

## Do I Have to Pay an Old Debt?

### Use this Fact Sheet if:

- A debt collector or lender has asked you to pay a debt that is more than 6 years old; and
- You have not made a payment for more than 6 years; and
- You have not acknowledged the debt in writing for more than 6 years

In these circumstances your debt might be **statute barred**.

A debt collector or lender cannot force you to pay a statute barred debt if you know how to respond to:

- The demands of the debt collector or lender, and
- Any court documents they serve on you.

### How do I Know if a Debt is Statute Barred?

A debt might be statute barred if:

- You haven't made a payment for at least 6 years;
- You haven't admitted in writing that you owe the debt; and
- No court judgment has been entered against you.

Most court judgments in Victoria for debts under \$100,000 are registered with the Magistrates Court of Victoria.

You can find out if a court judgment has been entered against you in the Magistrates Court of Victoria by:

- Contacting the Magistrates' Court in Melbourne ph: 03 9628 7777, or by emailing [info@magistratescourt.vic.gov.au](mailto:info@magistratescourt.vic.gov.au). Remember it is possible that judgment might have been entered in another court or interstate; or
- Asking the debt collector or lender for the court judgment number and checking that with the court; or
- Getting your credit report and checking if a judgment is recorded.

The factsheet *How do I get a copy of my credit report?* has information about getting your credit report.

Don't accept a debt collector's word that judgment has been entered against you. If a judgment has been entered against you, you should have received court documents informing you that the debt collector or lender had commenced legal proceedings.

If action is taken in the Magistrates Court this document is called a *Form 4A* or a *complaint*. The complaint would have given you the opportunity to defend the court action before judgment was entered.

If judgment has been entered but you never received a complaint, you should seek advice. See *Getting Help* below.

### **What should I do if someone says that I have to pay an old debt?**

If you think it might be more than 6 years since you last made a payment on the debt, or acknowledged the debt in writing and you are not aware that any court judgment has been made against you:

- **Don't** make a repayment,

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- **Don't** agree that you owe the debt,
- **Do** get advice immediately and
- **Do** ask the debt collector or lender to provide copies of the loan contract and the account statements.

### When does the 6 year time limit *not* apply?

The creditor has more than 6 years to collect the debt if:

- a court judgment has been entered, in which case a 15 year limitation period applies.
- the debt relates to a mortgage over property in which case a 15 year limitation period applies.
- there is a court judgment that states a debt is owed in which case a 15-year limitation period applies.

If a lender had a mortgage over your house or other property and it been sold and you still owe money, the lender might claim a 15 year limitation period applies. This is a complex issue and getting advice is recommended.

### What does statute barred mean?

A debt can be statute barred because the *Limitations of Actions Act 1958* (Vic) places a time limit on debt collectors and lenders to begin legal action to recover debts.

In most cases, a debt collector or lender must recover the debt, or begin court action to recover the debt within 6 years of the date:

- on which the debt was owed or
- that you last made a payment or
- that you admitted in writing that you owed the debt.

The countdown for the 6-year limit starts from the *latest* event in the above list.

If the lender or debt collector does not take action within this time, the debt becomes "statute barred".

### What happens if a debt is "statute barred"?

The debt collector or lender can still ask you to pay and they will often try to convince you to make immediate payment.

Representing that legal action will or may be taken when a defence at law applies, may be misleading and deceptive or unconscionable when the debtor has not had the opportunity to obtain legal advice.

Don't take advice about alleged debts from debt collectors or lenders. It is in their interest for you to believe you have to pay. However if the debt collector or the lender takes court action against you, you will be able to use the fact that the debt is statute barred in defending the court action.

If you make a payment or an admission that you owe the money in writing, the 6 year period will start all over again and your debt will no longer be statute barred.

The *Credit Reporting Code of Conduct* prohibits credit reporting agencies from listing statute-barred debts.

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If the lender or debt collector takes court action to recover the debt, you should immediately lodge a defence (get advice and read the instructions on the Court document).

Your defence should clearly state that the claim is “statute barred”, and if the matter goes to hearing, you can explain that to the Court. Unless the creditor can provide evidence to show why the debt is not statute barred, you will not have to pay the debt.

Remember, it is up to you to raise the defence that the debt is statute barred if you think it applies. If you do nothing, the lender or debt collector might get a court judgment (that you must repay the debt).

The lender or debt collector will then have 15 years to enforce (carry out) the judgment.

