

Mortgage arrears

If you are struggling to pay your mortgage, this fact sheet will provide you with information about what must happen before your mortgage lender can evict you, how you may be able to avoid eviction and keep your home, what will happen during an eviction and your continued financial responsibilities should you be evicted.

If you are in mortgage arrears, your mortgage lender will want you to clear them. If you aren't able to clear them, your lender will try to get you evicted from your home. This is called taking possession. It allows them to sell your property and use the money from the sale to help pay off the debt.

How your mortgage lender can take possession of your home

Your lender must go to court before they can take possession of your property. This is called taking possession action.

Your mortgage lender should not start possession action against you without giving you a reasonable chance to make arrangements to pay off the arrears, if you are able to.

If your lender starts possession action, you will receive a claim for possession of property from the county court. This will give you details about a court hearing and full details about the case against you.

At the court hearing, a judge will decide whether or not to grant your lender possession of your home. This will depend on whether or not you are able to come to an agreement with your lender to pay off the arrears.

If you are able to make an acceptable offer to repay the arrears, the court will make a **suspended possession order**. This means that, so long as you keep to the terms of the order, you will be able to stay in your home.

However, if the judge decides that you are unable to make an acceptable offer to repay the arrears, they may make an **outright possession order**. This is an order which says that your lender can take possession of your property and that you will have to leave it by a certain date.

If you haven't left your home by the date on the outright possession order, your mortgage lender will need to apply to the court for a **warrant of possession** before you can be evicted.

There may still be time before the warrant of possession is issued for you to take action which will allow you to stay in your home.

Changing the courts decision to grant a possession order

Even though the court may have granted your mortgage lender possession of your home, it still might not be too late to stop the eviction going ahead. You may be able to ask the court to grant another order allowing you to stay in your home. You may be able to do this even if your mortgage lender has been granted a warrant of possession.

You may be able to ask the court to:

Suspend an outright possession order

After the court has made an outright possession order, you may think that you are able to make an offer to repay the arrears. In this case, you can apply to the court for the order to be suspended. To do this, you should complete the court form N244. If your offer is acceptable, the court will make a suspended possession order.



Appeal against the order

If you believe that the judge was wrong to make a possession order, you may be able to appeal to a higher court. You may be able to do this if you think the correct procedures weren't followed, or the law wasn't applied properly or the facts the judge used to make a decision at the hearing were wrong. There is a time limit of 21 days to apply for an appeal.

If you think you have reasons to appeal, you should get expert legal advice.

Set aside the order

You may be able to apply for the court to set aside the possession order. For example, if you had good reason for not attending the hearing and you have a defence against the claim. If you think you have reasons for the court to set aside the order, you should get expert legal advice.

What happens after the court hearing?

If the court has granted your mortgage lender an **outright possession order**, the order will give a date by which you should leave your home. This is normally 28 days after the hearing. You can ask the court for an extension of this period. You might want to do this if, for example, you need more time to find alternative accommodation.

Your lender can also apply for a warrant of possession if they have a suspended possession order and you have not kept to the terms of the order.

You don't have to leave by the date of the possession order. If you haven't left by this date, your lender must apply for a **warrant of possession**. Your lender can't legally evict you without this warrant.

The warrant of possession gives the court bailiff the authority to evict you from your home. The date for eviction may be a week or two after the date on the possession order.

The bailiff must deliver a **notice of eviction** (form N54), which sets out the time and date of eviction, to your address. The notice must either be given to you personally, or left at the property in an envelope addressed to you by name and 'any other occupiers'. The notice must be delivered as soon as possible after the eviction date has been fixed to give you as much time as possible to act on it.

You could use the time before the warrant of possession is granted to try and come to an agreement with your lender which would let you stay in your home. Or you could go back to the court and ask them to vary or postpone the possession order.

Even if your lender has got a warrant of possession, it's not too late to try and come to an agreement with them or to ask the court to suspend the warrant.

You may be able to do this if you want more time to sell the property yourself, or because you are able to make an offer to pay the arrears.

If the court agrees to suspend the warrant, this will allow you to stay in your property. If you are selling your property, you will still have to leave once the property is sold.

What happens during an eviction?

There is no fixed procedure for an eviction. For example, there are no rules about what time of day bailiffs can call, or what they must do or say. However, bailiffs must act responsibly. They are entitled to use a reasonable amount of force if they need to, to enter your home, to remove you and anyone else that is there.

