

FACT SHEET: DEBT

Before Commencing Legal Action

Before commencing a legal action, you should contact the person owing you the money and attempt to come to an agreement regarding payment.

If attempts to reach an agreement are unsuccessful, you may send a letter of demand. This is a formal request that the money be paid within a certain timeframe and indicating your intention to take legal action if the money is not paid.

Important: you must ensure that the letter DOES NOT look like a court document – it is illegal to send a letter of demand that has the appearance of a court document.

Commencing a legal action

If debt is under \$10 000 – commence proceedings in the Small Claims Division of the Local Court where proceedings for court hearings are less formal.

If debt up to \$60 000 (if all parties consent up to \$72 000) - commence proceedings in the Local Court

If debt exceeds \$72 000 – commence proceedings in the District or Supreme Court

File a Statement of Claim

Legal action to recover money is commenced by filing at a Court Registry a document called a statement of claim.

Two types of claims that can be filed at the Local Court.

1. **Liquidated Claim** – This is used for most debt recovery actions and motor vehicle accident claims where the money owed is known.
2. **Unliquidated Claim**- This is used for claims where the amount of damages is unknown. For example: personal injuries claims and claims relating to the detention of goods.

Whether you are claiming liquidated or unliquidated damages – the same form should be used (Form 2). When preparing a Statement of Claim, ensure that you include following information:

- *Defendant's Details* – name, address & description (Company/Business/Individual);
- *Pleadings & Particulars* - information to identify your cause of action – when debt arose, where debt arose, brief description of events which show why money is owed, particulars of unpaid debt or breach, damage incurred & relief sought;
- *Interest* – may claim interest from date the cause of action arose at the prescribed rate;
- Costs of filing & service fees may be recoverable.

Lodging a Statement of Claim

You may lodge a Statement of Claim in person at your nearest Local Court or it may be lodged on your behalf by a solicitor.

When lodging the statement of claim it will be necessary to have **four** copies. The court will retain one copy, one copy will be returned to you, and two copies will be required for service upon the defendant.

The Debtor has 28 days to enter notice of appearance or file a defence.

Application for default judgment

If a debtor does not respond to the Statement of Claim within 28 days after service you may apply to the court for a default judgment. This is an application to the court to make an order in your favour on the basis that the defendant has failed to respond to the proceedings.

If you apply for a default judgment, you will need to complete and file a:

- notice of motion (Form 31 or 32); and
- an affidavit of service (Form 63); and
- an affidavit in support (Form 62) attesting to the debt owing; and
- a draft order or judgment.

All forms are available from the Lawlink Website. Click on the 'Forms & Fees' Link (www.lawlink.nsw.gov.au/lawlink/local_courts).

Affidavit proving service

The person who served the Statement of Claim should swear the affidavit of service. The affidavit of service must contain:

- a statement as to when, where, how and by whom service was effected;
- a statement, using as nearly as possible the words used by the person when it was delivered and anything the person said concerning the service or the proceedings; and
- a statement that the person receiving the Statement of Claim is over the age of 16 years.

Affidavit in support of application

An Affidavit in support must be sworn within 14 days before you file an application for default judgment. The affidavit must:

- state the amount owed to you at the time the Statement of Claim was filed;
- give details of any reduction of the debt or any costs as a consequence of the debt since the time the Statement of Claim was filed;
- state the source of your knowledge of the matters stated in the affidavit concerning the debt or debts;
- state the amount claimed by way of interest; and
- state whether costs are claimed. If costs are fixed, the amount that is claimed.

Time Limitation: Court action for debt recovery must commence within 6 years of when the debt or cause of action arose.

Contacts

Law Access NSW
1300 888 529

The Consumer Credit Legal Centre
For legal advice (02) 9212 4111
Hotline 1800 808 488

Financial Counsellors Ph:1800 808 488

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.