



**Legal Services
Commission**
OF SOUTH AUSTRALIA



HOW TO RECOVER A DEBT

—
STEP BY STEP



Contents

List of terms	4
When to use this booklet	5
First steps to recover a debt	6
Proving the debt	6
Time limits	6
Negotiation with the debtor	6
Behaviour when pursuing a debt	8
Sample letter of request	9
Mediation	10
The debt is still not paid. Now what?	11
Step one: Deciding to take legal action	11
Step two: Preliminary Steps to taking legal action	12
Step three: Final notice of claim or letter of demand	13
Sample letter of demand	14
Service	15
Possible responses	15
Step four: Commencing a minor civil claim in the magistrates court	16
Default judgment	17
Directions hearing	17
The trial	18
Step five: Enforcement	19
Investigation Summons	19
Debts owed by a Company	20
Examination Summons	20
Warrant of Sale	21
Charging Order	21
Garnishee Order	21
Bankruptcy	22
Winding up a Company	22
Using a Debt Collector	22
More information	23

How to Recover a Debt Step by Step

This booklet is published as a community service by the Legal Services Commission.

October 2017

© Legal Services Commission

List of terms

Minor civil claim	A claim up to \$12,000.
General Claim	A claim over \$12,000 up to \$100,000.
Damages	Amount of money claimed that is yet to be calculated.
Personal injury	Bodily injury, usually as a result of a car collision or other accident.
Plaintiff	Person making a claim.
Defendant	Person defending a claim (or against whom a claim is made).
Default judgment	Court judgment that is made because someone did not file a defence or comply with orders.
List of documents	Documents that may prove or disprove a claim.
Trial Court	The court where a trial takes place. It may be a different location to where the claim is filed.
Investigation Summons	An order for a debtor to attend court to answer questions about paying a judgment debt.
Examination Summons	An order to attend court to explain why a judgment debtor has not complied with a payment order.
Warrant of Sale	A court order to sell a person's property – either real estate or goods (only certain types of goods over a limited value can be sold). The Sheriff's Office arranges the sale.
Warrant of Arrest	A debtor can be arrested and brought to court to explain how the judgment debt is to be paid.
Enforceable Payment Agreement (Form 1B)	A record of an agreement for payment in instalments, entered into prior to taking court action.
Pre-Action Notice or Form 1A	A form putting the defendant on notice of possible claim. Issued by the Magistrates Court after payment of a fee.
Letter of demand	Letter demanding payment of a debt.
Garnishee Order	A court order allowing a person's wages or other money to be garnisheed (taken) for payment. Wages can only be garnisheed with the consent of the debtor.
Directions Hearing	Usually the first court date at which the court makes orders regarding the conduct of the case before a hearing. May also be used to help parties resolve the case informally.
Hearing	Also called a trial. Held before a Magistrate who listens to all evidence and makes a decision regarding a plaintiff's claim.
Debtor	Person who owes money, the defendant in legal proceedings.
Creditor	Person to whom money is owed, the plaintiff in legal proceedings.

When to use this booklet

THIS BOOKLET CAN BE USED IF:

Someone (a debtor) owes you a debt that is under \$12,000. If you make a claim for less than \$12,000 in the Magistrates Court, it is known as a Minor Civil claim.

If you are owed more than \$12,000, you should get legal advice.

A debt is a fixed (or known) amount of money, for example:

- Money you have lent someone
- Money owed to you for work you have done
- Money owed for goods

If you are owed money for

- Work done for you that is faulty, or
- Goods that are faulty or are not fit for purpose,

your claim may be a consumer claim, and you should get legal advice first.

If you are unsure whether your debt is fixed, get legal advice.

For assistance recovering a child support debt, telephone the Child Support Unit at the Legal Services Commission 8111 5576.

DO NOT USE THIS BOOKLET IF:

- The amount owed is more than \$12,000 or you are unsure how much money is owed to you.
- You want compensation for a personal injury as a result of a car accident, workplace incident or other accident.
- You are claiming money for repairs following a car accident. For information about claims arising from car accidents, see our Motor Vehicle Accident Kit.

First steps to recover a debt

PROVING THE DEBT

Keep copies of any contracts, invoices, emails, text messages, bank records or other documents that show how much money is owed by the debtor, and the time, date or circumstances of the debt.

