

## NSW Local Court

This fact sheet is for information only. You should get legal advice about your personal situation. The fact sheet refers to debt recovery in the local court in NSW only.

### **Main ideas**

• You cannot be sent to jail just for not paying debt.

• A creditor (a person or company you owe money to) can ask the court to make a judgment that you owe a debt.

• Before the creditor can get a judgment, you should get a statement of claim. You have 28 days to respond.

• If the creditor has a court judgment, they can take some of your property, money and wages to try to recover what you owe.

• Get legal advice immediately if:

• you receive any court documents

• you are contacted by a sheriff (court officers who take property under a writ)

• money disappears from your bank account (debt garnishee)

• your employer is taking money out of your wages (wage garnishee)

• you receive an examination notice or order.

• Financial counsellors can help. Their services are free.

## **In this fact sheet:**

### **[Before court action starts](#)**

#### **[Statement of Claim](#)**

• You can complain to the Australian Financial Complaints Authority (AFCA)

• You can negotiate with the creditor

• You can apply to pay by instalments

- You can lodge a defence explaining why you do not owe the money
- You can do nothing

### **Court judgment**

- You can dispute the judgment
- You can pay the debt

### **Enforcement**

- If you can't afford to pay
- Examination
- The sheriff can take your property
- Garnishee of wages or bank accounts
- Forced (involuntary) bankruptcy

## **Before court action starts**

If you owe money to someone, they can take you to court to get their money. This is usually called "legal action" or "court action". It is a civil claim, not a criminal case - you don't go to jail just because you owe a debt.

If you miss payments on a loan or lease you took out for personal purposes, **watch out for a 30 day default notice**. This will give you 30 days to fix the default (usually pay what is owing, and keep up with normal payments in that 30 days). This gives you time to do something, before court fees and costs are added on to your debt.

This only applies if your loan or lease is regulated by the National Credit Act. [Read our fact sheet about the National Credit Act](#). You may not get a 30 day default notice if your loan was business or commercial - legal action may start as soon as you miss a payment (default on your loan).

You may not get a 30 day default notice for utility or other consumer debts. However, most creditors (the person or company you owe money to) will send reminders or warnings before starting legal action for consumer debts.

## **Negotiate with your creditor**

You can ask the creditor for a repayment arrangement. For consumer loans and leases, utility and telco debts you have a right to ask for a hardship arrangement. You can find more details in our fact sheet about [Consumer Leases](#), [Phone Debt](#) and [Electricity and Gas Debt](#).

You can also ask to pay a smaller lump sum as a full and final settlement. But you cannot force the creditor to agree.

**If the creditor agrees**, ask them to put that in writing, stating they will not take further action if you keep to the agreement.

You can also ask for time to talk to a free financial counsellor to work out what you can afford (call the National Debt Helpline on 1800 007 007 or [find your closest financial counselling service on the NDH website](#)).

## **You can complain to the Australian Financial Complaints Authority (AFCA)**

If your 30 days are about to expire (or if you are concerned about legal action starting) and you do not have an agreement in place, complaining to AFCA is usually the first and best option. You can complain if your lender is a member of AFCA. [You can check if your lender is a member on AFCA's website](#) or by calling 1800 931 678.

AFCA is a free and independent complaints service. AFCA can consider many types of complaints, including:

- if you are in financial hardship and need a repayment arrangement
- if you believe you don't owe the debt, or the amount claimed is wrong.

The lender must stop court action while your AFCA complaint is open.

[You can complain to AFCA online](#). You will get a complaints reference number by email. AFCA may ask you for more information; keep to their timeframes or ask for more time if you need it. [For more information about the AFCA complaints process, read our fact sheet about Financial Complaints to AFCA](#).

## **You can complain to the other external dispute resolution schemes**

[If your debt is energy or water, try the Energy and Water Ombudsman](#).

[If you have a telco debt \(phone, mobile or internet\), try the Telecommunications Industry Ombudsman](#).

