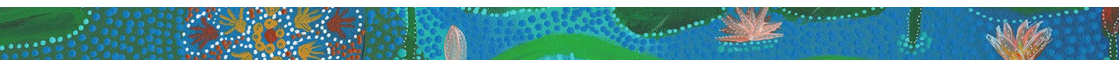




Are you struggling to pay a loan?

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



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Disclaimer

This guide is intended to provide you with information only. If you have a legal problem, you should get legal advice from a lawyer. Legal Aid Queensland believes the information provided is accurate as at January 2019 and does not accept responsibility for any errors or omissions.

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How can this guide help me?

This guide can help you understand what can happen if you've missed loan payments or are having trouble keeping your loan payments up to date.

This guide has information on:

- the options available to you if you can't meet your current loan/lease payments
- the options available to you to make a complaint to a lender's internal dispute resolution (IDR) area and external dispute resolution (EDR) (the Australian Financial Complaints Authority)
- 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.

If you go to court, this guide assumes your claim will be heard in the Magistrates Court—generally, if your loan debt is less than \$150,000 it will be heard in the Magistrates Court. Please refer to page 22 to find out which court you would need to go to for loan debts more than \$150,000.

This guide has sample letters and forms you can follow when you need to put something in writing. You can get copies of the forms from the Magistrates Court registry or from the Queensland Courts website www.courts.qld.gov.au

Does this guide apply to my loan?

There are laws that protect people who enter into loans (consumer credit contracts). These laws are the:

- National Consumer Credit Protection Act
- National Credit Code.

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

How can I tell if the National Credit Code applies to my loan?

The National Credit Code applies to loans where:

- the loan contract date is after 1 July 2010
- the loan is mostly for:
 - a) personal, domestic or household purposes (not business), or
 - b) to buy or renovate residential property for investment purposes, or
 - c) to refinance a loan for either of these purposes
- the loan contract says you may have to pay a charge (eg interest or fees)
- the credit or loan was provided:
 - a) by a bank or other lender/creditor which is in the business of providing loans (credit), or
 - b) as part of or incidental to the business of providing credit.

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

Even if this guide does not apply to you, you should still get legal advice about your loan to help you understand your options. Call Legal Aid Queensland on 1300 65 11 88 (cost of a local call from a landline in Queensland).

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.

Do I need legal advice?

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

How can I get legal advice?

You can get legal advice from:

- Legal Aid Queensland – call 1300 65 11 88 (cost of a local call from a landline in Queensland) 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 lawyer – call the Queensland Law Society on 1300 367 757 or visit www.qls.com.au for names of lawyers who can help.

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 Personal Properties Securities Register or the Titles Registry in the Department of Natural Resources, Mines and Energy called a 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 National Credit Code, serve you with a default notice telling you what the default amount is and give you 30 days to fix it by paying all the money currently owing. Even if the National 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 court documents called a *Form 2 – Claim* and a *Form 16 – Statement of claim*, and you will have 28 days to file a *Form 17 – Defence*. Filing a defence gives you an opportunity to argue that you do not owe the money. If you receive a *Form 2 – 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. The lender does not have to give you a copy of the judgment, but you can get a copy of the judgment from the court where it was made.

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

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- 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 included in the Bankruptcy Regulations on page 51.

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 can pay any money towards your debt. They cannot chase you for the loan after this time unless there are exceptional circumstances.

A creditor can follow the same court process whether they have a secured loan (where a car or a house is listed as security in your loan documents), or an unsecured loan (there are no assets listed in your loan documents to secure payment of the loan).

Will it affect my credit rating?

Yes, judgments made against you in court for secured or unsecured loans affect your credit rating, making it more difficult for you to get loans or credit in the future. Your judgment will be registered with one or more of the credit reporting agencies:

- Equifax (www.equifax.com.au)
- Dun & Bradstreet (www.dnb.com.au)
- Experian (www.experian.com.au)
- Tasmanian Collection Service (www.tascol.com.au).

These organisations can give information about your credit history and ratings to potential lenders.

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

Judgments remain listed for five years on your credit report, even if the debt is paid before that time. A default listing with a credit reporting agency will only be removed if the creditor agrees it should never have been listed in the first place or the listing contained incorrect information.



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 lawyer 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 'Your options' section on page 11.

