

www.queenslandlawhandbook.org.au

The *Queensland Law Handbook* is a comprehensive plain-English legal resource designed to help you deal with your legal problems.

caxton:
COMMUNITY LEGAL CENTRE

Debts

CHAPTER CONTENTS

2	Introduction
2	Debt Basics
4	Letter of Demand to Recover a Debt
5	Financial Counselling for Debtors
6	Harassment by Debt Collectors
7	Going to the Tribunal or Court for Debt Disputes
10	Disputing a Debt Claim in the Tribunal
11	Appealing a Tribunal Decision About Debt
11	Disputing a Debt Claim in the Court
14	Appealing a Court Decision About Debt
14	Recovering a Judgment Debt
17	Enforcement of a Money Order
20	Legal Notices

INTRODUCTION

A debt is created when one person owes money to another. While it is not a criminal offence to be in debt, debt problems and demand for payment of a debt should not be ignored.

There are low-cost and no-cost financial counselling services available throughout Queensland to assist with responding to a demand for payment of debts.

If court proceedings are commenced to recover a debt, there are formal procedures to follow and strict timelines will apply. It is advisable to get legal advice as soon as possible about court proceedings and the recovery of a debt.

DEBT BASICS

If there is a dispute about whether a debt is owed or how much is owed, we recommend that you write a letter to explain the dispute.

If there is no dispute that a debt is owed, you should try to negotiate payment on terms that are affordable and achievable for you.

Be prompt and courteous in correspondence about debts. Keep copies of all correspondence sent and received about a debt.

Debt collectors must not act in an unreasonable or harassing way. If this occurs, there is a way to make a complaint about a debt collector's behaviour (see Harassment by Debt Collectors).

Understanding some of the legal terminology about debts can assist if there is a dispute about whether money is owed to another person:

- A debt is created when one person owes money to another.
- A debtor is a person who owes money. A creditor is a person who is owed money.
- Generally, one person will not be legally responsible for another person's debt, even when that other person is their spouse, partner or child. However, if a person who enters into a joint debt with another or is the guarantor for the debt of another, they may take on legal responsibility for that debt. It is important to get legal advice about the obligation to pay another person's debt or before signing any agreement that may make you responsible for another person's debt.
- A debt must be for a fixed amount or for an amount that can be precisely calculated. This is known as a liquidated debt.

For example:

Chris asks Delia to build a staircase in Chris's house. Delia agrees to do so for \$1000. When the staircase is complete, there is a debt for the agreed amount owing by Chris to Delia of \$1000.

Erin asks Frank to build a staircase in Erin's house without discussing what price Frank will charge. No fixed price has been agreed upon. Frank can claim a reasonable price for the work that has been done. Frank can ask a court to order that there is a debt owing by Erin to Frank.

Civil courts can determine claims for debts and order the payment of interest for late payment and legal costs. In Queensland, civil court proceedings for debts may be issued in the Queensland Civil and Administrative Tribunal, the Magistrates Court, the District Court or the Supreme Court, depending upon the amount of money that is claimed.

If a civil court makes an order that a debt is owing, the order is called a judgment debt. A judgment debt should not be ignored, since non-payment of a judgment debt can result in bankruptcy and can impact on a person's credit rating. A creditor can petition for the bankruptcy of the debtor as a means of recovering a debt or money order (for more information see the Bankruptcy chapter).

Getting into debt

A person who is overcommitted or temporarily unable to pay their debts should write to the creditor as soon as possible and ask for more time to pay. It may also be possible to arrange for the debt to be paid by instalments.

A person who has entered into a contract to buy goods or services that they cannot afford should write to the contractor to explain that they cannot afford the goods or services and ask that the agreement be ended or varied. The seller is usually under no obligation to accept the goods back or end the contract, but they may agree to do so.

If the goods or services were bought from a door-to-door salesperson, the debtor may have a right to be released from the contract (sch 2 s 82 *Competition and Consumer Act 2010* (Cth) (Competition and Consumer Act) (see the Consumers and Contracts chapter).

It is important to keep copies of all correspondence about the debt.

Purchase of defective goods

If goods are defective, you should not simply refuse to pay for them.

Consumer protection legislation in Queensland protects people who have been sold defective products (see the Consumers and Contracts chapter). However, a

buyer must act promptly to complain about the defective goods and take steps to sort out the problem. Non-action (including non-payment) by the buyer may limit the protections available and the defence of a debt claim.

Complaints about defective goods should be made in writing (s 154 ZF Competition and Consumer Act), and the buyer should request replacement, repair of the goods, or cancellation of the sale. Always keep copies of all correspondence about defective goods (ss 259, 261 Competition and Consumer Act).