If your agreement with the debtor is only verbal, you will need to rely on your own story if you need to go to court to prove the debt. Write down as much as you can remember as soon as possible.

TIME LIMITS

Legal action to recover a debt must be commenced within 6 years from the date when the debt first came about or was due for payment. If the debtor acknowledges or confirms the debt during the 6 year period by

- making a signed promise to pay the debt (an IOU); or
- making a payment towards the debt,

the 6 year period begins again from that date.

If your debt is more than 6 years old or if you are unsure if your debt is within time, get legal advice. You may not be able to take the debtor to court.

NEGOTIATION WITH THE DEBTOR

Most debts can be settled if both parties remain courteous and reasonable. Keep in regular contact with the debtor by mail, email or telephone so the debt does not fall to the back of their mind.

Keep copies of correspondence and take notes of phone calls including the date and time of the call.

If a debtor is slow in paying, ask why. Perhaps they can afford to pay you part of the debt each month. A court will never place a person under severe financial hardship to pay a debt, so there is no point asking for more than the debtor can reasonably afford.

If the debtor has a dispute about the amount of the debt or another problem, it is very important that you try to fix the problem as soon as possible.

If goods or services are faulty, there is a legal obligation under the Australian Consumer Law or other laws to fix the problem quickly. Get legal advice if you are unsure of your obligations.

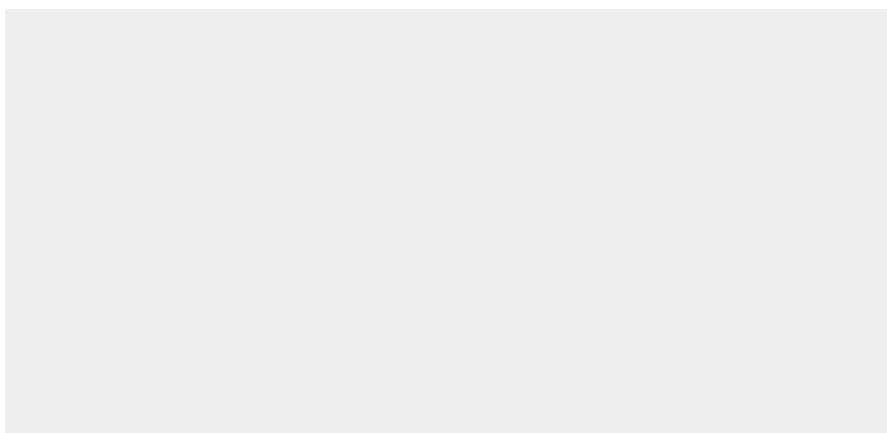
If you reach agreement with the debtor regarding a payment plan, make a record of the agreement and put it in writing so that both of you are clear on the amount of payments and when they are due.

Above all, it is far better to be polite and not make unreasonable demands.

CAN YOU PROVE THAT THE OTHER PERSON OWES YOU MONEY, AND CAN YOU CALCULATE HOW MUCH IS OWED?

Have you kept copies of documents that show how much money is owed, and the time, date or circumstances of the debt, including:

- agreements
- invoices
- emails
- letters
- bank records
- text messages.



THERE ARE SOME VERY STRICT RULES THAT APPLY TO YOUR BEHAVIOUR WHEN PURSUING A DEBT

Do not:

- demand money without saying who you are and how much money is owed
- demand more money than is actually owed
- continue to demand money from someone who denies they owe the money without making further inquiries as to whether your demands for the money are valid
- contact people who know the debtor, for example a debtor's employer, friends, relatives or neighbours, unless you are doing so to get the debtor's address
- blackmail a debtor, which may occur if you threaten, or make reference to, possible criminal proceedings if the debt is not paid
- say that court action has started when it has not, or threaten to take court action when you do not intend to involve the court
- pretend to be authorised in some official capacity to claim or enforce payment of a debt.

Apart from not helping to get the debt paid, some of this behaviour constitutes a criminal offence.

If you are unsure of what costs you can claim, get legal advice.

If talking to the debtor does not resolve the problem, put your request for payment in writing. A sample letter can be found on the next page.