If you don't owe the money, under the National Credit Code you have the right 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 disagree with you, the lender must write back to you explaining why they believe you owe them this amount of money.

If you disagree with your lender's explanation you can lodge a complaint with the lender's IDR team and ask them to review the lender's decision.

If the IDR team reviews your complaint but you are not satisfied with their decision, you can lodge a free complaint with an EDR scheme. The Australian Financial Complaints Authority is the only EDR scheme for banking and finance issues, replacing the Financial Ombudsman Service (FOS) and the Credit and Investments Ombudsman (CIO).

2. Was the credit contract unjust?

If the National Consumer Credit Protection Act and the National Credit Code apply to your loan, you might be able to change the contract if you can show it was ‘unjust’ (unfair). If you think your loan is unjust, get legal advice about the contract. Some of the reasons a contract may 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. This amount must include all of the lender's interest, costs, legal fees and court costs. 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

Sections 72–75 of the National Credit Code allow borrowers to apply to change their loan if they are experiencing financial hardship.

Pages 17–20 of this guide give detailed instructions about how to apply to change the terms of your loan.

Court application for hardship

If the lender does not agree to change your loan, you can apply for a court order asking the court to change your loan on the grounds of hardship so long as the amount borrowed is less than the hardship threshold.

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 for a stay of debt recovery (see the sample letter on page 34) 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 (put on hold) the enforcement action while the court considers your request.

EDR application for hardship

If a lender does not agree to change your loan, you can still lodge an EDR complaint with the Australian Financial Complaints Authority. It is free for consumers to lodge a complaint with the Australian Financial Complaints Authority.

Having an EDR complaint lodged against a lender will prevent the lender from taking another enforcement step (including progressing court action) while the EDR scheme reviews your complaint. If the lender agrees to a hardship arrangement in the EDR process and you keep your side of the arrangement, the court action will not go ahead.

As EDR schemes are a low or no cost jurisdiction, they can help you keep your costs down while you try to get a hardship arrangement put in place for your loan. The Australian Financial Complaints Authority is the only EDR scheme for banking and financial issues.

3. Claim on your insurance

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

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

If you find your insurance is inappropriate for your circumstances (eg you have unemployment insurance but are on a disability pension) or you are paying for insurance you didn't know you took out, then you may be entitled to an insurance premium 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, you may be able to get a mortgage relief loan from the Department of Housing and Public Works. Call the department on 1300 654 322 and ask them about this. In the meantime, keep making your loan payments if you can. You must apply in writing 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 can pay the loan. They will want to see evidence of your income and expenses. Lenders have responsible lending obligations to assess whether you can make the loan payments without experiencing substantial financial hardship.

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. If you are considering refinancing, you should get financial advice.

6. Access your compulsory superannuation

You may be able to access some of your superannuation early on financial hardship grounds.

Be aware that it may take some time to process your hardship relief application, so it is important you continue to make your loan payments while you apply.

Don't apply to access your superannuation early if it's not going to solve your financial problems and will only delay the inevitable forced sale of your home. Be aware that if you need to claim bankruptcy down the track, any superannuation you accessed before going bankrupt will not be protected. In this case you would be better off not accessing your superannuation and protecting your entitlements.

7. Repriritise 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 reduce 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 Industry Ombudsman www.tio.com.au or the Energy and Water Ombudsman www.ewoq.com.au). A financial counsellor may be able to negotiate on your behalf or access one-off payments available from Centrelink or other support organisations. Call the National Debt Helpline on 1800 007 007 to speak to a free financial counsellor.

See page 58 for a list of websites that offer free financial and budgeting tips.

8. Sell a secured asset (with permission)

If 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.

There are motor vehicle price comparison websites that can give you an idea of possible sale prices for your vehicle/s.

You will need your lender's permission to sell an asset if you can't pay out the loan from the sale. If you still owe money on the asset after the sale, you will 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 asset. If the lender won't give permission to sell the asset to that buyer, and the asset is later sold at a lower price, you may have a right to recover the difference between the sale price you arranged and the final sale price. The lender may be responsible for this loss. Get legal advice.

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

It may be 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 may avoid some repossession costs, the lender's 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 giving the lender your assets.

