

Facing Repossession

Please note that this document is for general guidance only and is not intended to take the place of specific legal advice. For further information and detailed legal advice, please contact your legal adviser.

Being faced with the possibility of your mortgage lender taking you to court to repossess your home is one of the most stressful experiences you are likely to encounter throughout your life. However, there are people who can help. You can contact the MABS helpline at 0761 07 2000, or visit www.mabs.ie. Please note that MABS cannot give you legal advice, but they can give you general advice on mortgage debt.

The legal process

Most legal cases to repossess property will be taken in the Circuit Court, before a court official called a county registrar. These are similar to a judge but without the full range of powers of a Circuit judge. Circuit Courts are situated in each county in Ireland, and some of the bigger counties will have more than one Circuit Court. Your case will usually be held in the circuit court area where your house is situated.

Repossessions: what happens first?

The first you'll probably hear of your lender's intention to go to court will be a letter from the lender itself. This will be followed soon after by a letter from their solicitors. The solicitor's letter will more than likely ask you to do one of two things:

- a) pay all of the money you owe under your mortgage contract, or
- b) give up your house to the lender within a certain time period, usually 7 to 10 days.

Please note that no one realistically expects you to do either of these things, the first for obvious reasons, and the second because there is no obligation on you to give up your house to your lender at this point. You can if you wish to do so (it is your house, after all) but under no circumstances should you make this decision without first consulting a legal adviser.

What happens next?

It is vital that you keep in contact with your lender and bring them up to date on your finances, especially if things have improved since you last contacted them. They will have no way of knowing this unless you tell them. If they do not hear from you, the next likely step will be the service of a summons on you. Even if that happens, it is never too late to contact the lender and try to work out a new repayment plan with them. This applies to the entire court process.

When you receive a summons

If you are served with a summons, you need to take it to your legal adviser, along with all of the letters you have received from your lender up to that point. Your legal adviser will figure out whether you have an actual legal defence to the case or not. It is important to realise that the fact that you cannot afford your mortgage is not a legal defence to the case, and nor is it a legal defence if you have other debts to pay, such as a credit card or bank loan. The only person who can advise you on whether you have a full or partial legal defence to the repossession case is a legal adviser. MABS cannot assist you with this aspect of your case.

Your MABS adviser can assist you with completing a standard financial statement, or SFS, which is a form all mortgage lenders require before looking at whether they can offer you an alternative repayment arrangement. The SFS is a requirement of the Central Bank, and your lender cannot engage meaningfully with you unless you have completed one.

You should also note that cases where full legal defences exist are rare – in other words, in the vast majority of cases there will be nothing wrong with the mortgage contract that you signed, you will have been properly advised at the time you signed it, and the money due under the mortgage will be properly owed by you. However you should always seek advice from a legal adviser, because if you don't ask them, you won't know.

Representing yourself in court

The first court date usually appears on the front of the summons, but if you are not sure of it, you can ring the solicitors for the lender and they will let you know. It is perfectly all right to do this. You will need to let them know the reference appearing on the top of their letter so that they will be able to track down your file. If you have not been able to get a legal adviser to attend court with you, you will have to attend by yourself. You have every right to do this, and in fact you will probably find that you are received with politeness and patience by the county registrar.

You can certainly bring a friend or family member to court with you for support, but none of these people have the right to address the court on your behalf. Only you yourself, or your lawyer, can do that. You will be given time to speak to the county registrar about your circumstances without any interruptions from anyone else. There is no need to be afraid, embarrassed or ashamed – many of the other people in the courtroom will be there for the exact same reason you are, and the court officials and lawyers deal with this type of case every single day.

On the first court date

On the morning of the first court date, get to the courtroom early to get a seat, as it can get pretty crowded. Try to speak to the MABS court mentor or the duty solicitor, to make sure that your case is in the court list for that date. If it isn't, they'll be able to tell you what to do. They'll also be able to give you the case number so you'll have an idea of how far down the list your case is. They may even have spare copies of the list so you can follow along when the cases are called out.

Once the county registrar comes into court, do not leave the courtroom until the list is finished. It can be very tempting to go out for a quick coffee or a short break, but if you do, you risk missing your case being called, which can lead to an order being made against you while you were outside court (although this will not happen on the first date in court). If the case is put back to a later date, you will also miss hearing this.

