

Court Proceedings: Unsecured Debts

*This fact sheet will discuss what can happen if an unsecured creditor (“lender”) takes legal action against you. This fact sheet applies to **unsecured debts**, where there is **no property** held as security for the loan. If you have been served with court documents for secured debts (e.g. mortgages, council rates, car loans) you can request a copy of our ‘**Court Proceedings: Secured Debt Factsheet**’.*

Important limitation periods

- ✘ If you have been served with legal documents in the **Supreme or County Court**, you have 10 days to file an Appearance from the date you were served. Filing an Appearance informs the court you will appear at the hearing;
- ✘ You will then have 30 days after you file an Appearance to file a Defence;
- ✘ If the matter is in the **Magistrates’ Court**, you will have 21 days from the date you were served with the court documents to file a Defence.

Please make sure you seek legal advice as quickly as possible if you think you have a defence to the court proceedings. If you are considering self-representing, we recommend talking to Justice Connect - [Self Representation Services – Justice Connect](#).

You have been served but Defence not filed and judgment not entered

You can still contact the creditor directly to negotiate a way to deal with the debt, even if you have been served with court documents. You have more options available to you before the creditor obtains a judgment in court against you, so please seek advice as quickly as possible. You can request our ‘**Debt Options Fact Sheet**’.

If you have attempted to negotiate with the creditor and they refuse to provide reasonable assistance, you can lodge a complaint with the **Australian Financial Complaints Authority (“AFCA”)** if they are a member. If you do this before a Defence is filed or judgment is entered against you, the court proceedings will be put on hold. **Not all creditors are members of AFCA.**

Default judgment

If you do not enter an alternative arrangement to deal with the debt, lodge a complaint with AFCA or file a Defence to the court proceedings, the creditor can apply to the court for **default judgment**. The creditor will have 15 years from the date of the judgment order to pursue you for payment of the judgment plus interest and legal costs.

A **judgment order is recorded on your credit report for five years**. You can ask the creditor to consent to have the judgment set aside (usually if the debt is settled). If this occurs, you can request the judgment be removed from your credit report.

Creditor's options to enforce judgment order

- ✘ The creditor can serve you with a **summons to attend an oral examination**. You will be requested to attend court to complete forms detailing **your income, expenses, assets and liabilities** so the creditor can find out how you can satisfy the court order against you. If you do not attend or if you leave court without completing the forms, you can be **arrested and brought before the court**. You can find copies of the relevant financial forms on the courts' websites;
- ✘ The creditor can apply to the court for an **instalment order** against you unless your sole income is Centrelink benefits;
- ✘ The creditor can apply for a **warrant to seize and sell your property** (personal or land) if the property you own is above the value of \$8,550 or if tools of trade, above the value of \$3,950. If your property is subject to finance the creditor will look at the value of your property minus any finance attached to it.
- ✘ The creditor can apply for an **attachment of earnings order** against you, if you are working and earning an employee salary. Your employer can be directed to pay up to 20% of your salary to the creditor to pay off the debt;
- ✘ The creditor can apply for an **attachment of debt order** against you, whereby any money owing to you is paid to the creditor, including money held in bank accounts;
- ✘ The creditor can apply to **bankrupt you**, for one or more judgment debts totalling \$10,000 or more.

Judgment Proof

You might be judgment proof if you have no income or are only receiving Centrelink benefits and you own no property or vehicles worth more than \$8,550 or tools of trade valued above \$3,950.

If you are considered judgment proof, **the creditor cannot enforce the court judgment order against you** unless your situation changes for the better within the 15-year limitation period the creditor has to pursue the judgment.

Your options to deal with judgment order

- ✘ Pay the judgment in full;
- ✘ Offer a reduced lump sum to settle the debt;

- ✘ Do nothing, and if the 15 year limitation period passes the debt will be statute barred (meaning the creditor can no longer enforce the judgment). Interest will continue to accrue so long as you do nothing. This is a risky option and we strongly advise against this option if you own a property;
- ✘ Ask for a deferral (hold) on payment for a period. You can ask for the interest to be frozen during this time;
- ✘ Negotiate a payment plan privately or through completion of the summons to attend oral examination;
- ✘ Apply for an instalment order through the court. This will put a hold on any enforcement action by the creditor, except where a Creditor's Bankruptcy Notice has been served on you;
- ✘ Request a waiver of the debt if you are on low or no income. Make sure you confirm a waiver in writing;
- ✘ Apply for a re-hearing of the judgment order. This will put a hold on any enforcement action by the creditor. You can apply for a rehearing if you were not present at the original hearing and have good reason as to why you were not served with the court documents. You should only apply for a rehearing if you have a genuine defence to the claim of the judgment order or dispute the amount owing. There are risks associated such as costs. If you lose you will likely have to pay your own legal costs and the other party's costs.
- ✘ You can apply to the Supreme Court on a question of law, which you must do within 28 days of the judgment order being made. This is expensive and we recommend seeking legal advice if considering this.
- ✘ You can apply for bankruptcy to wipe the debt. If you are considering this, please seek legal advice before making the decision.

You can call **Mortgage Stress Victoria** on **1800 572 292** and our lawyers and financial counsellors may be able to provide you with advice or assistance.

This fact sheet is a guide to the law in Victoria, Australia. It is not a substitute for legal advice.

Written by Mortgage Stress Victoria in March 2023.