LETTER OF REQUEST

Joe Smith
Assistant Manager
Paper and Printing Co
1 My Street
Adelaide SA 5000

Sam Johns
2 Your Street
Adelaide SA 5000
1 September 2016

Dear Mr Johns

Reminder Notice - Account invoice No. 12345

This is a friendly reminder that your account for printing brochures on 7 July 2016 for the sum of \$1635 is now overdue.

This amount was due to be paid on 1 August 2016.

A copy of the invoice No. 12345 is enclosed.

We look forward to receiving your payment within 7 days.

Yours faithfully

Joe Smith
Assistant Manager
encl.

WHAT STEPS SHOULD BE TAKEN AFTER SENDING THE LETTER OF REQUEST?

If the debt is not paid, follow up with a polite phone call about a week later.

If you are still not satisfied, you will need to decide whether to take legal action.



MEDIATION

Mediation is a process to help parties work out their differences and come to a mutually agreed solution. It may not be appropriate if the debtor agrees that the money is owed or genuinely cannot pay.

The parties need to agree to mediation, although sometimes the court will direct it.

A mediator is a neutral third party appointed to assist by suggesting solutions and acting as a go-between during mediation. A mediator is not there to decide the outcome.

Mediation can be better than going to trial because:

- the process is informal
- the parties decide the outcome, rather than a court
- it may be faster because the parties do not have to wait for a decision by a court.

The Magistrates Court offers a mediation service. Mediation is available if you have sent the debtor a Final Notice of Claim using the court's Form 1A or if you have commenced legal action in the court.

The cost of mediation is shared equally between both parties, and you will need to check the cost with either the court or other mediation service you decide to use. Some mediation services are free, depending on the circumstances.

If you come to an agreement regarding how the debt will be paid, make sure the agreement is put in writing. An Enforceable Payment Agreement (Form 1B) can be used for this purpose.

Step one:

Deciding to take legal action

THE DEBT IS STILL NOT PAID. NOW WHAT?

Factors to take into account when deciding to take legal action:

1. Fees

Fees are payable to the court to commence legal action and enforce the debt. These are added to the amount owed by the debtor.

The fees in minor civil actions are relatively small but they add up and can make it unviable to continue pursuing the debt.

For more information about fees see page 14.

2. The debtor's ability to pay

Does the debtor have the money to pay the debt? If you are owed money by a business, are other people having trouble getting paid?

Ask the debtor to provide information about their income and expenses and any assets which may help you to decide if it is worth continuing to pursue the debtor for payment.

For example, does the debtor own real estate or other assets that may be seized to pay the debt if you get a court order?

For more information about the debtor's ability to pay see page 13.

3. Any dispute about the debt

Has the debtor raised a problem with goods or services that are the subject of the debt?

You should consider coming to an agreement to fix the problem quickly, and if you cannot agree, you should try mediation.

For information about mediation, see page 10.

4. Time

Be aware that taking a debtor to court can be time-consuming and even if you get judgment, you will attend the court more than once.

If an order for payment in instalments is made, you may wait some time before the debt is paid in full, and you need to keep track of payments.

5. Other factors

Are you sure you know who to sue? If it is a company that runs a business, and you have been dealing with staff or a director, the debt is with the company and not the people you are dealing with.

If you run a business, consider whether you need to preserve the relationship with the debtor, for example, if the debtor has been a good customer in the past.

Listen to any concerns the debtor might have, but also take into account your own interests such as cashflow.

If the debt is owed by a friend or family member, consider whether taking legal action might have unintended consequences.

Remember, you can agree to accept a payment arrangement or a smaller lump sum payment at any time. If you reach agreement with the debtor to pay, record the agreement in writing and confirm it with the debtor.

Step two:

Preliminary steps to taking legal action



1. Sue the right person

Before you start, you need the correct name and address for the debtor.

If the debt is not business-related, you need the debtor's residential address. If you don't have the right address, you won't be able to serve the documents. It is possible to get the court's permission to serve documents in other ways, such as by email, but get legal advice first.

For more information about service see page 15.

If the debt is business related, check the name on any agreement or correspondence, including emails. Check the Australian Business Number (ABN). Some initial searches can be done for free, but you may need to pay for more detailed information.

A sole trader who has a business name should be registered on the Business Names Register (go to www.asic.gov.au). The register has free information regarding the address for service.