Always:

1. Take notes of all telephone conversations with your lender. Write down the time and date of the call, details of who you spoke to, what was said, and what was agreed. If you make any agreements in the phone call put them in writing—send a letter confirming the details (see the sample letter on page 35).
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?

You may find it helpful to speak to a financial counsellor when weighing up your options. Financial counselling is a free service.

Financial counsellors can prepare budgets and negotiate on your behalf with lenders. They may help you get 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 or the National Debt Helpline on 1800 007 007.

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 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 the sample letter on page 36.
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 improve and why.
7. Work out what you can afford to pay on your loan by calculating your income and expenses. Use the sample budget on pages 37–38 as a guide to working out your income and expenses.

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8. List any extra money such as a tax return or other lump sum you expect to receive, and the date you expect to receive it.
 9. Work out a plan to get you back on track. Any plan you come up with must be practical and achievable. Don't ask your lender for a plan you cannot follow. Some suggestions for your plan include:
 - temporarily reducing or stopping payments for a set time and then making extra payments or a lump sum later to catch up
 - extending the term of the loan and therefore reducing payments or stopping them for a set time
 - authorising a lump sum that is due to come to you to be paid directly to the lender (called an 'irrevocable authority'—see page 39) to bring you up to date on your loan contract.

How to write the letter

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

The lender does not have to consider your proposal, but if they don't, you could use this as evidence in court, or in an EDR scheme, of an unreasonable attitude.

See the sample letter on pages 40–41.

1. Start by saying you want to change the terms of the contract under sections 72–75 of National Credit Code. Even if your loan agreement or lease is not regulated by the National 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 or an EDR scheme if they refuse you.

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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 extending 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.
 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, under the National Credit Code you have the right to take the matter either to court or to an EDR scheme. EDR schemes are a cheaper option than court as they are free for consumers and there is no risk of costs being awarded against you.

If you go to court you will have to pay legal costs. This can be difficult if you are already suffering from financial hardship. Be aware that once the court makes a judgment about your matter, your rights to make a hardship application to an EDR scheme are severely restricted.

Lenders may also have obligations under a Code of Practice to help you when you are in hardship or financial difficulty. These Industry Codes of Practice have hardship obligations for lenders:

1. Clause 28 of the Australian Bankers Association Code of Banking Practice
2. Clause 24 of the Customer Owned Banking Code of Practice
3. Mortgage and Finance Association of Australia Code of Practice.

You can complain to the Australian Financial Complaints Authority when a lender does not follow the Code of Practice they have subscribed to. The lender cannot start court proceedings against you while your complaint is with the Australian Financial Complaints Authority. Contact:

The Australian Financial Complaints Authority
1800 931 678
www.afca.org.au

The Australian Financial Complaints Authority is the new EDR scheme that has replaced the FOS and the CIO from 1 November 2018. You retain the same rights to complain about your lender's conduct if they do not properly consider your hardship request.

Am I eligible to go to an EDR scheme or court?

If you tick all of the following boxes, you are eligible to go to an EDR scheme or court:

- The National Consumer Credit Protection Act and the National Credit Code must apply to your loan (see page 3 to find out if they apply to your loan).
- 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 changed.
- 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 EDR scheme or 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 EDR scheme do I go to?

All consumer credit lenders must be a member of the Australian Financial Complaints Authority.

Which court do I apply to?

In most instances, if you want to apply to the court for a variation of your loan contract, you must file an application in the Magistrates Court.

Generally if your loan debt is less than \$150,000 it will be heard in the Magistrates Court. Disputes between \$150,000 and \$750,000 are heard in the District Court, and disputes over \$750,000 are heard in the Supreme Court. 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 for advice on how to apply for the court to vary your loan contract.

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

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

Lodging a complaint with an EDR scheme

Lodging a complaint with the Australian Financial Complaints Authority's EDR scheme temporarily puts on hold any existing court proceedings while the EDR scheme reviews your complaint.

If you are lodging a complaint with an EDR scheme, make sure you put forward a reasonable and practical proposal that addresses your financial hardship. Lodging a complaint to buy time does not usually help you to get out of your difficult circumstances.

How do I lodge a complaint with an EDR scheme?

You can lodge a complaint with the Australian Financial Complaints Authority's EDR scheme online or on the phone. Contact:

The Australian Financial Complaints Authority
1800 931 678
www.afca.org.au

You do not need a lawyer to lodge a dispute with an EDR scheme.

