

# Mortgagee sales

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Home loans are commonly referred to as mortgages, but a mortgage is actually a charge over a property. When a bank lends money, it requires security against a borrower's failure to repay the money. The borrower grants the bank a mortgage over his or her property. If the borrower repays the debt secured by the mortgage, the mortgage is discharged. If not, the bank can sell the property to recover the money it is owed. This is called a mortgagee sale.

In this guide, we provide some information about the mortgagee sale process.

## Speak to the bank sooner rather than later

Contact the bank immediately if you're struggling financially. Explain your circumstances and seek the bank's suggestions or help. The earlier you make contact, the more ability it will have to offer possible help. A budget adviser is another source of help, as is our guide [Hardship and financial difficulty](#). Also try:

- [www.familyservices.govt.nz/directory](http://www.familyservices.govt.nz/directory)
- your local [Citizens Advice Bureau](#) (0800 367 222)
- the [Sorted](#) website
- the Financial Capability Trust - (0508 283 438) for free and confidential help with finances.

## Missed payments

Your bank is likely to contact you if you begin to miss payments. Banks will usually try to work with customers if they miss one or two payments rather than taking debt recovery or mortgagee sale action. Be honest and open with your bank about your situation. Your bank is likely to ask you to complete a statement of position. It is in your interests to do so. This statement details your income and expenses and gives the bank an indication of whether you can afford to enter into a repayment programme. Budget advisers can help you with this, and may talk to your bank on your behalf.

If you and your bank are able to come to an arrangement to meet your missed payments, do your best to keep to the arrangement. It is reasonable for your bank to expect you to pay the arrears if you have the funds to do so, and it will also expect you to continue making ongoing repayments.

## How to contact us

## When a bank issues a letter of demand

A bank will issue a letter of demand if you can't come to an agreement about missed loan payments or if you continue to miss payments. This marks the first step in the formal debt recovery process. A letter of demand will state the amount of missed payments you owe and demand payment by a certain date.

Once again, talk to your bank. If you can pay the amount by the due date, confirm this with your bank. If you can't, tell your bank as soon as possible and let it know what amount you can pay. You might still come to a repayment arrangement that is acceptable to the bank at this point.

If you can't pay the full amount and you can't reach an agreement with the bank, seek independent advice. A budget adviser or lawyer can discuss options such as refinancing with another bank, or selling your house yourself – before a sale is forced on you.

## Notice under the Property Law Act 2007

If you don't repay the amount the bank demands, it can issue a notice under the Property Law Act 2007. This notice is likely to be served on you in person. Don't try to avoid such a step by making yourself scarce as it will add to your debt. Further, the bank can apply to the courts to serve the notice in another way, such as by taking out a public notice in a newspaper.

A notice issued under the Act sets out the details of the default and states the amount you must pay by a certain date. This will be at least 20 working days after the serving of the notice.

At this point, you can still talk to the bank about a possible repayment arrangement if you can't pay the full amount by the due date. However, the bank does not have to agree to your request.

## Failure to pay by the due date

If you don't pay the amount demanded in the notice by the due date, the bank has the right to sell the property to recover all money secured by the mortgage, which is generally all of your debts to the bank.

Note that you may incur an early repayment charge if the mortgagee sale means that your fixed-rate loan is repaid early. See our guide [Early repayment charges on fixed-rate loans](#).

## Selling the property

Co-operate fully with the bank and its lawyer, valuer and real estate agent during the sale process. You remain personally liable for any shortfall after the sale of the property, so it is in your interest that the property is accurately assessed and properly marketed for sale. Denying access to a property during the marketing and sales process is likely to affect the sale price.

The bank is obliged to take reasonable care to get the best price reasonably obtainable at the time of sale.

## How to contact us

We will usually conclude that a bank has met this obligation if it:

- obtained a registered valuation of the property (which usually gives an indication of an expected sale price from a forced sale as well as its market value)
- appointed a real estate agent to market the property for a period of (usually) four weeks
- properly considered any offers made.

Sometimes people complain to us that a bank relied on an inaccurate valuation and sold the house for less than it was worth. We are likely to conclude it was reasonable for the bank to rely on a valuation from a registered valuer. However, we may take a different view if the bank was aware of a significant factor affecting the reliability of the valuation. (Complaints about registered valuers can also be taken to the Valuers Registration Board.)

The bank does not have to wait for the best time to sell the property or improve the property before mortgagee sale. A mortgagee sale for a price less than the current market value usually does not in itself establish a breach of the bank's obligation.

Sometimes people complain the bank's real estate agent was incompetent and marketed the property poorly. If the real estate agent followed a reasonable marketing plan, the property was appropriately advertised and was reasonably available to potential purchasers to view, we are likely to find that the sales process was fair. Agents are able to advertise a property as a mortgagee sale. Complaints about real estate agents can also be made to the Real Estate Agents Authority.

