



ASIC

Australian Securities & Investments Commission

## INFORMATION SHEET 117

# What can I do if I have received a default notice?

This information sheet contains information on:

- default notices under the *National Consumer Credit Protection Act 2009* (National Credit Act)
- your rights under section 88 of the National Credit Act
- the information a default notice must contain
- what you can do if you have been served a default notice.

## What are my rights under the National Credit Act?

If you fall behind in repaying money you have borrowed, a credit provider must not take recovery action against you until certain steps have been taken first.

These steps are designed to give you an opportunity to catch up on or dispute the arrears (that is, the unpaid amount) before action is taken in a court to recover the debt.

The National Credit Act allows you to request postponement of court proceedings. If this request is refused by the credit provider, you have the right to:

- apply to the court for postponement of enforcement proceedings, or
- take the dispute directly to the credit provider's **external dispute resolution (EDR) scheme** for independent adjudication (this will be either the Financial Ombudsman Service (FOS) at [www.fos.org.au](http://www.fos.org.au) or the Credit Ombudsman Service Ltd (COSL) at [www.creditombudsman.com.au](http://www.creditombudsman.com.au)—both can be reached by calling **1300 780 808**)

The credit provider must first give you (the borrower or the mortgagor, and the guarantor, if there is one) a **default notice** telling you that if the default is not remedied (that is, the debt paid back or otherwise legally dealt with) within a given time from the date of the notice, the credit provider can begin enforcement proceedings to recover the debt.

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

## What information must a default notice contain?

The default notice must contain:

- a prominent heading at the top which states that it is a **default notice**
- specific details of the **default amount**
- what **action** is necessary to fix the default
- **how long** you have to fix the default
- the date after which **enforcement proceedings** will commence (and, if relevant, repossession of mortgaged property may begin) if the default is not fixed
- notification that repossession and sale of mortgaged property **may not** repay all that is owed
- that you have a right to apply to the credit provider for a **hardship variation**
- that you have a right to make a request to the credit provider for a **postponement of enforcement proceedings**
- that you have a right to **apply to a court** if your request for a hardship variation or postponement of enforcement proceedings is refused
- details of the credit provider's **EDR scheme**
- that a **further default** of the same kind occurring during the time given to remedy the current default may result in enforcement proceedings commencing without further notice
- notification that, if the debt remains unpaid for 60 days or more, it may be included in a credit reporting agency's **credit information file** about the borrower.

Note that, if the credit provider has reasonable grounds to believe that a borrower cannot fix the default, the default notice need only specify the default amount and that the credit provider may begin enforcement proceedings from 30 days after the date of the notice.

## What can I do if I have been served a default notice?

### What if I fix the default straight away?

If the default is remedied (that is, the debt paid back) within the time stated in the default notice, then the contract or **mortgage is reinstated** and no **acceleration clause** can operate (that is, a clause in the terms of a loan or mortgage stipulating that payments must be made earlier in certain circumstances).

Don't forget that you not only need to pay back the amount you are in default, you also need to keep up with your regular monthly or fortnightly repayments as well, in order to avoid giving the credit provider grounds to take any further action against you.

### What are my rights as a guarantor?

If you are guarantor of a loan that is now in default, the credit provider must take the following steps before it can enforce a **guarantee** against you:

- **obtain a judgment** against the debtor (borrower) for payment of the debt (guaranteed liability)
- **make a written request** for payment to the borrower (judgment against debtor)
- if the debt remains unsatisfied after 30 days, the credit provider may then take steps to **enforce the judgment** against the guarantor.

If the credit provider has reasonable grounds to believe that recovery of the debt from the debtor (borrower) is unlikely, or if the debtor is insolvent or has disappeared, a court may relieve the credit provider of the requirement to wait 30 days from written notice to the borrower before enforcing the judgment against the guarantor.

### What if I dispute the debt?

If you dispute the debt because you do not believe you owe amount claimed, or you have some other valid defence, **get legal advice as soon as possible** or seek assistance from a financial counsellor.

Visit [www.nacalc.org.au](http://www.nacalc.org.au) to find a community legal centre near you, go to your state's Legal Aid office at [www.nla.aust.net.au](http://www.nla.aust.net.au), or look in the front section of your telephone directory under 'legal support services'.

To contact a financial counsellor visit [www.afccra.org](http://www.afccra.org) or call ASIC's Infoline on **1300 300 630**.

### Where can I get more information?

- Go to [www.asic.gov.au/credit](http://www.asic.gov.au/credit) for the latest updates about credit.
- Go to [www.fido.gov.au/credit](http://www.fido.gov.au/credit) for credit information and resources for consumers.
- Contact ASIC's infoline on 1300 300 630 or make an enquiry at [www.asic.gov.au/question](http://www.asic.gov.au/question).

Further information may be found in Information Sheet 118 *What can I do if my goods are about to be repossessed?*, Information Sheet 121 *What happens if my mortgage is enforced?* and Information Sheet 115 *Referrals: where to go to for help with your debts*.

### 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.