



*Are you struggling
to pay a loan?*

**A guide to your options if you
can't meet your loan payments**

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Disclaimer

Legal Aid Queensland believes the information provided in this guide is accurate as at September 2008 and does not accept responsibility for any errors or omissions.

What if English is my second language?

If you would like this publication explained in your language, you can contact us through the Translating and Interpreting Service (TIS) on 13 1450. TIS will organise an interpreter in your language and will connect you to Legal Aid Queensland. This is a confidential and free service.

Are you struggling to pay a loan?

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How can this guide help me?

This guide provides general information about:

- what can happen if you don't pay your loan
- the options available to you if you can't meet the current loan/lease payments
- how to negotiate a change to your loan or lease
- the procedure you will go through to change your loan if you go to court.

It also provides sample letters that you can follow when you need to put something in writing.



When should I use this guide?

Use this guide if:

- you have missed loan payments
- you are having trouble keeping your loan payments up to date.

Some of the options listed in this guide are only available if your loan is regulated by the Consumer Credit Code. This guide assumes (unless stated otherwise) the Consumer Credit Code applies to your loan.

The Consumer Credit Code applies if:

- the loan contract date is after 1 November 1996
- the loan is predominantly for domestic or household purposes (not business)
- the contract indicates that you could have to pay a charge
- no more than two years have passed since the contract was rescinded, written off or discharged.

Do not use this guide if your problem is not about money you have borrowed.

If you took out the loan in another state, you should contact Legal Aid in that state because the law may not be the same.

You must get legal advice

You should use this guide along with legal advice. Never make any decisions without speaking to a solicitor first.

You can get legal advice from:

- Legal Aid Queensland – call 1300 65 11 88 for free advice
- a community legal centre – go to www.legalaid.qld.gov.au or call 1300 65 11 88 to check services in your area
- a private solicitor – call the Queensland Law Society on 07 3842 5842 or visit www.qls.com.au for names of solicitors who can help.



*Always get legal and financial advice
if you are struggling to pay a loan or
have issues with your lender.*

What can happen if I don't pay my loan?

If you do not make your payments on time and in full, you are in default under the loan contract. When this happens, the lender has the right to take you to court (also known as starting “enforcement proceedings”) to recover the money you owe.

If you don't have the money, the lender can sell any assets you listed on the loan documents as security. Secured assets can be real estate, goods, a car or other property you offered to secure the loan. If you default, the lender can take the property and sell it to recover the debt.

There may be a document registered with the Office of Fair Trading or the titles office in the Department of Natural Resources (a bill of sale, chattel mortgage, bill of mortgage or encumbrance), which says the lender has an interest in the property and it cannot be sold unless the security is released.

You can only sell a secured asset if you arrange to pay out the loan, or get the lender's permission. For example, if you have a mortgage on your house you can only sell it if you will be able to pay back all the money you owe or you reach an agreement with the lender about keeping the loan and using the money from the sale for another purpose.

What can the lender do to get their money back?

The lender will probably try to repossess any secured assets you listed on your loan documents. Before doing this they must, under the Consumer Credit Code, serve you with a default notice telling you what the default amount

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is and giving you 30 days to fix it by paying all the money currently owing. Even if the Consumer Credit Code does not apply to your mortgage, the Property Law Act says lenders in Queensland cannot sell your house and land or vacant land without giving you 30 days notice. If the lender cannot find you, or believes you are trying to sell the goods or remove them without the lender's permission, they may not have to give you a default notice before repossessing a secured asset.

If you refuse to let the lender repossess a secured asset, they can start court proceedings against you. In this case, you will receive a court document called a *Claim* and there will be a time limit (28 days) for you to file a *Defence*. A *Defence* gives you an opportunity to argue that you do not owe the money. If you receive a *Claim* you should get legal advice immediately.

If you do not file a defence, the lender will get a judgment (order) against you. If they succeed in getting this judgment, the lender can take further steps to recover the money from you (see below). The lender does not have to give you a copy of the judgment, but you can get a copy from the court where it was obtained.

What further steps can the lender take?

The lender might apply for other orders like:

- An enforcement hearing summons, requiring you to go to court and take supporting documents to explain your current financial circumstances.
- An enforcement warrant redirecting your earnings (garnishee of wages) so you are making regular payments towards your loan from your pay.

- An enforcement warrant allowing the lender to seize and sell some of your assets and use the money from the sale to reduce your debt.

Your Centrelink entitlements and essential household and personal items, including a basic car (up to a set value), cannot be taken from you in most situations. Check the list of exempt household items on page 50.

How far can this go?

You cannot be sent to jail for defaulting on your loan. But if a judgment is made against you, you could be ordered to pay the lender's court costs and fees and it could affect your credit rating. A judgment made against you lasts for six years and can be extended for a further six years. The lender can check on you during this time to see if you are able to pay any money towards your debt. They cannot chase you for the loan after this time unless there are exceptional circumstances.

Will it affect my credit rating?

Yes, judgments made against you in court affect your credit rating, making it more difficult for you to get loans or credit in the future. Your debt will be registered with Veda Advantage (www.mycreditfile.com.au), previously called Baycorp, which is an organisation that can give information about your credit history and ratings to potential lenders.

You can get a copy of Veda Advantage's records about your credit history free of charge.

Judgments remain listed for five years on Veda Advantage's records, even if the debt is paid before that time. A default listing with Veda Advantage will only be removed if the creditor agrees it should never have been listed in the first place.



Your credit rating is important. A bad rating means you may find it difficult to get loans or credit in the future.

What can I do if my payments are overdue?

If your lender has sent you letters saying your payments are overdue and asks you to bring them up to date, you need to respond as soon as possible before they start legal action. Read this guide, decide what course of action you will take and then contact your lender to let them know what's happening.

If they don't hear from you, they could take enforcement action against you.

If they have already started legal action, like sending repossession notices, talk to a solicitor immediately to find out your options. Even if they have repossessed some of your things, there might still be a chance for you to get them back and ask for the loan terms to be varied.

Ask yourself these questions:

1. Do I owe the money?

If the answer is yes, read the section called "Your options" on page 10.

If you don't owe the money, you have the right under the Consumer Credit Code to dispute the money owing. You can do this by writing to the lender and explaining why you believe the amount they say you owe is wrong. If the lender agrees with you they will send you a revised account showing the agreed amount of money you owe. If they do not agree with you, the lender must write back to you explaining why they believe you owe them this amount of money.

2. Was the credit contract unjust?

If the Consumer Credit Code applies to your loan, you might be able to change the contract if you can show it was ‘unjust’. If you think your loan is unjust, get legal advice about the contract. Some of the reasons a contract could be found to be unjust include:

- It imposes unfair terms and conditions on you.
- It was difficult to read and understand.
- It was not properly explained to you.
- It includes excessive interest or fees when compared to other similar loans.

The contract might also be found to be unjust if the lender used unfair tactics or put pressure on you to sign it, knew (or should have known) you could not repay the loan without substantial hardship, or failed to take into account your age, literacy levels and mental or physical capacity to enter into a contract.

