

# A guide to Repossession

A guide explaining how to deal with the threat of Property Repossession



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## Guide Overview

National Debt Relief have helped many people who are dealing with the threat of repossession

The purpose of this guide is to give you an in-depth understanding of Repossession.

You will find all the information you need to know as well information on how to stop a repossession and also ways that National Debt Relief can help you.

Facing repossession can be a scary experience, so it is good to find out information and to find out all of your possible ways out of your situation.

If you have any questions or would like further information on how we can help you with a repossession, call us on freephone **0800 888 666 0** or send us an email [advice@nationaldebtrelief.co.uk](mailto:advice@nationaldebtrelief.co.uk)



### Free confidential debt advice

Get in touch today for some free advice on your options for getting out of debt at [www.nationaldebtrelief.co.uk](http://www.nationaldebtrelief.co.uk)

# Repossession

## Root causes of property repossession

Before we consider what a debtor should do when faced with the threat of property repossession, it may be useful to look at what caused the threat to arise in the first place and to consider whether dealing with the causes may minimise or remove the threat altogether.

The vast majority of threatened and actual repossessions of the family home have their root cause in mortgage repayments or rather the failure to make them in accordance with the terms and conditions originally agreed between the borrower who is living in the home and the lender who provided the mortgage in the first place.

In most cases the borrower fails to make the agreed payments because he or she cannot afford to do so and thus they begin to fall into arrears. Why is this? Lets look at the most common reasons for inability to pay and consider if the reason is short term or permanent:

- **Drop in income.** This can arise from loss of employment, loss of overtime earnings, reduction in wages, salary or social welfare benefits, loss of child benefit and other such reductions in income of the debtor and/or of his or her partner.

- **Increase in living costs.** The debtor might be facing increases in the cost of living due to a new addition to the family, an increase in the costs of raising children or just a general increase in outgoings.
- **Changes in lifestyle.**
- **Paying money on other financial obligations.** Diverting income to paying off other debts such as credit cards, loans, overdrafts etc...
- Having to deal with a one-off financial problem such as an unexpected major vehicle repair or purchase, repairing uninsured storm damage to the property, having a major medical emergency or even a death in the family.
- Increase in scheduled mortgage payments due to an increase in mortgage interest rates or because a low interest fixed term period has ended.

Looking at the root cause of the inability to pay the mortgage is useful in determining if the inability is a temporary condition or if it is likely to be a permanent or semi-permanent condition. It may also help to suggest some measures that can be taken to allieviate the situation and to prevent or at least delay the threat of repossession.

As soon as the debtor becomes aware of his or her failure or impending failure to make the contractual mortgage repayments in full and on time, they should **consider seeking independent financial and possibly legal advice**. See below for details of sources of advice.

They should also **inform their lender of the problem or anticipated problem, with a view to arriving at a mutually satisfactory solution to the problem**. The lender has a vested interest in arriving at an acceptable solution and indeed has an obligation to deal fairly and reasonably with the borrower.

There are certain obligations on lenders before they can pursue the remedy of repossession for mortgage arrears and these obligations are to be found in the Mortgage Arrears Protocol which we will look at next.

The protocol describes the behavior the court will normally expect of both lenders and borrowers prior to the start of a repossession claim related to first charge residential mortgages and home purchase plans regulated by the Financial Services Authority under the Financial Services and Markets Act 2000 and second charge mortgages over residential property and other secured loans regulated under the Consumer Credit Act 1974 on residential property and unregulated residential mortgages. The protocol applies to money claims as well as possession claims.



## Get debt help with us

Get in touch for some free advice on your debts at [www.nationaldebtrelief.co.uk](http://www.nationaldebtrelief.co.uk) or contact us on 0800 888 666 0.

Tell us about your situation, why you're facing repossession, if you have any debts, your income details and also details about your expenses.

We will discuss all of your possible options with you to see what ways you can deal with your debts or your repossession.

We could help you deal with a shortfall debt from a repossession or we could even help you to avoid or stop a repossession.

