



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 118

What can I do if my goods are about to be repossessed?

This information sheet contains information about:

- when repossession can occur
- what you can do to prevent repossession
- what you can do after repossession has taken place
- what you can do if repossession contravenes legislation.

Note: Use this information sheet when goods, typically a motor vehicle, secure a loan—not when the Sheriff is executing a court order (in that instance, refer to Information Sheet 123 *What if I am served with a warrant to seize property?*).

When can repossession occur?

Repossession of goods can only occur where:

- there is a **mortgage** over the goods (or vehicle)
- you are **behind** in your payments (that is, you have defaulted on payment)
- the credit provider (lender) has given you and any guarantor a **default notice**—that is, a section 80 or 88 notice under the *National Consumer Credit Protection Act 2009* (National Credit Code)—and has given you, or the guarantor, 30 days to pay the overdue amount (see Information Sheet 117 *What can I do if I have received a default notice?* for details of what the default notice must contain)
- you have been **unable to pay** within the time set out in the notice
- you have **not negotiated an arrangement** with the credit provider
- the credit provider has obtained a **court order**.

What should I do when I receive a default notice?

When you receive a default notice, avoid doing nothing. Talk with your credit provider and seek legal advice immediately.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Are there exceptions?

Yes there are exceptions (see below), but these rarely apply. In most circumstances they would not be upheld if you applied to a court to have the goods (or vehicle) returned.

The exceptions are:

- if the loan was obtained fraudulently
- if the credit provider is unable to locate you, after making reasonable attempts
- if a court authorises the credit provider to dispense with the default notice
- if the credit provider believes, on reasonable grounds, that you intend to dispose of the goods.

For further advice on exceptions, see a financial counsellor (visit www.afccra.org or call ASIC's Infoline on **1300 300 630**) or obtain legal advice (visit www.naalc.org.au, your state's Legal Aid office at www.nla.aust.net.au or look in the front section of your telephone directory).

What can I do to prevent repossession if I receive a default notice?

You can **avoid repossession** by taking one of the following steps:

- pay the overdue amount
- pay out the credit contract.

If you are **experiencing financial hardship**:

- try to negotiate directly with the credit provider for a variation (alternative payment arrangement), or
- apply to the credit provider for a 'hardship variation'—if the credit provider rejects your hardship application, you can make an application to the creditor's **external dispute resolution (EDR) scheme** (see contact details on page 3)—you should act on this immediately.

For more information on how to obtain a hardship variation, see our factsheet *Can't pay your debts?* (download from www.fido.gov.au/publications or call ASIC's Infoline on **1300 300 630** and we'll send you a copy).

What can I do after the repossession has occurred?

Within 14 days of repossession, the credit provider must give you a **written notice** telling you:

- the estimated value of the goods
- the cost of the repossession, plus any ongoing costs
- a statement of your rights.

The credit provider cannot sell your goods until **21 days after the date** of the abovementioned written notice, and you have the option to:

- give the credit provider the name of someone who is prepared to buy the goods (or vehicle) for at least the estimated value—the credit provider must sell the goods to your nominee if an offer is received in writing
- reinstate the credit contract and mortgage by paying all the overdue amounts and any reasonable costs incurred by the repossession and recovering of the goods (or vehicle)
- pay out the entire credit contract and get the goods back without a mortgage.

If payment is not made within 21 days after the date of the notice, and you have either not nominated a buyer or your nominated buyer has not bought the goods (or vehicle), generally the credit provider must sell your goods (or vehicle) for the best price reasonably obtainable. You will still be liable for any shortfall that occurs after the sale of the goods (or vehicle)—that is, if the sale is not enough to cover the amount outstanding.

If the credit provider or debt collector refuses to let you do any of these things, seek advice from a financial counsellor (visit www.afccra.org or call ASIC's Infoline on **1300 300 630**) or a community legal centre (visit www.naclc.org.au, your state's Legal Aid office at www.nla.aust.net.au or look in the front section of your telephone directory).

What can I do if a repossession was not carried out correctly?

If a credit provider took your goods (or vehicle) without following the proper procedure (for example, you were not served with a default notice, or your vehicle was removed by entering private property without a court order), you can **apply to the court** for an order for the goods (or vehicle) to be returned to you at the credit provider's expense, even if the relevant default has not been fixed.

How do I resolve a dispute or make a complaint?

You may be able to resolve a dispute by contacting the credit provider and negotiating directly with them. If you aren't satisfied with the credit provider's decision, you can complain to the credit provider's **external dispute resolution (EDR) scheme**.

This will be either the Financial Ombudsman Service (FOS) at www.fos.org.au or the Credit Ombudsman Service Ltd (COSL) at www.creditombudsman.com.au. Both schemes can be reached by calling **1300 780 808**.

If you think that a credit provider has acted unlawfully or in a misleading way, you can complain to ASIC online at www.asic.gov.au/complain or call ASIC's Infoline on **1300 300 630**.

Where can I get more information?

- Go to www.asic.gov.au/credit for the latest updates about credit.
- Go to www.fido.gov.au/credit for credit information and resources for consumers.
- Call ASIC's Infoline on 1300 300 630 or email Infoline@asic.gov.au.
- Further information may be found in Information Sheet 114 *What is external dispute resolution and how can it help me?*, Information Sheet 115 *Referrals: where to go for help with your debts*, Information Sheet 117 *What can I do if I have received a default notice?* and Information Sheet 123 *What if I am served with a warrant to seize property?*

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.