These schemes may not automatically stop legal action, so ask the creditor to put a hold on the account while the ombudsman is investigating your complaint. Make sure you keep to their timeframes or ask for more time if you need it. Aim to get a clear outcome, for example, a payment plan, or an agreed amount owing (if the amount is in dispute). Get the outcome in writing.

## **Statement of Claim**

A Statement of Claim (sometimes called a Summons) is an important document from the court. **Do not ignore it.** Get legal advice immediately. [Visit our Useful Links webpage for contact details.](#)

The Statement of Claim is often posted to your last known address. It will include the details of the court and a court number.

You can also ring the court on 1300 679 272. The court registry can tell you if any court action has been started against you in any NSW court.

In NSW, you usually have 28 days to respond from the date you were sent the Statement of Claim. After 28 days, the lender can apply to the court for judgment by default (without a hearing). The court will not tell you when there is a judgment, so ring the court on 1300 679 272 to check.

Your options include:

## **You can complain to the Australian Financial Complaints Authority (AFCA)**

Complaining to AFCA is usually the first and best option. You can complain if your lender is a member of AFCA. [You can check if your lender is a member on AFCA's website](#) or by calling 1800 931 678.

AFCA is a free and independent complaints service. AFCA can consider many types of complaints, including:

- if you are in financial hardship and need a repayment arrangement
- if you believe you don't owe the debt, or the amount claimed is wrong.

The lender must stop court action while your AFCA complaint is open.

[You can complain to AFCA online.](#) You will get a complaints reference number by email. AFCA may ask you for more information; keep to their timeframes or ask for more time if you need it. [For more information about the AFCA complaints process, read our fact sheet about Financial Complaints to AFCA.](#)

## **You can complain to the other external dispute resolution schemes**

[If your debt is energy or water, try the Energy and Water Ombudsman.](#)

[If you have a telco debt \(phone, mobile or internet\), try the Telecommunications Industry Ombudsman.](#)

These schemes may not automatically stop legal action, so ask the creditor to put a hold on the account while the ombudsman is investigating your complaint. **If they do not agree, get urgent legal advice about whether to file a defence in court instead, before your 28 days expires.**

Make sure you keep to the ombudsman's timeframes or ask for more time if you need it. Aim to get a clear outcome, for example, a payment plan, or an agreed amount owing (if the amount is in dispute). Get the outcome in writing.

## **You can negotiate with the creditor**

You can ask the creditor for a repayment arrangement. For consumer loans and leases, utility and telco debts you have a right to ask for a financial hardship arrangement. For more information see our fact sheets about [Consumer Leases](#), [Phone Debt](#) and [Electricity and Gas Debt](#).

You can also ask to pay a smaller lump sum as a full and final settlement. But you cannot force the creditor to agree.

**If the creditor does agree** get it in writing. Make sure that agreement includes what happens to the court proceedings, for example:

- **Discontinue the proceedings.** This gets rid of the court proceedings altogether, and is usually your best outcome.
- **Judgment entered against you.** A court judgment can be enforced for at least 12 years (see enforcement below). A judgment listing may also go on your credit report for 5 years (for loans or other credit). This isn't a great option, but may be unavoidable if you don't have a legal defence to the debt and the creditor won't agree to anything else.
- **The proceedings stay active, but the creditor doesn't apply for judgment if you keep to the payment plan.** You may be able to avoid a judgment if you can keep to the payment plan. The court may dismiss the proceedings if the creditor doesn't apply for a judgment within 9 months of starting the court action (after checking with the creditor). You can ring the court on 1300 679 272 to check if the case is still open.

**Get legal advice before agreeing to any settlement.** Make sure you get a receipt for any amounts paid and keep a copy of the written agreement and any court orders made.

## **You can apply to pay by instalments**

If you agree you owe the whole amount, you can confess to the debt and apply to the court to pay the debt off over time. If you are not sure you owe the debt, or the amount the creditor

says you owe, get legal advice before confessing to the debt.

