

Mortgage Stress

This fact sheet only applies to home mortgages and residential investment loans – most home loans. If you have a business related loan, get legal advice.

This fact sheet is for information only. You should get professional advice about your personal situation from a financial counsellor or a lawyer.

Main ideas

- The lender can take your home and sell it if you don't keep up with your payments. They follow a legal process.
- You can ask your lender for a hardship arrangement if you are in financial difficulty.
- Get advice if your lender threatens to take your home. Don't leave it to the last minute.
- If your financial difficulty is likely to be long term, consider selling your home.
- Financial counsellors can help if you are in financial hardship. Their services are free.

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When a mortgage lender can repossess your home

When you borrow money to buy a home, the lender takes a mortgage over the house as security. If you do not keep to your contract with the lender, they can take the home from

you and sell it. This is called repossession. **If the lender is threatening repossession, get legal advice.**

The repossession process:

1. You default on your contract with the lender. The most common defaults are missing repayments or not insuring the building.
2. The lender sends you a 'default notice' that says you have 30 days to fix the default. For example, get the loan back up to date – and keep to any other payments that become due during the 30 days.
This notice will usually say it is a combined notice under s88 Schedule 1 of the National Consumer Credit Protection Act (2009) and section 57(2)(b) of the Real Property Act (NSW).
3. If you have not fixed the default after the 30 days, the entire loan becomes due (not just the missed repayments).
4. **If your home is vacant:** The lender can go onto the property and change the locks straight away. They can then sell the property. Get urgent legal advice.
5. **If your home is not vacant:**
 - a. The lender goes to court and sends you a 'Statement of Claim' asking for possession. There may also be a 'Notice to Occupier' on top of the Statement of Claim, just in case the property is rented to tenants.
You have 28 days to respond to the Statement of Claim.
 - b. If you do not respond, the court can give the lender an order for possession of the home. The court may also give a judgment for the whole loan balance plus legal and court costs.
 - c. The lender gets the sheriff to send you a 'Notice to Vacate'. This will have a date and time when the sheriff will come to change the locks to your home. They will give the keys to the lender.
6. The lender will sell the home. They usually hire a real estate agent, advertise the property and sell it at a public auction.
7. If the sale price is enough to pay off your mortgage and any legal and sale costs, you get any money left over.
8. If the sale price is not enough to cover what you owe (a shortfall), you still owe money to the lender.

Get legal advice urgently if you are being threatened with bankruptcy for any debt (especially strata debts) – or if you have received any bankruptcy notices or creditor's petitions. Bankruptcy is a way other creditors can force the sale of your home. [Read our fact sheet about Bankruptcy for more details.](#)

What you can do to avoid repossession

What you can do depends on where you are in the process. If you are not sure what letters

you have received, talk to your lender. Ask if they have issued a 30-day default notice, or if they have gone to court. Ask for copies of those documents.

If you are not behind in your mortgage payments, but you are worried

If you can keep going with your normal repayments for now, but are worried about what might happen if living costs rise or interest rates go up, see a free financial counsellor. They can help you prepare a money plan and explain your options. All financial counsellors are free and independent. [Find a financial counsellor](#) or call 1800 007 007.

Consider refinancing

Refinancing or debt consolidation with a different lender may allow you to reduce your repayments. But it may be hard to get a new loan when you're already struggling. Always have a back-up plan in case you are unable to refinance – especially if the lender has already started court action (a court judgment goes onto your credit file for 5 years, so you may have trouble refinancing).

Make sure refinancing is an affordable long-term option for you. Check the interest rate, fees and payment amount. It may be better in the long run to sell rather than to refinance. Call a free financial counsellor on 1800 007 007 to talk through your options.

Be careful of predatory lenders that target desperate borrowers.

- Check the lender is reputable. Watch out for scams – you don't need to pay any money upfront to get a loan (because fees are usually included in the loan).
- [Check the Australian Financial Complaints Authority website to see if the lender is a member](#) – all lenders giving out consumer loans must be members, and this gives you access to a free complaints service if something goes wrong with the loan.
- Make sure you can afford the repayments now and if interest rates rise.
- Decide whether a fixed or variable interest rate is best for you.
A fixed rate means your payments will be the same over the fixed term, but fixed rates may be more expensive than variable rates. There may also be high exit fees if you sell or refinance before the fixed term ends.
- Know who you are paying fees to, and what the total amount of fees are. Know how much your loan balance will increase when all the fees are included.
- Know how long the loan is. Check you won't have to refinance every few years, with high fees added each time.
- Make sure you are not being asked to sign up to a fake business loan (business loans have far fewer protections).
- Make sure that any solicitor you pay or see is giving you helpful and independent advice.

