



An tSeirbhís Chúirteanna
Courts Service

The background features a modern, multi-story brick house with several dormer windows. In the foreground, there is a large pile of Euro banknotes and coins, including 200 Euro and 100 Euro notes, and various Euro coins.

GUIDE TO POSSESSION IN THE CIRCUIT COURT

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This guide is intended for people who are facing the possibility of having their property possessed by a lender in the Circuit Court. It outlines what possession means, the options and supports available to you and what you can expect will happen during the court process.

The Courts Service manages the courts in Ireland and has developed this guide as a support to people appearing in the possession courts. If you want more information on matters relevant to the operation of the courts, including how to locate court offices and buildings, details of court procedure (including court forms and fees) and information about court sittings, visit www.courts.ie

There are State agencies who can provide help, support and advice to people whose mortgages are in arrears and who have been served with a possession civil bill to appear before the Circuit Court:

The Money Advice and Budgeting Service ('MABS') is the State's money advice service. It is a free, independent, confidential and non-judgemental service, provided by skilled and experienced advisors, for people who are in debt or at risk of getting into debt. Contact 0761 07 2000 or visit www.mabs.ie

The Insolvency Service of Ireland ('ISI') is an independent Government body set up to help tackle personal debt problems. Contact 076 106 4200 or visit www.backontrack.ie

The Citizens Information Board provides general information on public services and entitlements in Ireland. Citizens Information and MABS have a website about managing mortgage debt in particular, www.keepingyourhome.ie

Everything you need to know about mortgage arrears and possession is available at www.keepingyourhome.ie
or call MABS Helpline
0761 07 2000 – Monday to Friday from 9 a.m. to 8 p.m.

IN THE EARLY STAGES OF MORTGAGE ARREARS

If you think you are likely to fall behind in your mortgage payments, or have recently fallen behind on your payments, the most important step you can take is to **contact your lender as soon as possible**.

As a first step, your lender will work with you to help find a more sustainable solution to your payments.

At the early stages where you have fallen behind or think you may fall behind, the Money Advice and Budgeting Service (MABS) will advise you on how to manage dealing with your lender and will guide you on the options available to you.

MABS can help to:

- Develop a sustainable budget for you and your family;
- Advise you on your rights and entitlements;
- Complete your Standard Financial Statement (SFS);
- Develop a plan to pay off your debts – always prioritising your family home;
- Give you information and advice on your mortgage debt and all of the options open to you, even if you are facing possession proceedings ;
- Deal with your creditors;
- Negotiate on your behalf if it is needed.

Lenders have an **obligation to engage** with borrowers who are in arrears or likely to fall behind with payments so it is crucial that you first make contact with them. Solutions they might offer you depend on your circumstances, but could include:

- Restructuring your mortgage repayment amount or mortgage term;

- A repayment break;
- Payment of interest only for a specified time;
- A split mortgage; or
- A write down of the amount of debt you owe.

If you have other problem debt or if your lender is not offering you a realistic alternative repayment arrangement and you cannot agree on one being offered, you may need to consider other options. Your local MABS advisors will guide you on what your next steps could be. Some options available to people who cannot negotiate a repayment arrangement with their lender and need additional support are

- Applying for a Personal Insolvency Arrangement;
- Switching to a mortgage-to-rent scheme;
- Selling your property;
- Seeking bankruptcy.

More information on all of these options is available at
www.keepingyourhome.ie
or call MABS Helpline
0761 07 2000 – Monday to Friday from 9 a.m. to 8 p.m.

ONGOING OR LONG TERM MORTGAGE ARREARS

When you take out a mortgage to buy a property, you offer the property as security for the mortgage debt. However, circumstances can change and if you fall behind on payments you are breaching your contract with the lender.

MABS may be able to help you agree an alternative payment plan with your lender or direct you to the appropriate solution.

You could be eligible to apply for a personal insolvency solution with the ISI to deal with your mortgage debt and/or other debts. More details are available at www.backontrack.ie

If you are at the stage where you have exhausted all the options open to you, your lender may be entitled to seek to possess your home in order to sell it to recover the amount you owe.

Possessions usually take place through the court, as the lender needs a court order to take possession of your property (unless you agree to the possession and give them written consent to possess your home – this is known as voluntary surrender).

Remember: Your lender has a responsibility to attempt to deal with any payment problems you have before taking the case to court.

What is possession?

When you miss mortgage payments for some time your lender can apply to the court to take possession of your property. If they are successful, the property is sold and the proceeds of the sale are offset against the outstanding balance owed. However, you may still owe the lender money for any shortfall (as well as owing other creditors) so you should explore all alternatives to possession first.

POSSESSION INFORMATION

There are three main ways to prevent your lender taking possession of your home:

1. Engage with your lender and seek to agree a solution

Open all letters you receive from your lender. Although the stress of debt can be overwhelming, ignoring calls and letters from your lender could actually harm your case. It is crucial that you engage with your lender and talk to them about your financial issues. Also, **know your rights** and the debt solution options available to you. MABS can advise you on your rights.