Your lender will be at the eviction so that the bailiff can hand over the keys of the property to them.



The locks will be changed to prevent you re-entering. If you are not at home when the bailiffs arrive, they are allowed to break in and change the locks. If the bailiffs think there might be some resistance from you, they may ask the police to be present when they carry out the eviction. The police are not allowed to help the bailiffs with the eviction; they are only there in case there is a breach of the peace.

Your lender has a right to vacant possession of your property, which means that all your furniture and belongings must be removed. The bailiffs should not remove any of your furniture or belongings but will usually watch while you do this. If you refuse to remove your possessions, your lender is entitled to remove them. Your lender can also get a court order requiring you to remove your possessions.

Once you have been evicted, you will not usually be able to get back into the property. However, you may be able to make arrangements with your lender to leave your belongings locked inside and to collect them later.

If the bailiffs arrive when you are not at home and change the locks, leaving your possessions in the property, you will need to contact your lender. Your lender should then arrange to let you into the property to collect your possessions.

What happens if I hand back the keys?

You may be tempted to just leave the property and hand back keys to your mortgage lender before they get an outright possession order. However, you won't gain anything by doing this. You will still be responsible for mortgage payments, buildings insurance and other costs until the property is sold, and you will still have to make up any shortfall if the sale doesn't make enough to cover what you owe.

It would be better to try and sell the property yourself, rather than wait to be evicted and let your mortgage lender sell it. You may still be able to sell the property yourself, even if your lender has got an outright possession order or a warrant of possession.

What happens to your property after you've been evicted?

If your mortgage lender has been granted a possession order, you will be responsible for the mortgage payments until the property is sold. This is regardless of whether you are still living there. You will also be responsible for the cost of repairs, maintenance and insurance. You should check your insurance policy to see whether it is still valid if you're not living there. However, your lender may insure the property themselves and pass the costs on to you.

Your lender has a duty of care towards you when selling your property. This means that they must get the best price that they can for it. However, in practice, lenders often sell properties at auction, and repossessed properties sold in this way often sell for less than they would on the open market. If you believe that you have been treated unfairly by your lender, for example, because they took a long time to sell your property and your arrears went up because of this, you can complain to the Financial Ombudsman Service.

Once your lender has sold your property they will:

- Take what is owed on the mortgage from the proceeds of the sale
- Deduct any legal and estate agents fees
- Deduct any sums they have paid for the insurance and maintenance of the property
- Repay any other lenders if the property has been used as security for a loan
- Give anything which is left over to you – although there may be nothing left over to give you



What happens if there is a shortfall?

If the money from the sale of the property is not enough to repay what you owe, you will have to pay the difference. This is called a shortfall. The lender will send you a bill for the shortfall. If you are unable to make an arrangement to repay it, your lender may go to court to force you to pay this amount.

In most cases, there is a time limit for your lender to take action to recover a shortfall. The question of time limits for the recovery of a mortgage shortfall can be complicated and it's best to get advice.

If you don't pay off the mortgage shortfall and then buy another property, the lender of your first property may take court action against you. If they get a court order against you and you don't pay up, they could then apply for a charging order against your new property. This means that, when you sell the new property, the proceeds of the sale will be used to repay the shortfall. It is also possible that your lender could get an order for sale of your new home to repay the debt on the previous one.

If you owe a shortfall on your mortgage after you have been evicted for mortgage arrears, you should get expert advice. If you have other debts besides a mortgage shortfall, you may decide that bankruptcy is the best option for you. If you apply for bankruptcy, you will be able to include the shortfall in your bankruptcy order.

Taking out another mortgage after eviction for mortgage arrears

If you have been evicted for mortgage arrears, you may have problems taking out another mortgage. This is because details of any payments you have missed are held on file by credit reference agencies, such as Experian or Equifax. Mortgage lenders will contact them to find out whether you have a good credit rating.

Finding somewhere to live after eviction

If you have been evicted and you have nowhere else to live, please contact your housing options officer as soon as possible for further advice and assistance to prevent your homelessness.

Useful Contacts

Financial Ombudsman Service

<http://financial-ombudsman.org.uk>

Telephone: 0800 023 4 567 or 0300 123 9 123

Citizens Advice Bureau Winchester

68 St Georges Street,

Winchester,

SO23 8AH

www.winchesterdistrictcab.org.uk

Telephone 01962 848 000

Shelter

<http://england.shelter.org.uk/>

Telephone: 0808 800 4444



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