Your options

If you agree you owe the money but you’re struggling to pay it back, consider these options:

1. Bring your payments up to date

The simplest way to prevent the lender taking further action is to bring the payments up to date as soon as possible. Consider whether you could sell any unsecured assets to raise the money needed to bring your payments up to date.

2. Ask to change the terms of your loan

Section 66 of the Consumer Credit Code allows borrowers to apply to vary their loan on the grounds of hardship. Pages 16–19 of this guide give detailed instructions about how to apply to change the terms of your loan.

If the lender does not agree to change your loan, you can apply for a court order so long as the amount borrowed is less than the hardship threshold listed on www.creditcode.gov.au

Applying to court for a variation of a loan contract will not automatically stop the lender from taking action to recover the money you owe. You should ask the lender in writing (see sample letter page 37) to stop all debt recovery action while the court considers your request. If the lender is not cooperative, you can ask the court to ‘stay’ (this means put on hold) the enforcement action while the court considers your request.

3. Claim on your insurance

If you took out unemployment, accident or sickness insurance when you got your loan, you may be able to claim on that insurance now.

Check your policy or call your insurer to see if your policy covers your current circumstances.

If you find the insurance you bought was inappropriate for your circumstances, (eg you took out unemployment insurance when you were on a disability pension), or you were ‘forced’ to take out the insurance and you don’t think you should have been, then you may be entitled to a refund. Get legal advice.

If you are making an insurance claim, write to your lender and keep them informed of the process.

4. Apply for government mortgage relief

If you are facing serious, unexpected difficulties making home loan payments and you are in danger of losing your home, the Department of Housing may be able provide mortgage relief. You should call the department on 1300 654 322 and ask them about this. In the meantime, you should keep making your loan payments if you can. You will need to make a written application to the department and there is no guarantee your application will be successful.

5. Refinance the loan

The interest rates or fees on your loan might be more than the current market average. If you shop around you may be able to find a better deal.

But beware — if you choose to refinance, make sure you are not just changing lenders without changing your ability to pay. Otherwise you might end up in the same financial situation you are facing now, just with a new lender.

To refinance the loan you will need to show the new lender you have the capacity to pay the loan. They will want to see evidence of your income.

The new lender will arrange to pay out the old lender. There might be a penalty attached to paying out the first loan early so check with your existing lender before you proceed.

Refinancing can be expensive. The Australian Securities Commission has created a checklist to help you decide if

refinancing will help you. See the multi-loan calculator and checklist at www.fido.gov.au

6. Access your compulsory superannuation

You may be able to access hardship relief (early release) of some of your superannuation. You should continue to make loan payments while you apply to your superannuation fund for the early release of some of your superannuation as the process may take some time. If accessing your superannuation is not going to solve your financial problems and will only delay the inevitable forced sale of your home, then it will not be worth it; if you need to claim bankruptcy down the track, any superannuation you accessed before going bankrupt will not be protected. You would be better off not accessing your superannuation and protecting your entitlements.

7. Reprioritise payments and access hardship policies of other billers

Your budget will usually include rates, phone, energy and other bills. Most companies have hardship policies that allow you to suspend or decrease payments during temporary hardship or when recovering from an illness, marriage break-up or other event that caused you high expense. You should contact your provider and ask for hardship assistance. Keep notes of any agreements made. If you are not getting assistance you can complain about your service provider to an ombudsman (ie the Telecommunications Ombudsman or Energy Ombudsman). A free financial counsellor may be able to negotiate on your behalf or access any one-off payments from Centrelink or other charitable organisations that may be able to help you.

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For a list of websites that offer free financial and budgeting tips, see page 58.

8. Sell a secured asset (with permission)

If you find you can't keep up the payments on your loan, selling a secured asset might be the best option. It could save you some costs (eg registration, running costs and insurance if it is a car) and will wipe out or reduce your debt to a more manageable level. You need to get an idea of what the likely sale price is for the asset before selling it.

You will need to get your lender's permission to sell the asset if you won't be able to pay out the loan from the money you get from the sale. If you owe money on the asset after the sale, you will still have to pay this money back to the lender even though you no longer own the asset.

It is possible to 'introduce a buyer' for your goods. If the lender refuses to give permission to sell the goods to that buyer, and the goods are later sold at a lower price, you might have a right to recover the difference between the sale price you arranged and the eventual sale price. It may be that the lender is responsible for this loss. Get legal advice.

9. Give back the secured assets to the lender to sell

It is often possible to voluntarily surrender your goods to the lender so they can sell them and recover some of their losses. The lender must sell the assets at the best price reasonably obtainable.

If your loan was for a car, take photos and get written evidence of the market value (physical appearance and mechanical function) before handing it over. Take any

personal possessions out of the car. Even though you will have avoided some repossession costs, storage and auction fees will still be added to your loan.

When you voluntarily surrender a car your rights are affected. Get legal advice before taking this action.

Always:

1. Make a note of all telephone conversations with your lender. Keep notes of the time and date of the call, details of who you spoke to, what was said, and what was agreed. Follow up any agreement on the phone with a letter confirming the details (see sample letter page 33).
2. Keep a copy of all letters you send to or receive from the lender.
3. Keep your lender informed of your current address in writing.

Do I need financial counselling?

When weighing up your options, you may benefit from some help. Financial counsellors can prepare budgets and negotiate on your behalf with lenders. Financial counselling is free. They may assist you with seeking a variation of your contract. They can also help you explore options such as increasing your household income (eg renting out a vacant room) or decreasing your expenses. Some financial counsellors will explore whether bankruptcy is a suitable option for you. For a list of financial counsellors in Queensland, call Legal Aid Queensland on 1300 65 11 88.

How do I change the terms of my loan?

You will need to write a letter to your lender asking them to vary the terms of your loan due to hardship. In order to succeed in getting your loan changed you will need to show:

- the reason for your current financial hardship
- that you will be able to meet the payments if the loan is varied or changed.

Prepare to write the letter

1. Find a copy of the original loan contract and any changes that have been made to it since you first took out the loan, like any money you have redrawn or if you have refinanced. If you don't have a copy, write to your lender asking for this information. See sample letter page 32.
2. Find out exactly what you owe including any arrears on the loan. These are the payments you may have missed.
3. Gather any documents or notices you received about the loan.
4. Make a list of your dealings with the lender (in the order in which they happened) and brief notes of what happened.
5. Work out what caused your financial problems and the date the problems started.

6. Estimate when you expect your financial circumstances to change for the better and why.
7. Work out what you can afford to pay on your loan by calculating your income and expenses. See page 35–36 for how to do this.
8. List any extra money such as a tax return or other lump sum that you expect to receive, including the date you expect to receive it.
9. Work out a plan to get you back on track. You could:
 - temporarily reduce or stop payments for a set time and then make extra payments or a lump sum later to catch up
 - extend the term of the loan and therefore reduce payments or stop them for a set time
 - authorise a lump sum that is due to come to you to be paid directly to the lender (called an irrevocable authority — see page 34) to bring you up to date on your loan contract.