You can **take control** of your situation by dealing with your debts. It is never too late to seek assistance – even if you have been issued with court papers.

Even if you have already received a **‘Letter of Demand’** or court summons from your lender it is not too late to seek a solution. You are not expected to give up your home on foot of receiving such letters.

If your lender has started the possession process and **you do not agree** to it, your lender will more than likely take you to court. You **must engage** in the legal process and turn up in court. If you do not, your side of the story will not be heard and you could miss a vital opportunity to have your case resolved.

2. Seek a Personal Insolvency Arrangement (PIA)

Legislation¹ was introduced by Government to try to ensure that possession is a last resort. The legislation allows the court to **postpone** possession proceedings for up to two months. This is to allow you time to explore the possibility of putting in place a debt solution called a **Personal Insolvency Arrangement**.

This arrangement is one of the solutions offered by an independent Government body – the Insolvency Service of Ireland ('ISI') – that deals with personal debt. A Personal Insolvency Arrangement aims to keep a person in their home, where possible. You will need to employ a Personal Insolvency Practitioner to represent you when applying for a PIA. Personal Insolvency Practitioners will explain the process to you and speak to your debtors on your behalf. More details on PIAs are available on www.backontrack.ie.

3. Where appropriate, swear an affidavit

If you believe that there are technical errors or serious issues with the proceedings being brought against you and you wish to defend them, you will need to swear an affidavit. You should bring or send the original sworn affidavit and 2 copies to the court office where the proceedings were issued. The original affidavit will be retained by the office and the copies will be returned to you – one which you must serve on the solicitors for the lender and the other to be retained by you.

Remember, possession should be a last resort for all parties involved and all other options should first be explored by both you and your lender.

¹ The Land and Conveyancing Law Reform Act 2013

COURT DOCUMENTS – POSSESSION

Your lender will issue a Circuit Court document called a **‘Civil Bill for Possession’**. This document could be served on you by a Summons Server or it could be posted to you by registered post.

The civil bill has details of the date and venue of the Circuit Court where the case will be heard. This date is called **‘the return date’** and it is essential that you note carefully the date and time when the case is listed.

In these documents, the lender will be described as the ‘Plaintiff’ and you, the borrower, will be the ‘Defendant’.

The civil bill will be accompanied by an affidavit – a document sworn by your lender setting out the claim being made against you – which will also exhibit documents which the lender will be relying upon.

Responding to a ‘Civil Bill’

If you have decided not to contest the action being taken against you by your lender, you should inform solicitors for the lender of your decision in writing.

If you have decided to contest the action, you need to complete a document called an **‘Appearance’ within 10 days** of receiving the civil bill for possession. The form for an ‘appearance’ is available from the Circuit Court Office or from www.courts.ie. There is no charge for filing the form.

You should bring or send three copies of the completed appearance to the court office where the proceedings were issued. One copy will be retained by the office and the other two returned to you – one which you must serve on the solicitors for the lender and the other to be retained by you.

If you are contesting the civil bill, you must swear, lodge and serve an affidavit replying to the claims your lender is making against you. This must be done at least four days before the return date (your court date mentioned above).

It is important that you inform yourself about the law and the procedures of the courts as, unless you are employing a solicitor, you have to prepare your own case and all the necessary documents. You also have to present your case in court. Judges and court staff cannot give you legal advice.

GOING TO COURT

Look out for representatives from MABS and/or the ISI who may be in attendance in court on the day. They are there to provide you with more information.

You should make your way into the appropriate courtroom. There will be several people in attendance, as there could be many cases being dealt with on the same day.

Possession cases will usually be heard by a county registrar. A county registrar is a court official and is not a judge. The county registrar could forward your case to be heard by a judge if required.

The county registrar's role is to ensure that:

- (a) you have been properly served with proceedings;
- (b) the lender has filed all relevant documentation for the case;
- (c) the case is ready to be heard by a Circuit Court judge, if necessary.

Cases before the county registrar are called out at the start of the day. This is known as a '**call over**' and it enables the registrar to check that all parties are present in court and to find out more information about the case. When it is your turn, the court registrar (another court official) will call out your case and you should stand up to identify yourself.

You may be asked some **questions** about your case, for example - are you making any payments or dealing with arrears? Have you tried to negotiate with the lender? Who else lives in the property?

If you have had discussions with your lender about finding a settlement or are making payments, it is very important to tell the county registrar/judge.

You may have to go to court more than once because, in practice, many cases are postponed or ‘adjourned’. This can happen for a number of reasons, including:

- either you or your lender need to file more **documents**;
- there is still hope of agreeing an **alternative repayment** plan and prevent the possession;
- to give you a chance to see if you are eligible for a **Personal Insolvency Arrangement** (as mentioned on page 6).