If your creditor is in AFCA or another free external dispute resolution service like EWON or TIO, try to get an arrangement through them first, before you consider this option.

The court will usually accept your application to pay by instalments if you can show you can pay off the debt (including interest) in a reasonable timeframe – usually 1 to 3 years.

However, confessing to the debt means you will get a court judgment against you. This can be listed on your credit report for 5 years (for loans or other credit).

A judgment can also mean court enforcement action. If the court does not accept your proposal or you don't keep to your instalment arrangement, the lender may take other action through the court (see below).

[Apply by using court form Notice of Motion to Pay by Instalments \(Form 46\).](#)

You need to provide information about your income and expenses, and assets and liabilities.

When working out what you can afford to offer:

- Make sure the amount is affordable when looking at your income and expenses.
- Think about how long it will take to repay the debt – is it reasonable?
- Put in a start date you can remember and keep to it – every payment must be received on time, every time. Monthly payments can be easier to remember than fortnightly.

If you need help working out what you can afford, or you can't afford very much and the debt will take more than 3 years to repay, talk to a [free financial counsellor on the National Debt Helpline](#): 1800 007 007 about other options.

**Be careful filling out the form** – you must provide the court with an accurate and complete picture of your situation. The form must be witnessed by a Justice of the Peace (JP) or a solicitor. It must be lodged in the same court where the action was started.

[More information about filling in forms is on the LawAccess website.](#)

You should get a letter within a week or two from the court telling you if the application was accepted. Ring the court on 1300 679 272 if you have not. Start making payments while you wait to hear back from the court.

**If the court accepts your application**, the creditor generally cannot take further action against you – as long as you make every payment on time. If you miss or fall behind on even one payment, the arrangement is no longer in place. Then the creditor can take court enforcement action against you.

[But if you have already received bankruptcy paperwork \(a bankruptcy notice or a creditor's petition\), read our Being made Bankrupt fact sheet and get legal advice immediately.](#)

An accepted application to pay by instalments does not stop bankruptcy action that has already started.

It is very rare for the creditor to object to an accepted application but they have 14 days to object. Get legal advice immediately and keep making payments in the meantime.

If you know you will miss a payment, you can put in a new application to pay by instalments. If you have missed payments under the old application, you are not protected from enforcement action until the new application is accepted.

**If your application is refused, get legal advice immediately.** You may be able to:

- Apply to have the court review its decision to refuse your Notice of Motion to Pay by Instalments. You must do this within 14 days of the refusal.
- Make a 2nd Notice of Motion to Pay by Instalments – but first get advice about why your application was refused.
- Try to negotiate a repayment arrangement directly with the creditor.

## **You can lodge a defence explaining why you do not owe the money**

Get legal advice first, and urgently. You only have 28 days to file a defence from being served the Statement of Claim.

If you lose, or something goes wrong in court, you could end up having to pay the creditor's court and legal costs (as well as still owing the debt).

If your creditor is a member of AFCA, consider making a complaint to that service instead. The lender can't get a judgment while AFCA is investigating. If your creditor is in the TIO or EWON, you must get the creditor's written agreement they won't get a judgment while TIO or EWON is investigating, otherwise you need urgent legal advice about filing a defence before your 28 days is up.

## **You can do nothing**

If you do nothing, the creditor can get a default judgment against you after 28 days. This will say that you owe the money claimed.

The creditor can then use the court's enforcement options, adding more costs to your debt. See details below.

## **Court judgment**

A court judgment means you owe the debt in the court's eyes. There may be a court judgment because:

- you did not file a defence, and the creditor got a judgment by default after 28 days (it did not need to go to a hearing)
- you did defend but lost the case
- you confessed the debt – usually by applying for payment by instalments through the court.

## You can dispute the judgment

If you don't agree you owe the debt, you can apply to have a default judgment set aside. To do this you must act quickly and have:

- **A reasonable excuse for not responding to the court action**  
For example, you moved and didn't receive any court documents, or you were in hospital. You also need to explain any delay once you found out about the court action.
- **A reasonable defence to argue**  
For example, you do not owe the debt, or the amount is incorrect. Or the loan was never affordable from the start, or you were forced into a loan by someone else.

