

Lovens tittel:

**Lov om frivillig og tvungen gjeldsordning for
privatpersoner (gjeldsordningsloven)**

Lovhjemmelens dato og nummer:

Lov av 17. juli 1992 nr. 99

Lovens fulle tittel og evt. korttittel på engelsk:

**Act No. 99 of 17 July 1992 relating to voluntary and
compulsory debt settlement for private individuals**

The Debt Settlement Act

Opplysninger om når loven sist ble endret:

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Oversatt av Peter Bilton

ACT

no. 99 of 17 July 1992

**RELATING TO VOLUNTARY AND COMPULSORY
DEBT SETTLEMENT FOR PRIVATE INDIVIDUALS
(THE DEBT SETTLEMENT ACT)**

Act relating to voluntary and compulsory debt settlement for private individuals (the Debt Settlement Act)

Chapter 1 General provisions

§ 1-1 Purpose

The Act is intended to give persons with serious debt problems an opportunity to regain control of their financial affairs. It provides for conditions in which debtors with such problems can, after applying for debt settlement proceedings, obtain a debt settlement, either by agreement with the creditors (voluntary debt settlement) or by confirmation by the court of enforcement (compulsory debt settlement). The Act is intended to ensure that the debtor fulfils his obligations as far as possible, and that the distribution of the debtor's assets among the creditors is well ordered.

§ 1-2 Scope. Relation to debt settlement proceedings and bankruptcy

The Act applies to natural persons. The Act does not apply to debtors with debts related to their own business, unless:

- (a) the business has ceased, and no unsettled questions remain relating to it that might significantly impede the implementation of debt settlement proceedings, or
- (b) the debt relating to the business is a relatively insignificant part of the debtor's total debt.

Debt settlement proceedings can not be instituted if the debtor's estate is subject to proceedings according to the Insolvency Act. The institution of debt settlement proceedings is no obstacle to the institution of bankruptcy proceedings in respect of the debtor's estate. If bankruptcy proceedings are instituted, the debt settlement proceedings shall cease.

§ 1-3 Conditions for debt settlement proceedings and debt settlements

Only debtors who are permanently incapable of meeting their obligations can obtain debt settlements according to the present Act. A person can only obtain a debt settlement once.

A debtor can not obtain a debt settlement according to the present Act if it would be offensive to other debtors or to society in general.

Debt settlement proceedings can not be instituted according to the present Act before the debtor has to the best of his ability sought on his own to arrive at a debt settlement with his creditors.

Chapter 2 Application and preparation

§ 2-1 Application for debt settlement proceedings

An application for debt settlement proceedings is submitted to the enforcement officer at the place where the debtor lives.

The application shall contain information on the debtor's income, assets, debt, living expenses and other factors that may have a bearing on the case. The same information shall be given in respect of the applicant's spouse or cohabitant. The application shall be made on a form issued by the Ministry.

The debtor shall issue a written declaration permitting the enforcement authorities to obtain information as mentioned in the second paragraph irrespective of the obligation of secrecy of those who have such information concerning the debtor.

Two or more persons who live together and maintain a joint household can apply to institute debt settlement proceedings together if they are largely mutually responsible for each other's debt.

§ 2-2 Advisory duty of the enforcement officer

The enforcement officer shall see that the debtor receives the advice he needs to be able to carry out debt settlement proceedings, prepare a debt settlement proposal within the limits of the law, and in the event request a compulsory debt settlement.

§ 2-3 Duty of the enforcement officer to investigate

The enforcement officer shall ensure that the necessary facts in the case are brought out.

The enforcement officer shall check that the application contains the information required according to the second paragraph of § 2-1, and can require the applicant to document the information.

The enforcement officer shall obtain information on registered charges on the debtor's assets.

The enforcement officer can obtain information from third parties. § 7-12 of the Enforcement of Claims Act applies correspondingly.

§ 2-4 Assistant

To give the debtor advice as mentioned in § 2-2 and otherwise assist the enforcement officer, the enforcement officer can appoint an assistant in accordance with Regulations issued by the King. The rates of the assistant's pay for the work and refunded expenses are fixed by the enforcement officer in accordance with the Regulations.

