



ashley park  
DEBT SOLUTIONS

## Solving Your Debt Guidance Sheet 4

# Dealing with Mortgage & Rent Arrears



**REPOSSESSED**

## **Solving Your Debt – Guidance Sheet 4** **Dealing with Mortgage/Rent Arrears**

Your rent and mortgage repayments are probably the most expensive single outgoing you have in a calendar month. It is also one of the most important payments you have to make too and you should always try to prioritise your rent or mortgage repayments above everything else.

If you have missed any rent or mortgage repayments then landlords and mortgage lenders may have the legal right to evict you from the property. Although this is usually only a course of action taken in extreme circumstances, it is still important you protect your home by prioritising the debt.

### **Avoiding Eviction**

If your landlord or mortgage lender has decided to evict you then they will need to follow a procedure known as a *Possession Proceeding*. This procedure takes a long time to complete from beginning to end which gives you the chance to act on any arrears you may have. If you do believe that your landlord or mortgage lender is about to carry out this action, you should begin to clear any arrears you have before the court gets involved or at least attempt to make a payment plan which is acceptable to both parties.

If your payment plan is refused by the lender in question, you may be able to apply for a time-order through the courts; which will help you keep your home.

Under a time-order, the court can either reduce the amount of interest you have to repay or in some circumstances even stop the interest being applied in order to help you through your difficult period. However this course of action is only normally granted, when there is a genuine reason for your difficulty and the cause of which is beyond your control. In order to successfully qualify for a time-order you will also need to show the courts that you can adhere to the new payment plan and will be able to resume full repayments in the foreseeable future.

### **The Possession Procedure**

The Possession procedure begins with a notice from either your Landlord or Lender or from a solicitor acting on their behalf. This notice will advise that the party concerned is considering taking you to court. At this point you should contact the person who has written to you in an attempt to come to an arrangement.

If you are unable to come to an arrangement at this point or you fail to make contact with the person then it is likely that you will be issued with a claim form. The claim form will be asking you to attend the local county court in

your area. At the hearing you will have to tell the judge the reason your reason for difficulty in paying your debts and how you intend to resolve the problem.

The court will then look at the current state of the arrears and the size of them and if any attempt to make payment on the debt has been made. The court will then look at the behaviour of the claimant to see if they have followed the proper procedure in attempting to clear the arrears. They will also check to see if they have fair grounds for trying to evict you too. If for example you were in rented property but the landlord had failed to complete emergency maintenance and so you were holding back rent until work had been completed, that would be taken into consideration.

If you are a council tenant, and unless you have what is called an “introductory tenancy” the court will decide if an order is reasonable. The courts will take into consideration whether they feel you are vulnerable.

In the event that your landlord or mortgage lender is successful in the claim against you, the court will normally agree to a possession order. However in the majority of cases as long as you make an arrangement to clear the arrears, you won't be evicted.

## **Suspended Possession Order**

In some cases the court can even allow you to pay off the arrears during the remainder of the term of your mortgage. They can also do something similar for rent arrears, depending on what you owe.

This is what is known as a *Suspended Possession Order*.

If you are under a suspended possession order, the landlord or mortgage company can then ask the court to issue an eviction warrant. If this happens, you will not be notified in advance, only on the date on which you will be evicted.

At this point you can ask the court to suspend the eviction. This must however be done before the eviction is due, if you ask for the warrant to be suspended after the date, your application will be refused.

In order to successfully apply for an eviction suspension you will have to have good reason and evidence for why you have missed further payments.

## **Exceptions**

The suspended possession order can be applied in most cases, the exceptions to these are below and under the following circumstances possession orders are granted;



- If you have an assured short-hold tenancy from a private landlord but not a council or housing association
- If you have missed two or more payments, if this is the case the possession order will be issued and not suspended. You will not be granted a time order to pay.
- You have an introductory tenancy from a public landlord such as a council or housing association. Again a possession order will be issued automatically.

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