

DEBTS



Legal Services
Commission
OF SOUTH AUSTRALIA



This information is general and should not be relied upon as a substitute for legal advice. The Legal Services Commission provides free advice for most legal problems. Contact the Legal Helpline on 1300 366 424 www.lsc.sa.gov.au www.lawhandbook.sa.gov.au

DEBTS

Many of us go through a time when we cannot afford to repay money we owe. If you are being asked to pay money which you think you do not owe, you should seek help quickly to protect your rights.

IF I CANNOT PAY MY BILLS WHAT CAN I DO?

STEP 1

Write down a statement of your financial position. A financial counsellor can help you do this free of charge. To get in touch with a financial counsellor, call 1800 007 007.

Your statement should include:

- money coming in
- money going out for food, rent, clothes, bills, medication, etc
- money owed and things you own

This financial statement will help you and your creditors (those people who you owe money) understand clearly your position.

STEP 2

List all your creditors and the amount you owe them. Make an offer in writing to pay them an amount each fortnight. Tell them the personal circumstances of your debts eg sickness, loss of job.

- Don't make an offer you may not be able to keep up
- Your creditor does not have to accept any offer you make

A financial counsellor can also help you with other options or negotiate on your behalf.

If you are experiencing hardship with your home loan, credit card or personal loan, contact your bank quickly to tell them about your situation. If they won't help, you need to ask a financial counsellor or ring the Legal Helpline 1300 366 424.

FINANCIAL COUNSELLORS

A financial counsellor can help you to work out a budget and a statement of your financial circumstances. A statement prepared by a financial counsellor can be useful if you are required to provide proof to the court or a creditor of your ability to pay. They can also assist in negotiating with creditors on your behalf. Their services are free and a list of contacts is provided at the back of this fact sheet.

WHAT CAN A CREDITOR DO TO ME?

If you owe someone money you need to be aware of the possible actions they may take against you. They may do any or all of the following:

- make a report to the credit rating agency
- send letters demanding payment
- have a debt collection agency to recover the money
- take court action

DEBT COLLECTORS

Debt collectors are not allowed to come to your house or phone you demanding payment between 10.00 pm and 7.00 am each day and not at all on public holidays. There are strict controls on debt collectors. They must be licensed and they are not allowed to threaten you. If you feel you are being harassed you can make a report to Consumer and Business Services, telephone 131 882.

Often debt collectors will include their costs in the amount being recovered. You may not be liable for these costs unless you have agreed to them specifically before incurring the debt (these debt recovery costs may be a condition of a credit card or loan).

WHAT IF WE REACH AN AGREEMENT?

Where an agreement is reached about the amount of money owed it is possible to make a court enforceable payment agreement recording the amount owed. It is recommended you see a financial counsellor to make sure that the new payment plan you are about to agree to is realistic in your financial circumstances.



WHAT IF I RECEIVE A CLAIM OR A SUMMONS FROM THE COURT?

Don't ignore it. Get legal advice. A 'claim' is a court form which says you owe money. If you ignore the claim the court assumes that you owe the full amount and will make judgment against you. Judgment is the court's finding that you owe an amount of money.

If you don't agree with the claim or think you don't owe the money you must lodge a defence or a counter-claim within 21 days.

If the matter goes to court, be sure to attend on time otherwise judgment may be decided against you. If you want to negotiate 'out of court', get your creditor's written agreement that no action will be taken against you while you are negotiating and that no court orders will be taken against you. A financial counsellor can help you do this. Even if you cannot pay any money you should contact your creditor because they may decide it is not worth their trouble to chase the debt.

WILL I GO TO GAOL?

You cannot be gaoled for failing to pay your debts but the court can imprison you for up to 40 days for disobeying its orders, such as refusing to attend court or refusing to pay if you have the money.

WHAT ABOUT MY CREDIT RECORD?

Even before a matter is taken to court a credit provider can report overdue accounts to a credit rating agency. Court judgments, bankruptcy and credit refusals are listed on your credit record. If your credit record shows you have defaulted on payments it will be difficult to obtain credit in the future.

HOW CAN THEY MAKE ME PAY?

Once the matter has been to court and judgment has been decided against you, a creditor has several ways to make you pay. Remember, they can still keep pressing you to pay either by letter or through a debt collection agency.

The main ways to enforce payment are:

Investigation Summons and Examination Summons

An Investigation Summons brings you to the Magistrates Court to answer questions about how you will pay your debt. Don't be late or else a warrant may be issued for your arrest. Get a financial counsellor to help you fill in the income and expenditure form which is attached to the summons. You may be pressed to make a large offer each week but do not offer to pay more than you can afford. If you do not make those payments you will be brought back to court under an Examination Summons to explain why you have not paid.

Taking your goods (Warrant of Sale)

The court has the power to authorise the seizure and sale of your property (real estate and personal property). This means a sheriff can come to your house and take things to sell to pay your debt. They cannot take essential furniture, personal things, car (valued under \$7,700) and tools of your trade (up to \$3,750).

Charging Order

A Charging Order works like a caveat that restricts you from dealing with your property. The court can also order the sale of this property to pay your debts.

Bankruptcy

Bankruptcy is a last resort. You can apply to go bankrupt voluntarily or in some circumstances a creditor can apply to make you bankrupt. Bankruptcy will release you from most of your debts and stops creditors from taking further action. However, you will lose most of your assets, including your home, you may be forced to pay some of your income to the bankruptcy trustee and you may face other restrictions. Some debts will not be wiped off (e.g. child support payments, fines imposed by a court, tax debts and Centrelink debts). You will also find it harder to get credit in the future, even after your finances have recovered. Depending on your circumstances, you may be able to establish a formal Debt Agreement or Personal Insolvency Agreement with your creditors instead of going bankrupt. More information about debt agreements and bankruptcy is available through a financial counsellor and AFSA. It's best to talk to someone before taking such a big step.

REMEMBER

- Get advice as soon as possible
- Put everything in writing
- With careful planning many problems can be avoided
- Don't ignore creditors. Most are understanding and will only press you if you ignore them.

GETTING HELP

Financial Counselling Helpline

Telephone: 1800 007 007 (free advice and assistance)

Australian Financial Security Authority (AFSA)

Level 9, 80 King William Street ADELAIDE SA 5000 www.afsa.gov.au

Telephone: 1300 364 785

South Australian Financial Counselling Association (SAFCA)

A list of financial counsellors is available at www.safca.info