## Outstanding debts

Sometimes people ask if they can give the bank the keys to their house and walk away from their debts. The answer is no. They remain liable for the debt to the bank, as well as all costs associated with the property (such as rates, insurance and maintenance) until the property is sold and settlement has taken place. If the sale price is not enough to repay the entire bank debt, they are liable for the outstanding balance. If no agreement can be reached with the bank about repaying the balance, the bank can take recovery action that can ultimately result in their bankruptcy.

## Case 1: Complaint over notice not upheld

Mr D had three home loans from his bank, one in his name and the other two in the name of a company, of which he was sole director.

Mr D's business stopped making regular loan repayments. He told the bank it was because he was looking for new tenants. When this continued, the bank followed its standard practice of sending reminder letters. It also tried to call him numerous times.

Six months after not receiving payments or hearing from Mr D, the bank hired a debt collection firm. It sent Mr D more letters and tried to contact him. Eventually the bank sent the business a notice under the Property Law Act 2007, giving it a date by which to repay the arrears. The notice said the total amount owed under each of the three loans would be payable if the company did not clear the arrears. The notice added that the bank had the right to sell properties used as security.

## How to contact us

The bank tried to serve notice on Mr D personally, but couldn't find him at any of his contact addresses. It then applied to the courts for directions on how to serve the notice. A court directed that service could be made by attaching the notice to the door of a property Mr D owned, by posting the notice to a post office box number in his name, and by publishing a copy of the notice in the public notices section of the local newspaper.

After publication of the notice, Mr D contacted the bank and was referred to the debt collection firm. But he didn't make the required repayment before the notice expired.

The bank began the mortgagee sale process, prompting Mr D to complain that:

- The real estate agent told his tenants about the pending mortgagee sale during an inspection so they moved out, leaving him without income.
- He didn't receive arrears-related bank correspondence before the notice's publication.
- The bank breached his privacy by publishing the notice.
- The bank should not have outsourced recovery action.

We found the bank was entitled to instruct a real estate agent to inspect the property because the notice had expired without the required repayments. We also found the bank had met its obligations to communicate with Mr D, having written to him at postal addresses he had supplied. The bank was entitled to serve the notice by publication in the newspaper in line with the court's direction. We found the loan agreements Mr D signed stipulated the bank could engage debt collection agencies if the loans were in default. We told Mr D we could not uphold his complaint.

## **Case 2: Settlement for poor service and silence over charge**

Mr K resigned from his job and moved overseas to care for his mother. He updated his bank before leaving the country. He found work, for which he was paid monthly, and asked the bank to make his loan repayments monthly rather than fortnightly, but didn't hear back.

Mr K was made redundant a few months later and couldn't make his loan repayments. He asked the bank to add his arrears to his loan, or alternatively to give him a loan repayment holiday until he found a new job.

The bank said no and required him to pay an extra \$1,000 a month to catch up on his arrears. This would have reduced his arrears if all fortnightly loan repayments were met.

Mr K returned to New Zealand, but could not meet the loan repayments. This meant his arrears did not reduce at the intended rate. The bank decided to recover its money, but gave Mr K four weeks to sell the property himself before initiating a mortgagee sale.

Mr K asked the bank what his loan stood at. The bank said about \$400,000. Mr K sold his property privately. However, when he repaid the loan, the bank added a \$12,000 early repayment charge, reducing the amount he cleared from the sale.

## **How to contact us**

Mr K complained to us that the bank didn't help him when he asked for it, and this directly led to his having to sell his property for less than it was worth. He also said he wasn't told about the early repayment charge and sought a \$12,000 refund.

We found the bank was entitled to decide whether to help Mr K, but we were concerned the bank hadn't properly considered his requests. The bank said it had no record of Mr K asking for an adjustment to the loan repayment cycle, when the bank's files had a record of the request. We proposed the bank pay Mr K \$500 for its poor service.

We also found the bank was entitled to impose an early repayment charge, but considered the bank was at fault for not advising him of this fact. Given Mr K's property would be sold at mortgagee sale if he didn't sell it himself, he had no way to avoid paying the charge. However, we considered Mr K had experienced stress and inconvenience when he unexpectedly learned about the early repayment charge. We proposed the bank pay him another \$500 for its failure to tell him about the charge.

Mr K and the bank accepted our proposal, and his complaint was settled.

### **Case 3: Actions over subdivision lending okay**

Mrs L borrowed money from her bank for a subdivision. Work didn't progress as quickly as planned, so the bank requested she pay back what she owed. Mrs L repaid some of the debt, and the bank agreed to lend more so she could get resource consent, which was likely to increase the land's value.

Getting the consent took longer and cost more than expected. The bank decided not to lend any more money. Mrs L missed some payments and the bank began a mortgagee sale. However, Mrs L sold the property privately beforehand.

Mrs L complained that the bank hadn't lent the extra money as agreed. She also felt the bank's property marketing was inadequate and resulted in a hurried sale.

We were satisfied the bank was not obliged to lend Mrs L more money. We also found that, in light of the significant arrears, it was able to start the mortgagee sale process. Further, as the property was sold privately two weeks into the bank's six-week marketing campaign, we could not say the bank's marketing was inadequate.

## **How to contact us**