https://www.housingrights.org.uk/housing-advice/mortgage-problems/taken-court-your-mortgage-lender

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Taken to court by your mortgage lender

This information is for homeowners in Northern Ireland.

It can be scary to get letters and calls from your lender about money you owe. Even if you're nervous, it's important to respond whenever your lender contacts you. Our advisers can help you go through letters or talk about phone calls from your lender. Our advisers, or a solicitor, can also go to court and speak on your behalf.

There are a few reasons why a mortgage lender can take you to court. Most commonly, it will be to take possession of your home due to mortgage arrears. It's important to understand the court process and your rights.

Repossession action can end in eviction. This is when the court orders you to leave your home.

A repossession action can be a lengthy process. You do not need to leave your home right away. It can take a while, and you may be able to find a way to stay in your home at any stage in the process.

Know your rights before the repossession process

Before the repossession process, your lender must contact you and try to work things out. Court action against you should always be a last resort. They must

show the court what they offered you to try to work things out. They do this in a document called the ‘pre-action protocol’. The offers they make are called ‘forbearance’.

The court will expect you and the lender to talk about:

- the reasons for your missed payments
- your financial circumstances
- ways to repay the debt

The court will also expect that your lender:

- told you to get independent advice
- told you to contact the Housing Executive for information on housing options
- considered your suggestions to repay the debt
- gave you reasonable time to work on a repayment plan

If you and the lender do not reach an agreement, the lender can ask the court to begin the repossession process. You must pay the lender’s court fees if they take you to court. The cost is added to your mortgage account.

If you or the lender is unreasonable, it can affect the court's decision.

Understanding the repossession process

Your lender, or their solicitor, will send you a ‘notice seeking an Order for Possession’ for your home. This is the first step in the repossession process.

After a week or so, you’ll get a further four documents:

1. Summons

The summons will tell you that your lender is taking you to court. In the summons, you are the ‘defendant’, and your lender is the ‘plaintiff’. The summons will tell you that they are seeking an Order for Possession for your home

2. Notice of appearance

A Notice of Appearance is included in the summons. This needs to be completed and returned. It will give the date and time of the hearing.

You can attend the court hearing. It is important that you or a representative attends court.

3. Grounding Affidavit

The Grounding Affidavit has details of your mortgage from the lender. It’s usually a very long document that can be overwhelming. It must contain:

Information about your household, including:

- who lives in your home
- your financial situation, including any benefits you’re getting
- a list of anyone with a registered interest in the home who should be told about the proceedings. For example, a spouse with matrimonial home rights or anyone over 18 living in the home

Information about the mortgage or loan, including:

- details of any payments required as a term of the mortgage
- details of the arrears that made the lender start the repossession process
- the rate(s) of interest when the mortgage, arrears, and proceedings started
- redemption charges if you pay off the loan within 14 days of proceedings starting

If you have a loan secured by the mortgage, the grounding affidavit should say whether the loan is regulated by the Consumer Credit Act. If it is, the grounding affidavit should also include:

- the date of the default notice
- how much is left on the loan

Information about the lender, including:

- any steps taken by the lender to recover the mortgage loan
- what the lender wants the court to do (for example, give possession or pay the full mortgage)

4. Form 10a

Form 10a explains what happens during the court process and how to get help. It will tell you what powers the courts have in possession cases. The judge hearing your case is called a 'Master'. They should explain their powers.

Going to court

Your hearing will take place:

- online or
- in person in the Chancery Division of the Royal Courts of Justice in Belfast

If you have an:

- online hearing, make sure you know how to join online
- in-person hearing, make sure you know how to get there and arrive on time

Hearings are usually held in the judge's private room, known as Chambers. This is a more private setting, not a big courtroom. The judge is called a Master.

Our advisers or a solicitor can help you get ready for the hearing. They can help you to prepare notes of what you want to say to the judge. They can advise you about what documents to bring. This could include pay slips, bank statements, or receipts for lump-sum payments.

