

MORTGAGE ARREARS

If you fall behind in your mortgage payments there are still a number of possible options available to you.

If you are notified that your mortgage lender is seeking to repossess your property through the courts, **don't** make the mistake of thinking it's all over and that you've already lost your home.

If you are in mortgage arrears you should **seek legal advice** as you potentially have more options than you think:

Example 1

You may be able to cut down your monthly mortgage costs. For example, your lender may agree to reduce your monthly interest payments, increase the term of the mortgage to give you more time to pay, or allow you to make interest-only payments for a while. We could potentially assist you with such negotiations.

Example 2

The Scottish Government's mortgage to rent scheme could allow you to remain in your home as a tenant.

Example 3

If you are claiming benefits, you may be able to get help with your housing costs, including mortgage interest relief.

The faster you seek help the more likely you may be able to keep your home.



Fife Law Centre

Working for equality and justice in Fife

HOW WE CAN HELP YOU

You can find out more information about your rights and how we can help you by visiting our website on www.fifelawcentre.co.uk

If you have a specific query or require assistance please contact us as follows:

CONTACT US

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Legal work is undertaken by the independent legal firm Fife Community Law Ltd (Company No SC365122).
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MORTGAGE ARREARS

How we can help



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CALLING UP NOTICE

This is the first step your lender has to take before they start court action. It is a legal notice that is served on you and demands that you pay all sums due under the mortgage or else face court action. Once this Notice is served the lender cannot start court action until the Notice has expired. This Notice will usually be served on you by recorded delivery or by sheriff officers.

It is important that you seek legal advice if you receive a Calling Up Notice. There may be options that could be looked at to prevent court action and to allow you to keep your home.

YOU CANNOT BE EVICTED JUST BECAUSE YOU HAVE BEEN SERVED A CALLING UP NOTICE. YOUR MORTGAGE LENDER HAS TO GET A COURT ORDER.

DEFENDING A COURT ACTION

After the Calling Up Notice has expired your lender **may** start court action by serving you with court papers. It is very important that you seek legal advice. **The court papers have a date by which you have to attend court in person or have a representative attend on your behalf.** Failure to take action may result in your being house being repossessed. There may be grounds to have the court action suspended after negotiations with your lender or by defending the court proceedings. This could allow you valuable time to pay the arrears, find alternative accommodation or to look into other options such as the Mortgage to Rent Scheme.

The lender cannot evict you without having a court order to do so. The court decides whether it is reasonable to evict you in the facts of your case taking into consideration factors such as:

- the nature and reasons for the arrears
- whether you can pay the arrears and pay your mortgage
- whether there are other options that could help, like the Mortgage to Rent Scheme
- whether you have alternative accommodation
- all facts of the case including whether you live with others in the house.

DECREE

If decree i.e. a court judgment has already been granted in favour of the lender, meaning the court accepts that in the circumstances it is reasonable for the lender to repossess your property, in some cases, we may be able to assist with recalling this court decree. This means that the eviction could be stopped.

BUT YOU MUST TAKE ACTION IMMEDIATELY AS THIS TYPE OF ACTION IS TIME LIMITED.

YOU MUST SEEK LEGAL ADVICE IMMEDIATELY

We can advise you:

- what your rights are
- ways to postpone or prevent eviction.

We can:

- help you respond to the court papers
- represent you at court
- negotiate with your lender
- refer you onto relevant agencies for housing or money advice who can also guide you on government schemes available to help people in your position.

THE HOMEOWNERS AND DEBTORS PROTECTION (SCOTLAND) ACT 2010

There are now new laws that have been made to help people in mortgage arrears. It means that the lender has to take steps to help you before they start court action-these are called **Pre-Action Requirements**. The lender can now be asked in court to show what steps they have taken to help you resolve your financial problems. Failure to follow the Pre-Action Requirements could mean that your lender may not get a court decree to repossess your property.

FAMILIES OR CO-HABITEES OF HOMEOWNERS

Other people that live in the house with you may be able to defend the court action to have you evicted. Such persons are called 'Entitled Residents' i.e. spouse, civil partner. Such people can defend the action to remain in your home.

EMERGENCY ACCOMMODATION

It may not be possible in some cases to avoid eviction. In such cases we could refer you to housing organisations that could help you to get emergency accommodation whilst you decide on more long term housing options.