

# REPOSSESSION & EVICTION

**If you fall behind on your mortgage, and you haven't agreed a mutually acceptable repayment arrangement with your mortgage lender, they can apply to the County Court to repossess your property.**

Your mortgage lender can't repossess your home without court permission. To get this, they will have to apply to your local County Court, setting out the reasons why the Judge should allow them to repossess the property.

## THE REPOSSESSION AND EVICTION PROCESS WHEN YOU HAVE A MORTGAGE

### 1. The mortgage lender applies to the County Court for a Possession Order

The court will set a date for the hearing.

### 2. The mortgage lender will write to you

You will be sent a Possession Claim form (Form N5) showing the date and time of the hearing in Court.

The hearing will be between 21 days and 8 weeks from the issue of the Form N5.

The Claim form must be accompanied by a Particulars of Claim (Form N120).

Included in the particulars are:

- Address of property
- Grounds on which the possession is claimed
- Details of the mortgage or charge
- Who lives in the property as far as the lender knows

A Particulars of Claim Form (Form N120) also contains lots of detailed information, including:

- Description of the property to be repossessed
- Grounds on which the possession is claimed
- Details of the mortgage or secured charge
- Who lives in the property, as far as the lender knows
- Current state of the mortgage account
- Any information the lender may know about your situation
- Details of any previous attempts the lender has made to recover the arrears
- A history of the arrears if they're in excess of 2 years

You will also receive a Defence Form for you to complete (Form N11M for Mortgaged Residential Premises or Form N11R for Rented Residential Premises).

You should complete and return the N11M to the Court within 14 days to explain what your circumstances are, why you got into arrears and how you propose to resolve them, including what your offer of repayment is and how long it will take you to clear the arrears.

## WHAT HAPPENS AT THE COURT HEARING?

- You should ALWAYS attend court for a Possession hearing. This is your chance to have your say. If you fail to attend, the Judge will not look on this favourably and is more likely to grant the Possession Order.
- You should present an Income & Expenditure as proof that you can afford to live in the property, pay all the usual household expenses and can afford a payment towards the arrears.
- Arrears should be cleared in the shortest time possible but the repayment offer needs to be sustainable and realistic for you.
- The Judge will consider your evidence and that of the lender and will make a decision.
- If you need further advice at the court, The Housing Possession Court Duty scheme is run in County Courts in England & Wales and provides a specialist adviser on the day of your hearing who can help or represent you.
- The hearing takes place in the local County Court and is held in the Judge's private room.
- The people involved will be you, your representative if you have one (if needed), the lender's solicitor and the Judge. No one else is permitted without your agreement.
- The hearing only lasts a short time, usually no more than 10 minutes.
- The Judge will have pre-read the paperwork and expects the lender's solicitor to be clear about what kind of Order they want and why. If you haven't been able to negotiate an agreement prior to the hearing, it is likely the lender will want a Possession Order.
- The Judge will then listen to you or your representative and you will be able to put forward your arguments against repossession explaining why you shouldn't lose your home, why the repossession should be delayed, how you can afford to pay the mortgage AND a monthly payment towards the arrears or why the case should be postponed to give you more time to prepare.
- Time is given for any issues to be discussed and then a decision is made.

## POSSIBLE OUTCOMES

### Dismiss the case

- This means the Judge will strike out the claim as there is no case to answer – the arrears may have been repaid since the hearing was scheduled.

### Adjourn the case

- This means the case will be heard at a later date as the Court may have asked you and the lender to look at alternatives before coming back to Court.

### Suspended Possession Order

- This means you can stay living in the property providing you continue repaying the mortgage and the mortgage arrears payment in the sum agreed by the Court.
- If you have equity in your property but you don't feel you can afford to remain living in the property, you could ask the Court to allow you permission to sell the property yourself in order to repay the mortgage and arrears. This may mean you get a better price for your home than if it were sold as a repossessed property and you could have a lump sum to either make a fresh start or to help with any unsecured debts that may be outstanding. However, please consider the costs that can be incurred when putting a property on the market and factor these in.

### Repossession Order granted

- This means you will be evicted and the lender will sell your property to repay the mortgage debt.
- You will be given a date to leave the property, normally 28 days from the date the Order was granted – you can ask for this to be increased to 56 days if there are mitigating circumstances, such as a disabled person in the household and you need more time to find somewhere suitable to live.
- The number of days you will be allowed will be included in a Warrant of Possession.

## WHAT IS A WARRANT OF POSSESSION?

The Possession Warrant allows a County Court Enforcement Officer (Bailiff) the power to evict you from your home. They will send you a Form N54 Notice of Eviction.

It also allows you to apply to the Court to postpone the eviction if you can prove you can afford to pay the mortgage and the mortgage arrears.

When the Enforcement Agent turns up at your property, you will be removed from it and the locks will be changed.

## CAN I STOP THE EVICTION FROM HAPPENING?

At any time before the eviction date, you can apply to the County Court to suspend the Warrant of Possession by completing Form N244 to request an emergency hearing.

It will normally only be suspended if you can convince the Judge that you can retrieve the situation.

You need to explain what has changed to allow you now to pay not only the mortgage but also the arrears and you will need to evidence this by completing an Income & Expenditure.

Attach the Income & Expenditure to the N244 and submit this to your County Court. There is a fee to do this, which is currently £50.

The Judge will consider your proposal and if he feels there are grounds to stop the eviction from going ahead and set a hearing date that you would need to attend.

If you are applying for the emergency hearing on the day that you are due to be evicted, we would recommend that you ask the Court officer to inform the Bailiffs office if the suspension has been granted, to prevent them from evicting you whilst you are at Court.

## WHAT ARE ENFORCEMENT AGENTS ALLOWED TO DO WHEN THEY COME TO EVICT YOU?

There are no rules about what time of day they can come to evict you from your property, but it should usually be during normal working hours.

If special arrangements need to be made – for example, if you need help moving out because you have a disability or young children – the enforcement agents should make allowances for this (as long as you let them know in advance of the eviction date).

Enforcement agents are allowed to use reasonable force to enter your home and remove you and anyone else who is living there and after the eviction, they will probably change the locks, and may also arrange to have the gas and electricity supply disconnected.

Your mortgage lender's solicitor or agent will also attend the eviction – the enforcement agents will give them the new keys to the property.

Enforcement agents can ask the police to attend the eviction to avoid any disturbance.

## WHAT HAPPENS AFTER THE REPOSSESSION?

Your mortgage lender will sell your home. You will still be held liable to pay interest on your mortgage until the property is sold.

After the sale, your mortgage lender will keep the money it is owed, and pay any remaining money to you.

If there's a shortfall, you will still owe the outstanding amount to your mortgage lender, but this will now be an unsecured debt.

If you'd like further help, please contact our Advice Team on 0800 917 7819.