Financial counselling is free and can help you decide what the best course of action will be for your situation.

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How to write the letter

See sample letter page 30–31.

1. Start by saying you want to change the terms of the contract under s. 66 of the Consumer Credit Code. Even if your loan agreement or lease is not regulated by the Consumer Credit Code, you can still request a variation of the loan due to hardship; it just means you can't take the lender to court if they refuse you.
2. Explain why you are experiencing temporary hardship, for example, you had a work accident or your work hours were reduced.
3. Explain when you expect your situation to improve.
4. Make a proposal to your lender about reducing or postponing payments or lengthening the term of the loan. Your proposal will need to show you can reduce the principal debt, not just pay the interest. Make it very clear how you will catch up or meet your obligations under the contract.
5. Tell the lender you will assume they have agreed to your proposal unless they contact you with another suggestion by a certain date.

Note:

Your plan must be clear and logical. Your lender is unlikely to accept a proposal that merely delays the inevitable.

The lender is not obliged to consider your proposal. But if they don't, you could use this as evidence in court of an unreasonable attitude.

6. Close the letter politely and give phone numbers where you can be contacted.

Your lender's response

If your lender agrees to your request, ask them to confirm their agreement in writing. Keep this correspondence in case you need to use it later.

If the lender refuses your request, you have the right, under the Consumer Credit Code, to take the matter to court.

If your lender is a member of the Mortgage and Finance Association of Australia then the lender has obligations to you under a Code of Practice. The Mortgage and Finance Association Code of Practice says the lender must tell you about its hardship policies if it becomes aware you are in financial difficulty. Read the relevant section from the Code of Practice on page 48.

You can complain to the Credit Ombudsman Service when a lender, who is a member of the Mortgage and Finance Association of Australia, does not follow the Code of Practice. The lender cannot start court proceedings against you while your complaint is with the Credit Ombudsman Service. Contact the Credit Ombudsman Service on 1800 138 422 or visit www.creditombudsman.com.au

Contact the Credit Ombudsman Service on 1800 138 422 or visit www.creditombudsman.com.au to lodge a complaint against a lender.

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Am I eligible to go to court?

If you tick all of the following boxes, you are eligible to go to court:

- The Consumer Credit Code must apply to your loan (see page 3).
- The amount you borrowed must be less than the hardship threshold (see page 56)
- You must have a good reason (called ‘reasonable cause’) for not being able to meet your payments, for example you had a work accident or your hours of employment were reduced. The court will not consider things like buying a new TV or losing your money at the casino as ‘reasonable cause’ for not meeting your payments.
- You must be able to afford the payments if the contract is varied.
- You must show you have tried to negotiate first with the lender (records of phone conversations and your written request to the lender to change your loan).
- You must show how many times you have defaulted, the amount outstanding (in arrears) and give reasons why you should be given a second chance, in other words, be able to show how you plan to get the loan back on track.
- You must show there is no other way to bring payments up to date.

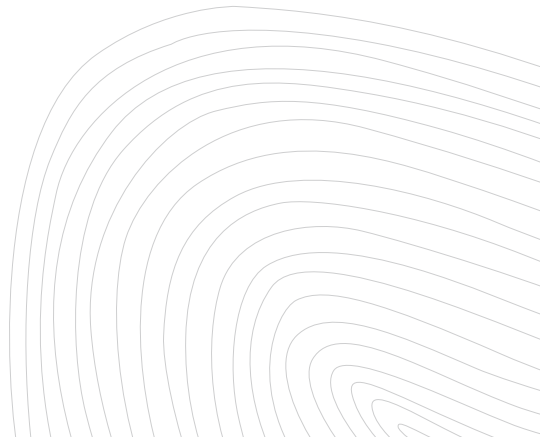
- You must show what is at stake for you if the court does not grant the order. For example, the lender is likely to repossess the car, your area has no public transport and without the car you would be unable to get to work and transport your children to school.

Which court?

You must apply to the magistrates court nearest to where the contract was entered into. This could mean you have to travel to the court nearest to where you lived when you took out the loan. Remember this only applies to loans taken out in Queensland. If your loan originated in another state, contact the Legal Aid office in that state.

If the lender has already started court proceedings against you in the District or Supreme Court, then in order to temporarily stay those proceedings (put them on hold) you will need to bring your application to that court.

If you're not sure where to lodge your claim, get legal advice to confirm the correct court for your matter.



How do I apply to the court?

To apply to the court you must submit an application form and a statement called an *Affidavit*, and pay a filing fee. You can ask the court to refund the filing fee on the basis of hardship when you appear in court. All the documents you present must be typed or very neatly written.

The application

On pages 38–40 you will find a sample application. You are the applicant and the lender is called the respondent. You will see that this form asks the court to make orders. Your wording on this form is, in effect, what you want to happen. If you are having trouble with the wording, ask a solicitor to help you.

The affidavit

On page 41–43 you will find a sample *Affidavit*. This statement supports your application. It tells your story to back up your request for the orders in the application. The affidavit should:

- identify the loan and attach the contract; attachments are called exhibits or annexures and should have a cover sheet like the sample on page 44
- explain your dealings with the lender and attach copies of relevant documents, like default notices and any letters you wrote to the lender
- explain when and why the defaults happened, why you are having financial problems, and when and how you expect to get back on track.

The affidavit must be sworn or affirmed in the presence of a commissioner of declarations, justice of the peace or a solicitor. To find one near you, call 1300 301 147 or visit www.justice.qld.gov.au/jps/finding.htm

The steps

1. Prepare the application, affidavit and attachments (annexures and exhibits), but don't sign them yet.
2. Take them to a commissioner of declarations, justice of the peace or a solicitor, and in their presence, sign each page. They will also sign and mark the date and place where they witnessed your affidavit.
3. Make three copies of all the documents.
4. Take the documents to the court, file them and pay the filing fee. The clerk at the court will arrange a hearing date and write it on your application.
5. It is your obligation to 'serve' (deliver) one complete copy of the documents on the respondent (the lender). You must do this within a time frame that gives the lender enough time to prepare for court. Get legal advice about this.

You can either deliver the documents in person to their head office or send them by registered post, which means the person receiving them must sign for them when they are delivered. You should get evidence to show the documents have been received. If you deliver them in person, ask the receptionist to sign acknowledging receipt. If you send them by registered post, keep your Australia Post receipt.

6. Prepare an *Affidavit of service* (see sample page 47), which is the document you will present to the court to show you served the documents on the lender. Remember, an affidavit must be witnessed by a commissioner of declarations, justice of the peace or a solicitor.
7. Prepare a draft *Order* (see sample page 45).
8. When you go to court, the magistrate might invite you to make verbal comments in court about the evidence in your Affidavit (called ‘submissions’). It may or may not be a good idea. Get legal advice about what is best for your situation.



Going to court

What do I do on the day of the hearing?

