

# Rates – Legal Recovery Process

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## Objective

These guidelines provide information to City of Swan ratepayers and staff about the steps the City may take as per 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.

## FAQs

### 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 the beginning of September).

The ratepayers are responsible for keeping the City up to date with their 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 on **(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 ratepayer's 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 cannot pay in full or in 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 information please visit [www.swan.wa.gov.au/pay-your-rates](http://www.swan.wa.gov.au/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?

Call 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. A confirmation letter will be sent once a payment plan has been approved.

### 5. Why has legal action started?

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. 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. Starting 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 rate 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 to remind ratepayers of the payment due before the due date on the demand notice. This way of communication may be discontinued at any time if the cost exceeds the benefit.



#### Step one: 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 where rates and charges can be paid in four instalments at least two months apart.

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

Penalty interest\* on rates specified area rates and emergency services levy (ESL) begins to accrue on amounts not paid by the due date.

\*Penalty interest will be updated annually as per budget adoption. For the 2024/25 financial year Council resolved to charge 5 per cent simple interest on the four-instalment plan and no instalment administration fee. Overdue rates will incur a penalty interest of 5 per cent per annum, calculated daily, and overdue ESL will incur a penalty interest of 11 per cent per annum calculated daily, as noted on rates notices (eligible pensioners and seniors excluded).



#### Step two: Final reminder notice issued

A final reminder 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 reminder notice, you will have 20 working days from the notice issue date to respond.



#### Step three: Demand notice issued

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



### Step four: 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, before 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 the 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 five: 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. The notice will require the lessee or tenant to pay to the City the rent due that they would otherwise pay under the lease/tenancy agreement 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 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 per the notice.



### Step six: General Procedure Claim (GPC) lodged (section 6.56 of the Act)

If payment in full is not received, 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 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 the ratepayer's credit file.



### Step seven: Default judgment (Form 13)

If payment in full is not received or an 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 eight and nine as detailed below.

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 eight: Property seizure and sale order – on goods

If payment in full is not received, or an alternative 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 (PSSO) – 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 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 nine: Property seizure and sale order – on land

If the PSSO on goods is returned to Court because the defendant does not have goods to the value of outstanding debt, and payment in full has not been received, or an alternative payment arrangement is not negotiated, the bailiff will recommend that the PSSO should proceed over the land. As per the City's Debt Collection Policy, the Council's approval is required to proceed with this step.

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 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 an auction advertisement in the newspaper.



### 10: Sale of land – rates overdue for three or more years (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 have been outstanding for at least three years, and the 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 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.