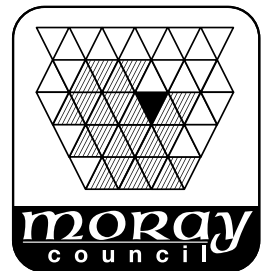




# **Keeping Your Home**

## **Information for homeowners**



# Alternative formats

If you need information from **Moray Council** in a different language or format, such as Braille, audio description or large print, please contact:



TRANSLATION



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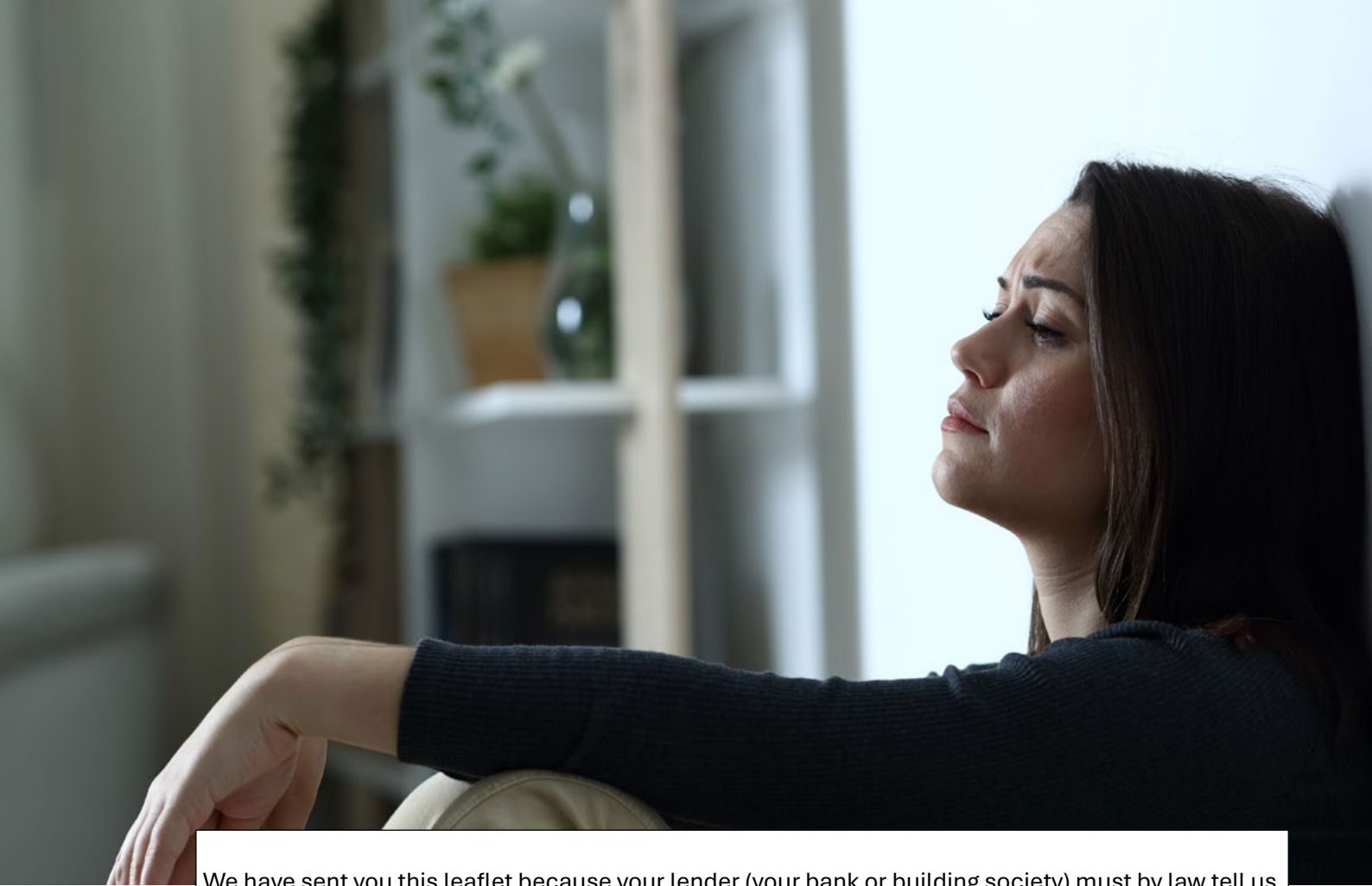
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✉️ **Moray Council**, High Street Elgin, IV30 1BX

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We have sent you this leaflet because your lender (your bank or building society) must by law tell us when they take legal action to repossess your house. Your home is at risk.