§ 2-5 Sale and valuation of the debtor's assets

If the enforcement officer finds it evident that in a debt settlement the debtor will be obliged to sell his dwelling or other assets, cf. §§ 4-4 to 4-6, and moreover that the sale should take place before debt settlement proceedings are instituted, the enforcement officer shall so decide. The sale shall be carried out according to the rules in § 4-6.

If the enforcement officer finds it necessary in order to ensure that the debt settlement proceedings can be completed in three months, he shall before debt settlement proceedings are instituted see to the valuation of the assets according to § 4-7.

§ 2-6 Authority of the enforcement officer to refuse applications

The enforcement officer shall refuse applications for debt settlement proceedings if:

- (a) the conditions for debt settlement according to §§ 1-2 and 1-3 have clearly not been met,
- (b) the debtor is not doing his best to help to shed light on the case, or
- (c) the debtor fails within a reasonable time to sell or cooperate in the sale of assets which the enforcement officer in accordance with the first paragraph of § 2-5 has ordered the debtor to sell before debt settlement proceedings are instituted.

§ 2-7 Submission of the case to the court of enforcement

When the case has been sufficiently elucidated and prepared, so that debt settlement proceedings can be concluded within three months, the enforcement officer submits the case to the court of enforcement, which decides whether debt settlement proceedings shall be instituted.

Chapter 3 Institution of debt settlement proceedings

§ 3-1 Institution of debt settlement proceedings by the court of enforcement

If the conditions in §§ 1-2 and 1-3 have been met, and the application satisfies the requirements in § 2-1, the court of enforcement shall institute debt settlement proceedings.

The court of enforcement can stipulate as a condition for instituting debt settlement proceedings that the sale or valuation of assets has been carried out. The court of enforcement can also lay down other conditions. If so, the enforcement officer submits the case again when the conditions have been met.

The decision whether to institute debt settlement proceedings is given in a ruling. A ruling instituting debt settlement proceedings can not be appealed.

§ 3-2 Invitation to present claims etc.

As soon as debt settlement proceedings have been instituted, this shall be announced in the Norwegian Gazette and, if necessary, in a newspaper generally read locally, with an invitation to anyone with a claim on the debtor to present his claim to the enforcement officer within three weeks of the announcement. The enforcement officer can for special reasons set a longer time-limit, but no more than six weeks.

The enforcement officer shall notify known creditors of the opening of debt-settlement proceedings by sending them copies of the announcement. They shall at the same time be informed of what claim the debtor has stated that they have. Mortgagees can at the same time be given the information mentioned in the third paragraph of § 4-6.

If taxes or duties are owing, the revenue authorities shall within six weeks of the announcement communicate any decision they may have taken concerning reduction, respite, remission or the like.

§ 3-3 Securing of the debtor's assets and deductions from wages

If the debtor has assets which according to § 4-6 are to be used to meet creditors' claims, the enforcement officer shall secure such assets for the creditors. This shall be done according to the rules in § 7-20 of the Enforcement of Claims Act, and has the same effect as attachment on the debtor's right to dispose of the assets and in relation to third parties.

The enforcement officer shall decide on deductions from wages and other performance as mentioned in § 2-7 of the Creditors Security Act according to §§ 7-21 to 7-24 of the Enforcement of Claims Act.

§ 3-4 Respite during debt settlement proceedings

The institution of debt settlement proceedings entails that, for a debt settlement proceedings period of three months from the date of the institution, the debtor is allowed respite, which means that creditors can neither:

- (a) demand nor receive payment in full or in part or other

- settlement of their claims,
- (b) set off claims, unless the primary claim and the cross-claim arise in the same legal relationship,
 - (c) invoke any due date clauses in the relationship arising from respite granted according to this Section,
 - (d) subject to attachment or carry out a forced sale of the debtor's assets, nor
 - (e) alleging previous non-payment, refuse to deliver for cash payment or sufficient security goods or services necessary for the debtor's and his household's sustenance. Interest accrues during the period but does not fall due.

The respite applies to all obligations, except payments for future performances which the debtor is entitled to receive according to §§ 4-3 to 4-5, and which the debtor has incurred up to the date when the court of enforcement instituted debt settlement proceedings.

