

Understand the 5 Stages of the Bank Repossession Process... And What Options You Have At Each Stage

Stage 1 - Missed payments

The first stage of the bank repossession process commences when for a variety of reasons you miss a payment to the bank, and once you have missed a payment it is difficult for you to catch it back up.

What the bank does at this stage... they will try to contact you by phone calls and letters in the post to remind you that you have missed your payments.

Technical terms... there are not many technical terms that the bank will use at this stage other than send you payment reminders.

Your options at this stage are...

- to talk to the bank to try to reach an agreement where you can have extra time to catch up your missed payments.
- to talk to family and friends about borrowing the money to enable you to catch up the missed payments (and then paying them back instead of the bank).
- it is important to remember at all Stages that you can apply to refinance your loan with a different lender (although this can be difficult if you are already in arrears with your current lender. Try online searches like... 'mortgage refinance', 'bad credit lenders', 'unsecured personal loans' etc).

Stage 2 - Bank's Collection Department

This Stage commences if you have not been able to come to an arrangement in Stage 1 above, and although it varies from bank to bank, this Stage usually commences once your payments have been outstanding for 60 days or more.

What the bank does at this stage... they will refer your loan to a separate department within the bank that specialises in handling and negotiating the collection of arrears, called either the 'collections' or 'recoveries' department.

Technical terms... again the bank will not use many technical terms at this stage as they will try to maintain a working relationship with you, usually they will stop referring to 'missed payments' and now make reference to your 'arrears'.

Your options at this stage are...

- to come to an agreement with the collections department about your arrears. **It is really important at this Stage to not feel afraid of the bank and for you to feel empowered that you can negotiate with the bank!** They will be trying to avoid taking legal action (Stage 3) as it is very costly and time-consuming for them, and the collections department will have more power to agree a reasonable solution with you that is achievable for you. Some of your options include...
 - asking for a longer period of time where you can make part payments to gradually pay off the arrears in the future .
 - asking for a period of time where the arrears can be 'held', and then you can start paying it off in the future, maybe in 6 months or 12 months time.
 - asking for the arrears to be added to the end of the loan, i.e. make the loan term longer, this is sometimes referred to as 'capitalising the arrears' into the loan amount.
 - asking for an interest only period on the loan, so that your regular loan payments will be lower and you will be able to put any extra cash flow into paying the arrears.
- it is very important at Stage 2 that you have made a formal 'hardship application' with your bank to help you pay off the arrears, because if you haven't you may not be able to take other important actions in later Stages.
- as in Stage 1 you can apply to refinance your loan with a different lender.

Stage 3 - External Collection

Again the timeframe varies from bank to bank, but usually if after a further 30 days of dealing with the collections department and you are now 3 or more monthly payments in arrears the bank will know that the situation is more serious, and you will have less likelihood of being able to catch up.

What the bank does at this stage... they will refer your loan to external lawyers to act on behalf of the bank to recover the arrears that you owe to them. Usually the lawyers are not as easy to deal with as the bank's internal departments in Stages 1 and 2, and they will just follow the letter of the law to try to recover the money owed to the bank.

Technical terms... the lawyers will issue you with what is called a 'Default Notice' or 'Notice of Default'. This is a legal requirement at this stage of the bank repossession process that they send you this notice.

Your options at this stage are...

- to pay the arrears amount in the 'Default Notice' within the time specified in that notice, usually 30 days.
- if you believe that you have been treated inappropriately by the bank, or not given a reasonable opportunity to pay the arrears by reaching an agreement in Stages 1 & 2, you can apply to the Australian Financial Complaints Authority (<https://www.afca.org.au/>) to have them act independently as a mediator between you and the bank. This will ensure that the bank cannot proceed with legal action unless it is independently judged by AFCA that it has acted reasonably. Whilst your case is being heard by AFCA, all legal action will be put on hold until there is an outcome, but it is important to understand and remember that interest will continue to accrue on the loan during this period.
- if you have not previously made a 'hardship application' to the bank, AFCA may not be prepared to take the case on until you have done so (i.e. you have to first try to work it out directly with the bank in Stage 2).

Stage 4 - Court Action

This stage commences when the 'Default Notice' in Stage 3 expires without the arrears being paid, usually 30 days after the date on the 'Default Notice'.

What the bank does at this stage... Once the 'Default Notice' has expired the bank has the right to go to the courts and lodge a formal 'Statement of Claim' against you, seeking orders from the court for the recovery of the arrears, the full balance of the loan, repossession of the property and all interest and legal costs. The bank does not always immediately take this step, and you may still be able to negotiate with the bank and their lawyers, however once the Stage 3 'Default Notice' has expired the bank has the legal right to lodge a 'Statement of Claim' whenever they decide to do so.

Technical terms... at this stage 'Court Proceedings' will have commenced against you and the bank will have lodged a 'Statement of Claim' detailing in full what you owe them.

Your options at this stage are...

- if you want to argue with the bank in the courts you will need to lodge a 'Notice of Grounds of Defense To the Lenders Proceedings' which will be your formal argument that you do not owe the bank the money that they claim you owe them. Whilst you have the option at this stage of lodging a notice in the court disagreeing with the bank's claim, this is not very common, although it is available to you if you disagree with their 'Statement of Claim' against you.
- If you believe that the bank has not treated you appropriately and you haven't already done so in Stage 3, you still have the option of going to the Australian Financial Complaints Authority (<https://www.afca.org.au/>) to have your case heard by them to ensure that the bank isn't acting unreasonably.

Stage 5 – Bank Repossession

Stage 5 commences if after 28 days you have not argued in the court against the bank's 'Statement of Claim'.

What the bank does at this stage... they will apply to the courts again for the court to make their 'Judgment' and a judge will give the order for you as the homeowner to hand over possession of the property to the bank. The bank will issue a 'Writ' to the 'Sheriff' who will 'Seize' your property by changing the locks, but only after giving you due notice of the day upon which he will do so. If you are still in the property they will change the locks anyway, and arrange at your cost for your possessions to be moved to storage.

Technical terms... 'Judgment', 'Writ of Possession', 'Sheriff'

Your options at this stage...

- By this stage you may feel that you have no options left, but you do still have options available to you...

Stage 4 & Stage 5 is where Fast House Sales specialises in helping its clients to stop the bank from repossessing their homes (of course we can assist you earlier as well, but you may want to try some of the other options first).

By Stage 4 & 5 it is usually clear that you can't pay the arrears, so you can't continue with the loan and your house will have to be sold... **but you still have the opportunity of selling your home yourself, rather than letting the bank do it!**

If the bank repossesses your property their main goal is to recover the loan amount that you owe them, and they are not at all motivated to make sure you get as much as you can.

At www.fasthousesales.com.au we stop the bank taking your property... which means that you remain in control of the sale process, and we can present and sell the property quickly and professionally for the best possible price to ensure that you get as much equity out of your home as you possibly can. By staying in charge of the sale process you can get your home sold for significantly more (and a lot quicker) than letting the bank take it, and you save significantly on legal fees, default fees, additional interest costs, court fees and holding costs. You get to retain your dignity by being in control and not having your home taken from you (and you avoid potential bankruptcy).

- If you have any questions you would like answered you can text or call Darren Webber on [0413590771](tel:0413590771) or email him at darren@fasthousesales.com.au
- If you would like to watch a case study of exactly how the process works you can click here... <https://fasthousesales.com.au/case-studies>