LOANS FROM AN INSTITUTION

Before entering an agreement to take out a loan for any purpose, ensure you read the following information.

What if you cannot pay back a loan or you have received an irresponsible loan?

If you have been given a loan that you are unable to repay, you may have a claim for compensation against the lender if there were particular circumstances in which the lender should have recognised that your loan was unsuitable for you at the time it was entered into.

The *National Consumer Credit Protection Act 2009* imposes responsible lending obligations on lenders. This requires them to assess whether a loan is unsuitable considering your requirements, objectives and financial situation.

To view the *National Consumer Credit Protection Act 2009*, go to:

https://www.legislation.gov.au/Details/C2019C00053

What must Lenders consider when assessing eligibility to service a Loan?

Lenders must consider if:

- The loan or credit limit increase meets customer requirements and objectives
- The customer can afford to repay the loan or credit limit increase without substantial hardship

If the person seeking a loan can only comply with the obligations under a loan contract by selling a major asset, e.g., the family home, it is likely that that the loan will be considered unsuitable.

Lenders that allow an unsuitable loan to be given, can be ordered to pay compensation to the loan recipient if loss is suffered as a result.

What are the rights of the borrower when being assessed for eligibility to service a Loan?

The *National Consumer Credit Protection Act* requires lenders and brokers to offer credit only when the customer can meet the repayments without substantial hardship, without selling their home, and the proposed loan meets their requirements and objectives.

As a guide, the *National Consumer Credit Protection Act* will apply to individuals and strata corporations if:

- A charge is made for providing the credit, e.g., interest or fees
- The loan is predominantly for personal, domestic or household purposes
- The loan is for the refinance, purchase or improvement of a residential investment property (only for loans granted on or after 1 July 2010)

What is the purpose of the *National Consumer Credit Protection Act*?

The *National Consumer Credit Protection Act* replaces previous state-based consumer credit codes and the Uniform Consumer Credit Code (UCCC) and applies to the conduct of lenders and brokers, where the credit is provided wholly or predominantly: for personal, domestic or household purposes, or to purchase, renovate or improve residential property for investment purposes, or to refinance credit previously provided for this purpose.

> For more information on the *National Consumer Credit Protection Act* go to:
>
> https://asic.gov.au/regulatory-resources/credit/credit-general-conduct-obligations/national-credit-code/#:~:text=The%20National%20Credit%20Act%20replaces,of%20Australian%20credit%20licence%20holders.&text=the%20credit%20is%20provided%20wholly,domestic%20or%20household%20purposes%2C%20or

Under the *National Consumer Credit Protection Act*, a lender must:

- Make reasonable inquiries about the customer requirements and objectives in relation to the loan
- Make reasonable inquiries about the customer's financial situation
- Take reasonable steps to verify the customer's financial situation

What are the warning signs a lender may be in breach of responsible lending laws?

The following are warning signs a lender may be in breach:

- The lender failed to make enquiries to ensure that your loan was suitable for your requirements or objectives
- The lender failed to verify your reliable income in your loan application
- The lender did not ask you about your actual living expenses or obtain statements but instead determined your monthly expenses based on a benchmark tool like the household expenditure measure
- You were suffering from illness, were elderly, or did not understand English when you applied for the loan and the lender did not accommodate for this
- You were given an interest only loan that you are struggling to repay since the interest only period ended or you will struggle to pay at that time
- Your interest only loan had an interest only period of greater than 5 years
- The loan was for more than the value of the investment property
- The lender did not ensure that you could still repay the loan if your interest rate increased
- The lender failed to properly consider your existing debts
- The lender unreasonably over-estimated the rental income returns from an investment property that you were planning to buy with the loan
- Your ability to repay the loan was reliant on rising house price

What should a borrower do if they cannot repay their Mortgage?

If you make mortgage repayments by direct debit, but there is not enough money in your account, the direct debit will be rejected and you are likely to be charged fees on your account and your mortgage by the lender.

If you cannot make a loan repayment you should:

- Contact your lender and negotiate a variation to arrange a direct debit amount you can afford
- Cancel the direct debit and make repayments using another method such as Bpay or direct credit

When is a borrower eligible for a 'hardship variation'?

If you are struggling to meet repayments you may be able to apply for a hardship variation.

Under the National Credit Code, if you have 'reasonable cause' for being unable to meet your repayments, you can ask the lender to change the loan contract to change your repayments.

