



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 120

How are court documents served?

This information sheet sets out how court documents can be served.

Service of court documents

When a credit provider or mortgagee wants to bring court proceedings against a debtor **any process that begins the court action must be personally served on the other party.**

- The party or person who initiates an action is called the **plaintiff**.
- The party or person who has a court action initiated against them is called the **defendant**.

What is personal service?

Personal service means that a document must be served on the other party or defendant in person. This is often done by a **process server**. Documents that begin a court action must be served in person.

What is ordinary service?

Ordinary service means that a document can be served by mail. In some cases, ordinary service will be sufficient. For example, a notice of defence can be served on the plaintiff by mail.

Initiating process may be served in any part of Australia

Each state and territory has its own **Rules of Service**. If a person is served with an initiating process from an interstate plaintiff, that process must be served in accordance with the *Service and Execution of Process Act 1992* (Cth). This means that service of the initiating process must be carried out in the same way it would be in the place of issue.

If you are served with an initiating court document, you should immediately read it and determine the time period available to lodge a notice of defence.

If you do not lodge a notice of defence, the plaintiff may apply to the court to have a default judgment entered against you.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Initiating process can be called:

- a writ
- a complaint
- an order
- a form 5A
- an originating motion
- a summons or a complaint and summons.

Note: if the way the process is served is ‘defective’ (that is, the service does not comply with a procedural or jurisdictional requirement), it is grounds for re-hearing in South Australia, Western Australia, New South Wales, the Northern Territory and Tasmania.

If you receive any of the court documents listed above you should obtain legal advice as soon as possible. Visit www.nacalc.org.au, your state’s Legal Aid office at www.nla.aust.net.au or look in the front section of your telephone directory.

Where can I get more information?

- Go to www.asic.gov.au/credit for the latest updates about credit.
- Go to www.moneySMART.gov.au/borrowing-and-credit for credit information and resources for consumers.
- Contact ASIC on 1300 300 630 or make an enquiry at www.asic.gov.au/question.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.