## Mortgage arrears protocol

The aims of the protocol are to ensure that the lender and borrower act reasonably with each other in resolving mortgage arrears and to encourage more pre-action contact between the lender and the borrower in an effort to seek agreement between the parties and where this cannot be reached, to enable efficient use of the court's time and resources.

Where either party is required to communicate and provide information to the other, reasonable steps should be taken to do so in a way that is clear, fair and not misleading and the lender in particular should take reasonable steps to ensure that information is communicated in a way that the borrower can understand.

The protocol states that while it does not alter the parties' rights and obligations, it is in the interest of the parties that mortgage payments are made promptly and that difficulties are resolved wherever possible without court proceedings, while acknowledging that that in some cases an order for possession may be in the interests of both the lender and the borrower.

### Free confidential debt advice

Get in touch today for some free advice on your options for getting out of debt at [www.nationaldebtrelief.co.uk](http://www.nationaldebtrelief.co.uk)

Call our repossession helpline

0800 888 666 0



## What the mortgage lender must do

Before a mortgage lender can repossess a home they must

- Tell the borrower how much they owe, including details of arrears, the total outstanding on the mortgage, details of interest and charges, if applicable.
- Discuss with the borrower the cause of the arrears, whether arrears are temporary or long term, the borrower's financial circumstances, the borrower's proposals for repayment of the arrears and the prospects for doing so within a reasonable time.
- Consider any request to change the way in which the borrower pays the mortgage.
- Respond to any offer of payment the borrower makes.
- Give reasons to the borrower for turning down an offer of payment within ten days.
- Give the borrower a reasonable amount of time to consider any proposal they make.
- Give the borrower fifteen days written warning if they plan to start court action.

- Tell the borrower the date and time of any repossession hearing.
- Advise the borrower to make early contact with the housing department of the borrower's local authority and refer the borrower to appropriate sources of independent debt advice.
- Inform the borrower's council within five days of getting notification of the date of the court hearing, in case the borrower has to apply to the council as being homeless.

## Postponing the start of a possession claim

There are certain circumstances where the lender must consider postponing the start of a possession claim. They are when the borrower can demonstrate to the lender that he or she has submitted a claim and provided all the evidence required to process a claim to

- The DWP for Support for Mortgage Interest (SMI) or
- An insurer under a mortgage payment protection policy or
- A participating local authority for support under a Mortgage Rescue Scheme

The borrower must have a reasonable expectation of eligibility for payment in respect of such a claim and an ability to pay the portion of the mortgage instalment not covered by such a claim.

The lender must also consider postponing

the start of a possession claim where the borrower can demonstrate that reasonable steps have been or will be taken to market the property at an appropriate price in accordance with reasonable professional standards. The borrower must, where the lender agrees to postpone starting a possession claim, continue to take all reasonable steps to market the property, provide the lender with: a copy of the particulars of sale, a copy of the Energy Performance Certificate (EPC) or proof that an EPC has been commissioned, details of purchase offers received within a reasonable period of time, details of the estate agent, details of the conveyance instructed to deal with the sale.

The borrower should also authorize the estate agent and the conveyance to communicate with the lender about the progress of the sale and the borrower's conduct during the process.

If the lender nevertheless decides not to postpone the start of a possession claim, it must inform the borrower of the reasons for this decision at least five business days before starting proceedings.

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## Considerations before starting a possession claim

Before the 'last resort' of starting a possession claim, the parties must attempt all other reasonable and appropriate actions to resolve the position. These include:

- Extend the term of the mortgage, thereby reducing the monthly repayment.
- Change the type of mortgage.
- Defer payment of interest due under the mortgage.
- Capitalise the arrears.
- Make use of any Government forbearance initiatives in which the lender chooses to participate.

## Complaints to the financial ombudsman service

Where the borrower has made a genuine complaint to the Financial Ombudsman Service (FOS) about the potential possession claim, the lender must consider whether to postpone the start of the possession claim. If the lender decides not to await the decision of the FOS, it must give notice to the borrower with reasons, that it intends to start a possession claim at least five business days before doing so.

## Compliance

Both lender and borrower must be able to explain the actions that they have taken to

comply with the Mortgage Arrears Protocol.