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

This leaflet explains what you need to do and where you can get free and confidential information.

Whatever you decide, please do something and **act now**. If you ignore legal papers, your lender can get a judgement against you automatically. This may mean that you lose your home and become homeless.

## **Act now**

**The possibility of becoming homeless often makes people feel anxious, frightened, depressed and unable to cope. You may feel that your world is crashing in on you. Remember, everyone facing homelessness feels like that. The first step is asking for help.**

You can get free legal and money advice to help you access your rights, take control of your life, and save your home. This leaflet tells you what you can do to prevent homelessness and where you can get free legal advice and assistance and support for any other problems you might have.

**If you haven't been repaying your mortgage or secured loan, you might be at risk of losing your home. In Scotland, a mortgage lender must use the Sheriff Court to repossess a property.**

## **How will I know if I am facing court action by my lender?**

If your lender is taking court action against you, they must do the following:

### **1. Send you a Default Notice**

- This is the first formal warning
- It tells you that you've broken the terms of your mortgage (usually by missing payments)
- It gives you a chance to fix the issue before further action is taken.

If you do not clear the arrears within one month or negotiate a repayment plan that your lender agrees to, it's likely your lender will start legal action. A copy of the notice should be sent to any other adults living in your home.

## **2. Complete Pre-Action Requirements**

Before the lender can send a Calling Up Notice or start court proceedings, they must complete these steps:

### **Keep you informed**

They must regularly update you about:

- How much you owe
- Any missed payments
- Charges for late payments or early repayment

### **Explain the loan terms**

They must clearly explain:

- The terms of your mortgage
- The total amount owed
- Any penalties or fee

### **Timely Communication**

- This information must be given to you within a reasonable time after you start missing payments.
- They must make reasonable efforts to agree on a repayment plan with you.
- This plan should consider your income and living costs.

## **3. Issue a Calling Up Notice**

- This ends the mortgage agreement and demands full repayment of the loan.

This notice can only be issued once the Pre-Action Requirements are met.

#### **4. Start legal action**

If you don't pay after the Calling Up Notice, the lender can begin court proceedings to repossess your home:

Even at this stage, repossession is not automatic. You may still be able to:

- Negotiate a repayment plan.
- Apply for help or support.
- Challenge the action in court.

**Get legal advice immediately to understand your options and protect your rights.**



# What are my rights if my lender takes court action?

If your lender takes you to court to repossess your home, you can ask for:

- more time to pay what you owe; or
- time to sell your home and find somewhere else to live.