You do not have to appear before an EDR scheme like you do in court. The EDR scheme will make a decision about the dispute after reading all the documents you and the lender have lodged.

There are no specific documents or special forms that you have to provide to an EDR scheme as part of a dispute. However it is important you provide evidence of conversations you have had with your lender, and letters the lender has sent you about your loan and your request for financial hardship.

Make sure you respond to the EDR scheme by the deadline they set for a response. If there is a good reason why you cannot respond before the deadline, then you should ask the EDR scheme for an extension before the deadline expires.

Unlike court, an EDR scheme can make a fair and reasonable decision in line with the law and good industry practice.

If you get a new loan payment plan agreement through the EDR scheme, make sure you keep your side of the agreement and make your payments on time, as it is very difficult to be successful in another financial hardship application before an EDR scheme if you haven't been able to follow a previous agreement.



How do I apply to the court to change my loan contract?

If you want to apply to the court to change your loan contract, you need to follow these steps:

Step 1 — Prepare your application to change your loan contract

What forms do I need to prepare my application?

You will need the following forms:

1. *Form 5 — Originating application*
2. *Form 46 — Affidavit*
3. *Form 47 — Certificate of exhibit*
4. *Form 46 — Affidavit of service*
5. *Form 59 — Order.*

Where do I get the forms?

You can get copies of the forms from the Magistrates Court registry or from the Queensland Courts website www.courts.qld.gov.au (go to the Forms section and look in the *Uniform Civil Procedure Rules 1999* category).

Note: All the forms you complete must be typed or neatly written in blue or black ink.

Complete the application form

There is a sample *Form 5 — Originating application* on pages 42–43 you can use as a guide to help you complete the form. In the form you are the applicant and the lender is called the respondent. You will see the form asks the court to make orders about what you want to happen. If you are having trouble with the wording, ask a lawyer to help you.

Complete the affidavit

There is a sample *Form 46 — Affidavit* on pages 44–46 you can use as a guide.

An affidavit is a signed, written statement that 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 called a *Form 47 — Certificate of exhibit* like the sample on page 47
- 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.

Prepare an Affidavit of service

Use the *Form 46 — Affidavit* template to prepare your *Affidavit of service*. There is a sample *Form 46 — Affidavit of service* on pages 48–49 you can use as a guide. An *Affidavit of service* is the document you will present to the court to show you served your completed forms and documents on the lender. Your affidavit must be witnessed by a commissioner of declarations, justice of the peace or a lawyer.

Prepare an Order

Use the *Form 59 – Order* to prepare your *Order*. There is a sample *Order* on page 50 you can use as a guide. In your *Order* you can tell the court what decisions you want it to make about your matter.

Step 2— Sign all your forms in the presence of a commissioner of declarations, justice of the peace or a lawyer

Take your forms and documents to a commissioner of declarations, justice of the peace or a lawyer, and sign each page in their presence. They will also sign and mark the date and place where they witnessed your affidavit.

To find a justice of the peace near you, visit www.qld.gov.au and type ‘find your nearest justice of the peace’ in the search box.

Step 3 — Make three copies of your forms and documents

You need to make three copies of all your forms and documents as you will file three copies with the court, and serve one copy on the lender.

Step 4 — File your forms and documents with the court and pay a filing fee

File three copies of your forms and documents at the Magistrates Court registry 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. The clerk at the court will arrange a hearing date and write it on your application.

Step 5 — Serve one complete copy of the forms and documents on the respondent

You must serve (deliver) one complete copy of your forms and documents on the respondent (the lender). Do this as soon as you can as you must give 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 an acknowledging receipt. If you send them by registered post, keep your Australia Post receipt.



Going to court

Before you arrive

- Find out the court's address and check the location on a map.
- Organise to arrive at court early, ideally half an hour before the hearing.
- If you are going to the Magistrates Court your matter will be heard by a magistrate.
- 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 and forms 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.
- Organise to take a family member or friend to support you. They can come into the courtroom with you.

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 present in court.
- 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 lender could reach an agreement about your dispute. If there is a chance, then you will be directed outside to negotiate privately with the lender.
- 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 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 to make verbal comments. Speak to your lawyer before the hearing to get legal advice about what is best for your situation.
- You can also tell the magistrate you have prepared an *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. Strict time limits apply.