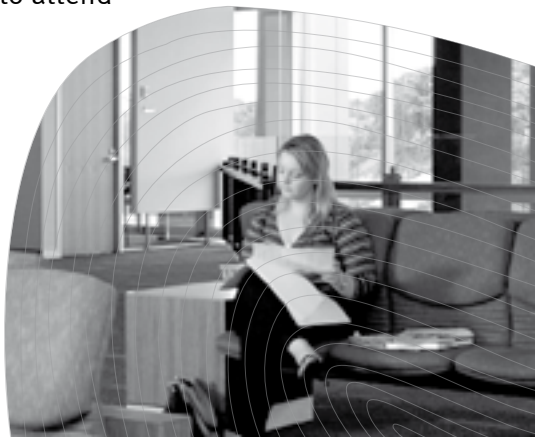
Before you arrive

- Find out the court's address and check the location on a map.
- Organise transport to the court, allowing time to arrive half an hour before the hearing.
- Practise what you will say before the magistrate.
- Dress neatly. Don't wear shorts, t-shirts, tracksuits, thongs or a hat while in court.
- Bring all of your documents including the application, affidavits and attachments (annexures and exhibits).
- Bring a pen and some notepaper to record anything you might want to remember later or say to the magistrate when the appropriate moment arises.
- As courtrooms can feel daunting, especially the first time, you might appreciate the support of a friend or family member. Ask them to attend the court with you.

Going to court can be intimidating – you might benefit from asking a friend or family member to attend the court with you.

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When you arrive

- Check in at the counter.
- Wait for your hearing outside the courtroom.
- You will be called into the hearing room when the magistrate is ready to start.

When you are called

- Speak clearly and follow the magistrate's instructions.
- Address the magistrate as "Your Honour".

What happens at the hearing?

- The magistrate will check to see if all parties are represented.
- If the lender or their representative is not there, the magistrate might ask you to show that you sent them the application. If this happens, tell the magistrate you have prepared an *Affidavit of service* detailing when and how you served the documents to the lender.
- The magistrate will decide whether there is time to deal with your matter straight away or adjourn (postpone) it to another time. The magistrate can adjourn your case if they think it is necessary for you or the lender to present more evidence.

- The magistrate may ask if there is any chance you and the respondent could reach an agreement about your dispute. If there is a chance, then you will be directed outside to negotiate privately with the other party.
- If you can't reach an agreement, the hearing will continue before the magistrate.
- When the magistrate asks you what material you are relying on (they may also use the term 'reading'), tell them you are relying on your application and affidavit filed on (give them the date).
- The magistrate will also ask if you have anything further to say. Follow the legal advice your solicitor gave you. You can also tell the magistrate you have prepared a draft *Order*.
- Make sure what you say to the magistrate is relevant and to the point. Present your case in a business-like manner.
- The magistrate will then ask the lender if they have filed any evidence in the matter. If they have, you should be given a chance to read the documents they plan to rely on.
- If you want to clarify anything the lender says, you must ask the magistrate for permission to do so. Even if you disagree with what the lender is saying, do not interrupt. Take notes about anything you disagree with so you can raise these issues when you have permission to do so.

- After hearing the evidence, the magistrate will make a decision. If you are unhappy with the decision, get legal advice as soon as possible about your right to appeal.
- If the magistrate orders a change to the contract or mortgage, the lender must send you a notice within 30 days of the hearing setting out the new terms of the loan. They do not have to do this if:
 - the change to the loan defers or reduces your payments for less than 90 days, or
 - you have a consumer lease (where you lease goods for a term, and you don't own them or have a right to purchase them at the end of the term).

Remember:

Once you have a new payment plan it is important that you make payments exactly as agreed. You should keep your lender informed if there are any further difficulties with the loan and be aware that it would be much harder to renegotiate a loan a second time with the same lender.

Do not photocopy and send the sample letters on the following pages

Sample documents and forms

Documents

- Sample 1 Letter to your lender asking to vary your loan contract
- Sample 2 Letter to your lender asking them to send you the loan documents
- Sample 3 Letter to your lender confirming details of a phone conversation
- Sample 4 Letter authorising a lump sum to be paid directly to your lender (called an ‘irrevocable authority’)
- Sample 5 Budget
- Sample 6 Letter asking your lender to stop any enforcement action while the case is waiting to be heard in court (called a stay of debt recovery)

Forms

- Sample 7 Application to the magistrates court to vary your loan payments
- Sample 8 Affidavit supporting the application to the court
- Sample 9 Cover sheet for all documents attached to an Affidavit as an exhibit
- Sample 10 Draft order
- Sample 11 Affidavit of service

Sample 1: Letter to your lender asking to vary your loan contract

25 Banksia Avenue
Treedale Qld 4234
6 June 2008

The Manager
ASD Credit Services
GPO Box 1234
Brisbane Qld 4000

Dear Sir or Madam

Re: Ferris, Loan Account Number 084 553

I am writing to ask for our credit contract to be varied due to temporary hardship. I am making this request under s. 66 of the Consumer Credit Code.

My wife and I borrowed \$40,000 for a car on 12 November 2004 and have been making monthly payments of \$500 since that time. We made all of our payments on time last year with the exception of June's payment. This payment was made late because we were visiting relatives in north Queensland and forgot to ensure the money was in our account.

We paid that instalment seven days late and rang your company to explain our mistake just before bringing the payment up to date. The money for last month's payment was not in our account when it was due. We have paid \$300 towards the outstanding amount and still owe \$200. We apologise for the delay in paying.

The problem is there has been an overtime ban at work and our family is experiencing short-term difficulty in meeting all our financial commitments. Overtime usually accounts for an extra \$400 a fortnight in my pay packet. My wife is a teacher's aide but has reduced her hours over the last two months due to her mother's ill health.

Letter to your lender asking to vary your loan contract cont'd

We have recently had to pay for my wife's mother's funeral and the emotional stress of her death has placed an extra burden on the family.

I have been told the overtime ban at work is only until 1 July. My wife is resuming her usual hours of employment next week. We anticipate it will take until the beginning of August (three months) for us to get back on track.

In the circumstances, we are asking for last month's payment and the next two months' payments to be reduced to \$300. We would then catch up on the outstanding \$600 by increasing our payments from August to \$650 a month. We anticipate we will have all of the arrears repaid by December this year.

Thank you for considering our request. If you would like any more information about our finances, please call my wife at home any afternoon after 3.30 pm.

If we have not heard from you by next Friday, 15 June we will assume the proposal to reduce payments and provide for catch up of arrears is satisfactory to your company. We assume you will not take action regarding the payments currently outstanding on the basis the proposal in this letter is acceptable to you.