However, in some circumstances, such as where you have not entered an appearance or filed a replying affidavit, the county registrar may make an **order for possession** at this court appearance.

It is important that you understand what the county registrar/judge has decided in relation to your case before you leave the courtroom. If your case is adjourned, you need to note the next date it will be before the court as the court office will not write to inform you. If you do not understand, do not be afraid to ask the county registrar/judge for clarification.

Decision

Based on the information presented, the judge/county registrar may:

- grant the order for possession;
- strike out or dismiss the case; or
- adjourn the case to allow time for both you and your lender to reach an agreement.

Listen carefully to the decision and reasons given and take notes. You can ask for the decision to be repeated if you miss anything.

Once orders are made, your case is finished and you are free to leave the court.

The court registrar/court clerk will draw up the court order and send it out to the solicitor acting for the lender. If the court grants an order for possession, it is then up to the lender to decide when they apply for an 'execution order', which is the official authorisation to a sheriff to take possession of the property.

Appeals process information

Appeals of decisions of the county registrar can be made to a Circuit Court judge. Appeals of a decision of a Circuit Court judge can be made to the High Court. Your local court office can provide information on the procedure but usually, it involves the issue of a document called a 'notice of motion' which is supported with an affidavit.

After an order for possession is granted

The court may grant these orders with or without a ‘Stay’. A stay delays orders from coming into effect for a time. Where the court grants a stay, for example for six months, the lender cannot seek to take possession or sell the property for at least six months. However, if there is no stay granted, the lender can seek to take possession once the order for possession has been drawn up. While the time taken to act on foot of the order for possession may vary from lender to lender, they can act on it once the order has been granted.

Supports available following an order for possession

If an order for possession has been made, you should make enquiries about being assessed by your local authority for **appropriate housing**.

It is worth noting that you can also be assessed by your local authority for social housing support following a decision by the lender that your mortgage has been declared unsustainable, under the Code of Conduct for Mortgage Arrears (CCMA), even where legal proceedings have not yet commenced.

More information is available from MABS at 0761 07 2000 or by logging on at www.environ.ie

Sale of the property

Your lender must inform you about the sale and to get the best price available for the property.

Following the sale of the property, all monies due to the lender (including legal costs, stamp duty and costs of the sale) are deducted from the proceeds of sale.

If the amount left is less than what is owed to the lender, there is still a debt outstanding and your lender can pursue you for this. This is why it is worth meeting with a Personal Insolvency Practitioner who will examine your debt situation to see if you qualify for a Personal Insolvency Arrangement. This will help you reach a solution which encompasses all your debts.

Alternatively, if the property is in positive equity (i.e. the sale price is more than what is owed on your mortgage), then you are entitled to the balance of the proceeds of sale following all the costs and deductions set out above.

DOs AND DON'Ts WHEN GOING TO COURT

DO:

- Get help. The legal process can seem intimidating, but there are supports available. Speak to a MABS advisor before your day in court so you know and understand all your rights and how the process will work
- Have all documents organised and bring copies of the relevant documents served on you
- Allow yourself plenty of time to get to court and locate the courtroom
- Consider bringing a friend or family member for support
- Look out for MABS or ISI staff who may be in attendance and are there to provide information and support to you
- Speak to the court registrar; tell him/her your name and the case you are involved in
- Stand each time the court commences or adjourns
- Address the judge as 'Judge'
- Address the county registrar as 'County Registrar'
- Always stand when addressing the judge or county registrar and do not sit down until told to do so.

DON'T:


- Bring food or beverages to the courtroom
- Chew gum in court
- Bring children to court
- Wear a hat or sunglasses unless for medical or religious reasons
- Turn on your phone or any other electrical equipment
- Bring a recording device into the courtroom
- Point; use abusive language; shout or interrupt others.

Attending court can be stressful but it is important to remain calm. It is also important to know your rights and entitlements, and to avail of the supports available to you


Get advice as soon as possible.
MABS or the ISI will be able to point you in the right direction for assistance

PROCESS FLOWCHART

Engage with your Lender to try to agree a solution before your case gets to court.



The Lender will issue a letter stating that your mortgage is unsustainable. At this stage you are entitled to contact your local authority about housing options.




The Lender issues a civil bill for possession.



If you agree to possession tell the Lender in writing.




If you don't want your house to be possessed complete an Appearance document.




Go to court.

At your first appearance, the case is usually adjourned if more information is required or if there is a chance of an agreement with the Lender



At subsequent hearing(s)

- (1) your case could be adjourned to allow you to meet with a Personal Insolvency Practitioner
 - (2) your case could be adjourned for other reasons
 - (3) a possession order with or without a stay order could be granted
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A decision will be made

Always remember: The possession process can stop at any stage if you reach agreement with your lender.



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