If a judgment was made after a hearing, get immediate advice about whether it is possible to appeal. Time limits apply.

**Always get legal advice before going to court.** If you lose or something goes wrong, you could end up owing the whole debt, plus any extra court or legal costs the creditor adds on for responding to your application.

## You can pay the debt

If you agree you owe the debt, you can:

1. **Apply to the court to pay by instalments.** (See above.) If you keep to the accepted repayment arrangement, the creditor usually can't take any further enforcement action against you. But if you have already received bankruptcy paperwork (a bankruptcy notice or a creditor's petition), see our factsheet about Being made Bankrupt and get legal advice immediately.  
If your wages are already being garnisheed, tell your employer about the new payment amount accepted by the court. The garnishee will continue, but at the amount accepted by the court.
2. **Negotiate with the creditor.** You can ask for a repayment arrangement, or to pay a smaller lump sum as a full and final settlement. You cannot force the creditor to agree. If they do agree – get it in writing.  
Make sure the agreement includes what happens to the court proceedings. If you are worried about a judgment listing on your credit report (for loans or other credit), ask the creditor to agree to remove the judgment by consent. This is usually the best option,



but it's up to the creditor to agree.

Get legal advice before agreeing to any settlement. Make sure you get a receipt for any amounts paid and keep a copy of the written agreement and any court orders.

## Enforcement

Once there is a court judgment, the court lets the creditor apply for enforcement orders to force you to pay the debt. Each enforcement option attempted usually adds more in court and legal fees to the debt you owe.

### If you can't afford to pay

There is not much a creditor can do if you:

- have no assets at risk, and [less savings than the protected amount \(\\$587.50 per week as at 1 April 2024\)](#)
- are on Centrelink or earning [less than the wage protected amount \(\\$587.50 per week as at 1 April 2024\)](#)
- do not expect your situation to change in the long-term. Judgments can be enforced for at least 12 years.

Talk to a free financial counsellor they may be able to help you negotiate a debt waiver, so you don't need to worry about the creditor taking further action in the future. If you have a lot of other debts, a financial counsellor can also give you advice on other options.

[Find a free financial counsellor on the National Debt Helpline website.](#)

Get legal advice if you are not sure what to do or if you have income or assets at risk. Call our Credit & Debt Legal Advice line on 1800 844 949

## Examination

The creditor can ask for:

- an examination notice where they ask you to send them information about your assets and income
- an examination order if you have not replied to the examination notice in 28 days. The examination order requires you go to court on the date listed with all your financial records. You can be forced to attend court and asked questions about your financial situation.

**If there is an examination order, you must go to the court on the correct day or you may be arrested for not following a court order.**

Usually the creditor wants this information so they know which enforcement options to use to force you to pay the debt.

## **The sheriff can take your property**

The court can make an order telling the sheriff to take and sell property to pay your debt. This order is called a writ for levy of property or writ of possession.

The sheriff will not take (seize) an item if they believe the cost of taking, storing and selling it would likely be more than what they can sell it for. Seized items are usually sold in a public auction.

The sheriff **cannot** take:

- essential household items and furniture (necessary for your household's domestic use)
- [one vehicle worth less than a set amount \(\\$9,100 at March 2024\)](#)
- [tools of trade up to a set amount \(\\$4,200 at March 2024\)](#)
- property that is rented, mortgaged, on hire purchase or belongs entirely to someone else
- any item that would be protected in bankruptcy for more details [read our fact sheet about Bankruptcy](#).

The sheriff can take:

- any goods you own or have a beneficial interest in
- money, cheques, bonds and securities
- land that you own if the judgment debt is more than \$20,000.

