

North East Derbyshire Citizens Advice Bureau



Fact Sheet #5: Mortgage / Secured Loan Arrears

Maintaining payments on mortgage accounts will normally be your number one priority expenditure as failure to do so will almost certainly mean your lender will commence legal action to re-possess your home.

For a number of reasons including job loss, relationship breakdown, interest rate rises, **paying other less important debts first**, many people have got behind with their mortgage payments or are struggling in one way or another to maintain them.

This fact sheet has been designed to explain what steps you can take if you are having difficulty in paying your mortgage. This advice covers before and after your lender has commenced court action.

Please Note: Any lender who has secured a loan on your property can use the same procedures outlined below to repossess your home if you fail to maintain payments.

The early stages

If you build up mortgage arrears, your lender can eventually take you to court and you may lose your home. It is therefore important to get advice as soon as you run into difficulties, and keep paying as much as you can towards your mortgage in the meantime.

Contact your lender

Contact your mortgage lender as soon as you know you are having difficulty making payments. Your lender is more likely to be able to help if you contact them early and show that you are taking steps to resolve the problem.

Reducing repayments

There are several ways in which your mortgage payments can be reduced. Your lender may agree to one of the following.

- **Reducing your monthly repayments for a short period**
For example, if you have a repayment mortgage, you may be able to make interest-only payments, or if you have an endowment mortgage, your lender may agree to reduce the amount of interest you pay. This is usually only suitable if your financial problems are temporary, because you will need to make up the payments at a later date.
- **Extending the term of your mortgage**
For example, if you have 10 years left on your mortgage, you could extend it to 15 years. If you have an endowment mortgage, you will also need to extend your endowment policy.
- **Adding the arrears on to your mortgage**
This will allow you to pay them off over the whole term of the mortgage.

All of these options will reduce payments in the short term, but mean that you will pay more in total. Your lender may also charge for making changes to your mortgage (also see HMS below).

Taking out a new mortgage

You could consider taking out a new mortgage, either with the same lender or with a different one. You may be able to get a better deal (for example, a discounted interest rate), and some new mortgages also offer cashback. However, there is often a charge for a re-mortgage. If you have arrears, new lenders may be reluctant to take you on, or may only agree to do so under special terms, such as a higher interest rate.

Mortgage rescue schemes

Some lenders run mortgage rescue schemes to help people in arrears stay in their homes. These schemes are often run in partnership with a council or housing association. They usually work by the council or housing association buying your home, and then renting it to you. The schemes are not available in all areas and may have limited places. Contact your lender to find out if there is a scheme in your area.

Increasing income

There may be ways in which you can increase your income to help you meet mortgage payments. For example, you could let out a room in your home, or there may be benefits that you are entitled to. If you are claiming Income Support, Jobseekers Allowance, or Pension Credit, you can get help with mortgage interest payments in some circumstances. You may also want to see if you can reduce your payments for mortgage protection, payment protection, buildings insurance, or contents insurance. Contact your local Citizens Advice bureau for advice.

Selling the property

Selling your home might be an option if it is too large for your needs or if you live in an expensive area. Selling your home and buying another can be expensive, as there will be costs such as solicitors' fees, stamp duty, and removal expenses. You need to factor these costs in when working out whether it's worth it.

Handing back the keys

If you are thinking about handing back the keys, **get advice first**, because it is not usually a good idea. Even if you hand back the keys, you will still be responsible for paying the mortgage and for insuring the building until your lender sells the property. The lender is unlikely to get as high a price for the property as you would. You could also be found intentionally homeless if you make a homelessness application to the council.

Court Action

This section gives basic advice only, and you should seek further advice. You may be entitled to free legal assistance from a solicitor, depending on your financial circumstances. If so, your solicitor may be able to provide you with initial advice and assistance and then represent you, under the legal aid scheme, in any court proceedings brought by your lender. If you do not qualify for free legal assistance, you may still wish to instruct a solicitor, but you will be charged for their time. Alternatively, you can get advice from a Citizens Advice Bureau or housing aid centre.

