



<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. The most common reason is for repossession. It's important to understand the court process and your rights.

## When can the court take your home

Repossession is the process that can end in eviction. This is when the court orders you to leave your home. There are a few reasons the court might do this. It's usually because you missed a lot of payments for your mortgage, or a loan secured on your home.

Repossession can be a long 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.

You can [talk to our advisors](#) or hire a solicitor to represent you in court and help you through the process.

# **Know your rights before the repossession process**

Before the repossession process, your lender must contact you and try to work things out. They must show the court what they offered you to try and work things out. They do this in a document called the 'pre action protocol' and 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 come to an agreement, the lender can ask the court to start 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, this can impact the court's decisions.

## **Understanding the repossession process**

### **1. Getting a notice of repossession and filling out forms**

Your lender or their solicitor writes to tell you they're starting the repossession process. They might call this 'seeking an Order for Possession' for your home.

#### **Getting a summons**

Your lender's solicitor writes to tell you that your lender is taking you to court. In the summons, you're called the 'defendant', your lender is the 'plaintiff', and they're seeking an Order for Possession for your home.

## **Solicitor sends you a notice**

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

### **Notice of Hearing**

The Notice of Hearing has the date and time you must go to court (also called a hearing).

### **Grounding Affidavit**

The Grounding Affidavit has details of your mortgage from the lender. It's usually a very long document that might seem overwhelming. It must include:

Information about your household, including:

- who lives your home
- your financial situation, including 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)

## **The Form of Reply**

The Form of Reply is also known as a 'Memorandum of Appearance'. You or your solicitor should fill out this form. On this form you should explain:

- your current financial situation including income, spending, other debts, whether you get help with your mortgage interest that is paid straight to your lender
- why you missed payments
- if you've got a place to live if your home is taken away
- difficulties you'd face if your home is taken away
- what you've already done to work with your lender to pay off your debt
- what you can offer to pay off the debt
- why the court might decide the terms of your agreement were unreasonable

## **Form 10a**

Form 10a explains what happens during the court process and how to get help.

## **2. Going to court**

Your hearing will take place online or in the Chancery Division of the Royal Courts of Justice in Belfast. Be sure to arrive on time. If you have an:

- online hearing, make sure you know how to join online
- in person, make you know how to get there

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 by preparing notes of what you want to say and figuring out what other documents to bring with you (such as pay slips, bank statements, or receipts from 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 did not speak to a Housing Rights adviser or solicitor beforehand, you can still ask if there's someone at the court that day who can help you.

## **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 and explains why they started the repossession process. This can include:

proof that you took out the mortgage or secured loan and that you owe money questions for you – they'll ask them to the Master, who will then ask you the questions

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

## **3. Decisions the Master can make**

## **Giving more time to get ready**

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

- 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

For example, if you and the lender don't agree on how much you owe, the Master can give more time for you both to work on getting proof of payments.

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 activate the case again if the problems restart.

## **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 lenders or solicitors did not follow the correct process, the Master may strike out the case.

## **Possession Orders**

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 actual eviction is delayed. If the arrears are cleared, the SPO is no longer valid. There are two kinds of SPOs, they can either 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 order if you can't leave right away (for example, you are sick or pregnant) or to give you time to pay off your debt. Once the amount of time passes, the lender can start taking eviction action.

**4. Home loans** – you restructure your debt to make it easier to pay back, but these are complicated and quite specific. [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.

## More advice

- [Losing the home you own](#)
- [Sorting out mortgage problems](#)
- [Managing your mortgage and income](#)