Stay in a place in the courtroom where you can hear what's going on (many courtrooms, especially in older buildings, can be pretty noisy places). **When you hear your case being called, move up to the top of the room near the judge's table, SPEAK UP and tell the county registrar who you are.** No one else will do this for you (unless of course you have your own legal representative in court) and no one involved in the case will know that you are actually there unless you speak up, and the case will go ahead as if you were absent. You'll also lose your chance to explain your circumstances to the county registrar and ask for an adjournment (postponement) of the case if you need more time to talk to your bank.

Remember, this is your case and concerns your property. You have every right to be there and to be heard by the county registrar and by the bank's lawyers. Do not interrupt the county registrar or anyone else while they are speaking. After they have finished, you will be given your chance to speak and similarly, no one will be allowed to interrupt you. Generally, the case will be adjourned (postponed) on the first court date, to allow both sides to gather their paperwork, or talk to each other if appropriate. This is not a reason not to attend court. It is in your interest to attend every court date.

Has your mortgage lender complied with all of their obligations under the Central Bank Code of Conduct on Mortgage Arrears 2013?

As early as possible in this process, you should consider, with the help of your MABS adviser, whether the lender has complied with the provisions of the Central Bank's Code of Conduct on Mortgage Arrears 2013 in relation to time limits for bringing you to court. If they have not, you can file an affidavit (sworn court document) setting out how you say they have failed to do this. You should make an appointment with your MABS adviser before your court date to discuss this, so that if you find that your lender has not complied with the Code in this respect, you can tell the court this and ask for time to file the affidavit. You will need to be very specific about which parts of the Code you say the lender has not complied with, and your MABS adviser will give you all the assistance you need to identify this. However, only a solicitor can finalise the affidavit for you. The finished affidavit will also need to be sworn by a solicitor and there is a fee for this.

On the next court date

After you've filed this document in the relevant court office and have sent a copy to the solicitors for your lender, the document will

be on your court file for the judge or county registrar to read on your next court date. You can ask the county registrar to transfer the case into the judge's list for a full hearing on the issues you've raised. Please note that this decision is for the county registrar to make, and there is no guarantee that they will transfer the case into the judge's list for a full hearing.

If you have no defence to the case

If you or your MABS adviser cannot find any examples of where your lender may have breached the Code of Conduct on Mortgage Arrears, and you have no other legal defence to the case, the county registrar will have no choice but to make an order for repossession of your property sooner or later. However, if you think you can put together a realistic payment plan for your lender to consider and can produce proof of this, such as increased wages or other improvement in your finances, you will always be given time to do this, no matter what stage the case is at.

How long will your case take?

It is impossible to predict this, but most repossession cases will take at least several months to finish, from the time the summons is served on you to when an order is made. The length of the court list in your local Circuit Court area will also be a factor – some Circuit Court areas are busier than others. If the case is contested (which means that you intend to defend it, either because you have a legal defence or because the lender has not complied with the Code of Conduct on Mortgage Arrears, in relation to time limits) it will take longer to come to completion.

Please remember that not all repossession cases will automatically result in an order being made against borrowers. If you have put a repayment plan in place with your lender during the court case, the hearing can be adjourned (postponed) to allow the plan to go ahead. The main thing to remember here is that there is absolutely no question of you losing your home a few days after you receive a summons. Court cases take much longer than that to come to a conclusion.

If you ignore the court case

If you have a history of ignoring letters from your lender, have never communicated with them or with your MABS adviser, and have never attended court, an order is much more likely to be made against you sooner rather than later, because none of the people involved, including the county registrar or judge, will know of your financial circumstances or plans for repayment of the mortgage, so the county registrar will eventually have no reason not to make the order against you.

“Jingle mail”

You may have come across this phrase before, when reading about mortgage arrears cases in countries like America. It refers to borrowers in arrears posting the keys to their houses to their banks, and then abandoning their properties because their loan is then finished. Please note that Irish mortgage law is very different from American law, and under Irish law, no matter how many copies of keys you post to your lender, it will have absolutely no legal effect whatsoever on the ownership of your property. You will still own the property and will still have legal responsibility for paying the mortgage, until the house is either sold or handed over to the lender by way of legal paperwork, or by way of a court order for repossession.