Yours sincerely

Louis Ferris

Louis and Jeanine Ferris

Ph: (07) 3238 3004

Sample 2: Letter to your lender asking them to send you the loan documents

25 Banksia Avenue
Treedale Qld 4234
3 June 2008

The Manager
ASD Credit Services
GPO Box 1234
Brisbane Qld 4000

Dear Sir or Madam

Re: Ferris, Loan Account Number 084 553

Please send us the following information about our loan contract:

1. A complete statement of account (under s. 34 of the Consumer Credit Code).
2. Copies of all contracts and notices relating to this loan, including insurance contracts, guarantees, mortgages and any notices (under s. 163 of the Consumer Credit Code).
3. A statement of the current pay-out figure and how it is calculated (under s. 76 of the Consumer Credit Code).

We look forward to your response as soon as possible.

Yours sincerely

Louis Ferris

Louis Ferris
Ph: (07) 3238 3004

Sample 3: Letter to your lender confirming details of a phone conversation

25 Banksia Avenue
Treedale Qld 4234
3 June 2008

The Manager
ASD Credit Services
GPO Box 1234
Brisbane Qld 4000

Dear Sir or Madam

Re: Ferris, Loan Account Number 084 553

This letter is to confirm the details of a conversation I had with Wendy from your Brisbane office at about 3.30 pm on 3 June, 2008.

In my call, I explained to Wendy that we are having difficulty paying our loan due to a temporary reduction in my husband's pay.

Wendy agreed we could reduce this month's payment from \$500 to \$300, and we could make up the difference by two extra payments of \$100, to be paid by 1 July and 31 July 2008.

If we have not heard from you by close of business this Friday, 15 June 2008 we will assume this letter accurately records the agreement we reached.

Yours sincerely

J E Ferris

Jeanine Ferris
Ph: (07) 3238 3004

Sample 4: Letter authorising a lump sum to be paid directly to your lender (called an 'irrevocable authority')

25 Banksia Avenue
Treedale Qld 4234
10 July 2008

Hutley Accountants
GPO Box 12
Mt Gravatt Qld 4121

Dear Mr Hutley

Re: Authority to direct my tax return

When my tax return is processed, could you please arrange for the entire sum to be paid directly to:

ASD Credit Services
GPO Box 1234
Brisbane Qld 4000

Reference: Ferris, Loan Account Number 084 553

Please send me a confirmation when this transaction occurs.

Yours sincerely

Louis Ferris

Louis Ferris
Ph: (07) 3238 3004

Sample 5: Budget

To work out what you can afford to pay on your loan, you need to know what money comes in and where it goes. You can use the lists below to help you work out your budget.

Remember to work in the same units, either weekly, fortnightly or monthly. For example, if your electricity bill comes every three months, then divide it by three to get a monthly figure (if you are working in months) or by 12 (or the exact number of weeks stated on the bill) to get the weekly figure.

Income	Weekly \$	Fortnightly \$	Monthly \$
Primary income	923	1846	4000
Partner income if any	461.55	923.10	2000
Centrelink benefits	0	0	0
Other income if any	0	0	0
Total income	1384.55	2769.10	6000

Expenditure	Weekly \$	Fortnightly \$	Monthly \$
Current housing costs (rent or mortgage)	484.60	969.20	2100
Electricity bill	8	16	35
Gas bill averaged weekly	3.70	7.40	16
Rates averaged weekly if any	27.70	55.40	120
Phone bills weekly	16.15	32.30	70
Motor vehicle loan payments (weekly)	103.85	207.70	450
Registration fees	10.40	20.80	45
Insurance of motor vehicle	10.40	20.80	45
Petrol, tolls	92.30	184.60	400
Car maintenance averaged weekly	3.45	6.90	15
Other loan payments	0	0	0
Credit card payments (debt) if any	10.80	21.60	90
Food and non-alcoholic beverages	99.25	198.45	430

Are you struggling to pay a loan?

A guide to your options if you can't meet your loan payments

Budget cont'd

Expenditure	Weekly \$	Fortnightly \$	Monthly \$
Alcoholic beverages	27.70	55.40	120
Tobacco	15	30	65
Clothing and footwear	23.10	46.20	100
Household furnishings and equipment	6.90	13.80	30
Household maintenance	2.30	4.60	10
Medical care and health expenses	46.15	92.30	200
Transport other than own car	10.80	21.60	90
Recreation	23.10	46.20	100
Personal care/pharmaceutical	6.90	13.80	30
Childcare/schooling	150	300	650
Miscellaneous goods and services	23.10	46.20	100
Total expenses	1205.65	2411.25	5311

Total income minus total expenditure gives you your net disposable income, which is the amount available to pay your loan, each week, fortnight or month (depending on which unit you chose to calculate).

Sample 6: Letter asking your lender to stop any enforcement action while the case is waiting to be heard in court

25 Banksia Avenue
Treedale Qld 4234
20 June 2008

The Manager
ASD Credit Services
GPO Box 1234
Brisbane Qld 4000

Dear Sir or Madam

Re: Ferris, Loan Account Number 084 553

We serve the following documents with this letter:

1. Application to court to vary our loan payments filed at Brisbane Magistrates Court on 18 June 2008
2. An affidavit sworn by me, Louis James Ferris, filed on 18 June 2008.

This matter is due to be heard in the Brisbane Magistrates Court on 12 July 2008. We ask you to stop all enforcement action on this loan until the case is heard and decided by the court.

Please confirm your agreement with our request as soon as possible. If we do not hear from you by 5 pm, 25 June 2008, we will ask the court to order you to stop enforcement action pending the outcome of our application.

Yours sincerely

Louis Ferris

Louis and Jeanine Ferris
Ph: 07 3238 3004

Sample 7: Application to the magistrates court to vary your loan payments

MAGISTRATES COURT OF QUEENSLAND

Registry:

Number:

Applicant: Louis James Ferris and Jeanine Elizabeth Ferris

AND

Respondent: ASD Credit Services, ACN 65789033

ORIGINATING APPLICATION

To the respondent: ASD Credit Services, ACN 65789033

TAKE NOTICE that the applicant is applying to the Court for the following orders:

1. That enforcement proceedings under the loan contract between the applicants and the respondent dated on 12 November 2004, account number 084553, and the mortgage relating to the loan contract be stayed until a decision has been made about this application.
2. That the applicant be granted a three month moratorium on the payments due under the loan contract for the period 1 June 2008 to 1 September 2008.
3. That the next payment date be changed to 2 September 2008

Application to the magistrates court to vary your loan payments cont'd

4. That the period of the loan contract be extended for a further three months until 12 February 2011.
5. Such further or other orders as this honourable court deems fit.

This application will be heard by the Court at Brisbane Magistrates Court
on 12 July 2008 at 11.30 am

Filed in the Brisbane Magistrates Court Registry on 18 June 2008.

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you. In addition you may before the day for hearing file a Notice of Address for Service in this Registry. The Notice should be in Form 8 to the Uniform Civil Procedure Rules. You must serve a copy of it at the applicant's address for service shown in this application as soon as possible.

On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of Louis James Ferris Sworn 18 June 2008
2. Affidavit of Sworn
3. Affidavit of Sworn

If you intend on the hearing to rely on any affidavits they must be filed and served at the applicant's address for service prior to the hearing date.