Respite does not comprise maintenance obligations imposed according to the legislation governing marriage or the Children Act. The maintenance enforcement officer's claims on the debtor are comprised in the respite.

Any deductions from wages according to the Creditors Security Act cease to apply. This does not apply to deductions to meet tax and duty claims and maintenance obligations as mentioned in litra c and d of § 4-8.

§ 3-5 Duties of the debtor during the period of debt settlement proceedings

During the period of debt settlement proceedings, the debtor is obliged:

- (a) to set aside pay and other income in excess of what the debtor needs for the necessary maintenance of himself and his household,
- (b) to terminate rental agreements and other agreements on future performance which do not relate to goods and services necessary for the maintenance of the debtor or his household,
- (c) not to sell or mortgage property or assets which can be used to meet creditors' claims without the consent of the enforcement officer, and
- (d) not to incur new debts except with the creditors' consent, or carry out other transactions that may be contrary to the creditors' interests.

Chapter 4 Voluntary debt settlement

§ 4-1 Debt settlement scheme

The debtor or whoever is assisting him shall as soon as possible after the expiry of the time-limit for the presentation of claims by creditors prepare a scheme for a voluntary debt settlement.

The scheme shall be submitted to the enforcement officer, who shall see that it is not contrary to §§ 4-2 to 4-9.

§ 4-2 What a voluntary debt settlement can consist of

The scheme can entail respite for all or part of the debt, waivers by creditors of their claims to all or some of the interest and costs, or cancellation in full or in part of the debt either at once or at the end of the debt settlement period.

The debt settlement period shall in such cases normally be five years.

The scheme can consist of a combination of the solutions mentioned in the first paragraph.

The scheme shall be based on a realistic assessment of the debtor's ability to pay.

§ 4-3 How much of his income the debtor can retain

The debtor is entitled to retain enough of his income to meet reasonable expenses incurred in maintaining himself and his household. The assessment shall be based on the net wages remaining after such deductions as are to continue.

§ 4-4 Obligation of the debtor to sell his dwelling

The debtor is obliged to sell his dwelling if its sale provides the best settlement for the creditors and it exceeds the reasonable needs of the debtor and his household. The assessment shall be based on the market value of the dwelling, cf. the first paragraph of § 4-7, and the cost to the debtor of providing another dwelling for himself and his household which meets reasonable requirements as to its location, size, price and other factors.

§ 4-5 Right of the debtor to keep personal property etc.

In accordance with § 2-3 of the Creditors Security Act, the debtor is entitled to keep:

- (a) clothes and other items for the personal use of the debtor or his household, and furniture, equipment and similar moveable property which the debtor needs in his home, all insofar as the value of the items is no greater than to make it reasonable under the circumstances for the debtor to keep them,
- (b) tools, means of transport and similar aids which the debtor or any member of his household needs in his job or education, but not exceeding in total value an amount corresponding to two-thirds of the basic National Insurance amount,
- (c) things of special personal value to the debtor or a member of his household, provided their value is no greater than to make it clearly unreasonable not to allow

the debtor to keep them.

If the debtor or any member of his household suffers from an illness or is disabled, reasonable regard shall be had to such circumstances.

Where the right to keep an item depends on what other things the debtor owns, property shall also be taken into account that belongs to the debtor's spouse or to children supported by the debtor or his spouse, provided the things can be made use of by the debtor or in his household.

In other respects, §§ 2-4 and 2-5 of the Creditors Security Act apply correspondingly.

§ 2-6 of the Creditors Security Act applies correspondingly insofar as claims mentioned there obtain more favourable settlements than other claims according to litra g of § 4-8 of the present Act.

§ 4-6 Sale of property

Property which the debtor is not entitled to keep according to §§ 4-4 and 4-5 shall be sold in whatever manner secures the most favourable settlement for the creditors. The enforcement officer decides how sales shall be made. The debtor is obliged to see to sales himself if the enforcement officer so decides.

If mortgage charges on the property or other restrictions on the rights to it prevent its voluntary sale, it shall be sold or realised in other ways according to the rules governing compulsory settlement in the Enforcement of Claims Act. The holder of a seller's lien in property which the debtor is not entitled to keep is obliged to take the item back according to the rules in Chapter 9 of the Enforcement of Claims Act if he is not himself entitled to request compulsory settlement in other ways.