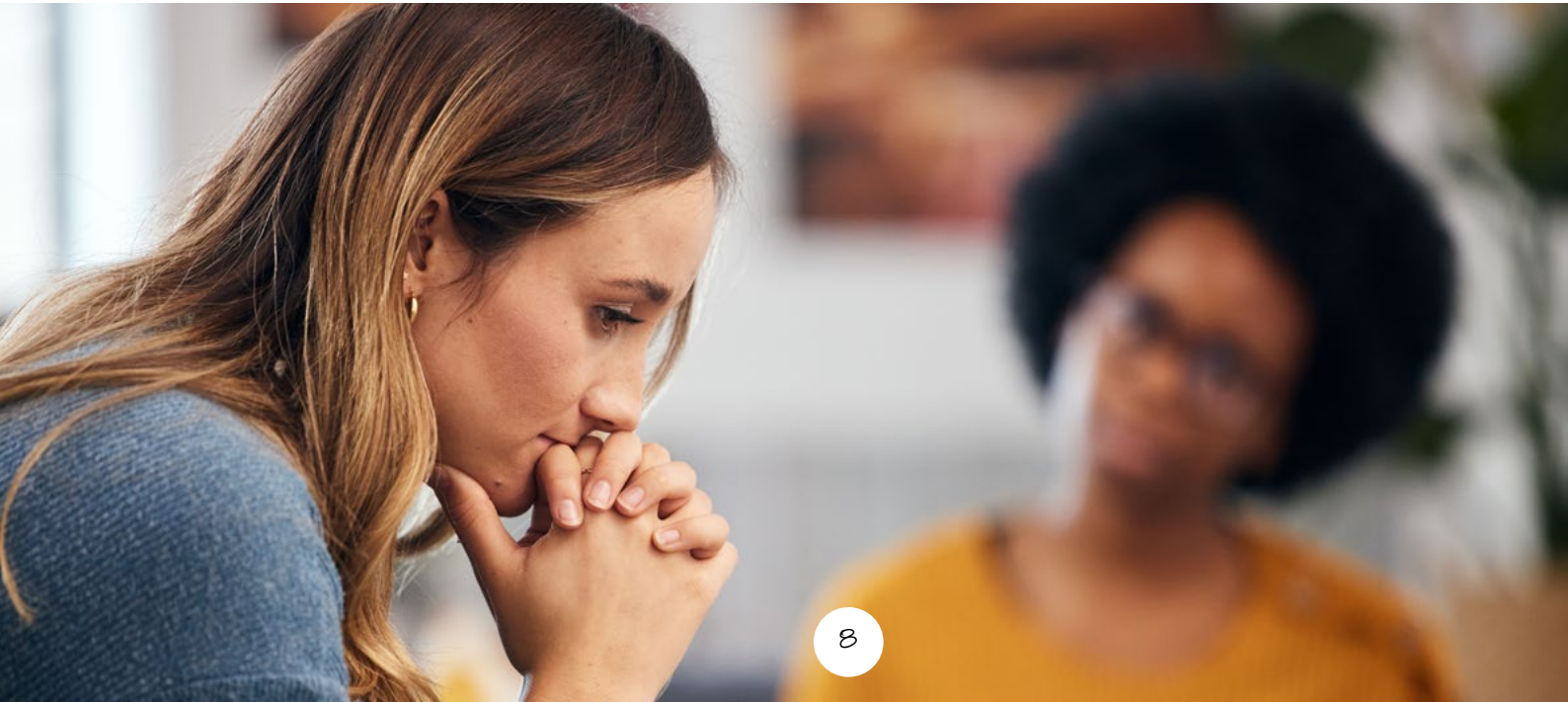
This applies even if:

- you live in the house, and the mortgage is in your partner's name
- you used to live with the person who owns the home, and they have left the property, and you still live there.

**You must act quickly.** Contact one of the agencies listed at the end of this leaflet.

## When should I respond to the court?

Get advice from a suitable agency but always respond to any letter you receive as quickly as possible. You will usually get 21 days' notice of your court date.



## **Do I need a solicitor?**

- You do not have to have a solicitor, but it is a very good idea.
- You can also ask permission from the court to have a trained advisor (called a ‘lay representative’) to speak for you at court, although this can be refused. Advice agencies listed at the end of this leaflet will be able to help you access a solicitor or advisor.

Bring these documents with you when you get advice:

- the legal papers;
- proof of your income; and
- letters from your lender or sheriff officer.

## **Can I get help with legal costs?**

If you have a low income or are getting benefits, you could be eligible for help with legal costs for advice before a court hearing and for representation at the court hearing if you have a solicitor. For more information about help in Moray contact the Civil Legal Advice Office (Highlands and Islands). If you appoint an approved lay representative instead of a solicitor, you won't be entitled to apply for legal aid. A lay representative can't charge you for their help.

## Who else can stop a repossession?

If you are the borrower's:

- husband/ wife civil partner, or partner
- You can ask the court to stop the repossession of your home as an 'entitled resident'.

Ex-partner you might be able to stop it if:

- They no longer live there, and you lived together for at least six months before they left.
- Or, a child under 16 years from your relationship lives with you.

## What else should I do?

You should contact your lender as soon as possible. You may be able to make a repayment plan. Please remember that if repossession action has started, a repayment plan will not stop a repossession order being granted unless you also make an application after getting the court papers.