Application to the magistrates court to vary your loan payments cont'd

If you object that these proceedings have not been commenced in the correct district of the Court, you must apply to the Court for dismissal of the proceedings.

The applicant estimates the hearing should be allocated – 60 minutes

PARTICULARS OF THE APPLICANT:

Name: Louis James Ferris and Jeanine Elizabeth Ferris

Applicant's residential or business address: 25 Banksia Ave, Treedale, Qld, 4234.

Applicant's solicitors name: No solicitor

and firm name: Not applicable

Solicitor's business address: Not applicable

Address for service: 25 Banksia Ave, Treedale, Qld, 4234.

Dx (if any): Not applicable

Telephone: 07 3238 3004

Fax: Not applicable

E-mail address (if any): lferris@mymail.com.au

Signed: *Louis Ferris*

Description: Applicant

Dated: 18 June 2008

This application is to be served on: The Manager, ASD Credit Services
of: 345 Queen Street, Brisbane, Qld, 4001.

Registrar: *P Kramer*
[Registrar to sign and seal]

ORIGINATING APPLICATION
Filed on behalf of the Applicant
Form 5 – Rule 26

Uniform Civil Procedure Rules 1999

Name: Louis Ferris
Address: 25 Banksia Ave
Treedale Qld 4234
Phone: 3238 3004
Fax:

Sample 8: Affidavit supporting the application to the court**MAGISTRATES COURT OF QUEENSLAND****Registry:****Number:**

Applicant: Louis James Ferris and Jeanine Elizabeth Ferris

AND

Respondent: ASD Credit Services, ACN 65789033

AFFIDAVIT

I, Louise James Ferris, of 25 Banksia Avenue, Treedeale, in the State of Queensland, builder's labourer, state on oath/solemnly and sincerely affirm and declare:

1. We are the applicants in these proceedings.
2. We entered into a loan contract with the respondent (as co-borrowers) on 12 November 2004. Exhibit A is a true copy of the loan contract.
3. On 3 June 2008 we received a default notice dated 25 May 2008 under the Consumer Credit Code (Queensland) Act 1996. Exhibit B is a copy of the default notice.
4. On June 3 2008 we attempted to negotiate a postponement of enforcement proceedings. Exhibit C is a copy of the letter from the respondent dated 10 June 2008 confirming the terms of the negotiated postponement.
5. The amount of the original loan was \$40,000 and the current balance payable is \$33,500. The loan is for six years and the monthly repayments are \$500.

Page 1

Signed: *Louise Ferris*

Taken by: (person taking the affidavit signs here)

Are you struggling to pay a loan?

A guide to your options if you
can't meet your loan payments

Affidavit supporting the application to the court cont'd

6. We made all loan repayments on time since the loan was drawn down until last month with the exception of one payment which was made seven days late in June 2007.
7. The reason for the only late repayment last year was that we were on vacation and forgot to arrange for sufficient funds to meet the repayment to be placed in our savings account in time for the direct debit of the account for the loan repayment. As soon as we had noticed our error we rang the respondent's office and explained our mistake to the operator.
8. Last month we were unable to pay the full payment. We are now in arrears \$700 which is \$200 from last month and \$500 this month.
9. The reason we cannot pay our loan right now is that we are experiencing temporary financial hardship. I have had an overtime ban at my workplace and my wife Jeanine Ferris recently reduced her hours of work to care for her sick mother.
10. I am a permanent part-time builder's labourer employed by Ross and Co Builders, Samsonvale. Overtime usually accounts for an extra \$400 per fortnight in my income. I expect to resume working overtime in the first week of July 2008 after the overtime ban is lifted on 1 July 2008.
11. Jeanine Ferris is employed as a teacher's aide at Mt Jackson primary school for 30 hours per week on a regular but casual basis. Over the last two months, Jeanine has reduced her hours to 10 hours per week to care for her mother. Her mother died on 15 May 2008. Jeanine has now resumed her usual hours of employment.
12. On 6 June 2008, we wrote to the respondent explaining our temporary hardship and asking to reduce our payments to \$300 for three months until August 2008. Then we will increase them to \$650 per month until we

Page 2

Signed: *Louis Ferris*

Taken by: (person taking the affidavit signs here)

Affidavit supporting the application to the court cont'd

- pay back all the arrears. Exhibit D is a true and correct copy of the letter. To date we have not received a reply although we have received the default notice (exhibit B) since we sent our letter.
13. We confirm that the facts and circumstances described in exhibit D are true and correct.
 14. We confirm that we are now asking this Honourable Court for orders to vary the loan by postponing the monthly repayments for June, July and August and correspondingly extending the term of the loan.
 15. We reasonably expect to be able to pay the net balance due under the contract if the terms of the loan contract are varied as we have requested.
 16. All the facts and circumstances herein deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this Affidavit.

Sworn by Louise James Ferris on 18 June 2008 at 35 Tank Street, Brisbane, Qld, in the presence of:

Louise Ferris.....

Deponent

Douglas Kennedy J P.....

Barrister/solicitor/Justice of the
Peace/Commissioner for
Declarations

AFFIDAVIT

Filed on behalf of the Applicant
Form 46 – Rule 431

Uniform Civil Procedure Rules 1999

Name: Louis Ferris
Address: 25 Banksia Ave
Treedale Qld 4234
Phone: 3238 3004
Fax:

Are you struggling to pay a loan?

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**Sample 9: Cover sheet for all documents attached to an affidavit
as an exhibit**

MAGISTRATES COURT OF QUEENSLAND

Registry:

Number:

Applicant: Louis James Ferris and Jeanine Elizabeth Ferris

AND

Respondent: ASD Credit Services, ACN 65789033

CERTIFICATE OF EXHIBIT

Exhibit A to the affidavit of Louis James Ferris sworn: 18 June 2008

Louis Ferris

Douglas Kennedy J P

.....
Deponent

.....
Barrister/solicitor/Justice of the peace/
Commissioner for declarations

CERTIFICATE OF EXHIBIT

Filed on behalf of the Applicant+
Form 47 – Rule 435

Uniform Civil Procedure Rules 1999

Name: Louis Ferris
Address: 25 Banksia Ave
Treedale Q 4234
Phone No: 3238 3004
Fax No:

Sample 10: Draft order

MAGISTRATES COURT OF QUEENSLAND

Registry:

Number:

Applicant: Louis James Ferris and Jeanine Elizabeth Ferris
AND

Respondent: ASD Credit Services, ACN 65789033

ORDER

Before: Ms Eileen King

Date: 12 July 2008

Initiating document: Originating application

Application filed on: 18 June 2008

The order of the court is that:

1. ASD Credit Services must stop all enforcement proceedings against Louis James Ferris and Jeanine Elizabeth Ferris, account number 084 553.
2. ASD Credit Services must vary the applicant's loan contract under s. 66 of the Consumer Credit Code, due to hardship.

The court directs that:

1. the applicants are granted a three month moratorium on the payments due under the loan contract for the period 1 June 2008 to 1 September 2008.
2. the applicants' next loan repayment will be due on 2 September 2008.