Remember, even if you’re going to court, you should try to keep paying your mortgage.

Arrive on time

Make sure to give yourself enough time to get to the court or log on. Your notice will tell you where to go and what time to arrive. Sometimes there’s a queue. Just wait until your case is called.

If you have not had advice from Housing Rights or a solicitor, you can ask if there is help available at the court.

What happens at the hearing

When it’s your turn, you’ll be called into Chambers. You and your lender will both be able to speak. You must give verbal or written permission to have a solicitor or adviser speak for you.

Giving information at the hearing

The lender, or their solicitor, usually goes first. They will explain why they started the repossession process. They will provide proof that you took out a mortgage or secured loan and that you are in arrears.

You or your solicitor can tell the Master why you shouldn’t lose your home, or why it should be delayed. This can include:

- a proposal for how you’ll pay off the debt – it must be one that you can stick to
- how you can make regular repayments to reduce the debt
- how your situation changed, and why you’ll be able to pay soon

Decisions the court can make

Giving more time

The Master can delay a hearing, also called ‘adjourning a case.’ They may set a new date if you:

- have had a change in situation that might help or fix the issue (such as a new job)
- did not have enough time to get advice
- need time to sort out benefits
- were sick and couldn’t get ready for the hearing

The Master will set a new date for another hearing. You can stay in your home while the case is adjourned. You may have to stick to certain conditions.

Deciding the case isn’t active

The Master can decide to ‘adjourn the case generally’ if it seems like the legal problems are sorted out. This means the case stays in court records, but it isn’t active anymore. Your lender can reopen the case if the problems recur.

Striking out the case

The Master can strike out your case, which means your lender would have to start the process all over again. For example, if the lender did not follow the correct process, the Master may strike out the case.

Issue a Possession Order

There are four kinds of ‘possession orders’, or ways the court can take away your home. These include:

1. Outright possession order – you must leave your home by the date on the order. If you do not move out on time, your lender can apply to evict you

2. Suspended possession orders (SPO) – you are ordered to leave your home, but the eviction is delayed. If the arrears are cleared, the SPO is no longer valid. There are two kinds of SPOs that can be given:

- before the eviction order is granted – the Master puts a hold on when the lender can use the possession order. For example, if you are sick or someone in your home has exams. The Master will ‘suspend’ the order to give enough time for you to manage your situation.
- after the eviction is granted – it is possible to go back and ask the Master for a SPO. This puts a hold on the eviction. For example, you found a job and can pay the mortgage.

3. Possession order with a stay – this gives you a certain amount of time where the lender cannot take any action. The Master may issue this if you can’t leave right away. For example, you are sick or pregnant. Or they might issue it to give you time to pay off your debt. Once the time period has passed, the lender can begin the actual eviction.

4. Home loans – you can try to restructure your debt to make it easier to pay back. These are complicated and only apply in specific circumstances. Get advice on a home loan since each case is different.

Up to the day of eviction, you may be able to work things out with your lender or get a stay that gives you more time. Talk to our advisers no matter where you are in the process; you may be able to keep your home.

Going to court for eviction or repossession hearings

Video transcript

My name is Sarah and I'm a solicitor for housing rights.

I can represent you at court for free in mortgage debt and social rent averses cases.

I understand how scary it must be to attend court about your home. Whether you're asked to attend via video link or in person, I can be there for you.

I'll talk on your behalf and try to sort something out or I can ask for an adjournment.

Then the expert advocates here at Housing Rights will work with you and your lender or landlord to come to an arrangement to stay in your home.

As frightening as it may feel to attend court, doing so is an important step in helping you keep your home.

The judges in Northern Ireland are really keen for people they see to engage with housing rights and will often adjourn your hearing to help us improve your situation. If you are at risk of having your home repossessed, please get in touch.

You can call our helpline on 0890245640 or chat to an advisor online at ….

It's never too late to try and save your home.

More advice

- Losing the home you own
- Sorting out mortgage problems
- Managing your mortgage