

Debt issues due to natural disaster

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

People can get into debt when their property has been damaged by a natural disaster such as a storm, flood or bushfire.

Watch the video for an overview or read below for more information.

What if my property was used as security for a loan and it has been destroyed?

My destroyed property was used as security for a loan on my home or another property I bought. What happens now?

A property that has been used as security for a loan, acts as a protection for the lender if you miss payments and default on the loan. If the property was damaged, you still need to make regular loan payments.

Usually, the lender must be told as soon as possible about any damage to the property that was being used as security. In most cases, the lender has standard expectations for the property being used as security (e.g. the lender will have required that the property is insured). If the property is damaged or destroyed, the lender will then require that you use any insurance payout to restore the property unless the loan is paid out. Check your mortgage document's terms.

If the destroyed property was not insured for flood and the lender asks you to give more security or to pay the loan out in full or in part, you should get legal advice.

My property was destroyed or damaged during renovations or building and I owe money for completed work done before the disaster. Do I have to pay?

Yes. Your contract with the tradespeople (to do work on the property) remains despite the disaster. If the damaged property is insured, you may be able to claim on your insurance policy. The builder may also be insured for this work so check if their general construction insurance covers the loss. Talk to your builder and ask to see a copy of the contract if yours was destroyed in the disaster.

What if I am having trouble paying my debts because of the disaster?

1. Tell your creditors

Tell your creditors about your situation as soon as possible. A creditor is the person or organisation to whom you owe the money. You can try to change your payment plans with the creditor by asking for more time to make payments or to back pay what you owe by instalments. Tell the creditor what you can afford to pay and how much time you think you need. A financial counsellor can help you with this; please see

below regarding financial counsellors.

2. Apply for a hardship variation

If you have borrowed money you may also apply for a 'hardship variation' to change your contract with the creditor. Under the *National Credit Code contained in the National Consumer Credit Protection Act 2009*, most borrowers are legally entitled to apply for a hardship variation if they entered into a credit contract on or after 1 July 2010. In addition, many lenders are bound by codes of practice, such as the Banking Code of Practice, which set out obligations to help consumers and small businesses in financial difficulties. A hardship variation can give you more time to pay (called 'extending the length of a loan'), reduce your regular payment amount or give you a break from paying anything for a period of time.

If your application for a hardship variation is refused by your lender, you can take your application to your lender's dispute resolution scheme – the [Australian Financial Complaints Authority \(AFCA\)](#). The scheme staff will look at the situation and work with your creditor to try and reach an agreement between you and the creditor.

Contact the AFCA Significant Event Hotline on 1800 337 444 to get help and information on financial and insurance issues experienced because of natural disaster. This service is free to you as a consumer and your lender will be bound by the ombudsman's decision if you choose to accept it.

Once you apply to the ombudsman's office your lender will not be able to start or continue legal proceedings against you while the application is being considered.

For free legal advice on credit and debt, call the Legal Aid Commission of Tasmania on 1300 366 611.

For more information about credit law variations, visit the Australian Securities and Investments Commission website at www.moneysmart.gov.au.

If you have a business debt, you can also try to change your payment plan with your creditor. A financial counsellor or legal service may help you do this. Small businesses can also access the [Australian Financial Complaints Authority](#) about unfair decisions their lender makes.

3. Get help from a financial counsellor

[Financial counsellors](#) offer free independent assistance about credit and debt. This sort of counselling is not the same as grief and trauma counselling, which may also help.

Financial counsellors can help you to access financial hardship programs with your service providers and with lenders, to give you time to get back on track with your bills.

Financial counsellors can help you:

- understand your financial rights and responsibilities
- understand debts and debt recovery processes
- budget and manage your money
- voice your circumstances to creditors and others
- understand insolvency options.

Rural financial counsellors can help farmers, fishermen and small rural businesses with:

- cash flow budgeting and business planning
- business analysis to determine their current situation and available resources
- identifying available options
- accessing disaster support measures and other forms of financial and professional assistance
- identifying areas of risk in the business.

4. Get help from your bank or creditor

As a result of a natural disaster, creditors should be offering you hardship variations that will reduce your payments while you are cleaning up and getting back on your feet after the natural disaster.

Contact your lender for more information on these options and to see what other help they may offer. Do not just accept the arrangement they offer you if it does not suit your circumstances.

Any hardship variations offered by a lender should be tailored to your specific circumstances. For example, you should not accept a lender's offer to put your payments on hold for three to six months if it is going to take you six months to get back into your home and working full time again.

As a general rule, lenders should not be offering you a refinance, credit increase or extra loan at this time. These increase your debt, and you may have trouble paying back this extra money.

What can the creditor do if I do not pay the money back?

If you don't pay back your debt, the lender can usually charge you a higher interest rate, plus legal and enforcement costs, and take you to court to sue you for the money you owe them.

If you receive a letter of demand from a lender or are served with court documents, get legal help immediately. Contact the Legal Aid Commission of Tasmania on 1300 366 611 for information on the best services to help you.

