

Guidelines

Rates—Legal Recovery Process

Objective

The purpose of this Guideline is to assist the ratepayers and staff of the City of Swan by providing information and explanations in regards to the steps the City may undertake under the provisions of the Local Government Act 1995 (the Act) sections 6.56; 6.60; and 6.64 to recover outstanding Rates and Charges as issued on the Annual and/or Interim Rate Notice.

FAQ's

1. What happens if I did not receive any rate notice/s?

Annual rate notices are issued and mailed or emailed by the end of July each year with the due date 35 days from the notice issue date (the due date is usually set to be at the end of August or beginning of September).

It is the ratepayer's responsibility to keep the City up to date with current postal address and/or email address. If the annual rate notice is not received by the end of July or the beginning of August at the latest, ratepayers are required to call the City's Customer Service line **(08 9267 9267)** to request a copy. Any change of postal and/or email address must be advised in writing.

Not receiving the rate notice does not negate a ratepayers' obligation to pay the full amount or first instalment by the due date.

Section 6.41 of the Act states " ...service of the rate notice is deemed to have been effected if delivered to the address shown in the rate record for the owner at the time of delivery".

2. I am having trouble paying my rates - what should I do?

If a ratepayer is unable to pay in full or by four instalments, other payment arrangements are available on request.

The City offers weekly or fortnightly direct debit or a payment plan where ratepayers make regular payments on an agreed schedule. As per the adopted annual budget, penalty interest may be applicable.

For more info please visit www.swan.wa.gov.au/Your-Services/Council-Rates/Pay-your-rates

3. What happens if I don't pay?

The City may proceed with legal recovery as per the steps explained in FAQ 8.

4. I have received a Demand Notice - what should I do?

Contact the City's Rating Services on **08 9267 9160** as soon as possible to discuss your payment options, such as paying in full, starting a direct debit (weekly or fortnightly) or negotiating a sufficient payment plan.

If paying in full please call Rating Services to obtain an up to date balance which includes any penalty interest accrued.

If starting direct debit please call Rating Services to negotiate a satisfactory repayment amount.

If wanting to negotiate a payment plan please call Rating Services to discuss a sufficient repayment amount. Once a payment plan has been approved, a confirmation letter will be sent.

5. Why has legal action commenced?

If rates and charges are not paid by the due date as per the options on the annual rate notice and no alternative payment agreement has been made, the City may start a legal recovery process.

Payment arrangements only exist if a confirmation letter has been issued by the City. Valid payment arrangements are not made without the City's approval, even if part-payment has been made. Making small payments without getting acceptance and confirmation from the City is not considered as an agreed payment arrangement and it will not stop legal proceedings.

6. I have been served with a General Procedure Claim (GPC), what does this mean?

This means that the City of Swan (the Claimant) has lodged a General Procedure Claim (GPC) with the WA Magistrate Court to recover the outstanding debt. A GPC is lodged against the owners/ratepayers (defendants) and will affect each defendant's credit history for the following five (5) years. Commencing legal recovery through the Court will incur additional legal fees that are due and payable by ratepayers as per section 6.56 of the Act.

For detailed information go to FAQ 8; Step 6.

7. Why do I have to pay extra legal fees?

As per section 6.56 of the Act " If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction"

8. What are the Rates Recovery Steps?

NOTE: At any stage of legal recovery, ratepayers are encouraged to call the City's Rating Services on **08 9267 9160** to either pay their outstanding debt in full or negotiate a payment arrangement if unable to pay the full outstanding balance. In addition to the notices sent, the City has introduced sending SMS or email messages to remind ratepayers of the payment due, before the due date for: full payment, final and demand notice. This way of communication may be discontinued at any time if cost exceeds the benefit.

STEP 1 Issue of Annual Rate Notice

The City issues the annual rate notice in July of each financial year. The due date for payment is 35 days from the date of issue, as per section 6.50 of the Act. An instalment option is offered – for rates and charges to be paid in four instalments which are at least two months apart.

Electing to pay by the four instalment plan can attract instalment interest, and instalment administration fees – as per sec 6.45(3) of the Act*.

Penalty interest* on rates, specified area rates and on ESL begins to accrue on amounts which are not paid by the due date.

Penalty interest will be updated annually as per budget adoption. For the 2022/23 financial year Council resolved to charge 5% simple interest on the four-instalment plan and no instalment administration fee. Overdue rates will incur penalty interest of 5% per annum, calculated daily, and overdue Emergency Service Levy will incur penalty interest of 7% per annum calculated daily, as noted on rates notices. (Eligible pensioners and seniors excluded)

STEP 2 Final Reminder Notice Issued

A final notice will be issued to all ratepayers who have not paid in full or paid the first instalment by the due date on the annual rate notice (excluding pensioners or seniors). If you receive a final notice you will have twenty (20) working days from the date of the notice issue date to respond.

STEP 3 Demand Notice Issued

Where rates and charges remain unpaid and no alternative arrangements are negotiated after twenty (20) working days of the issue date of the final notice, the legal recovery process will commence and a demand notice will be issued by the City's debt collection agency (currently CS Legal). This letter is issued at no cost to the City or ratepayer. If you receive a demand notice you will have twenty (20) working days from the date of the notice issue date to respond.

STEP 4 Caveat (section 6.64(3) of the Act)

If a large debt is outstanding, or the balance outstanding has not been fully paid for multiple years, a caveat may be lodged on the ratepayer's Certificate of Title to protect the City's interest. This step can be completed at any point, prior to or during the legal recovery process. Landgate will send a letter to the property owners advising of the caveat lodgement.

'A caveat is a notice at large that is recorded on the **title** of real property to protect the **interest** which the caveator may have on the real property.'

A caveat lodgement will delay refinancing or sale of the property as it acts as a formal notice to the public that there is an interest in the property in question.