If you are behind in payments (or about to be), but no default notice yet

Act quickly! The sooner you act the better chance you have of sorting out a repayment arrangement. Your lender may agree to accept reduced repayments while you are in financial hardship.

Mortgages can be up to 30 years long. Most people fall behind at some point because something happens outside their control – they’ve been out of work, or been sick, or needed to care for someone.

You can ask for a hardship variation if you are in temporary hardship (3-6 months, sometimes up to 12 months). If you can’t afford the mortgage long-term or your hardship is continuing for a long time and your lender is getting impatient, consider selling your home and ask for time to sell.

Making that difficult decision early can save you a lot of extra interest, fees, and legal costs that will add up over time. You will likely be worse off if the lender has to force a sale.

Hardship variations can go onto your credit report for 2 years – if you miss repayments, you could end up with multiple overdue repayment listings, each for 2 years. You may also get a default listing that lasts for 5 years if you are more than 60 days overdue. [Read our Credit Reports fact sheet for more details.](#)

Ask for a hardship variation

Don’t be scared. Lenders make hardship variations all the time.

Phone or write to the lender to ask for a hardship variation. Keep a copy of the letter/ email/ text/ chat. Make notes of what is said on the phone.

Contact the lender as soon as you think you are in financial hardship. [You can use our Request for Hardship Variation sample letter.](#) The lender must respond within 21 days.

1. Explain clearly why you are in financial hardship. For example, you are sick or lost your job.
2. Explain what variation you want. Be sure you can afford the variation you ask for.

For example:

- postpone your repayments temporarily
- reduce the amount of your repayments temporarily
- extend your loan and add arrears to the end
- reduce or freeze the interest temporarily

- waive default fees
- give you time to sell your home to pay off the loan.

3. Have a plan for when you can go back to normal repayments. Make sure the loan or debt will be repaid in a reasonable time.

If you took out the loan with another person (a joint loan), you can still ask the lender for a hardship variation. You can do this even if the other person does not agree or you cannot contact them. [If you were experiencing family violence or any form, read our fact sheet about Financial Abuse and Family Violence](#) for information and options.

If you are not sure you will ever be able to get back to regular payments, consider selling your house. You can ask for a hardship arrangement while you are selling to increase your income.

Examples for making a hardship request

I'm in hardship. I'm a builder and I lost my job when the company folded.

I'm on Centrelink payments while I look for a new job and I can't afford my loan until that happens. Can you pause my payments for 6 months? Once I get a new job, I want the missed repayments added onto the end of the loan, so I can go back to normal repayments without worrying about catching up on the missed repayments.

I'm in hardship. I need surgery and will be off work for 3 months while I recover.

My partner is still working, and between us we will only be able to afford \$300 per week into the loan for those 3 months. Can you reduce my payments to \$300 per week for 3 months? After 3 months, we can afford to pay an extra \$50 per week on top of our normal repayments to catch up on the missed repayments.

I'm in hardship. I've had a work injury and it's permanent.

I have some compensation but it's not enough to pay the mortgage down enough so I can afford the repayments. I can't go back to work, and I don't have enough superannuation to help. I won't ever be able to go back to normal repayments. I want a 6 month pause on payments so I can sell the home and pay out the loan.

Negotiate with the lender

Keep making repayments (whatever you can afford) while negotiating – even if the lender says it's not enough.

The lender may suggest a different arrangement to what you have asked for. **Don't agree to payments you cannot afford or are not sure about.** A broken arrangement can make it

harder next time. See a financial counsellor to work out what you can afford, and ask the lender to put the account on hold until after your financial counselling appointment.

You may have asked for a 6 month arrangement, but the lender will only agree to 3 months. You could agree to this and then ask for a review at the end of the 3 months if you need more time.

[Ask the lender how they will list the hardship on your credit report, for details read our Credit Reports fact sheet.](#)

Ask the lender to send you details of the arrangement in writing. Keep track of when you need to start making payments again or talk to the lender again.

If the lender doesn't agree, or if you don't hear back from them

Ask the lender's complaints department to reconsider. [Find your lender's complaints department.](#) Keep making repayments (whatever you can afford).

If that doesn't work, [complain to the Australian Financial Complaints Authority \(AFCA\) online](#) or by ringing 1800 931 678. You will get a complaint number.

If your lender is not a member of AFCA, get legal advice.