Negative equity

If your house is worth less than the amount of the mortgage you owe on it (referred to as “negative equity”) you will also owe this shortfall to your lender, unless you have managed to come to an agreement with them to write off some or all of this shortfall. A financial adviser, legal adviser or your MABS adviser may be able to assist you in trying to reach such an agreement with your lender, and you can avail of the free Aid and Advice scheme for free advice on this.

You will also be responsible for the costs of selling the house, such as auctioneers’ and solicitors’ fees, unless you have come to an agreement with your lender to share these costs between you. The best option of all is to try and agree with the lender that they will be responsible for costs of sale of the house, and also all legal costs, although you should remember that there is no obligation on them to do so.

Don’t abandon your property

It can be very tempting to just abandon a house that you might have come to associate with nothing but stress, but it is a very bad idea, for the reasons set out above, and also because if you leave your property empty, it will tend to attract vandalism, break-ins, and a rise in dampness and general disrepair. This will lower its value when it comes time to sell it.

Whether you end up, after taking the appropriate legal advice, signing over the ownership of your house to your lender; whether you end up selling it yourself and handing over the sale proceeds to your lender; or whether your lender ends up getting an order to repossess your home, if your mortgage is genuinely unsustainable, your house will more than likely eventually be sold. Obviously the best sale price you or the lender can get for it, the better. It is therefore in your interest to stay in the property as long as possible and to keep it in good order and repair, to attract the highest price, because any shortfall left over after the sale will still be your legal responsibility, unless you have managed to agree a write-down or a write-off of this remaining debt with your lender (your MABS adviser, legal adviser or financial adviser can help you with these negotiations).

You can always choose to sell your property yourself, before the court case comes to a conclusion. You should never take this decision without taking independent legal and financial advice. If, having taken this advice, you choose to put your house on the market for a private sale, be sure to let your lender know by writing to their solicitors and telling them. You will also need the consent of your lender to the sale, but your solicitor will organise that for you. You can also tell the court that you have put your property on the market on the next court date.

Please note that there is no obligation on you to sell your house. It is entirely your own decision and should on no account be rushed into without taking all necessary advice. You will also be responsible for the costs of selling the house, such as auctioneers’ and solicitors’ fees, unless you have come to an agreement with your lender to share these costs between you or unless the lender has agreed to pay all of the costs of sale and legal costs.

It’s never too late

Many people think that once they receive a court summons from their bank, that is the end of their opportunity to talk to the lender and try to put a repayment plan in place. This is simply not true. You can and should continue to engage with your lender, either directly or through your MABS adviser, all the way through the

court case. Even after an order has been made against you, if your circumstances improve and you have a realistic offer of repayment to make, you can contact your lender and let them know.

What happens if an order for possession is made against you?

It’s vital to keep communicating with your lender no matter what. Even if an order for possession is made against you, this does not automatically mean that the lender will immediately act on it. You may have heard of cases, either on the news or through family, friends or work colleagues, where an order for possession was made some years ago and yet the owner is still living in the property today. Lenders may be happy not to repossess your house, even if they have an order, if they have received a realistic offer of a payment plan from you. However at that stage you will no longer own the house, so if you find yourself in this situation, you will need to take legal advice and also keep talking to MABS and your lender.

Also, please note that under the Central Bank Code of Conduct on Mortgage Arrears, the lender has a duty to adjourn your case if you have presented them with a realistic payment plan.

If the lender decides to act on their order for possession immediately.

Even if the lender does decide to act on their court order, which means sending it to the sheriff who will then call out to the property and take it into the possession of the bank, you will receive plenty of notice of this. Also, sheriffs are reasonable people and will allow extra time on top of this for you to move out of the property, if you need it. However you should be aware that sheriffs are responsible to the court for carrying out the order, so they won’t be able to postpone your move indefinitely.

Finding a new home

Always try and have alternative accommodation in place before you leave. If you have received a letter from your lender stating that they think your mortgage is now unsustainable, you can apply to be assessed for social housing at any point along this process. If social housing is not an option for you and you are considering renting privately, look for a landlord registered with the Private Residential Tenancies Board. You can check the register at www.prtb.ie There is also a useful checklist on moving at <http://www.prtb.ie/tenants/helpful-info/moving-in-checklist>

You should also check with Citizens Information at www.citizensinformation.ie or 0761 07 4000 to see whether you are entitled to rent supplement.

