

## Approved form 2002-76

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made under the

**Credit Act 1985**

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## Credit Act 1985—Form 8

(see s 112)

Australian Capital Territory

*Credit Act 1985*

### Notice after taking possession of mortgaged goods

Dated..... 20 .

to: .....  
(name of mortgagor)

.....  
(address of mortgagor)

.....  
.....

from: .....  
(name of mortgagee)

.....  
(address of mortgagee)

.....  
.....

The law says that you must be given this information.

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

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**Details you should know**

Description of the goods .....

Date the goods were taken .....

The goods were taken because .....

.....

As at the date of this notice the cost of enforcing the mortgage (such as the cost of taking the goods) is \$ .....

.....

Your mortgagee’s estimate of the value of the goods is \$.....

**How to get the goods back**

IF YOU WANT THE GOODS IT IS PARTICULARLY IMPORTANT FOR YOU TO DO 1 OF THE THINGS LISTED BELOW AS SOON AS POSSIBLE. IF YOU DO NOT ACT WITHIN 21 DAYS AFTER YOU GET THIS NOTICE, YOUR MORTGAGEE MAY SELL THE GOODS.

**Either**

- \* You can get the goods back if you pay \$..... and fix up any problems that caused the goods to be taken. This amount of \$..... is calculated as follows:

Arrears .....	\$
Enforcement expenses .....	\$ _____
Total.....	\$ _____

**Or**

- \* You can pay the net balance due to the mortgagee worked out to the actual day you pay out your 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 net balance due may be, 2 figures are given below. The first is the net balance due at the date of this notice. The second is the balance calculated 21 days from that date. Any difference is the result of further payments or charges that fall due between the 2 dates.

1. Net balance due on...../...../..... = \$.....
2. Net balance due on...../...../..... = \$.....

- \* If you do nothing, you will lose the goods.

## **Sale of the Goods**

The law says that your mortgagee must get the best price reasonably obtainable for the goods.

If you want to, you can introduce a buyer to your mortgagee. This has to be done in writing and the buyer must be willing to pay the mortgagee's estimate of the value of the goods. Keep a copy of what you write.

Your mortgagee has to accept the buyer's offer, with 1 exception. The exception is where your mortgagee claims to be able to sell the goods for a price higher than the estimate of their value. In this case, the buyer has to be willing to pay this higher price if he or she still wants the goods.

However, if the buyer does not buy the goods at the higher price, the law says the higher price must still be taken off the amount you owe.

Your letter introducing the buyer has to reach your mortgagee 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 your mortgagee's office, you should get an employee to sign and date a receipt for your letter. Make sure you keep the receipt.

## **Finalising the Contract**

No matter how the goods are sold, the money they bring in will be taken off the amount you owe.

If the goods are sold for more than the amount you owe, you get back what is left after—

- \* your mortgagee gets the money owing under your mortgage;
- \* any person holding a prior or subsequent mortgage over the goods gets the money owing under that mortgage; and
- \* all costs of the sale have been paid.

If the sale price of the goods does not cover the full balance on your contract, you have to pay the difference.

## **General**

You should discuss this matter with your mortgagee as soon as possible. You may be able to work out some alternative arrangement about your contract and mortgage. For example, you could ask for your contract to be varied, repayments to be deferred, or action postponed.

The person to contact is .....

(name or title of officer/s)

of.....

(name of mortgagee or agent)

Office address .....

Postal address .....

Telephone no/s: .....

If you cannot come to a suitable arrangement with your mortgagee, contact Consumer Affairs immediately. If you have been **unemployed, sick** or there is another **good reason** why you are having problems with your contract or mortgage, your contract may be able to be varied under the law to meet your situation.

There are other people, such as financial counsellors, who may be able to help.

**IF YOU HAVE ANY DOUBTS OR YOU WANT MORE INFORMATION, CONTACT CONSUMER AFFAIRS OR GET LEGAL ADVICE**

Signature of mortgagee or agent .....

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## Endnotes

- 1 This form was originally in the *Credit Regulations 1985*, schedule 1. Under amendments made by the *Legislation (Consequential Amendments) Act 2001*, the form was omitted from the regulations and became a form approved under the *Credit Act 1985*, section 256 (see amdts 1.966, 1.978 and 1.980).
- 2 This republication includes amendments made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

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