Even if your lender says they will not enforce the repossession order, they can. It is always safer to use the Mortgage Rights (Scotland) Act 2001 to protect yourself. This will also let you get the case dismissed once you've established regular payments.

# Can I get any financial help?

You may be able to get Support for Mortgage Interest (SMI) from the Department of Works and Pensions (DWP) if you get:

- Pension Credit
- Universal Credit (UC), after three months
- New style Jobseekers Allowance (JSA)
- Income related Employment and Support Allowance (ESA).

For income related benefits you will normally only get help towards your mortgage interest after you have been claiming the benefit for 39 weeks. If your mortgage or other qualifying loans are more than £200,000 in total, your housing costs might not be met in full.

This help:

- Only covers interest and not your mortgage payments.
- Is a loan. You will need to repay it (for example, when you sell your home)

You must apply for help yourself. You can get free help and more information from one of the agencies listed at the end of this leaflet.

### **Can you increase your regular weekly income or get a one-off extra sum of money?**

This could help pay your mortgage and arrears. The checklist below contains some suggestions. Remember there could be other possibilities and you can discuss all of these with one of the agencies listed at the end of this leaflet.

- Check that you are getting all the benefits (and at the correct levels) you are entitled to.
- Claim on any insurance policies. For example, mortgage protection insurance, payment protection insurance, or loss of earnings insurance.
- You or your partner gets a part-time job. You might still be able to get benefits and substantially increase your income. Support might be available to help you re-train for work and develop new skills.
- If you have kids and are separated make sure you get all child maintenance
- Check if you are paying too much tax (including income tax and council tax).
- Sell anything you own but don't need (not things you owe money on).
- Rent out a spare room (ask your mortgage lender first).
- Reclaim credit card or bank charges.
- If you are a student, ask about extra support.

### **Can you spend less money?**

Here are some examples:

- Prioritise your mortgage over other debts or bills.
- Ask for help to get the interest on debts delayed or frozen and charges stopped.
- Look for a cheaper loan or refinance.
- Cut back on non-essential spending.
- Shop around for better deals on utilities services.

For example, mobile phone, landline phone, gas, electricity, internet or insurance tariffs.

# Do I have any other housing options?

Yes. There are other housing options that you can consider.

## Homeowners' Support Fund

This Scottish Government funds two schemes:

- the Mortgage to Rent scheme – where a housing association or the council buys your home and you continue to live there as a tenant.
- the Mortgage to Shared Equity scheme – where Scottish Government buys a share of your home. You will still own it and are responsible for it, but your monthly payments to your lender are less.

## Private renting

You could rent a home from a private landlord, and it could be furnished or unfurnished. It might cost more than the social rented market, but it could still be an affordable option. You may qualify for Local Housing Allowance which helps cover all, or part of your rent, based on your income, the amount of rent and your household size.

## Social housing

This includes housing owned by councils or housing associations. Providers of social housing use allocation policies (set of rules) to decide how to give out their housing. Some of the rules are based on the law, and others are up to the individual council or RSL to decide. Most providers allocate properties based on a person's housing need.

For more information on any of the above, please refer to a Guide to Housing Options in Moray, available online at [www.moray.gov.uk/housingoptions](http://www.moray.gov.uk/housingoptions).

# What happens at court?

Your case will be heard at a sheriff court. Your lender will usually be represented by a solicitor.

- At the hearing, you or your solicitor will have the chance to explain why it's not reasonable for your home to be repossessed and tell the court:
- why you fell behind on mortgage payments
- what you're doing to deal with the arrears
- what you've done to agree a repayment plan with your lender
- why you have not been able to stick to the repayment plan if you've missed payments
- how repossession would impact you – for example, if you're disabled or have health problems that could get worse

The court may also ask you or your solicitor to put your arguments in writing. This is called lodging answers.

## What can the court decide?

The court can:

- **dismiss the case:** this usually only happens if the lender has failed to follow the right procedures or doesn't have a case;
- **continue or freeze (sist) the case** in order for you to pay your mortgage and pay something towards the arrears. If your case is continued, a date will be set for your case to go back to court. If you've paid off all your arrears, no further action will be taken. But if you haven't kept to the agreement, the sheriff will decide if your lender should be allowed to repossess your home; or
- give your lender the right to repossess your home: this is called a repossession order.