If you are suing a company, you must send your documents to the registered office, which may be different to the principal place of business. You can find the address of the registered office by paying a small fee to ASIC for a company search.

Looking at the company search will also tell you if the company is still in business. If your search states that the company is in external administration it cannot be sued, and you should contact the administrator or liquidator instead.

Do not put the name of the director on your correspondence or court forms, unless you are relying on a personal guarantee. If you are unsure, get legal advice.

Step three:

Final notice of claim or letter of demand

For partnerships and trusts that run a business, you need to search the Business Name Register to find out the right address.

If you have trouble finding this information, contact ASIC on 1300 300 630.

2. Proving the debt

Gather your paperwork together and check all dates and calculations of the amount owed. If you do not have documents, is there a witness who can help to prove your case? A witness can be anyone who is able to give relevant information to the court.

If a dispute is raised about the debt, there is a risk that a court will prefer the debtor's version of events. Be prepared to address the debtor's objections.

3. The debtor's ability to pay the debt

Do a Lands Titles Office property search to check if the debtor owns real estate which may be sold to pay the debt. Ask the debtor if they own a car or other assets, and ask for proof of their income and expenses.

Remember that if a company is in financial difficulty, it may go into liquidation whilst you are taking it to court. If that happens, your legal action must stop.

This is the final step before commencing court action. It puts a debtor on notice that you are prepared to go to court.

If you do not take this step, the filing fee and other court costs cannot be claimed from the debtor if you decide to issue a claim.

The Final Notice of Claim (Form 1A) is issued by the Magistrates Court for a fee but you must serve it yourself.

For more information about service options, see page 15.

Your form will briefly state the basis of the claim the amount of the debt. Don't forget to include other costs such as searches and the cost of the form.

The Form 1A is not the commencement of court action but a debtor may be more likely to respond to a notice from a court. Take care that you do not mislead the debtor about the existence of legal proceedings.

If the debtor is willing to negotiate, the fee that you pay for the Form 1A includes access to the court's free mediation service. For information about mediation at the court, call 8204 2444.

You can also send a letter of demand instead of a Form 1A. This does not cost anything but must include certain information to ensure that you can claim costs associated with filing the claim. If your letters have been ignored in the past, it may not be as effective as a Form 1A.

Once you have sent a letter or form, you must wait at least 21 days (plus 5 days for posting). If you have not heard from the debtor in that time, you can take the next step.

A sample letter can be found on the following page.

LETTER OF DEMAND

Joe Smith
Assistant Manager
Paper and Printing Co
1 My Street
Adelaide SA 5000

Sam Johns
2 Your Street
Adelaide SA 5000

1 September 2016

Dear Mr Johns

Overdue account for printing 1 July 2016
Invoice No. 12345

I refer to our reminder letters dated 1 September 2016 and 14 September 2016 regarding your outstanding account for the sum of \$1635 for menu printing. A copy of the invoice is enclosed.

Unless the outstanding sum of \$1635 is paid within 21 days of receipt of this letter, we intend to issue legal proceedings without further notice to you. Court costs will be added to the claim.

If we get a court judgment against you, this will be recorded on your credit history.

Please contact us urgently to discuss payment options.

Yours faithfully

Joe Smith
Assistant Manager
encl.

COURT FEES

Fees need to be paid to:

- Give notice of intention to sue using Magistrates Court Form 1A, which is obtained from the Court for a small fee
- File a claim Form 3
- Enforce the judgment (the amount varies according to the method of enforcement used).

All these fees are added to the amount owing if you obtain judgment.

To find the exact fee for each step, go to the court website. You can also ask the registry.

SERVICE

“Service” is a formal term for delivering documents. Be sure to use the right address for the debtor.

There are a number of ways to serve court documents.

The court will post some documents for you.

1. Ordinary post: Keep a copy of the document and make a record of the date it was sent. Postal rules allow 5 days before a letter is deemed served. If it is returned to you, any default judgment will be set aside.
2. Registered Post: Someone must sign when receiving the document. While using Registered Post shows that the letter was sent, it is not strictly necessary. If the debtor does not collect the letter it will be sent back.
3. Hand delivery: You can deliver it to the debtor or leave it with someone at their address. Be sure to take a note of when and what time you delivered it, and the name of the person who took the document.
4. Process server: A professional service for document delivery. You may not be able to claim the cost unless personal service is absolutely necessary or the court orders it.
5. Business debts: Use the registered address of the company or the business address of a sole trader or partnership.