Draft order cont'd

3. the period of the loan contract be extended for a further three months until 12 February 2011.

Signed: *P Kramer*.....

Registrar

Sample

ORDER
Filed on behalf of the Applicant
Form 59 – Rule 661

Uniform Civil Procedure Rules 1999

Name: Louis Ferris
Address: 25 Banksia Ave
Treedale Qld 4234
Phone: 3238 3004
Fax:

Sample 11: Affidavit of service

MAGISTRATES COURT OF QUEENSLAND

Registry:

Number:

Applicant: Louis James Ferris and Jeanine Elizabeth Ferris

AND

Respondent: ASD Credit Services, ACN 65789033

AFFIDAVIT OF SERVICE

I, Louis James Ferris, of 25 Banksia Ave, Treedale, in the State of Queensland, builder's labourer, state on oath/solemnly and sincerely affirm and declare:

1. On 20 July 2008, I served these documents on the respondent:

- (a) Originating application, filed on 18 June 2008 and
- (b) Affidavit of Louis James Ferris, filed on 18 June 2008.

I served these documents in person at ASD Credit Services, 345 Queens Street, Brisbane. Exhibit A is a true copy of the receipt issued by the receptionist. OR on 20 July 2008, I served these documents by registered post to ASD Credit Services, GPO Box 1234, Brisbane. Exhibit A is a true copy of the Australia Post receipt for this service.

Sworn by Louis James Ferris on 21 July 2008

at 35 Tank Street, Brisbane, Qld, in the presence of:

Louis Ferris

Douglas Kennedy J.P

Deponent

Barrister/solicitor/Justice of the
Peace/Commissioner for Declarations

AFFIDAVIT
Filed on behalf of the Applicant
Form 46 – Rule 431

Name: Louis Ferris
Address: 25 Banksia Ave
Treedale Qld 4234
Phone: 3238 3004
Fax:

Uniform Civil Procedure Rules 1999

Are you struggling to pay a loan?

A guide to your options if you
can't meet your loan payments

The Mortgage and Finance Association Code of Practice

In deciding your request to vary your loan ss. 66–72 of the Code of Practice requires the lender must:

66. (a) have regard to the borrower’s financial circumstances and consider in good faith and within a reasonable time the borrower’s request to vary the payment terms;

(b) suspend any action to recover any payments due under the credit facility and, if it has not listed a default already, not list a credit default in respect of the credit facility against the borrower until:

(i) the Member informs the borrower in writing whether or not it will vary the payment terms; and

(ii) if the Member and the borrower agree to vary the payment terms, the borrower fails to meet the varied payment terms; and

(c) encourage the borrower to make payments the borrower can afford pending the Member informing the borrower of its decision.

67. The Member must act reasonably in assessing the borrower’s request to vary the payment terms under the borrower’s credit facility. Amongst other things, the Member must not require:

(a) the borrower to apply for the early release of any part of his or her superannuation entitlements; or

(b) the borrower to obtain funds from family members, friends or other third parties;

prior to the Member considering whether to, or agreeing to, vary the payment terms.

68. If the Member decides to vary the payment terms, it must promptly give to the borrower and any guarantor of the credit facility a written notice setting out particulars of the varied payment terms.

69. If the Member decides not to vary the payment terms, it must promptly inform the borrower in writing of:

(a) its decision and the reasons for its decision; and

(b) the borrower's right to make a complaint to Credit Ombudsman Service (COS) Limited or other ASIC approved EDR scheme and the contact particulars of COS Limited or other ASIC-approved EDR scheme if the loan falls within the jurisdiction of those schemes.

70. If a borrower informs a Member, who is not a Credit Provider nor a Mortgage Manager, that the borrower is in financial difficulty which prevents the borrower from repaying the credit facility in accordance with its terms, the Member must refer the borrower to the borrower's Credit Provider or the person responsible for the credit and management decisions of the Credit Provider.

71. If the Member is a Mortgage Manager, the Member must assist the borrower by requesting the Credit Provider or the person responsible for the credit and management decisions of the Credit Provider (whether or not the Member supports the request) to vary the payment terms of the borrower's credit facility. If the borrower's request is denied by the Credit Provider or the person responsible for the credit and management decisions of the Credit Provider and the borrower asks for the decision maker's contact details, then the Mortgage Manager must give these to the borrower

72. In addition to any other rights under clauses 65 to 71 inclusive, if the borrower's credit facility is regulated by the Uniform Consumer Credit Code and the borrower makes a request to a Member under section 66 of that Code, the Member must inform the borrower of his or her rights to apply to COS Limited or other ASIC approved EDR scheme or to a court or tribunal to review the Member's decision in respect of a hardship application.

Bankruptcy regulations

Bankruptcy Regulations 1996 — Reg 6.03

Household property

1. For the purposes of subparagraph 116 (2) (b) (i) of the Act, household property of the bankrupt specified in this regulation is household property to which subsection 116 (1) of the Act (which deals with property divisible among the creditors) does not extend.
2. Subsection 116 (1) of the Act does not extend to household property (including recreational and sports equipment) that is reasonably necessary for the domestic use of the bankrupt's household, having regard to current social standards.
3. In particular (but without limiting by implication the generality of subregulation (2)), subsection 116 (1) of the Act does not extend to property of the following kinds:
 - a. in the case of kitchen equipment, cutlery, crockery, foodstuffs, heating equipment, cooling equipment, telephone equipment, fire detectors and extinguishers, anti-burglar devices, bedding, linen, towels and other household effects — that property to the extent that it is reasonably appropriate for the household, having regard to the criteria mentioned in subregulation (4);
 - b. sufficient household furniture;

- c. sufficient beds for the members of the household;
and
 - d. educational, sporting or recreational items
(including books) that are wholly or mainly for the
use of children or students in the household;
 - e. 1 television set
 - f. 1 set of stereo equipment
 - g. 1 radio;
 - h. either:
 - i) 1 washing machine and 1 clothes drier; or
 - ii) 1 combined washing machine and clothes
drier;
 - i. either
 - i) 1 refrigerator and 1 freezer; or
 - ii) 1 combination refrigerator/freezer
 - j. 1 generator, if relied on to supply electrical power
to the household;
 - k. 1 telephone appliance
 - l. 1 video recorder
4. For the purpose of deciding whether property, other than property of a kind mentioned in paragraphs (3) (b) to (l) (both inclusive), is property to which subregulation (2) applies, regard must be had to following criteria:

- a. the number and ages of members of the bankrupt's household;
 - b. any special health or medical needs of any of those members;
 - c. any special climatic or other factors (including geographical isolation) of the place where the household residence is located;
 - d. whether the property is reasonably necessary for the functioning or servicing of the household as a viable and properly run household;
 - e. whether the costs of seizure, storage and sale of the property would be likely to exceed the sale of price of the property;
 - f. if paragraph (e) does not apply — whether for any other reason (for example, cost of transport) the sale of the property would be likely to be uneconomical.
5. The preceding provisions of this regulation do not prevent subsection 116 (1) of the Act from extending to antique items.
 6. For the purposes of subregulation (5), an item is taken to be antique if, and only if, a substantial part of its market value is attributable to its age or historical significance.