Ombudsman services for debt disputes

When a person has a dispute about a debt relating to banking, utilities or telecommunication services, there are free independent dispute resolution services available through an industry ombudsman.

Publication of debt information

Information about a person's slow payment or non-payment of a debt may be supplied to a credit agency (s 20C *Privacy Act 1988* (Cth)) (Privacy Act).

This information will form part of the person's credit record and will be disclosed to anyone who enquires at the credit bureau (s 20E Privacy Act). This can make it harder for the person to obtain credit in the future.

It is possible for a person to check their credit history. If the information on a credit file is incorrect, they can require the information to be corrected (pt IIIA div 3 subdiv F Privacy Act) (see the Consumer Credit and Banking chapter).

LETTER OF DEMAND TO RECOVER A DEBT

When a debt has not been paid by the due date, a creditor will generally send the debtor a final notice requiring payment. If payment is not made after that notice is received, the creditor or a debt collection agency may then send a letter of demand stating that legal action will be taken to recover the debt.

Sometimes, letters of demand may be designed to look like court documents. If in doubt as to whether it is a court document or not, a debtor should seek prompt legal advice.

If a letter of demand includes an additional fee or cost, this may not be part of the debt. If in doubt as to whether the fee should be paid, seek legal advice.

On receiving a letter of demand, a person who receives a demand for payment of a debt should:

- check if the amount the creditor is claiming is accurate or if it needs clarification

- check the age of the debt. There are time limits in which debts may be recovered. If a debt is more than six years old (s 10 *Limitation of Actions Act 1974* (Qld)), they should seek legal advice before confirming the debt or making any payments
- contact the creditor as soon as they receive a letter or final notice and make arrangements to pay the debt if it is not disputed
- write to the creditor and/or the debt collection agency requesting a breakdown of the debt, interest, terms and charges if there is any doubt about the details of the debt claimed. Keep a copy of this letter and any other correspondence with the creditor
- check the statement carefully or seek advice from a financial counsellor
- write to the creditor and request a correct statement or clarification, if it was unclear or inaccurate
- if the debt is disputed, write to the creditor and outline the dispute about the fact that a debt exists or the amount of the debt. Keep a copy of all correspondence with the creditor
- if agreement is reached that a debt is owed and about the amount of the debt, attempt to make arrangements with the creditor for repayment of all or part of the debt (name the amount to be repaid), by instalments if necessary. A creditor will generally accept a reasonable offer. If a creditor proposes that a new interest rate should be paid along with the repayments, the debtor should get legal advice about this.

FINANCIAL COUNSELLING FOR DEBTORS

Financial counselling can help people who find themselves overcommitted with debts or having difficulty managing money.

There are a number of not-for-profit and government-run services in Queensland that offer free or low-cost financial counselling and assistance.

A financial counsellor can help with budget planning and can assist with debt consolidation. If a creditor is demanding payment of a debt or threatening court proceedings, a financial counsellor can help to negotiate payment of the debt. If there is a dispute about the debt, a financial counsellor can advise on ways to challenge the debt and properly calculate any amount owing.

There are also debt advice businesses that charge fees for financial counselling services. These businesses may also conduct associated lending and finance services. It may be best to consult a not-for-profit financial counsellor first. If in

doubt about whether the financial counsellor they have contacted is a not-for-profit service, ask whether the financial adviser will be charging a fee for advice.

HARASSMENT BY DEBT COLLECTORS

Debt collectors must be licensed under the *Debt Collectors (Field Agents and Collections Agents) Act 2014* (Qld). This Act prohibits debt collectors from:

- entering the house or land of a debtor without lawful authority (s 36). If a debt collector arrives at the front door of a person's home, they may be asked to leave
- asking the debtor to pay the costs of the debt collection (s 27). The collector can only require payment of the debt itself and any court costs if legal action has already been taken
- making false or misleading representations to induce a debtor to enter into arrangements for the payment of a debt (s 37).

The Australian Competition and Consumer Commission and the Australian Securities and Investments Commission have issued guidelines on debt collection for debtors and creditors. The guidelines state that creditors (or debt collectors) should:

- only contact debtors by telephone between 7.30 am and 9 pm (9 am to 9 pm on weekends) unless the debtor is unavailable in that period of time
- first attempt to contact debtors by telephone and not in person
- not contact debtors more than three times a week or ten times a month without the debtor's permission
- not contact debtors at work unless there is no reasonable alternative
- not discuss the debtor's financial affairs with other people
- not threaten the debtor with any action they do not have the power or intention to carry out.

