

# Form 14—Notice after taking possession of mortgaged goods

paragraph 102(1)(c) of the Code  
regulation 88 of the Regulations

.....  
Date

TO: .....  
(name of mortgagor)

.....  
.....  
(address of mortgagor)

FROM: .....  
(name of credit provider)

.....  
(Australian credit licence number)

.....  
(address of credit provider)

.....  
(name, telephone and address)

This information tells you some of your rights and obligations and some of the options open to you.

## Details you should know

Description of the goods: .....

Date the goods were taken: .....

The goods were taken because: .....

.....

The cost of enforcing the mortgage up to the date the goods were taken is \$.....

The cost of the goods remaining in the credit provider's possession is \$....  
.....per.....\*

The credit provider's estimate of the value of the goods is \$.....

## How to get the goods back

**IF YOU WANT THE GOODS BACK YOU MUST DO ONE OF THE THINGS LISTED BELOW AS SOON AS POSSIBLE. IF YOU DO NOT ACT WITHIN 21 DAYS AFTER THE DATE OF THIS NOTICE, THE CREDIT PROVIDER MAY SELL THE GOODS. IT IS ALSO POSSIBLE THAT THE GOODS MIGHT BE SOLD EARLIER IF THE CREDIT PROVIDER GETS A COURT ORDER.**

### Either

You can get the goods back if you pay \$ . . . . . and there is no repetition of the default that caused the goods to be taken. This amount of \$ . . . . . is calculated as follows—

Arrears . . . . . \$ . . . . .  
Enforcement expenses . \$ . . . . .  
**TOTAL** . . . . . \$ . . . . .

### OR

You can pay out the credit contract. If you do this you can get the goods back and you do not have any further obligations.

To give you an idea of what the amount required to pay out the credit contract may be, 2 figures are given below. The first is the amount required to pay out the contract at the date of this notice. The second is the amount required calculated 21 days from that date. Any difference is the result of further payments or charges that fall due between the 2 dates.

- 1 Amount required to pay out  
the credit contract on / / \$
  
- 2 Amount required to pay out  
the credit contract on / / \$

## If you do nothing, you will lose the goods.

### Sale of goods

The law says that the credit provider must get the best price reasonably obtainable for the goods.

If you want to, you can introduce a buyer to the credit provider. This has to be done in writing within 21 days after the date of the notice you receive and

the buyer must be willing to pay the credit provider's estimate of the value of the goods or any greater amount for which the credit provider has obtained a written offer to buy the goods.

The credit provider must offer to sell the goods to the buyer you have introduced.

Your letter introducing the buyer has to reach the credit provider before the goods are sold. If you post the letter, it is best to send it by certified or registered mail then you can check that it was delivered. If you take it to the credit provider's office, you should get an employee to sign and date something to say that your letter has been received. Make sure you keep anything that was signed by the employee.

Once the 21 day period has expired, the credit provider must sell the goods as soon as reasonably practicable unless—

- you and the credit provider agree on some other time for sale; or
- legal proceedings have been taken which prevent the sale.

As mentioned above, the goods must be sold for the best price reasonably obtainable.

## **Finalising the contract**

As soon as the goods are sold, the total amount payable under the contract becomes due. However, the credit provider will have to deduct from what you owe any amount the credit provider gets for the goods less—

- the amount owing under your mortgage (which can not be more than the amount owing under the contract); and
- any amount owing under a prior mortgage of the goods; and
- any amount owing under a subsequent mortgage of the goods which the credit provider knows about; and
- the credit provider's reasonable expenses of enforcing the mortgage.

After the goods are sold, the credit provider must give you a notice setting out certain information including—

- what the sale price was; and
- the net proceeds of the sale after the amounts mentioned above have been deducted; and
- the amount due under the credit contract or the amount of any surplus due to you; and
- details of any further recovery action that might be taken against you under the credit contract if you are the debtor.

## **General**

You should discuss this matter with the credit provider as soon as possible. You should know that after the goods have been sold, you will still have to pay the credit provider any amount still outstanding. You may be able to work

out some alternative arrangement about the contract and mortgage. For example, if you are the debtor, you could ask the credit provider—

- to extend the term of the contract and either reduce the amount of each payment accordingly or defer payments for a specified period; or
- to simply defer payments for a specified period.

The name, telephone number and address of the person to contact is on the front of this form.

If you can not come to a suitable arrangement with the credit provider, contact the AFCA scheme immediately. If you are the debtor and have been **unemployed, sick** or there is **another good reason** why you are having problems with your contract, then your contract may be able to be varied under the law to meet your situation.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING THE AFCA SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT THE AFCA SCHEME.**

**THE AFCA SCHEME IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. THE AFCA SCHEME CAN BE CONTACTED AT [INSERT TELEPHONE NUMBER, EMAIL/WEBSITE AND POSTAL ADDRESS].**

Alternatively, you can seek legal advice, for example from a community legal centre or Legal Aid. There are other people, such as financial counsellors, who may be able to help.

.....

(signature of credit provider or person signing on behalf of credit provider)

.....

(name of person signing)

.....

(position of person signing)

\* *Indicate the daily, monthly or other rate at which enforcement expenses accrue.*