STEP 5 Notice issued for Seizure of Rent (section 6.60 of the Act)

Where the property owner of a leased or rented property, on which rates and service charges are outstanding, cannot be located or refuses to settle rates and service charges owed, a notice may be served on the lessee or tenant under the provisions of Section 6.60 of the Act requiring the lessee or tenant to pay to the City the rent due that they would otherwise pay under the lease/tenancy agreement as it becomes due, until the outstanding debt amount shown on the notice has been paid in full.

This recovery action step is separate from, and NOT part of, the legal action which is authorised under section 6.56 of the Act. As per section 6.60 (4) the City may recover the amount of the outstanding debt from the lessee if rent is not paid in accordance with the notice.

STEP 6 General Procedure Claim (GPC) Lodged (section 6.56 of the Act)

If payment in full, or an alternative payment arrangement is not negotiated, the City will instruct its debt recovery agency to proceed with a GPC. A court bailiff or a field agent will make multiple attempts to serve the GPC (WA Magistrate Court's Form 3) to the last known place of residence or business of the ratepayer/s (identified as the defendant on court forms). The GPC is deemed to be served if handed to any person who is believed, on reasonable grounds, to be aged 18 years or over.

Once the GPC has been served, the ratepayer is given 14 days in which to respond. **Legal action cannot proceed past the GPC being issued at Court until it has been served and the City may need to request a substitute service, which attracts additional legal fees.**

This step of legal recovery will incur legal fees that are due and payable by ratepayers as per section 6.56 of the Act. GPC will affect ratepayer's credit file.

STEP 7 Default Judgment (Form 13)

If payment in full is not received or alternative payment arrangement is not negotiated (via an Admission of Claim), an application for a default judgment will be lodged at the WA Magistrates Court. This process allows the City to proceed with Steps 8-9 Property Seizure Sale Order (on goods or land).

This step of legal recovery will incur additional legal fees that are due and payable by ratepayers as per section 6.56 of the Act.

STEP 8 Property Seizure and Sale Order (PSSO) – on Goods

If payment in full is not received or a formal payment arrangement is not negotiated, the City will proceed with further legal recovery (the enforcement of the GPC) with the issue of a Property Seizure Sale Order – on Goods in the first instance. This means the court bailiff will attend the defendant's residence to seize any goods to the value of the outstanding debt. This action may be repeated until the goods to the required value are seized or until it is established that there are no valuable goods in the freehold ownership of the defendant.

This step of legal recovery will incur additional legal fees that are due and payable by ratepayers as per section 6.56 of the Act.

STEP 9 Property Seizure and Sale Order (PSSO) – on Land

If the PSSO on Goods is returned to Court due to no goods to the value of outstanding debt to seize, and payment in full has not been received, the bailiff will recommend that the PSSO should proceed over the land. As per the City's Debt Collection Policy, to proceed with this step Council's approval is required.

Assuming Council's approval is received, the bailiff will then take steps to calculate the defendant's equity in the land, a "saleable equity" is required before a PSSO on land can proceed. The bailiff obtains a fresh title search at Landgate. If payment from the defendant is still not forthcoming, the bailiff will register the PSSO on the ratepayer's Certificate of Title. The bailiff writes to the defendant (ratepayer) to advise that the property could be sold by public auction. If the ratepayer wants to finally make a payment plan to clear the debt, the bailiff will direct that request to the City's Rating Services. If the PSSO on land proceeds, an auction date will be set by the bailiff and the property details will be included in a for auction advertisement in the newspaper.

STEP 10 Sale of Land – rates overdue for 3 years or more (section 6.64)

This step of legal recovery will incur additional legal fees that are due and payable by ratepayers as per section 6.56 of the Act.

If any amount of rates and charges has been outstanding for at least three (3) years, and legal action authorised under section 6.56 (Steps 6 – 9) has been unsuccessful, approval to sell land will be sought by way of a report to Council as per section 6.64 of the Act.

Once Council's approval to sell land is obtained, the City will authorise its solicitor or debt collection agency to initiate the various steps of the sale process – which are detailed in full in the Local Government Operational Guideline 22. A letter will first be sent to the ratepayer/s at their last known address, advising of the City's intention to sell the land by auction. The debt can be paid in full to stop the sale, at any point of this step and even on the day of an auction, although further fees may apply e.g.: a cancelled auction fee.

NOTE: one of the reasons why rates can fall into arrears for 3 full years or more may be that the ratepayer/s current whereabouts are not known. This does not prevent action authorised by sections 6.64 from proceeding.

9. Why is my tenant required to pay rent to the City? (Section 6.60)

Where the property owner of a leased or rented property on which rates and service charges are outstanding cannot be located or refuses to settle rates and service charges owed, a notice may be served on the lessee or tenant, as per section 6.60 of the Act.

Sections 6.60 and 6.61 of the Act allow the City to issue an order to the tenant of a property on which rates and service charges remain unpaid. This order requires that any amount due under a lease or rental agreement is to be paid to the City rather than the owner.

It is an offence if you do not comply with the order as section 6.60 and section 6.61 of the Act take precedence over the Tenancies Act and the tenant cannot be evicted for complying with the order and paying the rent to the City. Under section 6.60 (4) the City may take legal recovery against the lessee or tenant if the rent is not paid to the City as ordered.

10. What do I need to do to get my credit rating updated?

If a GPC is issued against you, the default is registered by the Magistrates Court. Credit reporting agencies within Australia have the ability to access this information and subsequently record this debt on your credit report, where it appears for a five year period.

The outstanding debt must be paid in full. Only upon payment in full the City will approve the issue of a Notice of Discontinuance (Form 57) or Memorandum of Consent (Form 49). Note: a fee may be payable.