A complaint about a debt collector's failure to comply with the guidelines may be made to the Queensland Office of Fair Trading. The office recommends that if a person is being harassed by a debt collector, they should request that future contact be made in writing. Inappropriate behaviour by a debt collector will not affect whether or not the debt must be paid.

GOING TO THE TRIBUNAL OR COURT FOR DEBT DISPUTES

When a person fails to pay a debt, or where there is a genuine dispute about whether a debt is owed and in what amount, the courts may determine whether the debt must be paid.

Court action can be time consuming and expensive. It is also possible to deal with debt problems or disputes through mediation or informal settlement discussions. Dispute Resolution Centres of Queensland offer free, confidential and voluntary mediation services.

Time limits

Court proceedings for the recovery of a debt must be commenced within six years from the date when the debt first arose (s 10 *Limitation of Actions Act 1974* (Qld)). If a written acknowledgement that a debt is owing has been given or part-payment of a debt has been made, this will extend the time limit for commencing court proceedings.

A debtor should not pay a debt that is more than six years old without first seeking legal advice.

Which court?

The appropriate tribunal or court in which to bring proceedings will depend on the amount of the debt. For debts of \$150 000 or less, proceedings may be brought in the Magistrates Court.

The Queensland Civil and Administrative Tribunal (QCAT) has jurisdiction to hear minor debt claims of up to \$25 000. Tribunal procedures are simpler, cheaper and quicker than other civil court proceedings and are designed to be navigated without legal representation.

For debts of \$150 000 to \$750 000, proceedings may be brought in the District Court.

For debts of more than \$750 000, proceedings may be brought in the Supreme Court (see The Court System chapter).

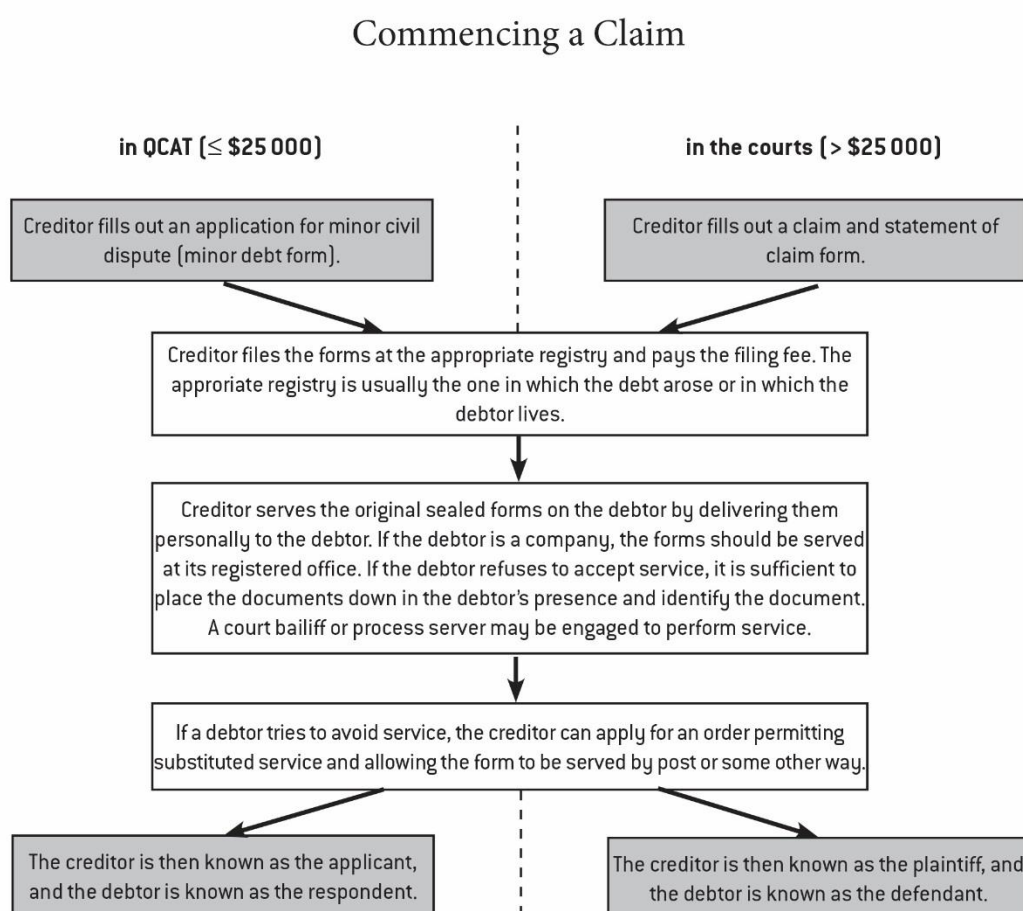
Tribunal and court proceedings to recover a debt

Court procedure in QCAT is governed by the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) and the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) (QCAT Rules). Court procedure in the civil courts is governed by the *Uniform Civil Procedure Rules 1999* (Qld) (UCP Rules).

