



## HOUSING ADVISORY SERVICE

### **WHAT ACTION CAN YOUR LENDER TAKE ABOUT YOU ARREARS**

You may already be in the process of negotiating with your lender and be confused over what action your lender can take, and when.

There are 8 main stages that your lender will go through before possession may be granted to them. Remember that all lenders are different. Some may proceed more quickly than others: but the procedure itself is standard.

#### **STAGE ONE      **STANDARD ARREARS LETTER****

If you have missed one or two payments, your lender will send you standard letters, or telephone, asking you to bring your mortgage account up to date. They may also give you the opportunity to come in and talk face to face or be visited by one of their mortgage arrears officer, to discuss your payment difficulties.

#### **STAGE TWO      **SEVEN DAY LETTER****

If you have not managed to reach agreement on your arrears and they are still rising, your lender will send a more strongly worded letter, advising you that, unless the arrears are cleared and you make contact with them within the next seven days, your case will be passed onto their solicitors.

#### **STAGE THREE      **SOLICITOR'S LETTER****

If no contact is made by you with your lender, they will instruct their solicitors to send you a letter asking you to clear your arrears in full within seven days. The letter will state that possession proceedings will start without any further notice if you do not clear the arrears, or put forward an acceptable proposal to clear them.

#### **STAGE FOUR      **POSSESSION SUMMONS****

Approximately, four to six weeks after receiving a letter from your lenders' solicitors, you will receive a Possession Summons from your local County Court, or if you live in the London area it may come from the High Court. This is a legal document summoning you to court on a particular date and time for a Possession Hearing. It will include the Particulars of Claim which contain details provided by your lender regarding your mortgage loan and arrears. There will also be a Form of Reply which you must fill in and return to the court.

#### **STAGE FIVE      **POSSESSION HEARING****

Your Possession Hearing will take place in front of a District Judge normally in a less formal atmosphere than a full courtroom. The District Judge will look at why you have got into arrears and will need to know if you are going to be able to meet the monthly repayments and clear the arrears within a 'reasonable period'.



## HOUSING ADVISORY SERVICE

### **STAGE SIX          JUDGMENT**

The District Judge can grant one of two orders of court, unless your case is adjourned or dismissed. These are either a Suspended Possession Order or an Outright Possession Order.

Sometimes your lender will seek a 'Money Judgment' as well, for repayment of the money you owe under the mortgage agreement. This is likely if you are in a negative equity situation, but some lenders ask for this type of judgment as well, for every case. A Money Judgment means that your lender can use standard debt enforcement procedures after eviction to seek repayment of the remainder you owe.

### **STAGE SEVEN      APPLICATION FOR WARRANT**

If your lender has been granted possession, or if you do not keep to the terms of a Suspended Possession Order, your lender's solicitors can apply to court (without informing you beforehand) for a Warrant of Possession of your home. This Warrant will then be passed to the court bailiffs to be 'executed', or carried out.

### **STAGE EIGHT      EVICTION**

Once the bailiffs receive the Warrant of Possession, they will contact you and let you know in advance of the date and time of the eviction. On the day you are due to be evicted, the bailiffs will come to your property, check that you have left, and that possession is handed over to your lender.

If you have to leave items of furniture, for example, inside the property at the time of eviction, you will be able to collect these at a later date by prior arrangement with the building society.

You will remain liable for mortgage payments until the property is sold, and may then still be liable for payments on any amount of the loan which the sale of the property did not meet: this is the case if you have a negative equity problem.

### **SECURED LOANS**

The court process for secured loans is the same as the above process.

The lender of your secured loan has the same rights to re-possess borrowers as your first lender. The lender of your secured loan does not need permission from your first lender before taking court action for possession. But if the lender of your secured loan was to take action first, your first lender would be paid, before the lender of your secured loan could be paid. So if your home would not be worth enough to cover both loans, for example if you have a negative equity problem, your second lender would be unlikely to take action for possession, as they may not receive the money they are owed.



## HOUSING ADVISORY SERVICE

### **LEASEHOLDERS.**

If you fall into arrears with your service charges, you run the risk of 'forfeiting your lease', meaning your lease will pass back to your freeholder. However, following the introduction of the Housing Act 1996, it has become more difficult to lose your lease through forfeiture, and easier to challenge your service charge bill itself.

So, in practise this rarely happens. Another reason for this is that your lender may step in and pay any arrears of service charges, in turn increasing your mortgage and monthly repayments. But, if you have already increased your mortgage by adding mortgage arrears to it, then this may not be a practical option.

### **SHARED OWNERSHIP.**

If your home is owned under shared ownership, you could have both mortgage and rent arrears. In this situation, information on arrears will be shared by your lender and landlord. If rent arrears build up, your lender may agree to add these to the capital of your mortgage, but if mortgage arrears build up (apart from the standard process already described), the outcome for you will depend on your ability to clear them, and the flexibility your Housing Association (landlord) is able to offer you. They may agree to you buying a lesser share of a smaller/cheaper property.

### **REGISTRATION OF COUNTY COURT JUDGMENT**

If your lender asked for a 'money judgment' to be made at the same time as the Possession Order, a record of the judgment will be held on the Register of County Court Judgments, once your lender has taken enforcement action. This will cause you difficulties when you try to obtain credit.

The Council of Mortgage Lenders have a register of people who have been repossessed or have handed back their keys. Once you have been evicted, or have handed back your keys, your details would be passed on to the 2 main credit reference agencies, who would hold them for 6 years. The result of this is that you will have difficulty in obtaining a new mortgage or credit during this period.