

Free Report

## The Repossession process in Scotland

With the compliments of



**Ronan Property Services**  
Cost Effective House and Property Solutions

A division of Ronan Property Services

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If you live in Scotland and are facing repossession, try not to worry; if you seek help as soon as you begin to struggle with mortgage repayments, your lender is much more likely to help you. You may qualify for a payment holiday on your mortgage, or your lender may allow you to switch to an interest only mortgage until your finances improve.

If you run up substantial arrears and are overwhelmed by the situation, contact an advisory organisation such as Shelter Scotland or the Citizens Advice Bureau, or seek the advice of a legal aid solicitor

Repossession in Scotland is different from that in England and Wales, and the following is a brief description of the Scottish repossession process:

### **There are three main ways a lender can begin repossession proceedings:**

1. By serving a calling-up notice, giving the homeowner 2 months to clear their arrears. If arrears are not cleared within this period, then the lender can sell the property without going to court. If the borrower refuses to leave the home, then an action for repossession allows lenders to evict
2. By serving a default notice, which gives one month's notice to clear the arrears and details of any repossession and power to sell.
3. By issuing a certificate with the court, if a mortgagee misses mortgage payments (legally known as 'proceeding on the debtor's default of standard condition 9 (1) (b) of the standard security (i.e. the mortgage)). The certificate will provide proof of arrears.

Although homeowners in Scotland are not covered by the pre-action protocol, they are afforded some protection by the Mortgage Rights (Scotland) Act 2001. This allows those affected by repossession to apply for suspension of enforcement action, giving them extra time to repay any mortgage arrears. The suspension of enforcement is known as a section 2 order and also applies to any loans secured on a property.

**A section 2 order can only be applied for on properties used for residential purposes, and where it is the owner's main residence - it does not cover holiday homes or second homes.**

**There are 4 groups of people who may apply for an order:**

1. The debtor or owner
2. The spouse of the debtor/owner, if they live in the property as a matrimonial home
3. The partner of the debtor/owner (this includes same sex relationships)
4. The ex-partner of the debtor/owner (if the relationship lasted in excess of 6 months, the debtor has left the home, and the debtors' child(ren) live within the home (stepchildren included)).

If a calling up notice is served, an application for a section 2 order must be made before the calling up notice expires. If you receive a default notice, then an application must be received no later than 1 month after the period as set down in the default notice. Where proceedings are raised under sections 24 of the conveyancing act and section 5 of the heritable securities act, an application must be received before the conclusion of the court case.

**If you are fighting repossession in Scotland, it is always best to file a section 2 order as soon as possible, and you can obtain one**

1. By way of summary application procedure (if served with a calling up or default notice)
2. By applying to the sheriff, where a lender has begun enforcement proceedings in the sheriff's court

**The granting of a section 2 order is at the discretion of the sheriff, in accordance with whether the court considers the circumstances reasonable. The following criteria are taken into account:**

- Reasons for default
- A debtor's ability to fulfil the conditions of their mortgage within a reasonable period (determined by a case's circumstances)
- Whether the debtor can reasonably secure alternative accommodation
- Mortgage to Rent application pending
- If the property is actively being marketed for sale

If an order is granted, any enforcement action will be suspended as seen fit and a creditor cannot take further action whilst the section 2 order is in force.

The court, however, does have the power to change or revoke an order if so requested by either lender or debtor; for example, if a debtor does not stick to the terms of the order, it may be revoked. Similarly, if a homeowner suffers a drop in income, they too may apply to court to request a variation of the order.

If you live in Scotland and fear repossession, contact a solicitor, Shelter, a law centre, or the Scottish Legal Aid Board <http://www.slab.org.uk/> in the first instance - they will be able to offer you (free) invaluable advice regarding what your next course of action should be. The Scottish legal aid board does NOT offer legal advice, but can explain the legal aid process.

**Remember - the sooner you seek help, the better your chances of holding onto your home.**

**- Six Steps to keeping your home:**

**1. Sort out your budget** - If you're feeling the pinch, take a look at your financial situation and see if there's anything you can do to improve it. Ask yourself:

Can I cut back on spending without hardship?

Can I get a better deal on my mortgage, insurance, utilities or other essentials?

Is there anything I can do to increase my income? Can I claim any benefits, increase my hours at work or take in a lodger?

An adviser at a Citizens Advice Bureau or money advice centre can help you work out a budget and claim any benefits you may be entitled to.

**2. Don't ignore the problem** - If you receive a letter from your mortgage lender, don't shove it to the back of a drawer. Get advice instead! Visit your local CAB or money advice centre, or call Shelter's helpline.

**3. Talk to your lender** - If something goes wrong and you can't meet your monthly mortgage payments in full, you should tell your lender immediately. It is really important to contact your lender!

**4. Pay what you can** - Even if you can't afford your entire monthly payments, show that you are willing to pay what you can. If your lender knows you are trying to pay off your loan, they should allow you more time to sort out your money problems.

**5. Find out what your options are** - Repossession should be a last resort for your lender, and they ought to consider ways to prevent it happening. For example, you could decide to sell your home yourself, or apply for a debt payment programme or the Scottish Government's mortgage to rent or mortgage to shared equity scheme or the UK-wide homeowners mortgage support (HMS) scheme. An adviser at a CAB, money advice centre or at Shelter will be able to help you look at all the options.

**6. Make the right decision for you and your family** - Before you and your lender agree on any changes to your mortgage, ask your lender to tell you about the longer-term implications of what's proposed. Get advice before making any choices.

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