Although the forms and terminology differ slightly, the process for commencing a claim for a debt is similar in QCAT and the civil courts.

Court and registry staff can provide copies of relevant forms and information about the filing fee.

The process for commencing a claim in QCAT or the courts is demonstrated in the diagram below.



Starting debt recovery proceedings in the tribunal or court

When a creditor commences proceedings to recover a debt, the QCAT application or court claim must include details about (s 33 QCAT Act):

- when the debt was entered into
- who the parties to the debt are
- what the creditor provided in return for the debt
- what agreement there was about payment of the debt
- whether the agreement was written or verbal
- what the amount of the debt was

- what payments the creditor has received for the debt.

The QCAT application or court claim must be filed with the court registry, and then served upon the debtor. After a QCAT application or a court claim is served, a debtor has 28 days to respond. It is advisable to obtain legal advice within this 28-day period.

Default judgment

If the strict 28-day deadline passes (r 137 UCP Rules) and the debtor has not paid the money owing or filed a response, then the creditor can apply for a default judgment.

Unless the debtor agrees entirely with the creditor's allegations about the amount of money owed (including costs and interest), it is essential that the debtor responds to the application or claim within 28 days of being served.

An informal agreement with a creditor to settle a debt does not safeguard the debtor against a default judgment. If a settlement is negotiated, it should be set out in writing and include a term that the creditor will immediately discontinue the court proceedings against the debtor.

The QCAT or court registry staff can provide the forms for making an application for default judgment. The creditor will provide a sworn statement about the debt (r 60 QCAT Rules) and about service of the claim on the debtor. The application can be made without giving any notice to the debtor.

When a creditor makes an application for default judgment, an order can be made for immediate payment of the full amount of the claim, plus interest and costs. The debtor does not have to be present for this decision to be made. A debtor will be notified of the order in writing that a default judgment has been made by the court. If the debtor fails to pay the judgment amount within the time allowed in the order, the creditor can take action to enforce the judgment debt (ch 19 UCP Rules) (see Recovering a Judgment Debt).

If a creditor obtains default judgment when the defendant has good reason for not filing a defence or after agreeing to alternative arrangements for payment of the debt, the debtor should immediately apply to have the judgment set aside (s 51 QCAT Act and s 290 UCP Rules). Provided the defendant can satisfy the judge or tribunal member that the defendant has a good defence or that a private agreement for payment has been made and that the defendant has not defaulted on any obligations under the agreement, the default judgment would usually be set aside. If an agreement is made, the debtor should always keep a written record of the terms of the agreement and request receipts as proof of payment.

DISPUTING A DEBT CLAIM IN THE TRIBUNAL

A respondent who wishes to dispute a claim for a debt must complete a Response to Minor Civil Dispute – Minor Debt Claim form and file it at the QCAT registry within 28 days of being served with the claim (r 45 QCAT Rules).

The response must include a statement answering the assertions made in the application and outlining the circumstances of the debt from the respondent's perspective (r 45 QCAT Rules).

A respondent to a QCAT minor debt claim may not bring a counterclaim (rr 48–49 QCAT Rules), however, details of any counterclaim should be included in the response form.

For example:

If Clark commenced proceedings against Debra seeking the repayment of a \$5000 loan, Debra's response form could refer to the fact that she had agreed to paint Clarke's house for \$3000 but was never paid. The tribunal may then order that Debra's claim be dealt with separately, and it may decide that Clark can recover the net amount of his claim.

After the response form is filed, a sealed copy should be served on the applicant.

The tribunal will then direct the parties to attend a hearing if the claim is for less than \$3000 (r 77 QCAT Rules).

At the hearing, if there is any dispute as to the money owing, the QCAT member will direct the parties to attend a compulsory conference (s 67 QCAT Act).

If the claim is for more than \$3000, QCAT will direct the parties to attend a compulsory conference before any trial proceeds.

The purpose of the compulsory conference is to clarify the issues in dispute and encourage settlement of the claim. A QCAT member, adjudicator or registrar will oversee the conference (s 70 QCAT Act). If one party (who has had reasonable notice of the conference) fails to attend, they risk having a final decision made against them at that time (s 72 QCAT Act). If the dispute settles at the compulsory conference, the settlement agreement will be recorded in writing, and the person presiding over the conference will make the necessary orders to give effect to the agreement (s 84 QCAT Act).