Examples of 'reasonable cause' include illness or unemployment.

What can a borrower ask for in a 'hardship variation'?

A borrower can ask for any change that will make the loan repayments more affordable or to give time to sell the home, such as:

- Extend the loan period, to make smaller repayments over a longer period
- Postpone loan repayments for an agreed period
- Extend the loan period and postpone the repayments for an agreed period
- Postpone payments while selling the house

When can a 'hardship variation' request be unsuccessful?

If a lender rejects the hardship variation, they must provide reasons. If you are not satisfied with the lender's response you can ask to speak to the internal dispute resolution section.

If you are not satisfied with the internal decision, the next step to take is to apply to the Australian Financial Complaints Authority (AFCA) for a review of that decision.

AFCA is the free and independent External Dispute Resolution (EDR) scheme for financial service providers, borrowers and consumers.

T: 1800 931 678

What can a lender do if you miss a mortgage repayment?

The lender can take the necessary steps towards taking possession of your home if you fail to remedy a missed mortgage repayment within the period of which the lender notifies you.

The sooner you act the more likely a repayment arrangement can be negotiated.

Where to Access More Information or Assistance

If you believe you have been given an irresponsible loan, or are struggling to make mortgage repayment or need general financial advice, you can contact one of the following services for guidance:

Financial Counselling Australia Helpline

T: 1800 007 007

Financial Information Services

T: 132 300 (ask for Financial Services)

W: www.humanservices.gov.au/customer/services/financial-information-service

National Information Centre on Retirement Investments

T: 1300 636 878

Pension Loan Scheme (Available through Centrelink)

W: www.humanservices.gov.au/customer/services/centrelink/pension-loans-scheme

Moneysmart

W: www.moneysmart.gov.au

No Interest Loan Scheme (NILS) (Accessed through Good Shepherd)

T: 13 64 57

W: www.nils.com.au

Personal Loans to an Individual

Before you give money to a family member or friend, it is important you know the risks involved.

What is the difference between a Loan and a 'Gift'?

The distinction between a 'loan or a gift' is a loan must be repaid whereas a gift does not need to be repaid.

To clarify whether the 'type' of money you are giving is a loan or a gift:

- It is vital that you put your intentions (loan or gift) in writing

- A written agreement should be signed by all parties
- Failure to do so could result in the financial assistance being classified as a gift and 'gifted money' can be the source of conflict, especially where relationship break-ups or deceased estates are concerned
- The recipient of a loan of money may claim the money was a gift rather than a loan and may refuse to repay the money

What should be put in writing to distinguish lending as a loan or a 'gift'?

The following information and distinctions should, at a minimum, be put in writing and signed by all parties to the loan:

- The background and intention of the loan
- The amount of the loan
- Schedule of interest payments if applicable
- Schedule of regular loan repayments if applicable
- The period of the loan and consequences if payment is late (i.e. default interest if applicable)
- Clearly state any security for the loan, e.g., a registered mortgage or unregistered mortgage protected by caveat lodged on the title of property owned by the borrower

  Again, any mortgage must be in writing and signed.
- Date when the loan must be repaid and penalties if the repayment is late (if applicable)
- All parties to the loan should be included in the written loan agreement, i.e. borrower and guarantor parties

You should get a lawyer to prepare or review the loan and security documents.

Could the person/s lending money to family or friends be at risk?

You could risk losing your home and savings by assisting your family financially if you:

- Guarantee a loan taken out by your family member
- Take out a loan in your name, with the intention that your child will pay off the loan
- Transfer the title of your home to your child so they can use the property as security for a loan

In these situations, you will be relying on your family member to be able to pay off the loan. If they do not keep up with the loan repayments or default in some other way, the lender may have the legal right to take the home you own and sell it to pay off the debt. If the value of the home does not cover the loan the lender can also pursue you for any shortfall which could, in turn, jeopardise any other property you may own.

Can I protect my interests when lending money or offering assets as collateral for a loan?

You can register a security interest over non-land assets with the Personal Property Securities Register (PPSR). The security interest needs to be in writing, signed and the required PPSR registrations made within prescribed time periods. Again, you should get your lawyer to prepare and register these interests.

