

Recovery of Old Debts

Description

This factsheet only applies to debts from NSW. Other states and territories have their own laws about how long a debt can be collected.

This fact sheet is for information only. You should get legal or financial counselling advice about your personal situation.

Main ideas

- Unsecured debts (like credit cards or personal loans) that are older than 6 years may be 'statute barred'. You may not need to pay.
- For mortgages, car loans, guarantees and deeds, this period may be 12 years.
- Making a payment on an old debt, or admitting in writing that the debt is yours, 'restarts the clock'.
- Statute barred debts are rare – get legal advice if you're being chased for a debt you think is statute barred

In this fact sheet:

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You may not need to pay a debt more than 6 years old (or 12 years for some types of debt)

For unsecured debts (like credit cards, personal loans and payday loans) in NSW, a lender or debt collector must start court action within 6 years of the latest of:

- the date the lender or debt collector got the right to sue you (this is usually around the

time you first missed a payment or a default notice was issued)

- the date of your last payment
- the date you acknowledged the debt in writing (this can be as simple as asking for a repayment arrangement or account statement for 'your' debt).

If no court action was started in time, then the debt is 'statute barred' and you do not have to pay the debt.

Do not get tricked into paying even a small amount– as the payment will restart the 6 years. But if you made a payment after the debt was already statute barred, you cannot reactivate the debt (**only applies to NSW debts**).

There are some debts where the lender or debt collector has 12 years to start court action – this includes:

- Mortgages (home or car loans, or other loans where an item or other property is used as security). They have 12 years to recover the principal amount borrowed, but only 6 years to claim interest – from when court action started.
- Deeds (commonly used for mortgages or guarantees).

If someone says you owe them money from a long time ago, ask for information

Don't pay anything. Don't acknowledge you owe the debt

You can ask the lender or debt collector to give you:

- copies of the original contract
- copies of account statements
- copies of any demand letters or court documents
- copies of any written acknowledgements they are relying on.

When you write to the lender or debt collector, use the term '**alleged debt**' – to avoid admitting to the debt and restarting the 6 years. Ask them to put a hold on all legal action for 28 days so you can receive and consider the information. [You could use this sample letter about old debts to a debt collector.](#)

If you find out the lender or debt collector has a court judgment against you, they have at least 12 years from the date of the judgment to collect the money. [Read our fact sheet about processes in the NSW Local Court.](#)

Get legal advice about whether you need to pay

Once you are confident the debt is already statute barred, you can raise a dispute with the lender or debt collector to get written confirmation that you don't need to pay (and keep that in a safe place). But if you turn out to be wrong, you may need to think about how you can pay the debt off.

If you're not sure, or if you are coming close to the 6 or 12 years, you need to be careful. It can be risky to do nothing and hope the time runs out for the lender or debt collector to collect the debt. Statute barred debts are fairly rare. Most, if not all, big lenders and debt collectors will likely have systems to alert them to debts about to become statute barred. If you wait and do nothing, interest and fees usually keep getting added to the debt, and if the lender starts court action in time, they can add on court and legal costs too.

Talk to a free financial counsellor for advice.

If the debt collector or lender starts court action

When court action starts, you should receive a statement of claim. You must act within 28 days, or the other side can get a 'default judgment' against you (which means you owe the debt in the court's eyes and the court can make enforcement orders to force you to pay).

Usually, the best thing to do is to lodge a complaint with the Australian Financial Complaints Authority (AFCA). You can only do this if the company chasing you for money is a member of AFCA. [Check if they are in the scheme on the AFCA website](#). AFCA is a free and independent complaints resolution scheme. Lodging a complaint stops all legal action until AFCA deals with the matter. [Read our Financial Complaints to AFCA fact sheet](#).

You can also file a defence in the court. You need to make your case that the debt is statute barred. **Get legal advice urgently to make sure you have a good case to argue and understand the risks.** If you lose, or something goes wrong in court, you could end up paying the other side's court and legal costs (on top of the debt they are chasing you for).

Need more help?

[Visit our Useful Links page for a more information.](#)

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