If the claim does not settle at a compulsory conference, then evidence of anything said or done at the conference is not admissible later in the proceeding (s 74 QCAT Act).

Disputes that do not settle at a compulsory conference may be referred to mediation or may progress straight to a trial. At a trial, the QCAT member may

hear evidence given under oath and will make a final decision in relation to the debt, any interest payable and costs.

The only costs that may be awarded in a minor debt claim are the costs of filing the application, the fee charged by any bailiff (r 84 QCAT Rules) or process server for service of the claim and the cost of conducting a business name or company search.

APPEALING A TRIBUNAL DECISION ABOUT DEBT

A party who believes the QCAT member's decision was incorrect may apply for leave to appeal the decision (using the appropriate QCAT Form 39).

The application must be made within 28 days of receiving the tribunal member's (s 143 QCAT Act) written reasons for the decision. Usually, to receive leave to appeal, there must be a demonstrable error in law or fact in the original decision. If leave to appeal is granted, the appeal will be heard by the tribunal in its appeal capacity. If leave to appeal is refused, a person has 28 days in which to appeal that decision to the Court of Appeal.

An application by a debtor to appeal or set aside a judgment does not prevent the creditor enforcing the judgment in the meantime (s 145 QCAT Act). The debtor may make an application to stay (postpone) the enforcement of the judgment until the application to set it aside is heard (s 152 QCAT Act).

DISPUTING A DEBT CLAIM IN COURT

It is more complicated to defend a debt claim in court, and a debtor served with a claim should seek legal advice.

If the defendant acknowledges to the court that the debt, costs and interest are due and payable, the court judgment will be made for that amount and the registrar of the court can order the judgment debt be paid (r 666 UCP Rules). If the defendant does not pay the whole amount, the plaintiff can enforce the judgment (see Recovering a Judgment Debt). Alternatively, the defendant can pay the money claimed (as well as an amount for the plaintiff's costs) to the court at any time before the hearing of the matter (r 560 UCP Rules). If the amount paid is the full amount of the debt, the plaintiff is notified by the court and the money is paid to the plaintiff. If the plaintiff is not satisfied with the amount, the court action can proceed.

A defendant who wishes to dispute the debt must file a notice of intention to defend and the defence within 28 days of receiving the claim (r 137 UCP Rules). The form must be filed at the court from which the claim was issued and served on the plaintiff (rr 139-142 UCP Rules). Once the defence is filed, the plaintiff

cannot obtain a judgment against the defendant without a court hearing. This does not prevent a defendant from later admitting all or some of the claim or negotiating to settle the claim.

The defence must refer to each and every allegation in the claim and specifically state whether each allegation is admitted, not admitted or denied (r 165 UCP Rules). A defendant must make reasonable enquiries to establish the truth or otherwise of each allegation in the claim before filing and serving a defence (r 166 UCP Rules). If an allegation is:

- admitted, the plaintiff does not have to prove that fact at trial, and the defendant cannot say that the fact does not represent the true situation
- not admitted, the defendant is not entitled to lead evidence at trial about that fact, although the plaintiff must still prove it. A fact that is known only to the plaintiff and cannot be discovered by the defendant after reasonable enquiry may not be admitted
- denied, the fact must be proved by the plaintiff, and the defendant is allowed to lead evidence at trial to rebut the plaintiff's claim. A defendant must state the reason why a fact is denied in the defence.

For example:

If Carol claims that she loaned David \$100, and David agrees that the money was loaned but says that he repaid the debt, David should say in his defence:

As to the allegation that Carol loaned me \$100, this is admitted.

I deny that the money is still owing and believe this to be untrue. I paid Carol back the \$100 on 1 September 2015.

A defendant who has a claim against a plaintiff can set this off against the plaintiff's claim (r 173 UCP Rules). The defendant may also bring a counterclaim (r 177 UCP Rules).

Once a notice of intention to defend and the defence is filed and served, the plaintiff may file a reply.

The parties will each prepare a list of documents relevant to the debt and the issues in dispute and exchange copies of these documents.

The court will likely order the parties to try and resolve the claim through alternative dispute resolution before progressing the matter to trial (ch 9 pt 4 UCP Rules).