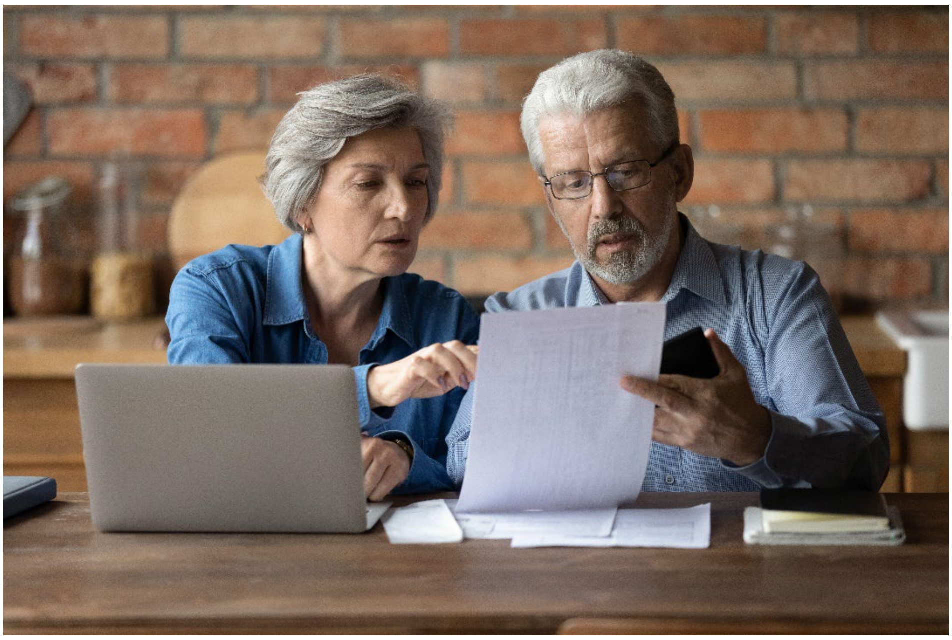
T: 1300 007 777

E: enquiries@ppsr/gov.au

To register go to:

https://www.ppsr.gov.au/registering/create-your-registration/how-register-security-interest-ppsr

For example, if your child's business becomes insolvent and you have a properly prepared, signed and registered security interest, as a secured creditor you have a priority ranking over most unsecured creditors when the assets of the business are sold. By registering a mortgage over the property, you can require the proceeds from the sale of the property to be paid to you, subject to the rights of other secured creditors.



Granny Flats

A granny flat arrangement is one in which a person exchanges assets or money for a right to live on someone else's property, often for as long as they live.

Why do people consider a granny flat arrangement?

People usually go into a granny flat arrangement with the best of intentions, but it is difficult to predict what the future circumstances and consequences will be. Due to the element of trust between family members, granny flat arrangements are often made on an informal basis. However, this can pose the risk of disputes in the future.

If you are transferring your property to your child and/or other person/s or spending a sum of money to build a granny flat on their property, you need to consider what would happen if:

- You have a falling out with the person who owns the property where you build a granny flat
- The property owner gets into financial trouble and the house has to be sold
- The property owner's marriage falls apart, resulting in a property settlement order that requires the property to be sold
- The property owner just decides to sell

All of these possibilities would leave you in a very uncomfortable situation which could even lead to your being left homeless and without any compensation for the money you have spent on the granny flat.

It is recommended that the arrangement be put in writing, paying attention to potential scenarios such as:

- What if we end up not getting along?
- What if my care needs change?
- If I need to go into residential aged care, what will the financial arrangement be?
- Can I ensure that this is the best thing for me now and into the future?
- What if the property owner's marriage or partnership breaks down?
- What if the family or property owner is forced (or chooses) to relocate?
- Will I have my name on the Certificate of Title?

In the documentation of a granny flat agreement, it is recommended that you seek independent legal and financial advice.

Who to contact for Legal Information, Advice or Assistance

To assist in writing the loan agreement and for legal advice contact: Advocare WA provides education, advocacy and information to support the rights of older people in Western Australia. Go to: Your Money, Your Life, Your Choice - Caring for your Assets as you Age: https://www.advocare.org.au/wp-content/uploads/2019/03/39869-Advocare-Assets-Brochure-WEB.pdf A hard copy of this brochure may be obtained by contacting Advocare. T: 08 9479 7566 Country Callers T: 1800 655 566 E: rights@advocare.org.au W: www.advocare.org.au
Australian Taxation Office provides information regarding individual tax concerns. T: 132 861 W: www.ato.gov.au