The enforcement officer can inform the mortgagees that an asset will be sold by voluntary sale with the effect that unsatisfied mortgage charges will be annulled if no mortgagee objects within a time limit of at least one week set by the enforcement officer. When the sale has been made, the court of enforcement issues a ruling as to which mortgage charges are annulled as unsatisfied.

§ 4-7 Valuation of property to be kept

If the debtor is to keep a dwelling he owns, its market value shall be determined by the enforcement officer with the help of two court invigilators with expert knowledge qualifying them to assist in the valuation, appointed by the enforcement officer. If the debtor is to keep other mortgaged property, and it is necessary in order to determine how far the mortgage charges exceed the market value of the property, the enforcement officer shall assess their value. The enforcement officer can appoint one or two court invigilators with expert knowledge to take part in the valuation if this is found necessary.

Otherwise the second and third paragraphs of § 9-7 of the Enforcement of Claims Act apply correspondingly to how the valuation is conducted.

The first, second and fourth paragraphs of § 9-12 of the

Enforcement of Claims Act apply to the right to challenge the valuation. Valuation by the court of enforcement can only be challenged in respect of procedure or the application of the law.

§ 4-8 Distribution among creditors

The debt settlement shall comprise all the debtor's obligations which are not payments for future performances which the debtor is entitled to receive according to §§ 4-3 to 4-5. The funds available for distribution among the creditors shall be divided in proportion to the amounts of their debts, with the following exceptions:

- (a) Claims secured by mortgages in housing
If the debtor is to keep a dwelling he owns, claims secured by mortgages in the dwelling within its market value plus 10 per cent shall be credited with interest at an agreed rate in the debt settlement. Instalments shall not be paid during the debt settlement period, but the principal shall subsist.
Other claims secured by mortgages in the dwelling shall be settled on a par with claims not secured by mortgages. The claims are annulled when the debtor has fulfilled his obligations according to the debt settlement.
- (b) Other claims secured by mortgages
Other claims secured by mortgages within the value of the mortgaged item shall be serviced with agreed interest and instalments. Claims with mortgages not covered by the market value of the mortgaged item shall be dealt with on a par with claims not secured by mortgages.
- (c) Tax and duty claims
Tax and duty claims shall be dealt with as laid down in Regulations issued by the King.
- (d) Maintenance obligations imposed on the debtor according to the legislation governing marriage or according to the Children Act shall be met in full, except for debt to the maintenance enforcement officer, which shall be treated like other debt.
- (e) Smaller claims
Smaller claims can be met in full when this is indicated out of regard for the reasonable implementation of the debt settlement.
- (f) Interest and costs
Interest charges and costs can be met less fully than other claims when this does not have an especially unreasonable effect on particular creditors.
- (g) Nature of the claim
A claim can be met more fully than other claims if there are strong reasons for doing so.

§ 4-9 Disputed claims

If a claim is disputed, funds shall be set aside to meet it. If no legal steps have been taken to prove the claim within six months of the acceptance of the debt settlement, the amount shall be divided among the other creditors.

§ 4-10 Verbal proceedings

If the enforcement officer on his own initiative or at the request of a creditor finds it necessary, he calls a meeting between the debtor and the creditors.

§ 4-11 Acceptance of a voluntary debt settlement

The enforcement officer sends the debtor's scheme for a debt settlement to all known creditors concerned. The creditors should be given a time limit of three weeks within which to consider the scheme. It shall be stated that creditors who have not dissented from the scheme when the time limit expires will be regarded as having assented to it.

A creditor shall not dissent from a debt settlement scheme without reason. A creditor who dissents from the scheme shall state his reason.

A debt settlement scheme is accepted when it has been passed by all the creditors concerned. A creditor who has been notified according to the first paragraph and who has not dissented from the scheme by the deadline is regarded as having assented to it.

Chapter 5 Compulsory debt settlement

§ 5-1 Petition for compulsory debt settlement

If the debtor and the creditors fail to agree on a voluntary debt settlement, the debtor can petition for a compulsory debt settlement. The petition shall be accompanied by a scheme for a compulsory debt settlement which is in accordance with § 5-2.

