

Have you Missed Payments on your Home Loan?

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. Please note the information provided is correct as of date of production, as of 15 August 2023.

If you miss a payment on your home loan, you will be in default. It is important to act as soon as possible and not ignore the situation.

Have you received a default notice?

If you default on your home loan, your lender will send you a default notice allowing you at least 30 days to fix the default.

If you pay the outstanding arrears **as well as** your normal payment due before the 30-day notice period expires, you have remedied the default. It is important that you pay both the arrears and the normal payment due. Paying one but not the other does not fix the default.

If you do not pay the arrears **as well as** any normal payment that falls due during the 30-day notice period, the lender may take steps to repossess and sell your home.



For more information on default notices and their contents please see our fact sheet on default notices.

How does a lender repossess my home?

If you do not remedy the default within the period specified in the default notice, the lender may:

- (a) ask you to vacate the property and give them vacant possession; or
- (b) start legal proceedings in the Supreme Court of Western Australia. The lender will ask the court for judgment which allows possession of the property and/or the payment of all monies due under your home loan contract.

Unless you have a valid defense to the lender's claim, the court will enter judgment against you.

If you believe you have a defense for defaulting on your home loan, you may want to contact us for advice.

What can I do before judgment is entered?

Your options are:

- (a) apply for hardship variation - please see our fact sheet on Hardship Variations and our sample letter to a lender requesting a hardship variation. If your lender unreasonably refuses your request for a hardship variation, you may make a complaint to the Australian Financial Complaints Authority (AFCA). AFCA provide a free dispute resolution service and your lender cannot begin legal proceedings or seek judgment while AFCA is considering your complaint.
- (b) pay the outstanding arrears and make regular repayments. You may also wish to ask the lender to withdraw the default notice. If it is not withdrawn, the lender can rely on this default notice in the future;
- (c) refinance the loan; or
- (d) negotiate with the lender for time to sell the property yourself. This may be preferable to incurring the legal costs of repossession which may be added to your debt. It may also allow you to maintain greater control of the sale process and price. If the lender refuses to negotiate, you could again lodge a dispute with the AFCA (contact details below).

What happens if the lender gets judgment?

If your lender does obtain judgment against you, you will probably have 28 days from judgment to deliver vacant possession of the property to the lender. The court may give you more time to do so.

It may be possible for you to negotiate with the lender to delay enforcing the judgment. For example, you may try to ask for more time to move out. However, it is up to the lender to agree.

For further information contact
Consumer Credit Legal Services Website: www.cclswa.org.au Advice line: (08) 9221 7066
AFCA Website: https://www.afca.org.au/ Advice line: 1800 931 678

National Debt Helpline

Website: <https://ndh.org.au/>

Advice Line: 1800 007 007