### **What should I do if I get contacted about an old debt?**

Unless you are sure the debt isn't statute barred you should not admit to the debt or make any payment.

However you can (and should) request details of the debt being claimed immediately.

As a guide, you can use the sample letter attached to this fact sheet. In your letter, ask the lender or debt collector to provide:

- Copies of the contract if you don't have a copy
- Copies of relevant account statements. For example, if you remember that your last payment was approximately 7 years ago, ask for account statements for the last 7 years.
- Details of any court judgments.

You should include a sentence in the letter saying that you ‘*deny that you are liable for the debt*’.

You should also ask the lender or debt collector to stop any legal action until after the information is provided, however if you have already received a court document, get advice about lodging a defence immediately- even if the lender says that it won't take the matter any further.

Refer to for a sample letter asking for documents.

Once you have received the information from the lender or debt collector, get advice from one of the listed contacts to make sure you know your rights.

If the information shows:

- that you last made a payment more than 6 years ago, and
- that there is no court judgment against you.

You can send a letter to the lender or debt collector claiming that the debt is statute barred.

### **What can I do if the lender or debt collector starts legal action against me?**

Even if a debt is statute-barred, the lender or debt collector can still start legal action. If they do start legal action, you will be served with a court document.

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If this is a complaint from the Magistrates Court you will then have 21 days to lodge a written defence to the complaint, other courts will have different time periods.

Get advice if you need help to prepare a defence that the debt is statute-barred or that the behaviour of the lender or debt collector was misleading or unconscionable when it arranged for you to make payment of a statute barred debt.

You might have other defences or legal reasons why you do not have to pay the debt.

If you do not lodge a defence within the time period stated on the court document, the lender or debt collector can apply for a court order that you have to pay the debt. It then becomes a judgment debt and the lender or debt collector will have 15 years to enforce the debt.

The court can make this order even if there is no hearing.

### Other tips

- Keep notes of all telephone conversations you have with the debt collector or lender about an old debt.
- Keep any letters sent to you.
- Keep copies of any letters you send.

You might need to use these to prove at a later time that the lender has agreed not to pursue the debt.

### **What can I do if the lender or debt collector keeps on asking me to pay when I have already told them that the debt is statute barred?**

Refer to our factsheet *I'm being hassled by a debt collector* for what to do if you are being hassled by a debt collector.

### **What can I do if I have made a payment or acknowledged the debt in writing, and just found out that the debt was statute barred?**

If a debt collector or a lender represents that legal action will or may be taken when a defence at law applies, this may be misleading and deceptive or unconscionable if the debtor has not had the opportunity to obtain legal advice.

Seek legal advice to find out whether you can argue that because the conduct of the lender or the debt collector you should still have the benefit of the debt being statute barred.

### **Free Advice & Assistance**

#### Consumer Action Law Centre

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

- *Legal Advice line* Telephone: (03) 9629 6300, or 1300 881 020 for country callers.
- *Email:* [advice@consumeraction.org.au](mailto:advice@consumeraction.org.au) Mon – Fri 10.00 am – 5.00pm

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### Sample Letter

(check if the lender is a member of an external dispute resolution scheme, and if so, send the letter to the complaints department of the lender and send a copy of the letter to the external dispute resolution scheme)

Date

Your Name & address

Name of **lender or debt collector**

Dear *(if you do not have a name, try "Sir/Madam")*

Re: Your claim for payment *(put in their reference number if you have it.)*

I refer to (our conversation on (insert date), or./your letter dated ...) demanding payment from me. I do not acknowledge liability for the debt. Regardless however, I note that the last payment made on this account was in *(give a date if you have one, or give an estimations.)*.

I believe that under section 5(1)(a) of the Limitations of Actions Act 1958 (Vic.) you are out of time to issue legal proceedings for recovery of the debt as it is more than six years since your cause of action arose. As the debt is statute barred, I request that you stop taking any further action against me.

If you commence any legal proceedings against me for recovery of this debt I will defend this on statute barred grounds. I note that any statements or implications by you that you will take legal action against me will be in breach of the ACCC & ASIC Debt Collection Guideline: for Collectors and Creditors, 2005.

Furthermore I consider that any further attempts you make to contact me in relation to this alleged debt will constitute undue harassment. If you do make any further demands I will make a harassment complaint to the appropriate external dispute resolution scheme and/or regulatory authority.

Yours faithfully  
(Your Name)

cc: insert name of the appropriate external dispute resolution scheme

Don't be pressured to make any payments or acknowledge the debt until you get advice.