

Mortgagee sales

A mortgage is security for a loan. This means that if you have a mortgage and you fail to meet your loan repayment obligations, your banking service provider ultimately has the right to sell that security (usually property) to get its money back. This is known as a mortgagee sale.

Before a banking service provider can sell a property to recover debt, a number of things need to happen. It will also most likely want to help you find other ways to meet your loan obligations before resorting to a mortgagee sale.

What should I do if I'm in financial difficulty?

If you're struggling with your finances, the best thing to do is to contact your banking service provider as soon as possible. The earlier you make contact, the more it may be able to do to help.

If you're not already behind in your loan repayments, you're entitled under the Credit Contracts and Consumer Finance Act to ask your banking service provider for a change to the terms of your contract to help you meet your obligations. This might include getting a mortgage holiday or decreasing the amount of your repayments, but increasing the length of your loan.

While these solutions may offer temporary relief, they will actually increase what you owe in the long run. You can read more in our Quick Guide, Hardship and financial difficulty at www.bankomb.org.nz/Publications/Quick-guides. It is also useful to know that your banking service provider does not have to agree to your request.

What happens if I fall behind in my loan repayments?

If you fall behind in your loan repayments, contact your banking service provider and be upfront and honest. Ask whether it is prepared to enter into a repayment programme with you.

How to contact us

If you have missed one or two repayments, do your best to meet the ongoing payments. If your bank asks you to complete a statement of position, do so. A statement of position shows your income and expenses and helps determine whether or not you can afford to enter a repayment programme. Budget advisers can also help you with this, and may talk to your banking service provider on your behalf.

Make sure you return phone calls from your banking service provider and keep a record of who you talk to and when. If you think a banking staff member is being unprofessional, raise your concerns with his or her manager.

If you and your banking service provider are not able to come to some arrangement to meet your loan obligations, it may then issue a letter of demand.

What should I do if my banking service provider issues a letter of demand?

A letter of demand is the first formal step in the debt recovery process. It will advise you of the amount you owe in arrears and demand payment by a certain date.

If you can pay the arrears, do so. You should also continue to make your ongoing loan repayments.

Talk to your banking service provider. If your file has been transferred to the bank's debt management department, contact that department and not the branch.

It is not too late to talk about a repayment programme if you haven't done so already. If your banking service provider is not prepared to enter into a repayment programme, you may like to consult a lawyer for advice about your options, including selling your house or refinancing your lending with another bank.

What happens if I can't pay back the amount in the letter of demand?

If you don't repay the arrears advised in a letter of demand, your banking service provider may issue a Property Law Act (PLA) notice. A PLA notice states that you are in default under your mortgage because you have failed to pay the amount in the letter of demand. The PLA notice will tell you the amount you need to pay by a certain date, a minimum of 20 working days after the PLA notice is issued.

How to contact us

You should:

- make sure you are available for the PLA notice to be served on you in person. If you don't do this, your banking service provider will have to find another way to serve you with the notice, such as taking out a public notice in a newspaper. This will increase the cost to you.
- pay the arrears.

If you cannot pay the arrears:

- contact your banking service provider, if you have not already done so, and ask whether you can enter into a repayment programme
- consult a lawyer for advice.

What happens if I don't pay the amount owed in the PLA notice?

If you do not pay the full amount owed in the PLA notice, including costs, your banking service provider has the legal right to sell your property as mortgagee.

Under the Property Law Act, the mortgagee (your banking service provider) owes the mortgagor (you) a duty of reasonable care to obtain the best price reasonably obtainable at the time of sale. In practice, this means that before selling a property under mortgage sale, a banking service provider will usually:

- get a registered valuation to give an indication of a reasonable mortgagee sale price
- appoint an appropriate real estate agent to market the property over four weeks.

During the sales process we recommend you co-operate with the valuer and the real estate agent, allowing them access to the property, so they can do their job.

How to contact us

Where else can I go for help?

If you're struggling with your finances, there are a number of places you can go for advice:

- The New Zealand Federation of Family Budgeting on 0508 283 438.
- The Ministry of Consumer Affairs' free helpline 0800 LOAN STRESS.
- Your local Citizens Advice Bureau 0800 FOR CAB (0800 367 222),

You should also talk to your banking service provider.

Some common mortgagee sale issues

“Can I give the bank the keys to my house and walk away?”

If you were to do this, you would still be liable for all the costs associated with the loan as well as all the costs to do with the property, such as rates, insurance and maintenance.

If the property sells for less than you owe, your banking service provider will expect you to repay the shortfall. Your loan is secured by a mortgage over the property. It is also secured by your personal obligation to repay the debt. Even if the mortgage is discharged, your personal obligation remains until you have fully repaid the debt.

“The bank sold my house for less than I owe. Now the house has been sold and I still owe the bank money.”

As long as the sale price was the best price reasonably obtainable at the time of sale, your banking service provider can sell your house for less than you owe, leaving a residual debt. Your banking service provider does not have to set the auction reserve at the amount you owe.

If you still owe the bank money after the property is sold, your banking service provider will ask you to repay this debt. You may be able to enter into a repayment agreement for the remainder, but if you cannot, your banking service provider may take recovery action against you which could ultimately result in your bankruptcy.

How to contact us

“It was the bank’s decision to sell the property, now it wants to charge me an early repayment cost.”

If you have a fixed interest rate loan and repay that loan before the end of the fixed rate period for any reason, including forced sale, your banking service provider has the right to pass the early repayment cost on to you.

You can read more in our Quick Guide, Early repayment costs on fixed rate loans at www.bankomb.org.nz/Publications/Quick-guides.

“The bank relied on an inaccurate valuation and sold the house for less than it was worth.”

As long as the valuation was provided by a registered valuer, we’d be likely to conclude it was reasonable for the banking service provider to rely on that valuation when accepting an offer to buy the property. However, if the banking service provider was aware of a significant factor that meant the valuation could not be relied on, we would take this into account.

If you have a complaint about the registered valuer, you can complain to the Valuers Registration Board.

“The bank made me pay for the valuation but won’t let me have a copy.”

A loan agreement allows a banking service provider to pass the valuation cost to you, however the valuation belongs to the banking service provider. In practice, banking service providers will almost always give their customers a copy of the valuation.

“The real estate agent was incompetent.”

As long as your banking service provider can show that the real estate agent followed a reasonable marketing plan, that the property was appropriately advertised and was reasonably available to potential purchasers, we’d be unlikely to conclude there was a problem in the sales process.

It is legitimate for a property to be advertised as a “mortgagee sale”.

If you have a complaint about the real estate agent, you can complain to the Real Estate Agents Authority.

How to contact us

“The bank should have waited until summer to sell my house because it would have got a better price.”

Your banking service provider does not have to wait to sell your house. Once the PLA notice has expired unremedied, your banking service provider has the legal right to sell your house.

“The bank would have got a better price for my property if it had subdivided it.”

Your banking service provider does not have to improve the property to increase its value.

How to contact us

Freephone 0800 805 950 Email help@bankomb.org.nz
Web www.bankomb.org.nz Facebook www.facebook.com/bankombnz

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