What happens after the hearing?

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.

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

It is also more difficult to successfully bring another application for financial hardship before an EDR scheme or court if you haven't been able to follow a previous agreement.

If you cannot keep making payments on your new payment plan, be aware it is also very difficult to successfully make another financial hardship application before a court.

Sample documents and forms

Documents — For EDR and court

- Sample 1 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’)
- Sample 2 Letter to your lender confirming details of a phone conversation
- Sample 3 Letter to your lender asking them to send you the loan documents
- Sample 4 Budget
- Sample 5 Letter authorising a lump sum to be paid directly to your lender (called an ‘irrevocable authority’)
- Sample 6 Letter to your lender asking to change your loan contract

Forms — For court only

- Sample 7 Form 5 — Originating application
- Sample 8 Form 46 — Affidavit
- Sample 9 Form 47 — Certificate of exhibit
- Sample 10 Form 46 — Affidavit of service
- Sample 11 Form 59 — Order.

Note

- These are sample documents and forms to give you an idea of the information you might need to put in. Do not copy the information on the sample documents and forms word for word. Use them as a guide only and put in the information about your own situation.
- You will not need to use all these forms. Only use the ones that apply to you.
- If you need advice on how to fill in any of the forms, call Legal Aid Queensland on **1300 65 11 88**.
- Type your answers or write neatly in black or blue pen.
- Make sure the information you use is correct and always double-check the spelling of the names of other people involved.
- Include as much information as possible in your *Affidavit* – it is better to include too much information than to leave out something important.



Sample 1: 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’)

25 Banksia Avenue
Treedale Qld 4234
20 June 2018

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 2018
2. An affidavit sworn by me, Louis James Ferris, filed on 18 June 2018.

This matter is due to be heard in the Brisbane Magistrates Court on 12 July 2018. 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 2018, 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 3182 5182

Sample 2: Letter to your lender confirming details of a phone conversation

25 Banksia Avenue
Treedale Qld 4234
3 June 2018

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, 2018.

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 2018.

If we have not heard from you by close of business this Friday, 15 June 2018 we will assume this letter accurately records the agreement we reached.

Yours sincerely

J E Ferris

Jeanine Ferris
Ph: (07) 3182 5182

Sample 3: Letter to your lender asking them to send you the loan documents

25 Banksia Avenue
Treedale Qld 4234
3 June 2018

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 National Credit Code).
2. Copies of all contracts and notices relating to this loan, including insurance contracts, guarantees, mortgages and any notices (under s. 185 of the National Credit Code).
3. A statement of the current payout figure and how it is calculated (under s. 83 of the National Credit Code).

We look forward to your response as soon as possible.

Yours sincerely

Louis Ferris

Louis and Jeanine Ferris
Ph: (07) 3182 5182

Sample 4: 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. A free online budget calculator is available at www.moneysmart.gov.au/tools-and-resources/calculators-and-apps/budget-planner

Remember to work in the same units—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 (<i>if any</i>)	461.55	923.10	2000
Centrelink benefits	0	0	0
Other income (<i>if any</i>)	0	0	0
Total income	1384.55	2769.10	6000

Expenditure	Weekly \$	Fortnightly \$	Monthly \$
Current housing costs (<i>rent or mortgage</i>)	484.60	969.20	2100
Electricity bill	8	16	35
Gas bill (<i>averaged weekly</i>)	3.70	7.40	16
Rates (<i>averaged weekly if any</i>)	27.70	55.40	120
Phone bills (<i>weekly</i>)	16.15	32.30	70
Motor vehicle loan payments (<i>weekly</i>)	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

Sample 4: Budget cont'd

Expenditure	Weekly \$	Fortnightly \$	Monthly \$
Car maintenance <i>(averaged weekly)</i>	3.45	6.90	15
Other loan payments	0	0	0
Credit card payments <i>(debt if any)</i>	10.80	21.60	90
Food and non-alcoholic beverages	99.25	198.45	430
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
Net disposable income	178.90	357.85	689

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 5: Letter authorising a lump sum to be paid directly to your lender
(called an ‘irrevocable authority’)**

25 Banksia Avenue
Treedale Qld 4234
10 July 2018

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) 3182 5182

Sample 6: Letter to your lender asking to change your loan contract

25 Banksia Avenue
Treedale Qld 4234
6 June 2018

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. 72–75 of the National Credit Code.

