



STEP-BY-STEP GUIDE TO APPLYING FOR A HARDSHIP VARIATION For contracts signed before 1 March 2013

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.

If you are experiencing financial hardship, you can apply to the lender to vary payments due under your credit contract. An application to vary a credit contract can be done by writing a letter to your lender requesting that they vary or change your credit contract. This is called a hardship variation application (**Hardship Variation Application**). Use our sample Hardship variation Letter to write to your lender (available through the link in Step 2 below).

If you have received legal or court documents from the lender, you may wish to contact us for advice on (08) 9221 7066 before following this guide any further.

Step 1: Do your research

We recommend that you read our [Hardship Variation Fact Sheet](#) to familiarise yourself with hardship variations and read our [Hardship Variation Flow Chart](#) to see the procedure that the lender must take after receiving your Hardship Variation Application.

Step 2: Write to your lender

The best way to make a Hardship Variation Application is to write a letter to your lender that explains your change of circumstances and sets out what variation or variations to the contract you want. Click here to generate your own [Sample Hardship Variation Letter](#).

Before you write the letter, consider:

1. How have your circumstances changed to cause you financial hardship?
2. When do you expect your circumstances to improve?
3. What are you doing to improve your circumstances?
4. What variations do you seek?

Be very clear about what you want to propose to the lender. For example you could request to vary or change the contract by:

- reducing the regular repayment amount due and having the arrears (the amount you were due to pay but did not pay) added to the loan contract to extend the term of the contract;
- postponement of payments due for a period of time and the arrears added to the loan contract to extend the term of the contract;

- postponement of payments due (this means you will make higher payments later); and
- postponement of payments due while you sell your property.

If you are unsure of what variations you can or should seek, you may wish to see a financial counsellor. [Click here](#) to read more about financial counsellors on our website.

Why should you make a Hardship Variation Application in writing?

Putting your request for a hardship variation in writing:

1. allows you to set out what variations you want and the reasons why the lender should grant your request for a variation; and
2. makes it easier to prove that you applied for a hardship variation if the lender does not grant your request for a variation.

Send the Hardship Variation Application (ie, the letter) to the lender by post and by email or fax to ensure that the lender receives it. Keep a copy of the letter that you send to the lender.

Step 3: Wait 21 days for a response to your Hardship Variation Application from your lender

Wait 21 days from the date of your letter for the lender's written response.

Step 4: What to do if your lender refuses to change your credit contract or you do not receive a response?

You may lodge a complaint with your lender's external dispute resolution service. It will either be the [Financial Ombudsman Service](#) or the [Credit & Investments Ombudsman](#). If you are unsure of the correct ombudsman service, call both services to find out (their contact details are below).

Step 5: If there is no resolution at the Ombudsman service or if you have approached the Ombudsman and you are still unable to get your credit contract varied, what can you do?

It may be possible to apply to the Federal Magistrates Court for a court ordered variation. For an application for a court ordered variation to be successful, the *National Credit Code* requires that **each** of the 4 criteria below is met:

1. the credit was borrowed by you as an individual;
2. the credit was provided for personal, domestic or household use;
3. If the credit contract was entered into after 1 July 2010, the amount borrowed is below \$500,000; **OR**

If the credit contract was entered into before 1 July 2010, the amount borrowed is below the relevant hardship threshold, which varies. See the [ASIC website](#) for more information;

4. You are applying to the lender to:

- reduce the amount of the repayments and the arrears (the amount that you do not repay) added to the end of the contract to extend the term; or
- postpone payments due for a period of time and have the arrears added to the end of the contract to extend the term; or
- postpone payments due.

Residential investment loans entered into after 1 July 2010 may also be eligible for a court ordered variation.

If your credit contract is not related to a business, if the amount is below the relevant limit, and if you have sent a Hardship Variation Application to your lender, these criteria will likely be met and a court ordered variation will likely be granted if an application is made to the Federal Magistrates Court. Making an application to the court can be costly and time consuming. You may be eligible for free legal services. Please contact us for more information.

If you do not meet the above 4 criteria you will be unable to get a court ordered variation.

If you are considering this option, you may wish to contact us for legal advice.

For further information contact or check out:

Consumer Credit Legal Service (WA) Inc.

Website: www.cclswa.org.au

Advice line number: (08) 9221 7066

Financial Counsellors' Association of Western Australia

Website: www.financialcounsellors.org

Telephone number: 1800 007 007

Financial Ombudsman Service

Website: www.fos.org.au

Telephone number: 1800 367 287

Credit & Investments Ombudsman

Website: www.cio.org.au

Telephone number: 1800 138 422

MoneySmart by ASIC

Website: www.moneysmart.gov.au/