Parties may also make formal, written offers to settle at any stage of the proceedings, up to delivery of the judgment (ch 9 pt 5 UCP Rules). If the defendant makes an offer to settle, and the court ultimately awards the plaintiff

no more than the amount the defendant offered, then the plaintiff may be liable to pay the defendant's court costs (r 361 UCP Rules). Similarly, if the plaintiff makes an offer to settle that is less than the amount awarded by the court, then the court may order the plaintiff to pay the defendant's costs (r 360 UCP Rules). Both parties should therefore accept reasonable offers to settle.

In the event that it is not possible to resolve the claim through alternative dispute resolution or settlement offers, the matter will proceed to trial.

The trial

In some courts, the date allocated for the hearing of the claim will only be a date for a mention. If so, the plaintiff's claim may not be heard on that day. Instead, the magistrate or judge will check on this day to see if both parties are ready to proceed and if so, set a date for the hearing. Whether the date is for mention or hearing can be checked by telephoning the court registry.

The plaintiff or defendant can personally put their respective cases in court or can be represented by a barrister or solicitor.

If the plaintiff does not appear in court, the claim may be dismissed. Similarly, if the defendant does not appear at the time set down for the hearing, the judge can proceed with the hearing in the defendant's absence (r 476 UCP Rules). In either case, the court will need to be satisfied there is evidence to establish an entitlement to judgment by the party present. If the plaintiff or the defendant is not ready to proceed on the date specified, that party can ask the judge for an adjournment (r 477 UCP Rules). However, the party asking for the adjournment may have to pay the legal costs incurred by the other party in coming to court to have the hearing adjourned.

If a plaintiff or defendant is ill or has other commitments on the hearing day, they should ring the other party or the solicitor acting for the other party before the hearing and ask them to consent to an adjournment. If this is refused, you can contact the court registry to ask for the hearing to be moved. If this does not occur, it will be necessary to go to the court on the day of the hearing to explain what has happened. The magistrate or judge may then adjourn the hearing to another time. The absent party will usually be ordered to pay the other party's costs for the wasted day, if the court agrees to the adjournment.

At a trial:

- each party will make an opening statement to the court
- the plaintiff (or their representative) will then present evidence to the court in relation to the debt. This evidence can be in the form of documents or evidence of witnesses (who may be cross-examined by the defendant)

- once the plaintiff has led their evidence, the defendant will have an opportunity to respond and to present their own documents and evidence of witnesses (who may be cross-examined by the plaintiff)
- once all the evidence has been presented, the parties will make closing arguments
- the judge will then weigh up all the evidence and make a decision. If the judge is unable to provide their decision on the spot, usually it will be given within three months and the parties will be called back to the court to receive the judgment
- generally, the judge will order the losing party to pay the court costs and legal costs of the winning party (calculated on a set scale) plus interest.

The legal costs of civil court proceedings can be very expensive for a losing party. In many cases, both parties will be better off negotiating a settlement of a debt claim.

APPEALING A COURT DECISION ABOUT DEBT

Within 28 days of the original decision, an unsuccessful party can appeal the decision (r 748 UCP Rules). Magistrates Court decisions are appealed to the District Court, District Court decisions are appealed to the Supreme Court and Supreme Court decisions are appealed to the Court of Appeal. The relevant forms are available from the court registry or website and will require the person to identify an error of fact or law in the original decision that ought to be reconsidered by a judge.

An application by a debtor to appeal or set aside a judgment does not prevent the creditor enforcing the judgment in the meantime.

The debtor may make an application to stay (postpone) the enforcement of the judgment until the application to set it aside is heard (r 300 UCP Rules).

RECOVERING A JUDGMENT DEBT

When a court gives judgment for a debt, the amount that a court ordered the defendant to pay is immediately payable to the plaintiff.

If the defendant cannot or does not pay the money order to the plaintiff straight away, the plaintiff can come to a private arrangement with the defendant or ask a court to enforce the money order.

If the plaintiff applies to a court to enforce a money order, the defendant will usually be ordered to pay the costs of the enforcement, as well as the original

debt, interest and legal costs. It is to the defendant's financial advantage to pay the money order as soon as possible (r 797 UCP Rules).

Receipts

Whenever a defendant pays any or all of a money order or settlement payment, they should require a written receipt and retain this record of purchase.

A written receipt is a safeguard for a defendant, especially when the plaintiff is a large company dealing with many debts. If a plaintiff loses a record of the defendant's payment, the plaintiff may take or continue proceedings to enforce the money order as if there has been no payment. In such circumstances, the defendant should at once apply to stay enforcement of the judgment and to set aside the enforcement order, using the written receipt as proof of payment.