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Tell us about your situation, why you're facing repossession, if you have any debts, your income details and also details about your expenses.

We will discuss all of your possible options with you to see what ways you can deal with your debts or your repossession.

We could help you deal with a shortfall debt from a repossession or we could even help you to avoid or stop a repossession.

## Mortgage rescue scheme

The Mortgage Rescue Scheme (<https://www.gov.uk/mortgage-rescue-scheme/eligibility>) is run by your local authority and it helps people in priority need by assisting them to either:

- Get a loan to reduce their mortgage payments.
- Sell their home to a Registered Local Landlord, who then lets their home back to them.

## Resisting repossession in court

If your lender starts a repossession action against you, the court will send you a blank defence form and guidance on how to fill it in. You can use the form to explain why you think the lender shouldn't repossess your home. You need to complete and return the form within fourteen days. The court will also send you:

- Copies of the claim forms for possessing your home, filled in by your lender.
- A court hearing date.
- The court's contact details

## Legal aid

If you are on a low income, you may be able to get legal aid (<https://www.gov.uk/legal-aid>)

## Free legal advice on the day of the court hearing

If you haven't got help before, you may be able to get last-minute legal help under the Housing Possession Court Duty scheme. This scheme runs in county courts in England and Wales. On the day of your court hearing, it provides you with a specialist adviser who can:

- Represent you.
- Help you to come to an arrangement with your mortgage lender to pay off your debts

To find out about the scheme in your area,

contact your local council (<https://www.gov.uk/find-your-local-council>) or the court where your case is being heard.



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## The court hearing

You can bring an adviser or friend to the repossession hearings which normally take place in a judge's chambers. If you fail to attend, it is likely that the judge will give your mortgage adviser the right to evict you.

You must adhere to any agreement that you make in court to pay off your mortgage arrears and if you don't, you may still risk losing your home. In court, you will probably be asked to provide proof of your finances.

You should bring your payslips, your bank statements, details of any job offers made to you and any letters you have received regarding benefits. If you are in the process of trying to sell your home to pay off the mortgage, you should bring estate agent's letters regarding this matter.

## Repossession Orders

The lender can repossess your home only if the court grants permission. The judge could decide to:

- Adjourn or delay the hearing.
- Set aside the case, which means that no order will be made and the hearing is finished.
- Make a repossession order.

## Outright possession order

Sometimes call an '**order for possession**' this gives the lender the right to own your home on the date stated in the order, which is usually 28

days after your court hearing. If you don't leave your home by that date, your lender can ask the court to evict you.

## Suspended possession order

This means that if you make regular payments as set out in the order, you can stay in your home and if you don't make the payments, your lender can ask the court to evict you.

## Money Order

This means that you have to pay the lender the amount(s) set out in the order and if you fail to make these payments, court action can be taken to:

- Deduct money from your wages or bank account.
- Send bailiffs to take away things that you own

Your lender cannot use a money order to evict you from your home. If you do not make the payments set out in a money order on time, your lender can go to court again and as a result, the judge could decide to grant them a possession order.

## Possession order with money judgement

A money judgment is usually added to a possession order and it means that you owe a specific amount of money usually comprising your mortgage arrears, court fees and your lender's legal costs. A money judgment won't apply if you pay your mortgage arrears and any amount set out in a suspended order or if your lender sells your home and the sale price is more than the amount set out in the money judgment.

If you don't pay the amount set out in the money judgment, your lender may ask the court to carry out the instructions in the possession order and the judgment.

## Time order

This means that the judge changes the amount you pay on your mortgage for a set time by:

- Changing the regular amount you pay.
- Changing the interest rate on your mortgage.
- Delaying the next time you have to make a payment.

If you don't make the payments, your lender can ask the court to evict you. A time order is usually only made on some types of loan like a second mortgage.

## Delaying Eviction

You can ask a judge to 'suspend the warrant for possession'. This means delaying the eviction or allowing you to stay in your home, if you are able to make payments again.

A new hearing will be held but the judge won't automatically agree to suspend the possession warrant. It depends on what happens in court. If you want to get a warrant suspended, get advice immediately.