Bankruptcy Regulations 1996 — Reg 6.03 B

Property divisible among creditors — prescribed amounts

1. For the purpose of subparagraphs 116 (2) (c) (i) of the Act, the maximum total value of a bankrupt's property that is for use by the bankrupt in earning income by personal exertion is:
 - a. in the case of bankruptcy occurring or continuing in the period commencing on the commencement date and ending at the end of 30 June 1997 — \$2,600; or
 - b. in the case of a bankruptcy occurring in a financial year commencing on 1 July 1997 or on 1 July of a subsequent year — the amount worked out in accordance with subregulation (2).
2. For the purposes of subparagraph (1) (b), the applicable amount is:
 - a. in the case of the financial year commencing on 1 July 1997 — \$2,600 increased in accordance with the CPI rate for the financial year that commenced on 1 July 1996 and rounded down to the nearest multiple of \$50; and
 - b. in the case of a subsequent financial year — the amount worked out in accordance with this subregulation for the immediately preceding financial year, increased in accordance with the CPI rate for that financial year and rounded down to the nearest multiple of \$50.

3. For the purposes of paragraph 116 (2) (ca) of the Act, the maximum aggregate value of property used by the bankrupt primarily as a means of transport is:
 - a. in case of a bankruptcy occurring or continuing in the period commencing on the commencement date and ending at the end of 30 June 1997 — \$5,000; or
 - b. in case of a bankruptcy occurring in a financial year commencing on 1 July 1997 or on 1 July of a subsequent year — the amounts worked out in accordance with subregulation (4).
4. For the purpose of subparagraph (3) (b), the applicable amount is:
 - a. in the case of the financial year commencing on 1 July 1997 — \$5,000 increased in accordance with the CPI rate for the financial year that commenced on 1 July 1996 and rounded down to the nearest multiple of \$50; and
 - b. in the case of a subsequent financial year — amount worked out in accordance with this subregulation for the immediately preceding financial year, increased in accordance with the CPI rate for that financial year and rounded down to the nearest multiple of \$50.

Legal words and phrases explained

We have described these words as we use them in this guide. If you are still not sure what a certain term means, ask your solicitor to explain it to you.

Acceleration clause — A clause used in contracts to allow the lender to demand payment of the total outstanding loan balance.

Affidavit — A statement sworn under oath in the presence of a commissioner of declarations, justice of the peace or a solicitor.

Arrears — This refers to the amount you have fallen behind in your payments.

Calling in the whole of the loan — The lender tells you to pay the total loan balance in one payment rather than by periodic payments. See ‘acceleration clause’.

Consumer Credit Code — The Consumer Credit Code (CCC) is legislation adopted by each Australian state that make rules about the way credit is provided to consumers (not business). If a loan is regulated by the CCC it means the lender has to meet certain obligations and can be penalised for not doing so.

Default — You are said to be in default on your loan if you have not met a condition in your loan contract, like not making a payment on time.

Deponent — A deponent is a person who makes a statement (deposition) under oath. On the forms you submit to the court (see samples on pages 38–46) the term ‘deponent’ refers to you, the one making the affidavit.

Enforcement proceedings — These are actions a creditor takes to recover a debt (get their money back). Enforcement proceedings can include:

- repossessing assets you provided as security on the loan
- claiming the money you owe them in court
- applying for a court order to make you pay back all the money you owe
- applying for an injunction (another type of court order) to stop you doing something that would make it harder for them to recover the loan, like selling a secured asset.

Hardship threshold — The hardship threshold is the maximum amount of money you can owe and still have options available under the Consumer Credit Code to change your loan conditions if you have financial problems.

If your loan is less than the threshold amount you can ask your credit provider, or even the court, to change your payment obligations if you are having financial problems.

The threshold changes every three months because it is linked to average loan sizes in New South Wales. You can check the current threshold at www.creditcode.gov.au

Interest — Interest is money you pay to the lender for borrowing their money. It is the main cost of borrowing money. Most people's interest payments will add up to more than the amount they originally borrowed, particularly if the loan is being paid back over 20 or more years. Interest is usually talked about as an annual

percentage rate. Your contract should give details about how it is calculated and charged.

Lender — In this guide we use ‘lender’ or ‘creditor’ to mean the bank, finance company or other institution who has lent you money.

Loan contract date — This is the date the last person signed the loan contract. The date will be on your contract.

Periodic payments — These are regular payments required under your contract.

Principal — The principal is the amount you borrowed. It does not include any interest you agreed to pay under the contract.

Secured asset — Something you own like goods, a car or property (assets), which is listed on your loan documentation as security. If you default on the loan, the lender can take this security (provided they give the correct notices) and sell it to recover the money you owe them.

Useful contacts

Financial counselling

For details about financial counselling services, visit Legal Aid Queensland's website www.legalaid.qld.gov.au or call 1300 65 11 88.

Free financial and budgeting tips

- Financial Counselling Queensland Network
www.fcqn.asn.au
- Lifeline Australia — www.lifeline.org.au
- The Salvation Army — www.salvos.org.au
- St Vincent De Paul Society — www.vinnies.org.au
- Seniors First — www.seniorsfirst.com.au
- Australian Securities Investment Commission tips —
www.fido.gov.au
- Centrelink – Financial Information Service —
www.centrelink.gov.au

Mortgage and Finance Association Code of Practice

www.mfaa.com.au

Your local Legal Aid Queensland office

Brisbane

44 Herschel Street
BRISBANE Q 4000

Bundaberg

2nd Floor, WIN Tower
Cnr Quay & Barolin Streets
BUNDABERG Q 4670

Caboolture

Ground Floor, Kingsgate
42 King Street
CABOOLTURE Q 4510

Cairns

Ground Floor, Equity Central
46 Spence Street
CAIRNS Q 4870

Inala

Level 1
Inala Commonwealth Offices
20 Wirraway Parade
INALA Q 4077

Ipswich

97 Brisbane Street
IPSWICH Q 4305

Mackay

Ground Floor
17 Brisbane Street
MACKAY Q 4740

Maroochydore

3rd Floor
Cnr The Esplanade & Second Ave
MAROOCHYDORE Q 4558

Mount Isa

Trustee House
18 Miles Street
MOUNT ISA Q 4825

Rockhampton

Ground Floor
35 Fitzroy Street
ROCKHAMPTON Q 4700

Southport

1st Floor
100 Scarborough Street
SOUTHPORT Q 4215

Toowoomba

1st Floor
154 Hume Street
TOOWOOMBA Q 4350

Townsville

Skerman Chambers
12 Wills Street
TOWNSVILLE Q 4810

Woodridge

1st Floor, Woodridge Place
Cnr Ewing Road & Carmody St
WOODRIDGE Q 4114

1300 65 11 88

www.legalaid.qld.gov.au