## **Can I ask the court to review its decision?**

If you didn't appear or were not represented in court when the decision was made, you can ask the court to review its decision. This is called recalling the decree.

## **What happens if the lender gets a court order to repossess my home?**

If your mortgage lender has a court order to repossess your home, you can still try to negotiate. The lender might be prepared to give you more time as they already have the backing of the court.

You'll probably have to make a new payment offer for your arrears and a plan to keep paying the mortgage to avoid being evicted.

### **When do I have to leave?**

Once your lender has the court order, they could ask you to leave the property quite quickly. You'll usually be given about two weeks from the date of the court order.

Your lender can't sell the property with you in it, so they might ask the court for a warrant to make sure you leave. This is called a warrant for ejection.

### **What happens on the eviction date?**

On the eviction date, a representative of the lender might come to repossess the property. The representatives are called [sheriff officers](#).

It's normal for the locks on the property to be changed to stop you getting back in. If the sheriff officers arrive when you're not at home and change the locks with your possessions still in the property, you'll need to contact your lender. Your lender should then arrange to let you in to collect your possessions.

## **What happens once my home has been repossessed?**

If your home is repossessed and the locks changed, it is usually too late to stop it. However, if the court has only granted the repossession order and the locks have not been changed, it might still be possible to save your home.

A solicitor can ask the court to suspend the repossession order by submitting a 'minute for recall'. This will only work if:

- You didn't already defend the case.
- You didn't apply under the Mortgage Rights (Scotland) Act.

## **What if I lose my home?**

If you become homeless, we have a duty to give you temporary or possibly permanent accommodation. Please contact us as soon as possible, or you can get independent advice on your legal rights from one of the advice agencies listed at the end of this leaflet.

# Advice agencies that can help you

## Money Advice Service

Moray Council Offices, High Street,  
Elgin, IV30 1BX

@ [moneyadvice@moray.gov.uk](mailto:moneyadvice@moray.gov.uk)

☎ 0300 123 4561

🌐 [www.moray.gov.uk](http://www.moray.gov.uk)

## Moray Council

Housing and Property, PO Box 6760,  
Elgin, IV30 1BX

@ [housing@moray.gov.uk](mailto:housing@moray.gov.uk)

☎ 0300 123 4566

🌐 [www.moray.gov.uk](http://www.moray.gov.uk)

## Moray Citizens Advice Bureau

6 Moss Street, Elgin, IV30 1LU

@ [bureau@moraycab.casonline.org.uk](mailto:bureau@moraycab.casonline.org.uk)

☎ 01343 550088

🌐 [www.moraycab.org.uk](http://www.moraycab.org.uk)

## Civil Legal Advice Office

2 Castle Wynd, Inverness, IV2 3EB

@ [inverness@clao.org.uk](mailto:inverness@clao.org.uk)

☎ 01463 641770

🌐 [www.clao.org.uk](http://www.clao.org.uk)

## Legal Aid Helpline

☎ 0131 240 1960

## SHELTER

4th floor, Scotiabank House, 6 South Charlotte  
Street, Edinburgh, EH2 4AW

☎ 0808 800 4444 (Free from landlines and  
mobile)

🌐 [www.shelter.org.uk](http://www.shelter.org.uk)

## Scottish Legal Aid Board

Thistle House, 91 Haymarket Terrace,  
Edinburgh, EH12 5HE

@ [general@slab.org.uk](mailto:general@slab.org.uk)

☎ 0131 226 7061

🌐 [www.slab.org.uk](http://www.slab.org.uk)


## Your Notes



If your lender wants to evict you, get advice immediately. If you ignore court papers your lender can get a judgement against you automatically and you may lose your home.

For more information about housing options in Moray:

 [www.moray.gov.uk/HousingOptionsGuide](http://www.moray.gov.uk/HousingOptionsGuide)

 0300 123 4566



We try to review our leaflets regularly to make sure you have the most up-to-date information; however, the contents of this leaflet are only correct at the time the leaflet is published.

For more information or advice contact us on 0300 123 4566 or visit our website at [www.moray.gov.uk](http://www.moray.gov.uk).