

# 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 financial mentor is another source of help, as is our guide on [Hardship and financial difficulty](#). Also try:

- [Family Services Directory](#)
- your local [Citizens Advice Bureau](#) (0800 367 222)
- the [Sorted](#) website
- the [MoneyTalks free financial helpline](#) (0800 345 123) 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. Financial mentors 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.

## 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 financial mentor 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. The Act requires this notice to be in a prescribed form.

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 on [Early repayment charges](#).

Making a complaint does not automatically stop the bank from taking steps to sell the security property. See our guide on [Suspending debt recovery action](#).

## 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 to have the property accurately valued and properly marketed for sale. Denying access to a property during the valuation, marketing and sales process is likely to affect the sale price.

We can consider a complaint if the bank has not:

- followed proper procedure or has not issued the correct notices, in the lead up to a mortgagee sale, or
- met its obligations under the Code of Banking Practice prior to, and throughout, the mortgagee sale.

However, the outcome of these types of process complaints will be unlikely to result in us preventing the sale from occurring or asking the bank to forgive any shortfall debt. Sometimes people complain it is a privacy breach for the bank to disclose a borrower's personal information to its third-party agents (for example, lawyers). However, the bank's right to share information with its agents is usually set out in its contract with its customer.

The bank owes a duty to take reasonable care to obtain the best price reasonably obtainable at the time of sale. The bank also has a duty of good faith, which requires a bank to not wilfully or recklessly disregard the interests of the borrower. This obligation does not mean that the bank must obtain the best price possible at the time of sale, but means the bank must take certain steps when selling the property.

We will usually conclude that a bank has met its obligations if it:

- obtained a registered valuation of the property (which usually gives an expert opinion about the expected sale price from a forced sale as well as its market value)
- obtained at least one appraisal from a reputable real estate agent to recommend on price, marketing and sale method
- appointed a reputable real estate agent to market the property for a reasonable length of time (usually four weeks)
- properly considered any offers made.

The bank does not have to:

- consult with the borrower about its decisions, and the borrower cannot dictate how the property is to be marketed, sold or what sale price is acceptable
- wait for the best time to sell the property, or until the market improves.
- maintain or improve the property before mortgagee sale, so to increase its value.

A mortgagee sale for a price less than the property's current market value usually does not in itself establish a

breach of the bank's obligation. The bank is not required to prioritise the borrower's interests over its own, provided reasonable care is taken.

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 should oversee the sale, but appointing a competent agent goes a long way toward meeting the bank's obligations. The bank is entitled to act and rely on specialist expert advice. 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 can advertise a property as a mortgagee sale. Sometimes people complain about the real estate agent's conduct during the sale. Complaints about real estate agents can be made to the Real Estate Agents Authority.

## Using sale proceeds

Sale proceeds are used to pay the costs incurred by the bank in selling the property. This can include (but is not limited to) advertising and sale costs, property agent and valuation fees, as well as legal costs. Generally, costs will be reasonably incurred if they were for the proper purpose of obtaining the best price reasonably obtainable at the time of sale.

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 holding 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 the borrower's bankruptcy. On the other hand, if there is money left over from the sale, and the borrower has no other loans, the bank should pay the surplus to the borrower.



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