The lender cannot take any legal action against you while AFCA considers your complaint.

You can keep negotiating with the lender.

AFCA can make a lender agree to a hardship arrangement if AFCA believes it is fair. You should show AFCA why your request is reasonable and that you can realistically afford future payments. [You can read more about how AFCA deals with hardship on their website.](#)

Accessing insurance or superannuation

Check whether you have any insurance you could claim on. You may have mortgage protection insurance, income protection insurance, or total and permanent disability insurance. These insurances may be through your superannuation or your employer.

You may be able to get an early release of your superannuation. Think carefully about this option first. It can help if your problems are temporary – but if you take money from your super and still can't meet your repayments, you may lose your house anyway and have less super when you retire. Before considering using your super, try asking the lender:

- to add the missed payments to the end of the loan (capitalise arrears) and extend the loan term, or
- to pay the arrears off slowly over time instead (for example, by paying a little extra on

top of your normal repayments) – but only if you can afford to.

[For more information read our Accessing your Superannuation early fact sheet.](#)

If you have received a Default Notice

Act immediately!

If you don't act within 30 days, the lender can go to court. That will add thousands in court and legal costs onto your mortgage.

If you can't pay both the arrears and your normal repayment before the 30 days expires, then before the 30 days runs out either:

- Negotiate a hardship arrangement with the lender. Get it in writing.
- [Lodge a complaint with the Australian Financial Complaints Authority \(online](#) or call 1800 931 678). Get a complaints reference number.

Complaining to AFCA is free. The lender must put a hold on the account while the complaint is open but interest will continue to be added on.

If you have received a Statement of Claim (or Notice to Occupier)

Get legal advice immediately!

A statement of claim for possession means the lender has gone to court. They intend to repossess your home.

The statement of claim needs to be 'served' on you (usually given to you in person or left in your presence). It may also come with a 'Notice to Occupier' just in case there are tenants living in the home – this document may be on top of the statement of claim.

You can:

- Lodge a complaint with AFCA about hardship or any other issues (such as irresponsible lending or that you were forced into a loan). You can do this until there is a judgment against you. Lodging a complaint is free – it puts court action on hold while AFCA looks into your complaint. [Read our Responsible Lending fact sheet if the complaint is about irresponsible lending. If you were forced into the loan read our fact sheet about Financial Abuse.](#)
- File a defence in court. A defence may be that you could never afford the repayments, or that you were unfairly pressured into the loan (for example, family violence or economic abuse). Get legal advice first – going to court is risky and you could end up paying the lender's court and legal costs.

It is often better to complain to AFCA first. Sometimes your complaint will be resolved by negotiation with the lender. If AFCA issues a final decision, you generally have 30 days to accept or reject it. If you accept it, the decision stands.

If you reject it, you still have the option to go to court – but use the 30 days to get legal advice and put in a defence before the lender gets a court judgment (which they can do once the AFCA file is closed after the 30 days).

If you do nothing, after 28 days, the lender can get a judgment. They can then repossess your home and chase the whole amount owing.

If the lender has a judgment or you have received a Notice to Vacate

Get legal advice immediately!

With a judgment, the lender can ask the court for a 'writ of possession'. This orders the sheriff (an officer who enforces court orders) to change the locks to your home and hand over the property to the lender.

The sheriff will give you a 'Notice to Vacate' with a date and time you need to move out by. You will have at least 30 days between when you get this notice, and when you need to move out.

You can:

- Keep negotiating with the lender – but it's often very difficult at this late stage. Your lender doesn't have to agree.
- Dispute the judgment. If you don't agree you owe the debt, get legal advice immediately.
- [Lodge a complaint in AFCA](#) – but only for time to sell, refinance or move out. Do this as early as possible and get legal advice. Lodging in AFCA does not automatically stop the eviction, and AFCA may not be able to help if there is not enough time before the

eviction date.

Applying to the court for a stay

You can ask the court for time to sell, refinance or move – you do this by making an application for a ‘stay’ on the notice to vacate. Get legal advice. The Duty Registrar at the Supreme Court can help you with court process, but they cannot give legal advice.

Do not leave this to the last minute. It takes time to put the court forms together, and there is a fee (or a form to apply for the fee to be waived or postponed). If your stay is not granted, you need to be prepared to leave the home on the eviction date.

An urgent stay is for up to 7 days. You need to go back to court within those 7 days to show evidence and reasons about why you need to be granted a further stay, and how long you need. The lender (or their lawyer) may argue that the Court should not give you more time. You may be able to negotiate with them.