A petition for a compulsory debt settlement must reach the enforcement officer before the end of the period of debt settlement proceedings. The enforcement officer shall promptly forward the case to the court of enforcement.

When compulsory debt settlement has been petitioned for within the time limit, the period of debt settlement proceedings is extended by a month. For exceptional reasons, the court of enforcement can decide before the end of the period to extend it still further.

§ 5-2 Special rules concerning the contents of a compulsory debt settlement

A compulsory debt settlement must satisfy §§ 4-2 to 4-9. A debt settlement period shall be five years. A different period can be decided on for exceptional reasons.

A compulsory debt settlement shall entail that a debtor who has satisfied the debt settlement conditions shall at the end of the debt settlement period be released from other debts covered by the debt settlement than the debts mentioned in the first paragraph of litra a and the first paragraph of litra b of § 4-8.

§ 5-3 Procedure of the court of enforcement

The court of enforcement shall without delay provisionally try the debtor's compulsory debt settlement scheme. If according to § 5-4 the court must refuse confirmation, the debtor shall be given a brief time limit within which to change the scheme or to comment on the question. The debtor shall be informed that he has the right to comment on the question verbally. If the difficulty has not been resolved within the time limit, the petition for compulsory debt settlement can be refused.

If the petition is not refused according to the first paragraph, the debtor and all known creditors concerned shall be summoned to oral proceedings concerning the debtor's scheme. The scheme shall be enclosed with the summons. In the summons, the creditors shall be given a time limit within which to submit written statements on the scheme prior to the proceedings. Unless a statement shows that the court of enforcement must refuse confirmation on its own initiative, it shall only be taken into consideration provided it reached the court within the time limit and the creditor at the same time sent a copy to the debtor.

At the court sitting, the debtor can change the scheme if that is necessary to remove an obstacle to confirmation. Creditors to whom the change is unfavourable shall be allowed to comment on it. The court of enforcement can if necessary extend the period of debt settlement negotiations.

§ 5-4 Confirmation by the court of enforcement

The court of enforcement shall confirm the debtor's scheme for a compulsory debt settlement if the conditions in § 1-2 and the first and second paragraphs of § 1-3 have been satisfied and the scheme satisfies § 5-2. The court of enforcement shall, however, refuse confirmation if:

- (a) it would seem offensive to confirm the debt settlement proposed by the debtor,
- (b) a procedural error has been committed which has not been rectified and which has been of obvious significance in the formulation of the debtor's scheme, or
- (c) so many of the claims are disputed, that there is no basis for considering the debtor's scheme. The decision of the court of enforcement is given in a ruling. The ruling shall be served on the debtor and made known to the other parties to the case in whatever way the court of enforcement finds appropriate. A ruling refusing confirmation can only be appealed by the debtor.

Chapter 6 Changing a debt settlement**§ 6-1 Changes in a debt settlement**

The debtor can apply to the court of enforcement to have a debt settlement changed if in the debt settlement period circumstances have arisen which he could not have been expected to foresee, or if there are other special circumstances which reduce the debtor's ability to meet the conditions of the debt settlement.

At the request of a creditor whose claim is comprised in the debt settlement, the court of enforcement can cancel a debt settlement if the debtor has been guilty of dishonesty or has seriously neglected his obligations according to the settlement.

The court of enforcement can also at the request of a creditor reverse a debt settlement if in the course of the debt settlement period there is a significant improvement in the debtor's financial position. If in the debt settlement period the debtor receives a large sum which was not taken into account in the debt settlement, it can be distributed among the creditors without any further change in the debt settlement.

If within five years of the end of the debt settlement period the debtor receives a considerable inheritance, prize or the like, the court of enforcement can at the request of a creditor set the debt settlement aside in whole or in part to the extent indicated by the debtor's financial position and by regard for the creditor.

The provisions in this Section apply to both voluntary and compulsory debt settlements.

§ 6-2 Court sitting on changes in a debt settlement

Before the court of enforcement tries a request according to § 6-1, the debtor and the creditors concerned shall be given an opportunity to comment. If the debtor or one of the creditors so demands or if the court of enforcement finds it necessary, a court sitting shall be summoned.