My wife and I borrowed \$40,000 for a car on 12 November 2014 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 the June 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 installment 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.

Sample 6: Letter to your lender asking to change 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 these 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 about 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) 3182 5182

Sample 7: Form 5 – Originating application

MAGISTRATES COURT OF QUEENSLAND

REGISTRY:
NUMBER:

Applicant: *Louis James Ferris and Jeanine Elizabeth Ferris*

AND

[First]Respondent: *ASD Credit Services, ACN 65789033*

AND

[Second Respondent]: *(Insert Name)*

ORIGINATING APPLICATION

To the respondents: 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 applicant and the respondent dated 12 November 2014, 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 2018 to 1 September 2018.*
- 3. That the next payment date be changed to 2 September 2018.*
- 4. That the period of the loan contract be extended for a further three months until 12 February 2021.*
- 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 2018 at 11.30am*

Filed in the *Brisbane Magistrates Court* Registry on *18 June 2018*:

Registrar: *P Kramer*
(registrar to sign and seal)

ORIGINATING APPLICATION
Filed on Behalf of the Applicants(s)

Form 5, Version 1
Uniform Civil Procedure Rules 1999
Rule 26

Name: Louis Ferris
Address: 25 Banksia Ave, Treedale Qld
4234

Phone No: 3182 5182
Fax No: N/A
Email: lferris@mymail.com.au

Sample 7: Form 5 – Originating application cont'd

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 2018

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.

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.¹

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED
(Insert Time Estimate) Hours/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 lawyer
and firm name: Not applicable

Solicitor's business address: Not applicable

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

Dx: Not applicable
Telephone: 07 3182 5182

Fax: Not applicable

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

Signed: *Louis Ferris*
Description: *Applicant*
Dated: *18 June 2018*

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

i. This sentence may be omitted from a proceeding started in any central registry of the Supreme Court.

Sample 8: Form 46 – Affidavit

MAGISTRATES COURT OF QUEENSLAND

REGISTRY:
NUMBER:

Plaintiff¹: *Louis James Ferris and Jeanine Elizabeth Ferris*

AND

[First]Defendant²: *ASD Credit Services, CAN 65789033*

AND

[Second Defendant]: *(Insert Name)*

AFFIDAVIT

I, Louis James Ferris, of 25 Banksia Ave, Treedale, in the State of Queensland, builder's labourer, states on oath [or: solemnly and sincerely affirms and declares]:

1. We are the applicants in these proceedings.
2. We entered into a loan contract with the respondent (as co-borrowers) on 12 November 2014. Exhibit A is a true copy of the loan contract.
3. On 3 June 2018 we received a default notice dated 25 May 2018 under the National Credit Code. Exhibit B is a copy of the default notice.
4. On 3 June 2018 we attempted to negotiate a postponement of enforcement proceedings. Exhibit C is a copy of the letter from the respondent dated 10 June 2018 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 payments are \$500.

If the affidavit extends over more than one page, at the foot of the first and every other page except the last:

Page 1

Signed: *Louis Ferris*

Taken by: *(person taking the affidavit to sign)*

AFFIDAVIT
Filed on Behalf of the (party)

Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Name: Louis Ferris
Address: 25 Banksia Ave,
Treedale Qld 4234

Phone No: 3182 5182
Fax No: N/A
Email:
lferris@mymail.com.au

Sample 8: Form 46 – Affidavit cont'd

6. We made all loan payments 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 2017.
7. The reason for late payment in 2017 was that we were on vacation and forgot to arrange for sufficient funds to be placed in our savings account in time for the loan payment direct debit. 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 2018 after the overtime ban is lifted on 1 July 2018.
11. Jeanine Ferris is employed as a teacher's aide at Mt Jackson Primary School for 30 hours per week on a regular 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 2018. Jeanine has now resumed her usual hours of employment.
12. On 6 June 2018, we wrote to the respondent explaining our temporary hardship and asked to reduce our payments to \$300 for three months until August 2018. Then we will increase them to \$650 per month until we 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 payments for June, July and August and correspondingly extending the term of the loan.