Non-court recovery

A private agreement with the plaintiff will save enforcement costs and can be tailored to meet the resources of the defendant. However, the plaintiff who has come to an agreement with a defendant for the repayment of a money order may still take court action at any time if the debt is not paid according to that agreement. Again, it is important to obtain a written receipt for any payments made.

Payment by instalments

A defendant will often reach a private agreement with a plaintiff to pay the money order by instalments.

Payment by instalments allows the defendant to pay the debt steadily without going further into debt. The defendant pays an amount they can afford each week or fortnight.

Any agreement for payment of a judgment debt should be made in writing, outlining the amount and frequency of payments. It should be signed by both parties. When each payment is made, a written receipt should be obtained.

Court recovery

A money order may be enforced through the court at any time within six years after the money order was made or later if the court allows it upon an application to extend that time (r 799 UCP Rules).

The court may make an order for the payment of the money order by instalments, either on its own initiative or on the application of either party.

Enforcement hearing

Before enforcement of a money order, the plaintiff (or enforcement creditor) may apply for an enforcement hearing to obtain information to assist the enforcement of the money order against the defendant (or enforcement debtor) (ch 19 pt 2 UCP Rules). If it is established at the enforcement hearing that the enforcement debtor is unable to pay the money order, or any instalment of it, because of sickness or other sufficient cause, the enforcement debtor can apply to the court to suspend the enforcement of the money order (rr 854, 862 UCP Rules).

At the time a court makes a money order or some time thereafter, an enforcement creditor can apply for an enforcement hearing of the enforcement debtor by filing and serving an enforcement hearing summons. At an enforcement hearing, the enforcement debtor must answer questions in court about the property or means available to them to satisfy the money order. The court may also order the enforcement debtor to produce any books, deeds, papers or other documents that will show the enforcement debtor's financial position (r 807 UCP Rules).

The enforcement hearing summons must be served or posted to the enforcement debtor. If the enforcement hearing is scheduled to occur outside the enforcement debtor's home court district (r 826 UCP Rules), the enforcement debtor must also be given reasonable expenses to pay for the transport of the enforcement debtor and any documents to the court. Staff at the court registries will be able to advise whether the enforcement hearing is outside the enforcement debtor's home district.

Enforcement debtors summoned to court for an enforcement hearing should attend with any documents regarding their financial affairs referred to in the enforcement hearing summons. The enforcement debtor should have a workable proposal for paying off the money order by instalments. The enforcement creditor and registrar of the court will generally accept a repayment scheme if it is reasonable (ch 19 pt 7 UCP Rules). Costs of the enforcement hearing are added to the total amount of the money order (r 814 UCP Rules).

An enforcement hearing summons may require an enforcement debtor to complete a sworn statement of their financial position (r 815 UCP Rules). The blank form should be attached to the enforcement summons but can also be obtained from court registry staff. If the enforcement debtor receives regular payments, such as wages or social security benefits, they must give details of receipt of the last four payments and details of the account the payments were paid into (r 807 UCP Rules). The enforcement debtor should bring to the

enforcement hearing any documents in support of the information contained in the statement of financial position.

The enforcement debtor should return the completed statement of financial position to the enforcement creditor within 14 days of receiving it and before the enforcement hearing (r 807 UCP Rules). If the enforcement creditor is satisfied with the information provided in the statement of financial position, the enforcement creditor may give written notice to the court and to the enforcement debtor that the enforcement hearing is not required (r 813 UCP Rules). The enforcement creditor will then use the information contained in the statement of financial position when deciding how to enforce the money order.

If the enforcement hearing is not cancelled, and the enforcement debtor fails to attend the court for an enforcement hearing without a reasonable excuse, the court may issue a warrant for arrest of the enforcement debtor (r 816 UCP Rules). If the enforcement debtor attends but refuses without lawful excuse to answer questions considered proper by the court, the court may find a contempt of court and may order a warrant issue to compel the debtor to give answers before the court.

ENFORCEMENT OF A MONEY ORDER

If a money order is unpaid, the enforcement creditor may apply to the court for an enforcement warrant for:

- seizure and sale of property
- redirection of debts
- redirection of earnings
- payment by instalments
- charging orders and stop orders (ch 19 pts 4–7 UCP Rules).

When applying for an enforcement warrant, the enforcement creditor must swear an affidavit stating that the money order remains unpaid (r 808 UCP Rules). This must be served or posted to the enforcement debtor.

The enforcement warrant must be enforced within one year or renewed (rr 821, 908 UCP Rules). If more than one enforcement warrant has been issued against the enforcement debtor, the court will require the enforcement warrants to be enforced in the order that they were issued (r 823 UCP Rules). The time and date of issue will be noted on the enforcement warrant.