Chapter 7 Various provisions

§ 7-1 Registration of debt settlements etc.

The institution of debt settlement proceedings shall be registered in the Register of Mortgaged Movable Property. Voluntary and compulsory debt settlements shall also be so registered. The registration of the institution of debt settlement proceedings shall be struck out either on the registration of a debt settlement or when the period of debt settlement proceedings expires without a debt settlement having been arranged. On the expiry of a debt settlement period, the information shall only be used by the enforcement authorities to examine whether the conditions in the second period of the first paragraph of § 1-3 have been satisfied in cases according to the Act.

If under the terms of a debt settlement the debtor is to keep mortgaged property which is registered in a register of charges, the debt settlement shall be registered there. If the debtor is to keep property which has been pledged, the owner of the pledge shall be notified of the debt settlement.

The enforcement officer carries out registrations and notifications according to this Section.

The King issues Regulations governing the registration of debt settlements or debt settlement proceedings.

§ 7-2 Charges annulled on the completion of debt settlements

When a debt settlement has been completed, mortgage charges as mentioned in the second paragraph of litra a and the second paragraph of litra b of § 4-8 are annulled.

If such charges have been registered in a register of charges, the enforcement officer shall see that the registration is cancelled. If such charges have been secured by pledges, the enforcement officer shall notify the owners of the pledges that the charges have been annulled.

§ 7-3 Distribution of unsecured funds when a debt settlement is not arranged

If a debt settlement is not arranged, the enforcement officer shall distribute the funds deducted according to the second paragraph of § 3-3 proportionately among the creditors, in such a manner however that creditors with prior wage deductions receive payment first, as if debt settlement proceedings had not been instituted.

The securing of assets according to the first paragraph of § 3-3 shall moreover cease to apply. The enforcement officer sees that the measures adopted are discontinued.

§ 7-4 Liability of the debtor for costs

A person who deliberately or through gross negligence initiates a debt settlement case according to the present Act without reason, is obliged to refund the expenses incurred by the authorities and the creditors in connection with the case.

§ 7-5 Relation to the Enforcement of Claims Act

The provisions in Chapters 2, 5 and 6 of the Enforcement

of Claims Act with further references apply as appropriate.

Chapter 8 Entry into force and amendments to other Acts

§ 8-1 Entry into force

The present Act enters into force from such date as the King shall decide. The provisions in the present Act also apply to claims which arose before the Act entered into force.

§ 8-2 Amendments to other Acts

With effect from the entry into force of this Act, the following amendments are made to other Acts:

- 1) In Act no. 5 of 13 August 1915 relating to the Courts of Law, a new second period of the second paragraph of § 110 shall read:
The same applies to court invigilators in cases according to the Debt Settlement Act.
- 2) In the Act of 10 February 1967 relating to Procedure in Administrative Cases, *litra b* of the first paragraph of § 4 shall read:
 - (b) cases dealt with or decided in pursuance of the Acts relating to the administration of justice (the Criminal Procedure Act, the Courts of Justice Act, the Civil Procedure Act, the Enforcement of Claims Act, the Public Survey Valuation Act) or statutes related to those Acts (the Bankruptcy and Composition of Debts Acts, the Probate Act and the Debt Settlement Act) or the Land Consolidation Act or in pursuance of legislation relating to public fees.
- 3) Act no. 86 of 17 December 1982 relating to Court Fees is amended as follows:

A new second paragraph of § 22 shall read:
Nor shall fees be paid for judicial registration, registration or annotation in pursuance of the Debt Settlement Act.

In Chapter 9, a new § 27 b shall read:
For appeals to the court of enforcement in cases according to the Debt Settlement Act the Standard Court Fee shall be paid.

For sales according to the rules in the Enforcement of Claims Act pursuant to § 4-6 of the Debt Settlement Act no fee shall be paid.
- 4) In subsection 98 of § 16-3 of the Act of ... relating to the Enforcement of Claims (the Enforcement of Claims Act), the amendment to the first paragraph of § 4 of the Act of 10 February 1967 relating to Procedure in Administrative Cases (the Public Administration Act) is repealed.