You will only have a short time to do something before a court order may be made against you requiring you to pay the money you owe, plus interest and court costs.

If the debt is your home loan, a court will usually also order the repossession of your home. You should apply for a hardship variation before a lender takes court action against you. If you have been served with court documents, you may still apply for a hardship variation at court. Contact the Legal Aid Commission of Tasmania or your local community legal centre for help.

How can I find out if a court has made an order against me?

To find out if a court order has been made against you, you can order a free copy of your credit report, which will have this information. Your credit report also has information about your credit history, any requests for loans (including application for mobile phones and utilities) and unpaid debts.

Note: If you request a copy of your credit report, your contact details will then be available to any lender who wants to check your report. To order your free credit report, contact Veda Advantage on 1300 921 621 or visit www.mycreditfile.com.au

Do I have to make mortgage payments if my house was damaged, destroyed or if my situation has changed because of the disaster?

Yes. You still need to pay your mortgage, but there are steps you can take to make this easier. Contact your lender and try to change or stop your payments for a period to allow you to get back on track. A financial counsellor can help you with this. If your lender does not agree, you should apply to your lender's dispute resolution scheme for a hardship variation.

The items I leased were destroyed. Do I have to keep paying the lease?

Yes, but check the lease's terms. You may have to make payments or replace the destroyed item. If you miss payments, you may have to pay extra money or pay out the entire contract. The item may have been insured, so check your contract. A financial counsellor can help you sort this out. If the items were not for your business, you may apply for a hardship variation.

What if I disagree with the amount I owe?

If you disagree with your debt amount, you should make a complaint to the lender's dispute resolution scheme. By doing this, you may be able to stop any legal action starting until the debt is sorted out. If the debt is a credit card, personal loan or home loan, the lender is legally required to provide you with account statements showing the amount owing.

Do I have to pay my debt?

If your only income is from a Centrelink payment, a court will not make you pay your debt from this income. Workcover payments are usually protected too.

Basic household goods, such as your cutlery and children's toys, are protected and cannot be sold by a creditor. If a creditor is threatening to seize goods like this, you should get legal advice immediately.

If you have an old debt, you may not have to pay it. It may be 'statute barred', which means the creditor can no longer legally recover it. A debt will be statute barred if in the last six years, you have not:

- made payments to the debt
- said in writing that you owe the debt
- had any court orders made against you.

You should get legal advice about your debt, even if you do not think it is statute barred.

What are my rights when dealing with a debt collector?

You have a right not to be harassed or bullied when a creditor or debt collector contacts you. There are strict guidelines about debt collector behaviour. Visit the Australian Competition and Consumer Commission website at [www.accc.gov.au \(dealing with debt collectors\)](http://www.accc.gov.au/dealing-with-debt-collectors) for guidelines about what a debt collector can and cannot do when they contact you.

Can I access my superannuation to help pay my debts?

No one can make you access your superannuation as a condition of considering a hardship variation or debt payment plan. You should not access your superannuation if you are likely to go bankrupt – your superannuation is usually protected in bankruptcy, but not if you have accessed it!

You may be able to access your superannuation early if the money is used:

- to stop your lender selling your property
- for medical reasons (or paying expenses related to the medical needs)
- following the death of someone you depended on.

There are other special circumstances for when you will be allowed to access your superannuation early. For more information, contact your superannuation fund.

How do I apply to access my superannuation?

If you are eligible, you will need to apply to get your superannuation early through the Department of Human Services. You can download an application form from their website at:

<http://www.humanservices.gov.au/customer/services/centrelink/early-release-of-superannuation>

There are different forms depending on your reason for wanting to get your superannuation early – make sure you use the correct form. A financial counsellor can help you apply.

If your application is refused, you should contact a financial counsellor.

You may have to pay tax – usually between 20 and 25 percent – on your superannuation if you receive it early. Contact the Australian Taxation Office on 13 28 65 to find out how much tax you may have to pay.

Is bankruptcy a good option for me?

Bankruptcy gives you a legal right to protection from your creditors. When you declare bankruptcy, you hand over control for most of your debts and significant assets to a bankruptcy trustee. Most debts will be cancelled by bankruptcy.

Whether or not you should declare yourself bankrupt is a major decision but can be of great value to a person who is earning a low to medium income and has no or limited assets. If you are considering bankruptcy, you should get advice from a financial counsellor, or contact the Australian Financial Security Authority on 1300 364 785 or at <https://www.afsa.gov.au>

Where can I get more information?

National Debt Helpline

Phone 1800 007 007

<https://ndh.org.au>

Australian Financial Complaints Authority

Freecall 1800 931 678

<https://www.afca.org.au/>

Australian Securities and Investment Commission

Phone 1300 300 630

<https://www.moneysmart.gov.au/>

Australian Competition and Consumer Commission

Phone 1300 302 502

<https://www.accc.gov.au/>

Australian Taxation Office

Phone 132 865

<https://www.ato.gov.au/>

Australian Financial Security Authority

Phone 1300 364 785

<https://www.afsa.gov.au/>

[Did this answer your question?](#)

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.