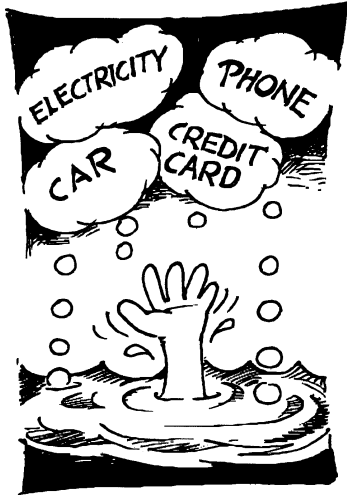


# Struggling with a Debt?

**Don't panic - you cannot be put in gaol in NSW because you cannot pay a debt. You have rights. Get advice quickly.**



Dealing with debts is a serious and stressful matter. If someone says that you owe them money, the law says that:

## THEY CANNOT:

- have you sent to gaol.
- take and sell any property over which they do not have a **mortgage** or other form of **security** unless they have an order from the Court.
- threaten you, physically intimidate you or harass you

## BUT THEY CAN:

- write you a letter or ring you to demand payment.
- take you to court to recover their money.
- take and sell any property over which they have taken a mortgage or other form of security

## Having trouble paying a loan? Some options

- Do you have insurance which might cover your loan payments (for example, income protection or consumer credit insurance)? Check the original documents you signed or ask the lender if you are unsure. If you do have a policy but your claim is refused, get **legal advice** immediately.
- Have you tried explaining your situation to the lender and negotiating a temporary reduction in repayments or an extension of the loan period?
- If you took out the loan for personal and not business or investment purposes, you may be entitled to a **hardship variation** to the loan contract. This might be available if you have become sick or unemployed or ended a long-term relationship since you took out the loan.
- If you are having trouble paying your home mortgage you could enquire about **Mortgage Assistance**.
- If you don't think your financial situation will improve in the near future, you may wish to seek permission to sell any mortgaged property (eg your car or house). You must get the lender's permission to sell any property over which they have taken a mortgage.

A **financial counsellor** may be able to assist you with some of these steps. See the **Getting Help** section over the page for contact details of organisations that offer advice and assistance.

## The Court Process

If you do not pay a debt you may be taken to court. The following is a very brief summary of the court process. If you receive any letters threatening legal proceedings or court documents, you should get legal advice.

- **You receive a document stamped by the Court called a *Statement of Claim*.** This will tell you how much the other person or company says you owe them. It will also have money added for legal costs and service fees.
- **You then have 28 days to take action.** This may include paying the debt, applying to the court to pay the debt by instalments, or filing court papers called a **Defence** or **Cross-Claim** explaining why you do not owe the money. You may also have to file a form called a **Notice of Appearance**.
- If you have filed a defence or cross claim, you will be notified when you must attend court. The court will usually ask you to negotiate with the person or company who is claiming money from you. If you cannot come to an agreement there will be a "hearing" where the court hears the evidence and makes a decision about whether you owe the amount claimed. You may have to go to court several times before you get a "hearing"

**IMPORTANT** – If you receive the *Statement of Claim* do not ignore it! If you do nothing the Court will make orders that you owe the debt in your absence. You will not be warned about this or asked to attend the court. Get legal advice as soon as possible.

## Jack's Story

A woman in a blue uniform from the Sheriff's Office of NSW knocks on Jack's door. She gives him a piece of paper, which he cannot understand, and starts looking through his house and placing stickers on his furniture. Jack takes the piece of paper to the worker at the local community centre who explains what the paper says. It seems a bank has a court order to take and sell Jack's property to settle a debt of \$8,000. Jack is very confused. He didn't know anything about a court case.

Sometimes a person is not properly notified about a court claim against them. In these cases it may be possible to have the court judgment "set aside" and the case reconsidered by the Court, if you have a defence. Get legal advice urgently if a Sheriff comes to your home.

## What can the Court do to make me pay the money?

*In the Local Court*, if the court makes orders that you do owe the money, the court can do any of the following:

- make you show the court evidence of your financial circumstances. This is called an **Examination Order**. The creditor will first send you a letter called an Examination Notice for you to complete.
- arrange for the Sheriff's Office to take and sell your property or personal belongings. This is called a **Writ for Levy on Property**.
- arrange for money to be deducted from your pay or your bank account. This is called a **Garnishee Order**. Centrelink payments cannot be taken in this way, unless they are taken to pay debts owed to Centrelink or if they sit untouched in a bank account for more than 4 weeks.
- make you **bankrupt**.

You can stop any of these things by lodging a **Notice of Motion for Time to Pay**. If you have already made one or more applications to pay the debt off over time, you will have to ask for a stay—it will not be given automatically. The Court or a financial counsellor can assist.

*If you have a home loan or a loan secured by a home*, the Supreme Court can make an order (if you did not file a defence) that the creditor can take possession of your home and sell it. The Supreme Court will also make an order that you owe the debt. The lender can make you bankrupt if there is still debt left to be paid after your home is sold.

## Getting help

### LEGAL ADVICE

The **Chamber Magistrate** at your nearest local court can provide information about the court process and help fill out court forms. They cannot give legal advice.

**Consumer Credit Legal Centre (NSW) Inc.** gives free legal advice to people who are experiencing difficulty with consumer loans: **(02) 9212 4111**

**Law Access** helps callers find information and services to assist with legal problems and questions: **1800 806 913**

### FINANCIAL COUNSELLING

**Credit and Debt Hotline:** information and referral to a financial counsellor who can assist you to examine your budget, negotiate with your creditors, complete some court documents or refer you to other relevant services: **1800 808 488**

### OTHER

**Mortgage Assistance** may be available for people experiencing temporary difficulty paying a home loan: **1800 806 653** or **9821 6502**

### TRANSLATING AND INTERPRETING SERVICE

You can call this free service and ask for an interpreter to assist you to explain your problem to one of the above services on the telephone: **13 14 50**

A project of Consumer Credit Legal Centre (NSW) Inc. 2006. Other Fact Sheets in this series are available at [www.cclcnsw.org.au](http://www.cclcnsw.org.au) or **02 9212 4216**