

Default judgment and financial difficulty

This factsheet outlines what AFCA expects of financial firms where an individual or small business asks the financial firm to delay enforcement of a default judgment.

It also provides information about the types of complaints that AFCA can consider when there is a default judgment.

What is a default judgment?

When someone stops making repayments on their loan and is 'in default', a financial firm is entitled to take action to recover the debt.

Recovery action can include the financial firm making a claim in court for repossession of a security property and/or repayment of the debt. Where the borrower does not defend the claim, the court order is called a 'default judgment'. This applies both to unsecured loans and loans secured by property.



What does AFCA expect of financial firms?

If an individual or small business asks their lender to delay enforcement of a default judgment, we expect them to genuinely consider the request. This only applies to a default judgment, and not a judgment given after the borrower defended their case in court.

Financial firms can agree to suspend enforcement of a default judgment for a period of time. This may be appropriate where the individual or small business is actively taking steps to address the debt and needs more time to:

- sell the security property themselves within a reasonable time
- finalise a refinance of the amount owed
- organise their affairs, if they are suffering from personal hardship; or
- apply to the court to have the default judgment set aside.

What complaints can AFCA consider?

In certain circumstances, an individual or small business experiencing financial difficulty is able to lodge a complaint with AFCA after their financial firm has obtained default judgment.

AFCA is able to consider complaints where:

- an individual or small business has asked for enforcement of the default judgment to be suspended on the basis of financial difficulty;
- the financial firm has declined the request; and
- AFCA (or a predecessor scheme) has not previously dealt with the request.

See section C.1.2(d) of the AFCA Rules on our website for more information: afca.org.au/rules.

What will AFCA look at?

Once we receive a complaint about a default judgment, the financial firm must hold all enforcement action until an outcome is agreed. We expect the borrower to demonstrate good faith towards achieving one of the outcomes listed above. We will ask them to provide evidence of the steps taken to date. This might include, for example, a copy of an agency sale agreement if they are intending to sell the property, or a copy of their loan approval if they are refinancing with another lender.

We will review whether there is a realistic and immediate alternative to enforcement of the default judgment. We will also consider what the appropriate period for any delay in enforcement should be, taking into account the circumstances of each case and the interests of both the borrower and the financial firm.

What is AFCA not able to assist with?

AFCA cannot set aside or interfere with a default judgment. This means, for example, that once there is a default judgment it is too late for the borrower to request a repayment arrangement or other contract variation on the grounds of financial hardship.

In addition, where the financial firm has already enforced the default judgment or warrant of possession and has taken possession of the security property, we are unable to intervene. This is because orders that have already been enforced cannot be suspended.

How will AFCA handle complaints about default judgment?

When we receive a complaint about default judgment, we will first refer it back to the financial firm – an internal dispute resolution (IDR) period of 21 days applies. If a suitable agreement is not reached during the IDR period, we will assign the complaint to a financial difficulty specialist for investigation.

Further information about how we manage financial difficulty complaints can be found on our website: afca.org.au/financial-difficulty. More information about default judgment complaints is covered in the fourth approach document in our financial difficulty series, *Dealing with common financial difficulty issues*: afca.org.au/publications, and under AFCA's Operational Guidelines to Rules A.7.2(f) and C.1.2(d): afca.org.au/og.