Advice and support from MABS

MABS now has a Dedicated Mortgage Arrears Service available throughout the country to offer you mortgage debt advice and support, and refer you to other free professional services. To make an appointment call the MABS Helpline on 0761 07 2000.

Accessing Free Legal Advice

MABS operates an Aid and Advice scheme, and under this you can apply for a voucher for one session of free legal advice on your situation. Please note that the free legal aid solicitor cannot represent you in court. For more on the Aid and Advice scheme, please see the MABS Aid & Advice booklet.

In addition, MABS in conjunction with the Legal Aid Board has launched a “duty solicitor” service. This means that there will be a solicitor in attendance at all court repossessions lists around the country, whom you can consult before court begins, or after it ends, if you have legal queries. However, this solicitor is only there to give general advice and cannot speak for you in court.

MABS Court Mentor

MABS also provides a court mentor who is a trained MABS money adviser and who will be present at all repossessions lists around the country. MABS staff cannot give you legal advice or speak for you in court, but they can provide you with general support inside and after court, and give you an appointment to speak to an adviser who will help you review your mortgage and other financial circumstances.

Accessing free personal insolvency advice

Under the Aid and Advice scheme (see above) MABS can also arrange a free consultation with a personal insolvency practitioner (PIP), to see whether any of the statutory personal insolvency solutions might work for you. A personal insolvency practitioner is a licenced professional, usually an accountant, who specialises in negotiating deals with creditors for people who are insolvent. The legal definition of insolvency applies when someone is unable to meet their debts as they fall due. PIPs can also deal with mortgage debt. For more information on this service, go to www.isi.ie for a list of participating PIPs, and talk to your MABS adviser or the MABS helpline who will assist you to apply for a free consultation voucher.

One of the options available to people struggling with mortgage debt is bankruptcy. Bankruptcy is a legal process overseen by the courts, so the relevant professional to take advice from is a legal practitioner who specialises in bankruptcy practice. If you want to explore whether this solution might work for you, you are advised to first apply for the free PIP consultation voucher and afterwards apply for the free legal advice voucher, so that you can be fully advised on bankruptcy and its implications from both a financial and legal point of view.

Dealing with the emotional impact

This is probably one of the most stressful experiences you are ever likely to have, so it is very important that you continue to take care of your own and your family’s health throughout it. Never keep secrets about the mortgage arrears from other adult family members, especially if they are also on the mortgage deed to the property (which means that they own it jointly with you). It’s not fair to them, and it will come as a far bigger shock to them further

down the road than if you are open with them about the mortgage troubles from the beginning.

If you feel you need to discuss how the situation is affecting you or a family member, contact the Samaritans at 116 123 or www.samaritans.org

Finally

DO make sure you’ve sent in a standard financial statement to your lender (your MABS adviser can help you with this)

DO keep copies of all paperwork, filed together

DO contact your lender or their solicitor if your circumstances improve at any time

DO check whether you are due any tax relief on your mortgage

DO check your insurance to see whether you can make a claim

DO check your rights under the Code of Conduct on Mortgage Arrears (your MABS adviser can help you with this)

DO start making arrangements for a new home once it becomes clear that your house will be repossessed

DON’T miss any court dates

DON’T be afraid to speak up for yourself in court - this is YOUR case

DON’T be embarrassed that the lender has taken a case against you - the courtroom is likely to contain many people in the same situation

DON’T send your keys back to the lender - this has absolutely no effect on the money you owe them

DON’T abandon your property and leave it vacant unless you have received a notice from the sheriff

DON’T keep secrets from other adult family members about the problems with your mortgage, especially if their name is also on the mortgage

DON’T ignore the problem in the hope that it will just go away - it won’t

DON’T neglect your own and your family’s health and wellbeing during this stressful time - your health is your most important asset



The Money Advice and Budgeting Service has helpful information, budget sheets and sample letters available online at www.mabs.ie. Advice and information is also available by calling the MABS Helpline 0761 07 2000 (Monday – Friday 9.00 am to 8.00 pm.) and from over 60 offices nationwide.

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