Act quickly so you don’t need to keep going back to court to ask for more stays. It gets harder each time to get a stay – you need very good reasons and evidence for the court to give you more time. The lender will add their legal costs onto your mortgage (because the loan contract says they can).

You need to provide evidence to the court to explain why the court should give you more time:

- If you are close to selling the house, include a signed real estate agent contract, copies of advertising or a contract of sale.
- If you are just about to get a refinance arrangement approved, include a copy of your loan application or a letter on your broker or lender’s letterhead explaining where your application is up to.
- If moving will cause you severe personal hardship, bring along medical evidence, or evidence of being unable to find alternative rental accommodation.

The court will often grant an urgent stay without this evidence, and without the lender there to make counter-arguments. But when the matter goes back to court, they expect you to provide evidence. The lender (or their lawyer) can argue why you should not be given more time.

As these are court processes, the lender will usually be adding more legal fees to your debt, for the time their lawyers have to attend and respond to your application. Get legal advice and make sure you act quickly.

Being evicted

If you do nothing, get ready to move out on eviction day.

The sheriff will change the locks on the eviction date.

If you need to organise access to move any remaining belongings that you were not able to move out in time, contact the lender as soon as you can. Make sure your lender also knows your new address and contact details so you don't miss any important mail.

The lender will usually hire a real estate agent and set a time to sell the property at a public auction. The lender will generally sell at the best price on the auction date.

Selling is better than having your home repossessed

If you can't afford your mortgage repayments and won't be able to for some years to come, you need to consider selling.

You could get a better price for your home and avoid costs if you sell yourself, instead of waiting for the lender to go to court after you fall too far behind. It is best to decide to sell before the lender starts any legal proceedings. Give yourself as much time as possible to sell your home and get a good price for it.

If you delay selling, you will get further and further behind on your loan repayments and there will be lots of extra interest. Interest, fees and legal costs will eat into your equity as time goes by. You may end up with a lot less than if you sold earlier. You may even end up with a shortfall that the lender can chase you for after the sale.

Deciding to sell can be incredibly hard when you are still working towards being able to pay the loan, but don't know when this will be. For example:

- You are unemployed and trying to get a job, but you've been out of work for months.
- You are ill and trying to get well but you just don't know when you will be well.
- You are waiting for a compensation payment but don't know when it will come through. Ask your lawyer how long it could take.
- You are going through a family law settlement, but you don't know how long it will take. Ask your family law solicitor to get a realistic idea.

You can keep pushing your lender for further hardship, but they may start saying no because your hardship is not short term. You can also complain to AFCA to get more time. AFCA will decide if you have a realistic plan to return to normal repayments in a fair timeframe.

An effective plan could be:

- Make a payment arrangement with the lender for up to 6 months.

- If, by the end of the 6 months, you are not any closer to making normal repayments, put your home on the market.
- Negotiate with the lender for time to sell.

You can ask for time to sell at any time, but:

- the lender is less likely to agree later in the repossession process – it can be more difficult after judgment, and almost impossible after eviction
- the mortgage will grow bigger if you can't cover the interest and fees being added on
- it's harder if the lender is worried you may delay the sale, or if the sale price won't pay off the mortgage in full ('shortfall')
- if the lender goes to court, thousands of dollars in court and legal costs gets added onto your mortgage.

If you've decided to sell

1. Put your home on the market:

- Hire a real estate agent and get a conveyancer or property solicitor to draw up a contract of sale.
- Price the home realistically so that it will sell in a reasonable time but for the best price possible. Tell your real estate agent what timeframe you are working with. This will usually be under 6 months but could be under 3 months depending on what you've agreed to with your lender or where you are in the court process.

2. Tell the lender you are selling:

- Give them copies of documents to show what steps you have taken. For example, a signed real estate agent contract, advertising of your home, or front page of the contract of sale.
- Ask for a hardship arrangement where you get:
 - 6 months to sell your home (you may need to consider agreeing to 3 months, or even less if there's court action in progress – but get legal advice first)
 - Affordable repayments or postponed repayments (if you can't afford anything) until the home is sold.
- If the lender does not agree or has already started court action, get legal advice.

While you are trying to sell, if you get a job, get well or get a large lump sum of money, you can still go back to the lender to say you can now pay the loan. You can then negotiate to get back on track with the loan (as long as the lender does not have a court judgment – get legal advice if there is a judgment). You may have fees to pay the real estate agent for work done to date (check the contract).

Need more help?

For a list of additional resources [visit our Useful Links page](#).

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