



COVENTRY LAW CENTRE

HOUSING LAW LEAFLETS

MORTGAGE POSSESSION PROCEEDINGS

This leaflet is intended to assist those persons whose lenders are taking proceedings for possession against them.

Seeking Advice & Assistance

This leaflet is intended to give general guidance only and is not to be treated as giving specific advice in respect of particular cases.

If you would like advice from Coventry Law Centre we offer a telephone advice service on Wednesday and Friday mornings between 10:00am and 12noon. Please call 76253167 and your call will be answered by a specialist housing advisor.

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MORTGAGE POSSESSION PROCEEDINGS

What happens once proceedings are issued?

Once your lender has issued a Summons against you then the matter will be given a hearing date at the County Court. The lenders will usually attend the hearing through their solicitors. You should also attend the hearing.

What might the Court decide?

The Court have a number of options available to them. One such option is to make an outright Possession Order when they will specify a date when you will be required to leave the property. Another option is the making of a Suspended Possession Order. This would enable you to remain at the property so long as you complied with the terms of the Court Order. Typically, in such a case the Court would order you to pay current mortgage instalments together with a fixed monthly sum off the arrears. The Court have powers to adjourn the proceedings or to dismiss the proceedings if they do not think any form of Possession Order is appropriate.

What will the Court wish to know?

If you are attending a possession hearing you should prepare yourself to be able to explain to the Judge why mortgage arrears accrued. You should also be in a position to satisfy the Judge that you will be able to pay off any outstanding arrears within a reasonable time. There is some judicial disagreement as to what would be a reasonable time but in certain cases it has been held that a reasonable time can include the whole remaining mortgage term.

What if I am unable to pay off the arrears?

In this situation it is unlikely that the Court would take any steps other than making an outright Possession Order unless there was some strong suggestion that your financial situation was likely to improve significantly within a short period of time.

Court costs?

It is likely that your mortgage agreement gives your lender permission to charge to you the costs of any enforcement action taken. Usually this is simply added on to the amount owed under the mortgage.

Selling the property first

Even if it is clear that you are not going to be able to discharge the arrears or maintain future monthly payments, it is sometimes possible to persuade the Court to allow you a little more time in order to see if you can sell the property yourself rather than have it repossessed. This is a step you should consider if you feel you might be able to get a good price for the property and a reasonably quick sale. It is often felt that lenders who take possession do not always get the best possible price for the property, so it may be to your advantage to sell the property yourself.

What happens if the property is re-possessed?

The lenders will take possession of the property and will attempt to sell it. Once it is sold then they will take all monies necessary to redeem the mortgage and to cover their costs of possessing and selling the property. The balance will be due to you. If, however, there are insufficient monies realised by the sale of the property to cover the mortgage arrears and costs then you will be liable for the shortfall. It is not always the case that lenders seek to enforce this against a borrower but they are free to do so if they wish.

Although every effort is made to ensure the information in this leaflet is accurate and up to date, it should not be treated as a complete and authoritative statement of the law and does not constitute legal advice - we cannot be held liable for any inaccuracies and their consequences. The information in this leaflet is written for people resident in, or affected by, the laws of England and Wales only.