Seizure and sale of property

Unless a creditor has a secured loan, a debtor's goods or property cannot be repossessed without a court order or enforcement warrant (ch 19 pt 4 UCP Rules).

Once an enforcement warrant is issued, an enforcement creditor can seize and sell property owned by the enforcement debtor to satisfy the money order. The court's enforcement officer decides what property to sell and in what order (r 829 UCP Rules).

The enforcement officer must sell the property in order to promptly enforce the money order and must minimise any hardship to the enforcement debtor and others (r 829 UCP Rules), including the enforcement debtor's family. The enforcement officer can only sell land owned by the enforcement debtor and their principal place of residence if everything else of value owned by the enforcement debtor has been sold, or if the enforcement debtor otherwise agrees or the court otherwise orders.

If at or before the sale by the enforcement officer the enforcement debtor produces the amount owing under the money order (r 830 UCP Rules), interest and costs as well as an amount set by the enforcement officer as security for any enforcement costs, the enforcement officer must not sell the seized property.

Sale of seized property is by public auction after advertising and as soon as possible after seizure. The sale is conducted at a place that the enforcement officer considers suitable. The sale price must be reasonable. For property worth more than \$500, the enforcement officer is likely to set a reserve after obtaining a valuation. For property worth less than \$500, the officer must obtain the best price possible (r 832 UCP Rules).

If an auction is conducted but the seized property is not sold, the enforcement officer may sell the property privately for an amount that is not less than the highest bid achieved at auction or according to a court order (r 832 UCP Rules). If the sale price exceeds the amount owing, the court registrar will refund the difference to the enforcement debtor (r 836 UCP Rules).

Land that is jointly owned by the enforcement debtor and another person (e.g. their spouse) cannot be sold under an enforcement warrant. Only the enforcement debtor's interest may be sold. Such sales are extremely unusual.

If the enforcement officer attempts to seize property that does not belong to the enforcement debtor:

- the enforcement debtor and/or the owner (if present) should immediately tell the enforcement officer that the goods are not owned by the enforcement debtor

- any documents or receipts showing title should be shown to the enforcement officer
- the owner should immediately apply to the court to decide who owns the goods in dispute.

Redirection of earnings and money

If an enforcement creditor who has obtained a judgment knows that money is owed to the enforcement debtor, the enforcement creditor can seek a warrant for redirection (ch 19 pt 6 UCP Rules). A warrant for redirection is an order to a person who owes money to the enforcement debtor to pay that money to the enforcement creditor instead. Before ordering the redirection of earnings and other money to satisfy a debt, a court must consider whether the amount proposed to be deducted would cause unjustifiable hardship to the enforcement debtor.

Money that can be redirected includes:

- an enforcement debtor's wages (rr 793, 855–856 UCP Rules). An enforcement debtor's employer can be ordered to pay most of the enforcement debtor's wages to the enforcement creditor instead of the enforcement debtor. The court will allow the enforcement debtor necessary living expenses and will provide for any known liabilities due to be paid before allowing redirection of earnings
- money held in a bank account
- rent due to be paid to the debtor
- trust moneys for which a debtor is the beneficiary
- other judgment debts owing to the debtor.

Money that cannot be redirected includes:

- money in the hands of a liquidator
- social security payments (r 855 UCP Rules)
- debts (not wages) owing by the Crown to the enforcement debtor.

LEGAL NOTICES

Disclaimer

The Queensland Law Handbook is produced by Caxton Community Legal Centre with the assistance of volunteers with legal experience in Queensland. The Handbook is intended to give general information about the law in Queensland as at the date stated on each individual page. The content of the *Queensland Law Handbook* does not constitute legal advice, and if you have a specific legal problem, you should consult a professional legal advisor.

External links

The *Queensland Law Handbook* provides links to a number of other websites that are not under the control of Caxton Community Legal Centre. These links have been provided for convenience only and may be subject to updates, revisions or other changes by the entities controlling or owning those sites. The inclusion of the link does not imply that Caxton Community Legal Centre endorses the content, the site owner or has any relationship with the site owner.

Limitation of liability

To the maximum extent permitted by law, Caxton Community Legal Centre and the contributors to the *Queensland Law Handbook* are not responsible for, and do not accept any liability for, any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from the *Queensland Law Handbook*.

Copyright

The content of this website is subject to copyright. You may use and reproduce the material published on this website provided you do not use it for a commercial purpose, the original meaning is retained and proper credit and a link to the *Queensland Law Handbook* website is provided. If the material is to be used for commercial purpose, permission from Caxton Community Legal Centre must be obtained.