

## **Mortgage, Second Mortgage and Secured Loans**

### **Court Hearing and Possession Order**

#### **YOUR MORTGAGE, SECOND MORTGAGE OR SECURED LOANS ARE YOUR MOST IMPORTANT DEBTS!**

A mortgage, 2nd mortgage or secured loan is a debt **secured on property**. If it is not paid your debt falls into arrears and the lender can ask the County Court to give them possession of your property even if that property is your home.

Before the court stage is reached it is **important that you contact the lender and make a payment offer**. The lender may not accept your offer but pay it anyway; they will not send the money back. By the time of the hearing, you will have established a pattern of payment. This will then make it much more likely that the District Judge will grant a **Suspended Possession of Order**. A Suspended Possession Order means that as long as you pay the amount ordered by the court each month to clear the arrears you will not lose your home.

#### **The Court Hearing**

At the hearing the District Judge can make any order that is considered reasonable. In practice, this means that you will be granted at least 24 months to clear the arrears. **Do not be afraid to ask the Judge for a longer time**. For example 36 or 48 months. In some cases, you can be granted the remaining life of the mortgage to clear arrears.

**Do not be afraid of attending the court hearing** and do not let the lender or the solicitor dissuade you from making your offer of payment to the judge.

#### **Example of offer**

If your arrears are £2500.00 a 36 month suspended Possession Order will mean that you pay (£2500.00 divided by 36) £69.44 per month **in addition to your normal mortgage payment** until your arrears are cleared. So, if your normal mortgage payment is £150 per month, your new monthly payment will be £219.44.

If you ask for a longer term to pay the arrears the Judge is more likely to grant a normal mortgage payment **plus** 1/60th of your arrears per month, if you suggest that the Court Order is reviewed on yearly basis.

Once a payment is agreed and a Suspended Possession Order is made **it is important that you make your payments on time every time each month**. Failure to do so, even being late with a payment could mean the lender applying for an **Eviction order** which means you are in real danger of losing your home (see enforcement action).

**Possession Order or Suspended Possession Order**

**Enforcement Action**

**Eviction**

Anyone with arrears on a Mortgage, Second Mortgage or Secured loan may find themselves with a Possession Order or a Suspended Possession Order.

If the terms of the Suspended Possession Order are broken (late or non - payment of the agreed instalment plus a payment for the arrears) **the lender may ask the County Court Bailiff to set a date at which you will be actually evicted from your home.**

The court will automatically grant a Warrant of Possession (i.e. the power to evict on a specific date). **If you do nothing you will be evicted.**

If you wish to apply to have a Possession Order suspended **contact the lender immediately** and make an offer to clear the arrears over a period of months. The period can be any number of months. Pay what you have offered. **Time is not on your side** so as well as negotiating with the lender **contact the Court**. If you are applying to stop the actual eviction the of which has been set, fill in **Form N244** (available from the Court).

On this form:

- 1 Request a **Stay of Possession**
- 2 Give the date of the eviction
- 3 Quote the **Case number and the Warrant Number**
- 4 Set out the terms upon which you wish the Court to consider granting a **Stay of Possession** (i.e. not evicting you)

**The quicker you act the better.** The Court will usually require at least 48 hours notice before the Hearing but a judge will consider an application on the day of your eviction. **But this cannot be guaranteed.** Always attend the Hearing.

If you are applying for a change in terms of a Possession Order before the actual date of the eviction has been set, negotiate with the lender **and** contact the Court. Fill in the **Form N244**.

On this form:

- 1 Request a **Variation of the Possession Order** granted on (state the date).
- 2 State the terms upon which you request the variation.