

DEBTS FROM A PREVIOUS TENANCY

A debt from a previous tenancy can be a barrier to being re-housed. You may find out, or be reminded, that you have a debt from a previous tenancy when you apply for re-housing.

Housing ACT cannot refuse to process your application if you have a debt. However, Housing ACT may refuse to offer you a property once your name reaches the top of the waiting list if you owe a debt. Nevertheless, it is worthwhile persisting with the application process. It can be difficult to be re-housed with a debt, but it is possible.

DO YOU ACCEPT THE DEBT?

This is the first thing for you to work out. It is important to get all the details of the debt as you may be able to successfully challenge all or part of it. If you cannot challenge the debt, you may have a legally enforceable obligation to repay any debt that has been properly raised against you.

REPAYING THE DEBT

When you apply to be re-housed and there is a debt from a previous tenancy, there will be some encouragement to repay the debt, often by instalments. But before you enter into any agreement to repay the debt you need to consider whether the debt is in fact recoverable by Housing ACT (eg, can legal proceedings be commenced to force you to repay the debt?).

There are two situations where a debt may not be recoverable by Housing ACT:

1. The debt is 'statute barred'; **or**
2. The debt is part of a bankruptcy.

'Statute barred' debts are not recoverable when two basic conditions have been met. The first is that it must be at least six years since the debt first became due, and the second is that the debt must not have been 'acknowledged' at any time during that six year period.

'Acknowledged' means that you have agreed in writing that the debt exists, or you have started to make repayments. In either case, the six-year limitation period starts to run again.

In practice, Housing ACT may refuse to offer you a property once you get to the top of the waiting list if you have a debt, even if it is statute barred. They may also indicate that acceptance of your application is conditional upon you agreeing to repay the debt. In this case you can ask for Housing ACT to exercise their discretion to waive the debt on the basis of your circumstances, either now and/or at the time the debt was first raised.

If Housing ACT raises a debt against you that is or may be statute barred, particularly if it

is a significant amount, you should seek legal advice before entering any agreement to repay the debt.

Bankruptcy debts are similar to statute-barrred debts — after you have been discharged from bankruptcy the debts do not exist in law. It is important to work out if the debt was included in any bankruptcy. However, if the debt involves fraud it will not be covered by the bankruptcy.

If you think you may have a statute-barrred debt, or one covered by bankruptcy, you should get legal advice before entering into an agreement to repay the debt.

REPAYING A DEBT

If you enter into an instalment agreement with Housing ACT or their debt collection agency, you need to ensure that the amount you agree to repay is affordable for you now and in the future. It is better to negotiate a lower fortnightly repayment figure that you can afford each and every week, than to miss a payment because you are overstretched.



Welfare Rights & Legal Centre
Advice Line
6247 2177

BEING HOUSED DESPITE A DEBT

All decisions made by Housing ACT to house people are governed by the Public Rental Housing Assistance Program ('the Program'). The Program allows for someone to be refused housing on two grounds:

1. If they have a debt (usually from a previous tenancy, but it could also be a bond loan debt); and/or
2. Due to breaches of a previous residential tenancy agreement.

A decision to refuse you housing because of a debt or breach is **not made at the application stage** (when you lodge your application), it is made when your name reaches the top of the waiting list — **the allocation stage**.

The Program contains a discretion requiring Housing ACT to take into account your circumstances when deciding whether or not to re-house you. A decision can be made to house you despite a debt or previous breaches of a residential tenancy agreement. You can improve the chance of a decision in your favour by doing a few things:

- If you accept the debt, arrange to pay it off by instalments and ensure the payments are regular. Even payment of very small instalments on a regular basis will significantly improve your chances of being housed in spite of debt;

- Obtain letters of support showing any housing crisis you might be facing; and
- Maintain regular rent payments in your current accommodation (eg, refuge or other supported accommodation program).

These things help because they show your commitment to being a responsible tenant in any future tenancy, and that you are capable of meeting your current financial obligations. There could be other things that would help depending on your circumstances. The important thing is to provide some evidence that the problems of the old tenancy are not likely to happen in a new tenancy. In some cases, this could mean providing written evidence of supports you will have in place for you new tenancy, such as a community agency support worker, mental health worker, specific family member or financial counsellor.

Even though a debt may be statute barred or form part of a bankruptcy it could still be used to refuse housing — not on the basis of a debt owing, but because it arose as a result of a breach of a residential tenancy agreement, such as a failure to pay rent or failing to leave the property in a reasonable condition.

APPEALING DECISIONS

A decision refusing to allocate you a home is reviewable. You can appeal to Housing ACT's internal Housing Assistance and Tenancy Review Panel (HATRP) and, if that does not succeed, to the Administrative Appeals Tribunal— see **The Appeals Process** (WRLC Fact Sheet 9).

Any review will look at both the debt and how you are able to show that the problems of the old tenancy are unlikely to occur in the new tenancy. Accordingly, if you have failed to make regular payments towards the debt, or have not kept your rent up to date in your current accommodation, you may have less chance of succeeding.

Disclaimer

This fact sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact the Welfare Rights and Legal Centre's advice line on 6247 2177. The Welfare Rights and Legal Centre is entirely independent of Housing ACT. All assistance is free.

April 2008