If the items the sheriff wants to take belong to somebody else

- Tell the sheriff it is not your property. If possible, show proof of ownership.
- [The real owner must complete a notice to sheriff of disputed property \(Form 75\)](#). The owner must affirm or swear on oath that they own the property (it is a serious criminal offence to lie). Attach evidence of ownership (for example, receipts) whenever possible.
- The real owner should lodge the form at the court as soon as possible, and send a copy to the sheriff's office (the address is at the top of the writ).
- The sheriff will ask the creditor if they agree to release the property. If not, the sheriff may apply to the court to determine ownership, and the real owner and other affected people may need to attend.

## **When the sheriff comes to your home**

You must not assault or obstruct the sheriff. This is a serious criminal offence, and they can return with police. The sheriff's job is to execute the writ issued by the court, and the sheriff can give you useful information about services you can contact to get advice about what you can do.

- The sheriff will generally not take any items on the first visit. They will give you a copy of the writ, and explain that your items can be taken and sold at auction to pay the debt.
- You will have a short time after the sheriff's first visit to decide to either dispute the judgment or pay the debt (see above).
- The sheriff can "seize" an item without taking it immediately. The sheriff attaches a "notice of seizure" to the item and gives you a "notice to custodian" listing the seized items. You must not sell or give these items away.
- The sheriff can only seize items or accept full payment of the debt. The sheriff cannot agree to a reduced amount or a repayment arrangement.
- You can ask the sheriff to take certain items to sell first if you agree you owe the debt, and sale of those items will cover the debt.
- Court and sheriff costs are added on to what you owe.
- For land, the sheriff must give you at least 30 days' notice. They can then take reasonably necessary steps and use reasonable force to enter the premises and enforce the writ.

**Get urgent legal advice by calling our Credit & Debt Legal Advice Line 1800 844 949**

## **Garnishee of wages or bank accounts**

### **Garnishee over your wages**

This is money taken from your wages to pay your debt.

Your employer will receive the garnishee order, and must then [pay anything you earn above a protected amount \(\\$587.50 per week at April 2024\) to your creditor](#). Your employer can also take an administration fee of \$13 to cover their costs of arranging each deduction.

So, if you earn \$800 (after tax) a week, your employer must take \$199.50 out to pay to the creditor, and they keep \$13 for administration costs. You get \$587.50.

This garnishee continues until the debt is paid in full, or you leave that employer.

If you want to reduce the amount taken by a garnishee you can apply to the court to pay by instalments (see above). You can also try negotiating with the creditor directly, but it can be very difficult to get them to agree once a garnishee is in place.

### **Garnishee over your bank account**

This is money taken directly from your bank account (or from anyone holding funds for you) to pay your debt.

[Your bank must leave you with a protected amount \(\\$587.50 per week at April 2024\)](#).

Anything over that must be paid to your creditor. Your bank can also take an administration fee of \$13.

If you have less than \$587.50 in your account, nothing can be garnisheed.

If you receive certain types of Centrelink benefits, a certain amount of the balance cannot be taken (but this protection is rarely useful, as it is often less than the \$587.50 protected amount if you are spending most or all of your Centrelink payment as it comes in).

This garnishee is a one-off. But the creditor may keep going back to the court to get more garnishees issued over the same account. If the creditor doesn't know who you bank with, they may issue an examination notice or order to find out, or they may send several garnishees to different banks or financial institutions to see if any come back successful.

### **Forced (involuntary) bankruptcy**

If the debt is over \$10,000, the creditor may force you into bankruptcy.

Get legal advice immediately if you receive a Bankruptcy Notice or Creditor's Petition.

Usually, the first step is a Bankruptcy Notice which you only have 21 days to respond to.

If you have not paid within 21 days, you will have committed an Act of Bankruptcy. The creditor can then send you a Creditor's Petition with a court date and time for you to

attend to assess whether you are insolvent (cannot or will not pay your debts as they fall due). You must attend, or the court can make you bankrupt without you being there.

[Read our fact sheet about Being made Bankrupt, for more information.](#)

## **Need more help?**

[For a list of other resources and organisations, visit our Useful Links page.](#)

*Last updated: November 2022*