Page 2

Signed: *Louis Ferris*

Taken by: *(person taking the affidavit to sign)*

AFFIDAVIT
Filed on Behalf of the (party)
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Name: Louis Ferris
Address: 25 Banksia Ave,
Treedale Qld 4234
Phone No: 3182 5182
Fax No: N/A
Email:
lferris@mymail.com.au

Sample 8: Form 46 – Affidavit cont'd

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 [or: Affirmed] by *Louis Ferris* on 18 June 2018 at 35 Tank Street, Brisbane, Qld, in the presence of:

Signed: *Louis Ferris*

Douglas Kennedy JP

Deponent

(Commissioner for Declarations/Solicitor/JP)

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit. (If required: see R. 433(1)).

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit, but was physically incapable of signing it. (If required: see R. 433(2)).

¹ For proceedings commenced by Originating Application for "Plaintiff" substitute "Applicant"

² For proceedings commenced by Originating Application for "Defendant" substitute "Respondent"

AFFIDAVIT
Filed on Behalf of the (party)
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Name: Louis Ferris
Address: 25 Banksia Ave,
Treedale Qld 4234
Phone No: 3182 5182
Fax No: N/A
Email:
lferris@mymail.com.au

Sample 9: Form 47 – Certificate of exhibit

MAGISTRATE COURT OF QUEENSLAND

REGISTRY:
NUMBER:

Applicant¹: *Louis James Ferris and Jeanine Elizabeth Ferris*
AND
Respondent²: *ASD Credit Services, ACN 65789033*
AND
[Second Defendant:] *(Insert Name)*

CERTIFICATE OF EXHIBIT

Exhibit A to the affidavit of *Louis James Ferris* sworn [affirmed] *18 June 2018*.

Louis Ferris

Douglas Kennedy JP

Deponent

Justice of the Peace

Note:

1. If the affidavit is taken under r 433, the deponent does not sign.

¹ For proceedings commenced by Originating Application for "Plaintiff" substitute "Applicant"

² For proceedings commenced by Originating Application for "Defendant" substitute "Respondent"

CERTIFICATE OF EXHIBIT
Filed on Behalf of the Applicant

Form 47, Version 2
Uniform Civil Procedure Rules 1999
Rule 435

Name: Louis Ferris
Address: 25 Banksia Ave
Treedale Qld 4234
Phone No: 3182 5182
Fax No:
Email:

Sample 10: Form 46 – Affidavit of service

MAGISTRATES COURT OF QUEENSLAND

REGISTRY:
NUMBER:

Applicant¹: *Louis James Ferris and Jeanine Elizabeth Ferris*

AND

Respondent²: *ASD Credit Services, ACN 65789033*

AND

[Second Defendant:] *(Insert Name)*

AFFIDAVIT OF SERVICE

I, Louis, James Ferris of 25 Banksia Ave, Treedale, in the State of Queensland, builder's labourer, states on oath [or: solemnly and sincerely affirms and declares]:

1. On 20 July 2018. I served these documents on the respondent:
 - a. Originating application, filed on 18 June 2018, and
 - b. Affidavit of Louis James Ferris, filed on 18 June 2018.

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 2018, 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.

Page 1

Signed: *Louis Ferris*

Taken by: *Douglas Kennedy JP*

AFFIDAVIT
Filed on Behalf of the Applicant

Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Name: Louis Ferris

Address: 25 Banksia Ave
Treedale Qld 4234

Phone No: 3182 5182
Fax No:
Email:

Sample 10: Form 46 – Affidavit of service cont'd

Sworn [or: Affirmed] by *Louis James Ferris* on *21 July 2018* at *35 Tank Street, Brisbane, Qld* in the presence of:

Signed: *Louis Ferris* *Douglas Kennedy JP*

Deponent *(Commissioner for Declarations/Solicitor/JP)*

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit. *(If required: see R. 433(1)).*

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit, but was physically incapable of signing it. *(If required: see R.453(2)).*

¹ For proceedings commenced by Originating Application for "Plaintiff" substitute "Applicant"

² For proceedings commenced by Originating Application for "Defendant" substitute "Respondent"

SAMPLE

Sample 11: Form 59 – Order

MAGISTRATESⁱ COURT OF QUEENSLAND

REGISTRY:

NUMBER:

Applicantⁱⁱ *Louis James Ferris and Jeanine Elizabeth Ferris*

AND

Respondent *ASD Credit Services, ACN 65789033*

ORDER

Before: Ms Eileen King

Date: *12 July 2018*

Initiating document: Originating application

Application filed *18 July 2018*

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 National 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 2018 to 1 September 2018.
2. The applicant's next loan payment will be due on 2 September 2018.
3. The period of the loan contract be extended for a further three months until 12 February 2021.