Centrelink Financial Information Service provides free information to help you understand how any financial decisions you are considering will affect your pension. T: 132 300 W: www.humanservices.gov.au
Financial Counselling Network offers free, independent and confidential financial information, advice, advocacy and referrals to counsellors. W: www.financialcounsellingnetwork.org.au Moneysmart helps you take control of your money and build a better life with free tools, tips and guidance. W: www.moneysmart.gov.au

Department of Communities WA | Housing provides information regarding community and social housing as well as ancillary dwelling (granny flat) requirements. Go to: Ancillary Dwellings – Housing Authority: https://www.housing.wa.gov.au/HousingDocuments/Ancillary_Dwellings_Fact_Sheet.pdf T: 08 9222 4666 Free Call: 1800 0923 325 E: generalenquiries@housing.wa.gov.au
Department Veterans Affairs provides information regarding Veteran benefits and payments. T: 133 254 W: www.dva.gov.au
Law Society of Western Australia is the peak professional association for lawyers in Western Australia. T: 08 9324 8600 W: www.lawsocietywa.asn.au
Consumer Credit Legal Service WA provides free legal advice to WA consumers in the area of banking, finance and related consumer disputes. T: 08 9221 7066 W: https://cclswa.org.au/
Northern Suburbs Community Legal Centre (NSCLC) + Older Peoples Rights Service (OPPRS) provides legal advice, information, referral and crisis counselling for older people in Perth WA metropolitan area who are experiencing elder abuse or at risk of being abused, including financial and property matters. T: 08 9440 1663 Mirrabooka T: 08 9301 4413 Joondalup W: www.nsclegal.org.au
Elder Rights WA (ERWA) provides a holistic legal service for seniors and the aged based in Civil Law Division of Legal Aid WA. T: 1300 650 579 Legal Aid WA Infoline E: elderrightswa@legalaid.wa.gov.au W: https://www.legalaid.wa.gov.au/

Seniors Housing Advisory Centre provides general information about housing options and what to consider.

DMIRS Seniors Housing Guide

Go to: Buying or Building:

https://www.commerce.wa.gov.au/sites/default/files/atoms/files/snrhsgguidebuyingorbuilding.pdf

Go to: Contracts and Family Agreements:

https://www.commerce.wa.gov.au/sites/default/files/atoms/files/snrhsgguidecontractsandagreements.pdf

T: 1300 367 057

T: 1300 304 054 Consumer Protection

E: seniors.housing@dmirs.wa.gov.au

Reverse Mortgages

A reverse mortgage allows you to borrow money using the equity in your home as security for the loan.

Interest is charged but you do not need to make repayments while you live in your home, rather the interest is added to your loan balance. The loan, interest and additional fees must be repaid in full when the home is sold, the owner dies or moves into residential age care.

What is a Reverse Mortgage and are there any risks?

Reverse mortgages are loans often offered to seniors who own their own homes. Seniors can use the equity in their home as security to get access to cash.

This is a trade-off which comes with risks:

- High interest rates
- Expensive fees
- Huge penalties if you cancel the loan
- Compound interest leading to rapidly rising debt
- Impact on pension eligibility; extremely vulnerable to a fall in house prices, as this eats into remaining equity
- Less equity available to cover future expenses
- restrictions on selling, renting, renovations or living arrangements

What can be done as protection against these risks?

Before agreeing to a reverse mortgage, ensure you fully understand the terms and conditions of the loans and the financial and legal consequences. It is important to seek independent financial and legal advice.

Five (5) Questions to ask before negotiating a Reverse Mortgage

1. How much is this loan going to cost me? ASIC's Moneysmart website www.moneysmart.gov.au has a reverse mortgage calculator which can give you an indication of the compounding effect of interest over time.
2. Does the proposed reverse mortgage have a No Negative Equity Guarantee i.e., the loan repayments will not exceed the net sale proceeds of the house. If so, how can that Guarantee be lost?
3. Has the loan been structured so I will always have sufficient funds for future expenses such as medical bills or a deposit for aged care? How could my pension be affected?
4. Have I had all the terms and conditions explained to me clearly and do I understand them?
5. Is a reverse mortgage the best choice for me or are there other options?

For further information regarding negotiating a Reverse Mortgage

Moneysmart helps you take control of your money and build a better life with free tools, tips and guidance.

W: www.moneysmart.gov.au