POSSIBLE RESPONSES TO YOUR FINAL NOTICE OF CLAIM OR LETTER OF DEMAND:

1. No response from the debtor.

After waiting 21 days (plus 5 days for postal service), you can start proceedings in the Magistrates Court by filing a claim.

2. Payment in full by debtor.

Congratulations! No further steps are required.

3. The defendant may offer to make payment in instalments.

If you served a Form 1A, it will include a Form 1B which is an enforceable payment agreement. You should write the terms of the agreement on the Form 1B and both need to sign.

4. The defendant may ask for more time to pay the debt.

When considering the defendant’s offer, take into account how long court action may take, and consider whether an enforceable payment agreement (Form 1B) may be a preferable option.

5. The defendant may dispute some of the claim or all of it.

Mediation is an option, if the defendant agrees. If you paid for a Final Notice of Claim Form, you can use the court mediation service but fees may apply.

For more information about Mediation see page 10.

Step four:

Commencing a minor civil claim in the Magistrates Court

Remember that a minor civil claim is for amounts of \$12,000 or less. If the debt is more than \$12,000, get legal advice.

A Minor Civil Claim is commenced using Magistrates Court Form 3, obtainable from the court registry or from www.courts.sa.gov.au

By now, you should have all of the information you need to complete the form.

Keep the details of the claim brief and number the paragraphs. An example of wording for a claim is shown below.

Get legal advice if you are unsure of what to include in your claim.

Lodge the completed forms at the Registry and remember to take four copies with you.

You need to pay the filing fee at the same time.

The court registry can post the claim for you free of charge, making it easy to track the claim.

If you decide to serve the document yourself by posting it or giving it to the other person, you need to file a form (called an affidavit of service) setting out when, where and how you served the claim.

You must also include a Form 17 with the claim. The Form 17 is a multilingual notice that emphasises the importance of the claim and explains what the defendant needs to do.

POSSIBLE RESPONSES FROM DEBTOR:

1. No response:

The defendant has 21 days (plus 5 days allowing for post) from the date of receiving your claim to file a defence. If no defence is filed, you can ask the court to sign judgment in default.

You will need to complete a Form 18 with proof that the claim has been served (unless the court served it for you).

Default judgment can be set aside if the defendant can show that they did not receive the claim and they have a good defence to the debt.

2. Admits the money is owed:

If the defendant admits the claim and agrees to pay, make sure that you record a final date for payment. If possible, get the defendant to sign an Enforceable Payment Agreement. If payment is not received as agreed, you can then follow the steps above for default judgment.

3. Denies that the money is owed:

A defendant may file a defence to your claim, denying that the money is owed.

A copy of the defence will be sent to you by the court, along with a notice of a directions hearing.

EXAMPLE OF A CLAIM:

1. In July 2016, the plaintiff provided the defendant with printing services. On 2 August 2016, invoice no 12345 for \$1653 was issued and due for payment within 7 days.
2. Despite repeated requests for payment, the defendant has not paid invoice no 12345.
3. The plaintiff claims \$1653 plus costs and interest.



You must attend or the claim will be dismissed in your absence.

4. Counterclaim:

A defendant may not only file a defence, but also a counterclaim. A counterclaim may be for losses suffered by the defendant arising out of the same situation – for example, the defendant may be refusing to pay an invoice because the goods supplied or the quality of work is below standard.

The court assumes that you will defend the counterclaim so there is no need to file a defence.

If the circumstances of the counterclaim have not been raised with you before, get legal advice as soon as possible.

DEFAULT JUDGMENT

If the defendant does not respond to the claim by filing a defence within 21 days (plus time for posting) you can ask the court to sign judgment in default by completing a Form 18 and filing it with the court.

If you served the claim yourself by giving it to the debtor, you need to complete an affidavit of service.

Default judgment means that the defendant is deemed to have accepted the claim.

You are not required to inform a debtor if you sign default judgment. Usually the only way they will know is when an enforcement process is served.

DIRECTIONS HEARING

If the other person files a defence disputing the debt, you will both get a Notice of Directions Hearing.