How will I know my lender is taking action?

Before your lender starts court action, you will usually have received several letters from them and their solicitors asking you to pay off the arrears or contact the lender to arrange repayment. If you do not address the situation your lender will usually start court action when

you are approximately **three months** in arrears and you would then receive possession papers from the court, giving the date and time of the court hearing along with an NIIM defence form.

Can I prevent my lender going to court?

You may be able to negotiate with your lender to stop them going to court. For example, you could agree a repayment plan where you make your normal mortgage payment plus an amount towards the arrears each month. The earlier you start to negotiate, the more likely you are to be able to stop court action. If you do not have a solicitor, get help with negotiating from a Citizens Advice Bureau or a housing aid centre.

What will happen in court?

It is important to attend the court hearing if you can, as it will give you a chance to state your side of the story, and may mean that you are more likely to be able to stay in your home. If you do not have a solicitor, an adviser from a Citizens Advice Bureau or a housing aid centre may be able to attend court with you.

Some courts have advisers available in court that may be able to help you. This is often known as a duty scheme. Contact your court to find out whether they have a duty scheme. If they do, it's advisable to arrive at least an hour before your hearing so the adviser has time to help you.

In court, both you and your lender will have the opportunity to put your case across. The judge will then make a decision on what should happen next. The most likely possibilities are the following.

- An adjournment: either to give you time to pay off the arrears or for other reasons (for example, if your lender hasn't supplied all the information they

need to provide).

- A suspended possession order: this will usually state that you need to make regular payments towards your mortgage, including an amount towards the arrears. If you don't keep to this order, your lender can apply for a warrant to evict you (if this happens, you can **still** apply to have the eviction suspended via submitting form N244).
- An outright possession order: you will be given a date by which you need to leave your home. If you don't leave, then the lender would **still** have to apply for an eviction warrant so the court bailiffs can evict you.

Enforcement of possession order

If your lender obtains a warrant for eviction you will get a letter from the court bailiffs informing you of the time and date when they will come and evict you. Where an eviction warrant has been obtained the date of the actual eviction is usually around 10 to 14 days later.

If you receive a warrant for eviction for **any reason** including the above you may **still** be able to stop this by completing and submitting form N244 (fee payable, unless exempt by form ex160) to court requesting the eviction be suspended on your proposals / reasons. On receipt of the N244 form the court will grant you a hearing (before the eviction date) also informing your lender.

At the court hearing you will have chance to put forward your case / proposals / circumstances and request that the judge suspend the eviction warrant. If for whatever reason this fails you could ask the court for more time to get re-housed.

Eviction

If all your efforts to stay / remain in your home fail, you will be given an eviction time and date as already explained. This is really the end of the road and unfortunately on the named day the bailiffs will come and evict you forcing their way into your home if necessary (with a police presence if required) securing the property after.

Getting re-housed

If you are faced with eviction with no hope of suspending any warrant you will need to look for alternative accommodation as soon as possible.

Many people believe that their local authority (council) will / must re-house them when evicted or homeless, this is not true in all cases as you may be deemed intentionally homeless or not be classed as top priority.

If you think you are going to face re- possession / eviction or become homeless for **any reason** contact your local housing department immediately and ask what they can do for you with regards to re-housing including a request for a list of local landlords both social and private.

What about costs?

If your lender takes court action against you, then the judge can decide that you will be liable for the costs of the lender taking you to court. These costs will usually be added on to your mortgage. This is why it's important to **get advice** as soon as possible, because if you can prevent the case going to court, you will avoid these costs.

Advice and assistance contacts

If you have problems with mortgage arrears or any housing issues, then **get advice as soon as possible**.

- Community Legal Advice:
Housing and Homelessness
0845 345 4 345
www.communitylegaladvice.org.uk

- Shelter
0808 800 4444
www.shelter.org.uk

- Find your local Citizens Advice Bureau
www.citizensadvice.org.uk

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