



COURT DOCUMENTS

Disclaimer: Consumer Credit Legal Service (WA) Inc. produced this information as a general guide only. The information is not legal advice. You may ring us on (08) 9221 7066 for more help.

CASE STUDY

Peter has failed to make repayments on his home loan. Last month he received a default notice in the mail from his lender. He did not do anything following the default notice and yesterday he was served with a Writ of Summons. Unsure of what to do next Peter contacted CCLSWA for advice. He was given an explanation of what a Writ of Summons is and was told what steps he could take in response to the Writ.

Default notice

If you (as a debtor) default on a consumer credit contract, the lender may send you a default notice. You have 30 days from the date of the default notice to fix the default. If you do not fix the default within this time, the lender can start legal proceedings against you. Please refer to the fact sheet on 'Default Notices' for further information.

Starting legal proceedings

To start legal proceedings, the lender will lodge documents with the court and serve them on you. The most common originating court documents used for lenders' claims are: a Minor Case Claim, a General Procedure Claim (both of these are from the Magistrates Court); and a Writ of Summons (from the District Court and Supreme Court). The type of court document used depends on the type of claim and the claim amount. These documents are described below.

Magistrates court claims

Parties

If you are named in the document as a **Defendant**, it means that the person/s or company named as the **Claimant** has started court action against you in the Magistrates Court.

Minor Claim Case

A Minor Case claim is for a claim under \$10,000. Parties to a Minor Claim Case claim are not allowed to be represented by a lawyer. Although, a Defendant that is a company may be represented by one of its officers or an employee who has written authority from one of its officers to do so. Unless the court orders otherwise, Minor Case proceedings are predominantly informal and are to be held in private, with allowance for the attendance of relatives and friends of a party.

The successful party is entitled to an order that states that the losing party must pay its court fees, services fees and the costs of enforcing the judgment made by the Court. The successful party is not entitled to an order in relation to its other costs (ie its lawyer's fees) unless the court is satisfied that there are exceptional circumstances of injustice or the losing party's claim or defence was wholly without merit.

General Procedure Claim

A General Procedure claim is for a claim that exceeds \$10,000 but less than \$75,000. Parties to a General Procedure claim are entitled to be represented by a lawyer.

Form Parts A-G – Claimant

The Claimant will commence a Minor Case claim by lodging Form 4 with the Magistrates Court. Alternatively, in General Procedure cases, the Claimant will lodge a Form 3. The forms similarly consist of Parts A to G. As the defendant, you will receive Parts D to G.

Part D contains information about the identity, address and contact details of the Claimant. It also sets out a description of the claim (this may be attached as a separate document).

Part E, 'Information for the Defendant', provides you as the defendant with important information about the claim and your possible responses.

IT IS ESSENTIAL THAT YOU READ AND UNDERSTAND THE INFORMATION PROVIDED IN PART E.

Form Part F – Defendant's Response

Part F contains the Defendant's response form. As the defendant, you **MUST** fill out Part F and lodge it with the court registry **within 14 days** of service of the claim on you. If you do not lodge a response within 14 days, the Claimant may enter a default judgment against you. A default judgment is a court order granted in your absence to the Claimant, because you failed to lodge a response to the claim.

You can respond to the claim in the following ways:

- Admit to the claim.
You admit liability for the whole of the claim and agree to pay the judgment amount. Judgment may be given against you in accordance with the admission.

- Admit to part of the claim with the intention of defending the amount not admitted. You may admit liability for part of the claim and may offer to the Claimant an amount as full satisfaction for the claim. The Claimant has the option to accept this offer and the judgment for this amount may be made accordingly. This option does indicate that you do intend to defend the part of the claim for which you have not admitted liability.
- Dispute the full amount of the claim by giving an intention to defend. If you intend to defend the claim, and the claimant had served you with their statement of claim (together with the claim), you must lodge a statement of defence along with your response under Part F. The current approved form for a statement of defence for a Minor Case Claim is Form 22, General Procedure Claim is Form 21.

Pre-Trial Conference

Once you have lodged your response the Court will file it and notify the Claimant of your response. If you intend to defend the claim the court will, within 14 days after you lodge the response, list the case for a pre-trial conference between the parties. You will receive a written notice of the date and time of the pre-trial conference. A pre-trial conference is a meeting between the two parties for them to discuss the dispute and, if possible, reach an agreement to avoid the matter progressing further in court. If no agreement is reached at the pre-trial conference, the case will be heard in court on a later date.

IF YOU RECEIVE A COURT DOCUMENT AND ARE UNSURE WHAT IT MEANS OR HOW YOU SHOULD PROCEED, WE RECOMMEND YOU CONTACT OUR ADVICE LINE URGENTLY ON 9221 7066.

District Court & Supreme Court Claims

Parties

If you are named in the document as a **Defendant**, it means the person/s or company named as the **Plaintiff/s** has started court action against you in the District Court or Supreme Court.

Writ of Summons

A Writ of Summons is used where the Plaintiff wishes to commence action in either the District Court or the Supreme Court, as will be indicated on the court document, and the amount claimed is over \$75,000. Parties may have lawyers to represent them.

When a lender sues for repayment of a home loan or repossession of a home the court action will take place at the Supreme Court.

If you are served with a Writ and you intend to defend the claim being made against you, you must enter an appearance. The Writ will state the time frame allowed to file your appearance, which is 10 days if you live within 300km of Perth CBD.

How to file an Appearance

To enter an appearance you need to complete and lodge a Form 6, Memorandum of Appearance. This form is available online on the Supreme Court website, under 'Court Procedure – General Division – Forms'; and also on our website under 'Resources – Forms'. If you do not lodge an appearance within the allowed time the Plaintiff may enter a default judgment against you. It is therefore very important that you respond immediately if you receive a Writ of Summons, to avoid a default judgment being entered against you.

Defending a claim

A defendant who enters an appearance and intends to defend an action must lodge a Defence within 14 days of receiving a Statement of Claim. This serves as the Defendant's answer to the Plaintiff's claims. If you fail to serve a Defence on the plaintiff within the allowed time, the Plaintiff may enter a default judgment against you. We recommend that you seek legal advice or assistance when preparing a Defence.

IF YOU RECEIVE A WRIT OF SUMMONS AND ARE UNSURE WHAT IT MEANS OR HOW YOU SHOULD PROCEED, WE RECOMMEND YOU CONTACT OUR ADVICE LINE URGENTLY ON 9221 7066.

For further information contact:

Consumer Credit Legal Service (WA) Inc.
Website: www.cclswa.org.au
Advice line number: (08) 9221 7066

For information about obtaining a private solicitor contact:

The Law Society of WA
Website: <https://www.lawsocietywa.asn.au/find-a-lawyer/>
General enquiries: (08) 9324 8600