

# Mortgagee sales

The possibility of a mortgagee sale of your home is a stressful prospect. In this guide, you will find information about how to minimise that possibility, and, if it is inevitable, how to ensure the sale happens as smoothly as possible.



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.

## 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 Quick Guide Financial hardship. 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 repayments.

## 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 Quick Guide [Early repayment charges](#).

## 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. 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.



The earlier you make contact with the bank, the more likely it will be able to offer help.