EDR Response Guide

# Mortgagee sale

This guide has been prepared to assist financial firms in preparing a quality external dispute resolution (EDR) response for complaints about mortgagee in possession sale. This is a **guide only**.

It is important to note the following:

* All issues raised in a complaint should be addressed. If there are multiple issues, please refer to the additional EDR response templates available or consider addressing them in a separate section as it is important that all issues are addressed.
* This is your EDR response. As such it is to be sent to both AFCA and the complainant. It is to the benefit of all parties for the complainant to understand the reason for your position.
* AFCA will generally seek more information if a complaint does not resolve at Registration & Referral. AFCA still expects a response to any subsequent requests for information.

This guide may change over the time to reflect any feedback.

To ensure a comprehensive response for mortgagee sale complaints, an EDR response should the sections outlined below.

## Complaint details

|  |  |
| --- | --- |
| Complaint details | |
| Financial firm name |  |
| Financial firm reference |  |
| Complainant name | [consumer or business name] |
| AFCA reference |  |

## Summary of complaint

Summarise all issues raised by the complainant: [include necessary background information]

If the financial firm has taken steps to attempt to resolve include details: (eg. the financial firm provided a response to the complainant, offering to [ ]. The complainant rejected the offer and said [ ].)

## Financial firm’s position

Outline how you have considered all of the issues raised in the complaint and set out the financial firm’s reasons for its position, noting what information you have considered to reach this view. It is important you consider your obligations and whether you have met them.

You may wish to review the AFCA Approach to Mortgagee Sales document when setting out the financial firm’s position.

A financial firm is required to comply with obligations as mortgagee in possession.

Those obligations include:

* Taking all reasonable care to obtain market value for a mortgaged property.
* An appropriate marketing period for the property, with suitable advertising.
* A sale by public auction, unless it is appropriate for the property to be sold in another way.

In relation to mortgagee in possession complaints, AFCA must be satisfied that the financial firm has established:

* that it has met its obligations as mortgagee in possession when it sold the property
* that the property was sold for market value
* that the property was appropriately marketed.

Preferably, the financial firm should set out its position in a logical narrative format, which steps the customer through the obligations of a mortgagee in possession, and then explains how those obligations were met. An example of this format, with potential headings, is provided below.

## Date the financial firm obtained possession

The financial firm obtained possession on [date].

## The property was marketed for an appropriate period of time

* Outline the length of time the property was advertised or marketed for (the appropriate period being four weeks prior to auction) and the advertising method used.

## The advertising of the property was appropriate

* Explain why the advertising was appropriate (make reference to all advertising campaign materials for the property).
* Explain how the property was advertised in various media over the appropriate four week period.

## The financial firm obtained reliable evidence about the value of the property

* Explain how the financial firm made best efforts to obtain market value.
* Explain if the financial firm obtained at least one independent market valuation.
* Describe the valuation(s) obtained by the financial firm, and the amount for which the property was valued.

## The property went to public auction

* Detail the date and time of the auction.
* Provide details of the auction that took place from the appointed agent’s documentation.
* Explain why selling the property at auction was appropriate in this instance.
* If the property then sold for market value or within market value range, explain how this means the financial firm fulfilled its obligation to obtain market value for the property.
* If the property was passed in at auction, provide details of the bids made, and the outcome of any subsequent negotiations with the final bidder.
* Address any submissions put forward by the complainant about why they consider the property was worth more than what it was sold for.

## If the property did not go to auction

* Provide reasons for why the financial firm chose to sell the property by private sale.

## Jurisdictional issues?

Include the details of any jurisdictional issues the financial firm wishes to raise. Ensure you refer to the AFCA Operational Guidelines and any relevant approach documents.

Full details of the section of the AFCA Rules must be included to ensure that AFCA and the complainant understand the jurisdictional issue(s) being raised.

## Complainant’s position (optional)

[If necessary, outline the complainant’s position on the financial firm’s decision].

## Proposals to resolve the complaint

Set out any action the financial firm is willing to take/accept to resolve the complaint.

[If you require further information before you can offer a resolution, please provide details of what information is required].

## Supporting information

Provide a list of all the supporting information provided. In relation to a complaint about a mortgagee in possession sale, the following information is usually required:

* any court order
* details of any valuations and/or market appraisals obtained by the financial firm prior to sale
* the advertising schedule including when and where the property was advertised
* advertisements in print and on the internet
* marketing information from the appointed agent, including all marketing updates over the advertising period
* information showing the ads were published in accordance with the advertising schedule
* reports on comments from interested parties, and the agent’s suggestions regarding any offers received or opportunities to promote offers
* any correspondence sent to or received from potential purchasers and responses to genuine enquiries
* report on what occurred at the auction
* notes from the auctioneer or agent in relation to the bids made at the auction
* notes from the auctioneer or agent in relations to any subsequent negotiations
* any information relied upon by the financial firm to decide not to go to auction
* if the complainant is disputing costs incurred in the process of mortgagee sale:
* documents recording the expenses incurred by the financial firm over the course of the sale process
* details of the costs passed on to the complainant
* confirm that Reduced Input Tax Credit was taken into account before passing costs on.

If other issues are raised, we offer a range of resources in the member resources section of the Secure Services portal. These include other EDR response guides, specific complaint topic guides and the Complaint Information Documentation guide.