

**LSA** Legal Services Agency

Scotland's National Law Centre



# Problems paying your mortgage? What to do to avoid losing your home

**Advice Leaflet for Home Owners and Their Families  
Published by Legal Services Agency**

Sponsored by Communities Scotland, HomePoint: Glasgow Homelessness Partnership (Glasgow City Council) and North Glasgow Advice Centre (a joint LSA and Glasgow Central CAB Project)

# Act Now

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## If you have fallen behind with your mortgage, get advice now.

If you have not paid your mortgage, your lender (for example bank or building society) can take you to Court to try to take (repossess) your house and sell it.

The quicker you act, the more likely you are to be able to keep your house and get yourself out of debt.

Even if things seem hopeless and your lender has already taken court action, you may have more options than you think. You may be able to stop or delay the lender repossessing your home.

With independent financial advice, it may be possible to remortgage, paying off your arrears in an affordable way.

Even if a court order has already been made against you, it may not be too late to do something. The sooner you get advice the better!

This leaflet suggests what to do if you are facing court action and how to avoid it in the first place. It also explains how the Mortgage Rights (Scotland) Act 2001 can help you.

This leaflet, of course, just a brief summary. If you have any difficulties at all you should get advice and assistance from, where appropriate, a CAB, Advice Agency, law centre solicitor, Local Authority or private practice solicitor. Remember if you are on a low income affordable legal aid may be available.

# Prevent Court Action

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The threat of being taken to Court and losing your home is very worrying. Also, lenders who take court action against people with mortgage arrears often charge huge expenses. So, it is better to sort out any problems **sooner** rather than later.

## Living in the house but not an owner?

Even if you are not the owner or joint owner, you may have rights, particularly if you are married to the owner or living with the owner as if you are man and wife. This applies to same sex relationships. It is obviously easier to show that you are living together as if you are man and wife if there are children. Get advice.

## Not living in the house?

If you are not living in the house but are a joint owner or married to the owner who is still there, then you may still have rights, at least if you are only away temporarily. You may also have rights if you are away permanently but a child of yours under the age of 16 is still living there. Get advice on the Mortgage Rights Act and Family Law.

If no-one is living in the house at all you may have difficulty using the Mortgage Rights Act – but you may still have some rights under other laws. Get advice.

## Tell your lender

If you are finding it difficult to pay your mortgage contact your lender as soon as you have problems. The sooner you do this the better, even if the problems are temporary. Most lenders are sympathetic and want to help people find ways to clear debt and keep their homes.

## Get money advice

Contact your local CAB, money advice agency or council office for advice about debt and money matters. They may also be able to help you sort things out with your lender.

## Get financial advice on your mortgage

Working with a Money Advisor, it may be a good idea to see a reputable financial advisor about switching mortgage providers or renegotiating. Always be sure to get independent advice from somebody acting with your best interests at heart.

## Switch to Renting?

Under the Mortgage to Rent Scheme run by Communities Scotland it may be possible to arrange for a local housing association to buy your house, pay off the mortgage and rent it back to you. See a local CAB, and advice centre, Housing Advice Centre or Law Centre on this.

## Get legal advice

If you have difficulty sorting things out with your lender contact a solicitor. If you are on a low income you will get free or cheap legal advice and help.

## If all else fails!

Sometimes selling your home may be the best option if you have looked into all the other possibilities and obtained full advice. It is always better to arrange to sell your home yourself rather than leave it to the lender. Sometimes this can make a difference of many thousands of pounds. See a reputable solicitor and/or an estate agent.

# If you are Facing Court Action

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If your lender is taking court action against you they will send you a legal document called a Notice. They can start court proceedings.

You may be able to get help under the Mortgage Rights (Scotland) Act 2001. So, you should contact a solicitor immediately.

This law allows you to ask the Court to give you:

- **Time to pay the debt so you can keep your home or**
- **Time for you and others who live with you to sell up and to find somewhere else to stay.**

This also applies if you live in the house and married to, or are the partner of, the person in mortgage arrears.

You need to apply to the court within a certain length of time. Formal court documents need to be sent (lodged). Check all this with a solicitor/adviser.

## Legal and money advice

Most people can get free money advice and those with low incomes/savings can get free or cheap legal advice and help. Legal advisers can help with negotiating with lenders, preparing and lodging court documents and appearing in court.

## Financial advice

Sometimes it is possible to renegotiate your mortgage, get a different one, or release capital from an endowment policy or other savings vehicle. Always get independent financial advice from a reputable organisation on all the options.

# How the Court Decides

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The court will balance your rights and the lender's rights. It will look at:

- Why you could not pay the mortgage and got into debt
- Whether you can repay the debt and the mortgage in future
- Whether the lender has helped you find ways to pay the debt
- Whether you can find somewhere else to live.

Depending on the circumstances the court can:

- Allow the lender to repossess your home **or**
- Allow you time to pay off mortgage debt **or**
- Allow time for you and others in the house to sell up and arrange somewhere else to stay.

The lender cannot take or sell your house while the court has allowed you time to pay off your debts or find somewhere else to live.

## Expenses

Court expenses can be substantial. You should always check with your solicitor whether you are eligible for Legal Aid. The lender may try to make you responsible for their expenses: these can be very substantial. Get Legal Advice. One way or another try to agree things as quickly as you can!

LSA is one of Scotland's leading law centres. We undertake a wide range of casework (including Mortgage Rights Act cases) in all courts and tribunals, organise seminars and publish leaflets on many topics. See also [www.lsa.org.uk](http://www.lsa.org.uk) for full details of our work and how we can help you.

LSA's Seminars are very helpful for all advisors or those interested in Social Welfare/Scots Law as a whole. We aim to help our delegates give better help to more people! If you would like to go on to our free e-mail "mailing list" please register by contacting us on [seminars@lsa.org.uk](mailto:seminars@lsa.org.uk).

We specialise in social welfare law including asylum, landlord and tenant disputes, homelessness, criminal injuries compensation, children's rights, mental health, community care, disability discrimination and dementia.

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**For further information please visit [www.lsa.org.uk](http://www.lsa.org.uk)**

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