Signed: P Kramer
Registrar

ⁱ For an application in the District Court or a Magistrates Court, substitute "District Court" or "Magistrates Courts" respectively.

ⁱⁱ If the matter was commenced by way of Originating Application the heading should read "Applicant" in lieu of "Plaintiff" and "Respondent" in lieu of "Defendant".

ORDER
Filed on Behalf of the Applicant
Form 59, Version 1
Uniform Civil Procedure Rules 1999
Rule 661

Name: Louis Ferris
Address: 25 Banksia Ave
Treedale Qld 4234
Phone No: 3182 5182
Fax No:
Email:

Bankruptcy Regulations

Bankruptcy Regulations 1996 excerpt

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.

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.

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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 lawyer to explain it to you.

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

Arrears—The amount you have fallen behind in your payments.

Default—Your loan is ‘in default’ 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 44–49) 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 National 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.moneysmart.gov.au/managing-your-money/managing-debts/trouble-with-debt/hardship-threshold

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—The bank, finance company or other institution who has lent you money. These may also be referred to as the ‘creditor’.

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

National Credit Code—The National Credit Code is part of the National Consumer Credit Protection Act. The National Credit Code is an Australian law that sets rules about the way credit is provided to consumers (not businesses). If a loan is regulated by the National Credit Code it means the lender has to meet certain obligations towards consumers and can be penalised for not doing so.

National Consumer Credit Protection Act—The National Consumer Credit Protection Act is an Australian law that makes rules about the way credit is provided to consumers (not businesses). If a loan is regulated by the National Consumer Credit Protection Act it means the lender has to meet certain obligations towards consumers and can be penalised for not doing so.

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

Principal—The principal is the amount of money 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 in your loan documents 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

To speak to a free financial counsellor, call the National Debt Helpline on 1800 007 007. You can also visit Legal Aid Queensland's website www.legalaid.qld.gov.au or call 1300 65 11 88 to find out about free financial counselling services in your area.

Free financial and budgeting tips

Financial Counselling Australia — www.financialcounsellingaustralia.org.au

Lifeline Australia — www.lifeline.org.au

The Salvation Army — www.salvos.org.au

St Vincent De Paul Society — www.vinnies.org.au

Moneysmart — www.moneysmart.gov.au

Your notes

Your local Legal Aid Queensland office

Brisbane

44 Herschel Street
BRISBANE Q 4000

Bundaberg

3rd Floor
WIN Tower
Cnr Quay & Barolin Streets
BUNDABERG Q 4670

Caboolture

Ground Floor
Kingsgate
42 King Street
CABOOLTURE Q 4510

Cairns

Level 2
Cairns Square Complex
42-52 Abbott Street
CAIRNS Q 4870

Inala

Level 1
Inala Commonwealth Offices
20 Wirraway Parade
INALA Q 4077

Ipswich

Level 7, 117 Brisbane Street
IPSWICH Q 4305

Mackay

Ground Floor
17 Brisbane Street
MACKAY Q 4740

Maroochydore

Ground Floor
M1 Building
1 Duport Avenue
MAROOCHYDORE Q 4558

Mount Isa

6 Miles Street
MOUNT ISA Q 4825

Rockhampton

Ground Floor
35 Fitzroy Street
ROCKHAMPTON Q 4700

Southport

Level 2
7 Bay Street
SOUTHPORT Q 4215

Toowoomba

1st Floor
154 Hume Street
TOOWOOMBA Q 4350

Townsville

Level 4
Northern Securities Building
22 Walker Street
TOWNSVILLE Q 4810

Woodridge

1st Floor, Woodridge Place
Cnr Ewing Road and
Carmody Street
WOODRIDGE Q 4114



For more information about our services visit legalaid.qld.gov.au
or phone 1300 65 11 88 or 1300 650 143 (Aboriginal and Torres Strait Islander Information Line)

