

## What to do when the Council starts legal action

Have you received a notice demanding payment of your rates within ten days or legal action can begin? Here's what you need to know.

## What can the Council do if I don't pay?

The Local Government Act enables councils to:

- Take you to court for the rates, service charges & legal costs. This may result in a property order allowing the council to seize and sell your car, whitegoods, any
- other items of value and even your home (if arrears exceed three years);
- Lodge a caveat that prevents you from selling or refinancing the property;
- Garnish (i.e. take) rent from the tenant of your property (if any); OR
- Write off any amount of money owed.

## What can I do?

### **Payment Arrangements:**

- Most councils will allow you to clear your debt through a payment arrangement. How long they will give you is variable – it may be until the end of the nearest June, it may be for a year or even two years or more.
- Some councils want you to pay your future rates in advance, along with your current arrears. This is intended to help you catch up and not complete an arrangement only to be hit with another bill.
- You can estimate your future rates by looking at your most recent bill. Add this amount to your arrears and divide by 12 for monthly payments, divide by 26 for fortnightly payments or by 52 for weekly payments.
- If you believe you can pay future rates upfront and only want a payment arrangement for your arrears, be prepared to provide evidence of why/how.

Reduce or pause other debt repayments to free up money to clear council rates – see 'Hardship Variations'. This will mean arrears on other debts will build up but you may be able to pay these off over a longer period of time than the Council offers, or have them capitalised into the loan.

### **Capitalised arrears will mean you pay more over time if your loan charges interest.**

- Sell assets to free up cash – even if you can't clear the debt in full, reducing it will also reduce any needed payment arrangement.
- If you have only been having trouble making payments after taking on more debt (another mortgage, car loan, personal loan, credit card etc.) check to see if that new debt was affordable. If it was not, you may have grounds for a maladministration complaint. If maladministration occurred, you may find this debt could be reduced or cleared as a result, making paying the Council easier. This is generally not a quick process and should be considered in combination with other options.

## Can I access my Super to clear the rates?

The answer to that is “sometimes”.

As of time of writing, the ATO does allow you to access your superannuation under compassionate grounds to prevent your primary residence from being seized and sold due to arrears. However:

- If you owe less than three years of arrears, the Council cannot take your home to pay for the debt. Therefore, you are not eligible to access your Super.
- Access to superannuation is intended only for situations that are sustainable. There is no benefit to accessing superannuation just to keep an impossible living situation continuing a little longer. Do a realistic budget to work out if your situation is sustainable or not. If the answer is no – don’t waste your money.
- The council needs to give you a suitable letter to lodge with the ATO. The letter must state the total amount that has to be paid to prevent sale of the house, the arrears and interest specified by year, a due date for payment and a clear statement that if it is not paid by the due date, the council will take action to recover/seize/sell the property.
- Some councils provide a letter that is not properly formatted and therefore is rejected by the ATO. When the ATO rejects an application, they do not give reasons in writing – which can make it difficult to prove to the council that the fault is with their letter.
- Some councils may refuse to provide a letter.
- Some councils may only provide a letter after pursuing legal action, adding thousands in fees.

## I can normally pay but something happened

The Ombudsman of WA does provide guidelines for Councils and how they should treat people in ‘situations of vulnerability, which is a complex matter that is not limited to but may include:

- Disability
- Illiteracy/innumeracy
- Unemployment
- Serious or chronic illness
- Bereavement
- Exposure to family or domestic violence
- Low English language proficiency

It is important to be aware that having or being in one of the above situations does not automatically make you ‘in a situation of vulnerability’. They are simply indicators that a vulnerable situation may exist. If you believe this applies to you, think about what evidence you might be able to provide and contact your council for options. Always remember: You Have to Pay Your Rates. No amount of vulnerability entitles you to a write-off, even if the council could choose to do so.

If your situation has resulted in a permanent change to your financial circumstances that makes your rates unaffordable (even after applying eligible discounts) then the reality may be that you must sell your home and re-assess your options based on your new financial situation. You can speak to a financial counsellor about this or, if you are nearing retirement, you can speak with free financial planners through FIS. The guidelines specify that councils should:

- Encourage proactive and early identification of people in situations of vulnerability to minimise the amount of debt that accumulates and;
- For ratepayers identified as being in a situation of vulnerability, a flexible alternative payment arrangement should be negotiated that “reflects their actual capacity to pay”

## I asked for an arrangement and was refused

The guidelines also require a Council to inform you about your right to have decisions reviewed, both internally (Complaints – check your council’s website) and externally (WA Ombudsman). You have the right to complain/ask for a review of a decision if you feel that what you have asked for is:

Reasonable

Was backed by evidence (income, budget, other)

Enables you to clear your debt and demonstrates capacity/a reasonable plan to pay future rates.

If you would like to review your financial situation and options, call **Midlas** 9250 2123 to make an appointment with a Financial Counsellor. To make an appointment, please call us between 10:00am – 2:00pm, Monday to Friday.

Appointments are limited and demand is very high so please call early, consider other nearby Financial Counselling Services.

