

What if I have been sued for a debt?

Use this factsheet if you have been sued for a debt in the Magistrate's Court of Victoria

What can I do if I am being sued for debt?

If the amount owed is \$100,000 or less, a creditor (known as the plaintiff) will serve a document called a Magistrates Court Complaint on you. The court requires that it be served in person on any person over 16 living at your address. The Complaint will bear a court number and have attached two copies of a blank Notice of Defence form for you to complete.

You should seek legal advice immediately. You have 21 days from the date of service to lodge your Defence (if any) with the Court and to send a copy of it to the address for service of the creditor (often this will be the creditor's solicitor).

If you do nothing, the Court may, on application by the creditor after the expiry of 21 days after the Complaint was served on you, make an order (called a "judgment in default of defence") in your absence that you owe the debt, plus legal costs, plus interest. Interest will accrue on the debt at a rate set by the Penalties Interest Rates Act 1983, which is currently (24 August 2011) 10.5 % a year.

You may still lodge a Defence after the 21 day time period has expired if the creditor has not applied for a judgment order against you.

If you agree that you owe the debt, you should, as soon as possible after service of the Complaint on you, negotiate and enter a written agreement with the creditor to pay the debt or an agreed amount by instalments or a lump sum. If you do not negotiate payment as soon as possible the creditor may enter judgment against you. You must ensure that the creditor files a Notice of Discontinuance with the court, which will stop the court action against you.

If you do not agree you owe the debt, or all of the debt, you will need to file a Notice of Defence even if you are discussing the matter with the creditor.

Remember: this information only applies to the Magistrates' Court of Victoria. Different rules apply to other courts and tribunals in Victoria and outside Victoria. You should always seek legal advice quickly if court action is threatened or taken against you.

What can happen if judgment is entered against me?

Once a court order (judgment) has been made against you for payment of a debt,

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there are various steps a creditor (also known as a judgment creditor) may take to recover the money owed. Some common steps are summarised below.

Oral examination

A judgment creditor may serve you with a summons to appear in Court to be questioned about your financial position. Failure to obey the summons may result in your arrest.

Instalment orders

A judgment creditor may apply to the Court for an order that you pay a judgment debt by instalments.

While not subject to any formal policy, an order will usually not be made unless the debt (if it is less than \$10,000), will be paid off within 2 or 3 years. Penalty interest on the debt will continue to accrue while the instalment order is in place.

If an instalment order is in place and is being complied with, or if a copy of an application for an instalment order has been served upon the judgment creditor, all other methods of enforcement of the judgment are blocked.

An instalment order will not be made without the consent of the judgment debtor where the income of the judgment debtor is derived solely from social security benefits: JDRA, s 12(2).

You may wish to apply for an instalment order because it has the effect of stopping other enforcement action, such as a warrant to seize property.

Warrant to seize property

A warrant to seize property is an order to the Sheriff to seize and sell goods belonging to the debtor unless the debtor pays the amount stated in the warrant. A debtor is entitled to refuse entry to the Sheriff. The Sheriff cannot seize any property which could not be taken from a bankrupt. This protects necessary household items and a car worth less than \$7050.00 (this amount is indexed annually and refers to the equity in the car meaning the value of the car less the amount owing under finance). Tools used to earn an income are also protected up to an amount of \$3,500.00 (indexed).

If you own real estate, the creditor may apply to another Court to have the Sheriff sell your share of your house or land.

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Attachment of earnings

A judgment creditor may apply to the Court for an order compelling a debtor's employer to deduct instalments from the debtor's salary and pay them to the creditor. Income received as a social security payment cannot be subject to attachment.

Free Advice & Assistance Consumer Action Law Centre

Legal Advice line

Telephone: (03) 9629 6300, or 1300 881 020 for country callers.

Email: advice@consumeraction.org.au

Mon – Fri 10.00 am – 5.00pm

Free telephone and email advice regarding credit and debt and consumer law matters

MoneyHelp

Financial Counselling service

Telephone: 1800 149 689

Mon – Fri 9:30am – 5.00pm

Free telephone financial counselling service