

Our legal practice and your family and business on the mid north coast – Woolgoolga, Coffs Harbour, Bellingen and Nambucca Heads – Team Legal Mobile – we come to you – or you come to us at Park Beach Homebase 252 Pacific Highway Coffs Harbour or at 24 Thornbill Glen Nambucca Heads. There is no extra charge for our mobile legal service and the first interview is free!

Problems with Debt

I have received a letter of demand, what should I do?

Don't ignore it.

The letter will usually state that unless you pay the amount claimed within a specified time (often 14 days) the lawyer 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 instalments. Try to reach agreement with the person to whom you owe the money – your creditor. The creditor is mainly interested in getting the money back and will usually only take legal proceedings if there is not 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 lawyer for the creditor 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 from *Team Legal*.

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

If you are successfully sued in court, interest can be awarded against you, so it is in your interest to try to negotiate without going to court.

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.

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 instalments 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.

If you feel that you do not owe the money, you can choose to defend the claim. *Team Legal* can assist you to prepare and lodge it with the court. A Defence 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, that you may have been sold defective goods by the creditor who says you owe them money.

If you are served with a Statement of Claim and do nothing about it for 28 days, the creditor is then entitled to apply to the registrar of the court for judgment against you (default judgment).

Can I get a default judgment set aside?

If a default judgement 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 judgement set aside. You will have to explain to the court why you failed to lodge a defence or did not attend court, and you will also be required to file your Notice of Grounds of Defence within a specified time. In most cases you will have to pay your creditor's legal and court costs, which will usually be assessed by the court at the hearing.

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 *Team Legal*. It will be necessary for you to give the court written statements of evidence from you and all your witnesses.

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 judgement debt which is payable immediately. You have to pay interest on the money from the date of judgement. You may apply to the court to pay by instalments.

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

If you don't pay the judgement 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 sheriff (an officer of the court) to take and sell your goods to pay the judgement 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;
- Until the debt is paid, you remain liable for the other side's legal costs and interest, as assessed by the court;
- 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 judgement from a court or tribunal against the person owing you the money (the debtor). *Team Legal* can do this for you.

But before doing this think about the costs; *Team Legal* 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.

Team Legal will claim interest as well as legal costs against the party who owes you money. The claim for interest continues from the date when your debt became overdue until you are paid. Court interest is always higher than bank interest. *Team Legal* can tell you about the amount of interest and costs you can recover.

What will *Team Legal* do?

The first thing *Team Legal* 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 *Team Legal* 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.

How can *Team Legal* help me?

If you have problems with a debt *Team Legal* 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 amicable 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 your face action to have you declared bankrupt;
- Advise you on arrangements for payment of outstanding debts which do not involve bankruptcy.