

Problems with debt?

Generally credit is easily obtainable for personal or business reasons either in the form of finance (loan), or as a business transaction, for example, in the form of an invoice. Someone's credit to you is however your debt to them, raising a legal obligation to pay back the debt in an agreed manner at an agreed time.

Debt can therefore be a problem for both the creditor who is seeking payment of the debt from the debtor, and for the debtor who may have valid reasons for not paying a debt such as never receiving goods, faulty goods or poor workmanship. It is often best for a debtor and creditor to try and reach an agreement. A debtor, for example, may agree to pay off the debt by an installment plan, or the creditor may agree to rectify or replace faulty goods in return for payment. Taking legal proceedings remains an option if an amicable agreement cannot be reached.

A Solicitor has sent me a letter of demand. What should I do?

Don't ignore it.

The Solicitor has written the letter on behalf of someone (the creditor) who claims that you owe him or her money. The letter will usually state that unless you pay the amount claimed within a specified time (often 14 days) the Solicitor has been instructed to begin legal proceedings against you.

If you do owe the money you should pay the debt as soon as possible to avoid having to pay extras such as court costs and interest on the money.

If you can't pay the whole amount at once, you can offer to pay by installments. Try to reach agreement with the person to whom you owe the money – your creditor. He or she is mainly interested in getting the money back and will usually only take legal proceedings if there is no other way of achieving this.

If you do not owe the money you can refuse to pay. If there is a clear reason why you do not owe the money (for example if the money is for goods or services that you didn't receive) you can tell the Solicitor about this. This may prevent court proceedings being started. However, if you are not sure that you owe the money, you should get legal advice.

Remember legal advice can always help. Even if you owe the money, a Solicitor may be able to make better arrangements for you to repay it.

What if legal proceedings are begun against me?

You will know if legal proceedings have been commenced against you because you will be served with a statement of claim. Your creditor's Solicitor will have already filed this document with a court.

Don't ignore it.

If you do owe the money it is still not too late to negotiate terms of agreement with the creditor. You can admit the debt and offer to pay by installments through the court office. But if you do this and the creditor objects to the terms you have offered within 14 days, the matter will be decided by the court registrar.

If you feel that you do not owe the money, you can choose to defend the claim. You can lodge the defense yourself or have your Solicitor assist you to prepare and lodge it with the court. A defense sets out your reasons for believing you do not owe the money.

You may also want to make a counter claim against the creditor – for example you may have been sold defective goods by your creditor. If you want to defend the claim, the court will set a date for the hearing.

If you are served with a statement of claim and do nothing about it for 28 days, your creditor is then entitled to apply to the registrar of the court for judgment against you.

Can I get a judgment set aside?

If a judgment has been entered against you, for example because you ignored the statement of claim or didn't turn up in court on the date set for the hearing, in some circumstances you may apply to the court to have the judgment set aside. You will have to explain to the court why you failed to lodge a defense or did not attend court, and you will also be required to file your notice of grounds of defense within a specified time. In some cases you will have to pay your creditor's legal and court costs.

What happens at the hearing?

On the date appointed for the hearing, the court will listen to what your creditor and you have to say and make a decision. You and your creditor can speak for yourselves in court but you can also be represented by a Solicitor.

What happens if I lose the case?

The amount you have to pay, including court costs and any legal costs that may be awarded, becomes a judgment debt which is payable immediately. You have to pay interest on the money from the date of judgment. You may apply to the court to pay by installments.

What happens if I don't pay the judgment debt?

If you don't pay the judgment debt:

- You may have to go to court to be questioned about your financial position;
- A garnishee order can be issued which directs someone who holds your money, for example your employer, bank or building society, to pay the money out of your wages or savings;
- A court may order a bailiff (an officer of the court) to take and sell your goods to pay the judgment debt and interest unless the full amount is paid;
- If the debt is more than \$3,000 and is not covered by the sale of your goods, a court can order the sale of your real estate, including your home;
- Bankruptcy proceedings may be started against you.

Someone owes me money and is refusing to pay. What can I do?

If you have tried the usual remedies such as accounts rendered and reminder letters, you will probably need to apply for a judgment from a court or tribunal against the person owing you the money (the debtor). A Solicitor can do this for you.

But before doing this think about the costs; your Solicitor will advise you whether it is financially worthwhile starting legal proceedings. Some debts are too small to justify the cost of legal action and in some cases if the debtor has no money and would not be able to pay, there is not much point in going to court.

What will the Solicitor do?

The first thing your Solicitor will usually do is send a letter of demand to the person or people who owe you money. It is worth remembering that in a great many cases when a debtor receives a letter of demand from a Solicitor he or she pays up, so it is often worth taking this step even if the further expense of legal proceedings would not be warranted.

Do I have to act within a certain time?

You usually must take action within six years from the date on which the debt falls due or is acknowledged by the debtor in writing.

Will I be eligible for legal aid?

Whether you are owed or owe money, you may be eligible for legal aid if you satisfy certain tests. These tests relate both to your income and assets and to the nature and merits of your case. Your Solicitor will be able to advise whether you would be likely to qualify for assistance, or you can contact the Legal Aid Commission of NSW directly.

How can a Solicitor help me?

If you have problems with a debt a Solicitor can:

- Advise you on the best course of action if someone owes you money or claims you owe them money;
- Advise you on the possibility of amicably resolving or reducing areas of dispute;
- Advise you about the possibilities of taking an action, defending an action or counter-claiming;
- Advise you of the possibility of applying to the court for time to pay if you are in debt;
- Advise you of your entitlement to retain some of your property if your debts exceed your assets and you face action to have you declared bankrupt;
- Advise you on arrangements for payment of outstanding debts, which do not involve bankruptcy.

These brief notes are for your general information. They are not a definitive analysis of the subject and professional legal advice should be taken before any course of action is pursued. Your Solicitors at Barry F. Cosier & Associates can advise you further regarding any matters of this nature.



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