## Appealing a Judge's decision

If you think a judge made mistakes about the law or the facts in your case in the original hearing, you may be able to appeal and if you want to do so, get legal advice. Normally, the appeal will be heard by a more senior judge.

## Permission to Appeal

At the end of your original possession hearing, you can ask the judge if you can appeal. If that judge refuses to give you permission to appeal, you can appeal to a more senior judge. If you do get permission to appeal, you should make your application as soon as possible after your original possession hearing. You will have to pay a court fee, unless you are on benefits or low pay.

## What happens at an appeal hearing?

The judge at the appeal hearing can make a number of decisions including:

- Keep the original decision
- Dismiss the previous decision or change it
- Order a new hearing

The judge can also decide who pays the legal costs of the appeal.

## What if your home is repossessed?

If you find yourself homeless, you should seek advice from your local council, who must give you advice to help you find a new home (<https://www.gov.uk/find-your-local-council>).

Depending on your circumstances, they may also be able to provide you with emergency accommodation or a more permanent home.

## Will repossession affect the chances of getting a mortgage in the future?

It could make getting a new mortgage more difficult since you are obliged to tell any new mortgage lender that your previous home was repossessed. If you still owe money to your

previous lender, they may be able to claim some of the proceeds from your new home if you should sell it in the future.

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## How can National Debt Relief help?

### We provide free debt advice on any debt problem

National Debt Relief are part of a group of companies that have been established for over 80 years.

Since 1932, we have helped thousands of people to relieve themselves of debt. We offer both informal and formal government backed debt solutions to anyone who needs our help.

- National Debt Relief provides free advice on all debt problems.
- We will not recommend a solution unless it suitable to your circumstances. All other options will be explained in full and details will be given as to why a recommended solution is appropriate for you.
- Everything you tell NDR is in strictly confidential . Your details and information will never be passed on.
- We NEVER charge for our advice. We provide free debt advice to all clients no matter what your circumstances.
- We have in-house Insolvency Practitioners, Debt Management advisors, Trust Deed advisors, IVA Advisors and general Debt Advisors.

- We offer solutions to individuals as well as companies.
- Our expert advisors are fully trained and have ALL been working with us for years.
- Professional advice. The National Debt Relief group of companies are licensed and regulated by a number of different bodies.
- We can negotiate on your behalf to reduce outgoings to one affordable monthly payment, ask Creditors to freeze interest, and negotiate full and final settlement offers for your creditors. We can help you to pay debt in less than 5 years and become debt free.

## Contacting National Debt Relief

We provide free debt advice on any debt problem

Call us for some advice on the telephone

Call our freephone number on **0800 888 666 0**. You can also call us on landline **02871 376854**.

We are open 6 days a week:

**Monday - Thursday 8am - 8pm**

**Fri 8am - 7pm**

**Sat 10am - 6pm**

Calls from a landline are normally free. Please consult your provider if you are unsure. Calls from a mobile may be subject to charges. If you think you will get charged just ask us to call you back for free.

Send an email for some advice

If you prefer some email advice or want to receive some further information via email then send an email to

[advice@nationaldebtrelief.co.uk](mailto:advice@nationaldebtrelief.co.uk)

Online debt advice chat

If you are reading this guide online and have any questions, you can simply click the link below, type your question and an advisor will be happy to help you. [Live online chat](#)

Online debt / budget calculator

Fill in our online budget and debt calculator and submit it for debt help. An advisor will review your information and contact you for a chat about your options. [Online budget calculator](#)

Alternatively, contact us with your details and we will post a fact find form out to you, along with some information on our debtsolutions.

Please note : All of our advice is free. A fee is only payable where further services are requested. All fees will be explained in detail and discussed prior to commencement of any debt repayment plan. Repaying debt over a longer period may increase the total amount to be repaid.

Your home may be repossessed if you do not keep up repayments on your mortgage.

Phonecalls: Calls from a landline are normally free. Please consult your provider if you are unsure. Calls from a mobile may be subject to charges. If you get charged just ask us to call you back for free.