A directions hearing is not the trial of your case. It is an opportunity for the court to find out each party's position and help define any issues in contention. You may also find that the court helps you to work out a resolution.

You should bring any relevant documents and be prepared to try to resolve any dispute or reach a compromise.

If the matter cannot be resolved and a trial is necessary to decide the dispute, you can be directed by the court to do any of the following:

- A list of documents to be filed and copies provided. The process of giving each other a list of relevant documents is called 'discovery'.
- Make changes to your claim or to the defence, or to the names of the parties
- File a list of witnesses
- Mediation. (see page 15)

If you do not understand what you need to do, ask the Magistrate to explain.

Any orders will be recorded by the court. Make sure you get a copy from the Registry so you know what you need to do. Be aware that you may be penalised for not complying with any court order.

If a date is set for trial by the Magistrate, you will get a further notice of the trial called a Notice of Hearing.

The trial

A trial will only happen if the debt is disputed by the debtor. If no defence is filed by the debtor, see page 16.

Note: Lawyers are not usually permitted at the trial of a minor civil claim except in special circumstances.

Take careful note of the date and time for your trial.

You need to be prepared:

1. Ensure your witnesses are available
2. Gather all available documents related to your claim in order
3. Arrive at court in plenty of time, and check your allocated courtroom on the noticeboard.

If you are more than 15 minutes late, your case could be dismissed in your absence.

You may need to wait until the court is ready to hear your case. Avoid making other appointments on the day and be prepared for a long wait if necessary.

A court officer will take your name and call you into the court room. Your witnesses will have to wait outside. Everyone stands when the magistrate enters or leaves the court and you must call him or her "your honour" or "sir" or "madam".

Remain calm and polite at all times. Allow the magistrate to control the proceedings and avoid speaking directly to the debtor.

The magistrate will conduct the hearing like an inquiry and ask you to begin with an outline of your case. He or she will ask each person questions, as well questioning the witnesses (if you have them). Debt matters tend to be relatively straightforward, so your hearing may not take much time.

The magistrate may give a decision immediately or reserve his or her decision, which means you may have to wait to find out the result.

If you are unhappy with the decision, get legal advice quickly about your right to have the decision reviewed. You have limited time in which to ask for a review and there are fees to pay.

If you are successful, the magistrate may ask the other person to make arrangements to pay. This may be by instalments or in a lump sum and may include your costs.

Step five:

Enforcement

There is no automatic requirement for a judgment debtor to pay – it is up to you to enforce a judgment. Some debtors will pay after judgment is handed down and it is clear that there is no longer a dispute.

If a person does not pay even though there is a court judgment, there are a number of options to get the defendant to pay. These vary depending on whether the debt is owed by an individual or a company.

Unless a court judgment is discontinued because full payment is made, the judgment will remain on a person's credit file for up to 7 years. An unsatisfied court judgment on a credit file may prevent the debtor from obtaining credit.

INVESTIGATION SUMMONS

If the debt is owed by an individual (whether it is a personal debt or related to a business), the first step is to issue an Investigation Summons.

If you complete a Form 18 asking for default judgment, you can ask for an investigation summons to be issued at the same time. You will need to pay a fee which is added to the debt.

A time and date is set by the court for an investigation hearing. The purpose of the investigation hearing is to determine the judgment debtor's ability to pay the judgment debt. It is not a hearing about whether or not the debt is owed.

The investigation summons must be served on the debtor personally. The court will send you a notice of the time and date for the hearing.

Prior to the hearing, the debtor must complete a form showing their income and expenses. The court registrar may also question the debtor and depending on the circumstances, an order for regular payments in instalments can be made.

If the debtor does not have the means to pay, a 'no order' can be made for a period of time to re-assess the person's circumstances.

If a person does not attend the investigation summons hearing, a warrant may be issued for their arrest.

DEBTS OWED BY A COMPANY

You will need to issue a summons to a director of the company. A company search lists the current directors of the company and their addresses.

The director is required to bring information about the company's financial situation to the hearing.

EXAMINATION SUMMONS

If the judgment debtor does not keep to the orders made by the court registrar and misses two or more payments, you can ask for the person to be brought to the court to explain why and for an order for the arrears to be paid.

You do this by requesting that an examination summons be issued. This will incur an additional fee which is added to the total owed.



WARRANT OF SALE

If the debtor owns real estate and the debt is more than \$10,000 you can ask for a warrant of sale of the property. A warrant for sale is issued by the court and authorises the Sheriff to sell property owned by the debtor to pay the judgment debt.

If the person owns other assets such as a car worth more than about \$7,000 or a boat or shares, these may also be seized by the Sheriff for sale.

The cost of selling property is paid first from the proceeds, then any other debts with priority (such as a mortgage), then the judgment debt surplus is returned to the owner.

CHARGING ORDER

If the judgment debtor owns real estate, it is possible to place a charging order on the property. This means the debt will be paid whenever the property is sold or transferred, if there is sufficient surplus after all other costs are paid.

It is best to get legal advice regarding the forms to complete for a charging order. The court will award a fixed sum for preparing the necessary forms for lodgement and registration as well as the discharge of the charging order when the property is sold.

You may also need to use a conveyancer to prepare the documents for registration at the Lands Titles Office.

GARNISHEE ORDER

A garnishee order means that any money owed to the judgment debtor is paid directly to the judgment creditor. This money might be money in a bank account, or a debt owed by a third party.

A debtor's wages may also be garnisheed, but only with the permission of the debtor.

This is not a common process and can only be used in limited circumstances. It would be best to obtain legal advice first.



BANKRUPTCY

If the debt is more than \$5,000 you can issue a bankruptcy notice which is the first step in making the judgment debtor bankrupt.

If a person is made bankrupt all of their assets vest in a trustee who sells the assets and shares the proceeds between all of the person's creditors.

Having a person declared bankrupt is an expensive process involving further court proceedings. If the person does not own any property (whether personal property or real property such as land or a house), it is unlikely that you will recoup your costs and less likely that your will debt paid.

The bankruptcy notice is completed online at the Australia Financial Security Authority (AFSA) website. You must pay a fee and have the notice served personally on the debtor. The debtor may respond by paying within 21 days as required by the notice, but if there is no payment, you can issue a creditor's petition to have the person declared bankrupt.

Given the cost and complexity of making someone bankrupt, it is best to obtain legal advice .

WINDING UP A COMPANY

If the debt is more than \$2,000 and owed by a company, it is possible to have the company wound up, or liquidated. Again, this is a complex process and further costs are involved which may not be recovered.

If you are considering winding up the company, seek legal advice first.

USING A DEBT COLLECTOR

It may be tempting to engage a debt collector to recover a debt because you do not have the time to chase the debt. You need to pay the debt collector and with some exceptions, you cannot add that cost to your claim.

If you have a number of debts outstanding, you may want to consider a debt collector as it may be more economical.

More information

MAGISTRATES COURT OF SOUTH AUSTRALIA

The Registry staff may be able to assist with forms, but cannot give you legal advice.

The forms can also be obtained from the court website as well as up to date information about fees.

www.courts.sa.gov.au

Ph: 8204 2444

LEGAL SERVICES COMMISSION

www.lsc.sa.gov.au

Legal Help Line: 1300 366 424

(free advice and information Mon to Fri 9.00am-4.30pm)

ADELAIDE OFFICE

159 Gawler Place

Adelaide SA 5000

Ph: (08) 8111 5555

ELIZABETH OFFICE

Suite 2 Windsor Building

1 Windsor Square (off Playford Boulevard)

Elizabeth Shopping Centre SA 5112

Ph: (08) 8111 5400

MOUNT BARKER OFFICE

18 Walker Street

Mount Barker SA 5251

Ph: (08) 8111 5320

NOARLUNGA OFFICE

Ramsay Place

Noarlunga House,

Colonnades Shopping Centre

Noarlunga Centre SA 5168

Ph: (08) 8111 5340

PORT ADELAIDE OFFICE

ANL House, 306 St Vincent Street

Port Adelaide SA 5015

Ph: (08) 8111 5460

PORT AUGUSTA OFFICE

13 Flinders Terrace

Port Augusta SA 5700

Ph: (08) 8686 2200

WHYALLA OFFICE

Tenancy 7, 169 Nicolson Avenue

Whyalla Norrie SA 5608

Ph: (08) 8620 8500

COMMUNITY LEGAL CENTRES

For details of community legal centres visit
www.saccls.org.au



www.lsc.sa.gov.au