# A guide to dealing with repossessions and mortgage arrears

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# Introduction

**Repossession is a last resort option for lenders. It is usually only taken after all other options to address problems an owner may be having with their mortgage payments have been tried and failed. When a lender applies to the Sheriff's Court for a property to be repossessed, they have to demonstrate that they have explored other options and given the owner ample opportunity to bring arrears up to date and maintain mortgage payments going forward. Because it is a complex process, many neighbours, and even owners, can mistakenly believe a property has been repossessed when it is actually still in the owner's name.**

This guide is for Empty Homes Officers dealing with properties that they believe to have been repossessed. It aims to set out the procedure for repossessions in Scotland and what should be considered if officers believe a property is, or may be, subject to repossession proceedings. It draws primarily on information published on Shelter Scotland and Citizens Advice Scotland websites. It is intended as a guide to the process for empty homes officers and not as a legal guide for home owners.

> *The leaflet focuses on repossession caused by mortgage arrears. This is the most common reason why a property is repossessed. However, failure to pay loans secured on a property (second mortgages) can also result in repossession proceedings. These loans, and sequestration proceedings are referred to briefly at the end of this leaflet.*

## Repossession and empty homes

**Often when we think of a property being repossessed, we think of owners leaving the property after a court order has been made. Alternatively, we think of owners leaving a property and locks being changed a few days later.**

However, a property may already have been empty for a long time before repossession proceedings have commenced.

For example, where the owner has moved away for work or personal reasons and placed the property on the market, but it has failed to sell. The owner may have initially kept up with repayments, but then struggled to afford the cost of the mortgage alongside other costs for their new accommodation and paying the bills on the empty property. Alternatively, they may have rented the property, but then had tenants leave and been unable to re-let it. In these instances, mortgage arrears may only have begun after the property became empty.

When a mortgage is in arrears, the first step a lender has to take is to write to the owner to;

- give the owner clear information about their arrears
- make reasonable efforts to agree with a repayment proposal with them
- allow them reasonable time to pay off the arrears; and
- give information about where to go to for further information and advice

As a minimum, they will have to have sent at least two separate letters, and allowed the owner time to respond to each one, before they can begin formal court proceedings. In practice, they are likely to have sent more than this, particularly where the owner is engaging with the lender and/or putting forward their own proposals for reducing the arrears.

If no resolution is reached and the lender intends to apply to the court to commence formal repossession proceedings, they have to send a notice to the owner to tell them this. They then have to allow a minimum of two months before they can actually make an application to the court itself.

At each stage of this process, the owner may clear the arrears or come to an arrangement with the lender that effectively brings a halt to the process. Sadly, however, there are many instances where owners may once again fall into arrears. Where this happens, the process may begin again, with another letter to the owner.

Where a case does make its way to the court, an order for repossession is only one of the possible outcomes. Other outcomes include the application being dismissed by the court, or effectively be put on hold where the court believe that the owner should be given time to clear the arrears or at least demonstrate that they are making regular mortgage payments.

Where a repossession order is made by the court, there are still further steps that need to be taken before the lender formally takes possession of the property. The owner or other entitled residents of the property may make applications to the court during this time. If they do, it will prevent the lender from taking any final action unless and until a court dismisses the application.

If the property has been empty while all of this has been going on, neighbours may incorrectly assume it has been repossessed. In some instances, an owner may also assume that there is nothing they can do to bring the property back into use while repossession proceedings are pending.

The first of these assumptions may often be incorrect. The second will almost always be incorrect. So, the first thing an empty homes officer should do when told that a property has been repossessed is to check that this is the case.

## Where to check to establish whether a property has been repossessed

**Council tax records**
The best way to establish if a home has been repossessed is to check the council tax status of the property.

Repossessed properties are exempt from council tax until they are sold to a new owner. Once a lender has taken a possession of a property, they will send notification to council tax giving the date of re-possession.

At that point, council tax apply the Council Tax Repossession Exemption, create a new Council Tax liability in the name of the heritable creditor (normally the bank or mortgage lender), and a Notice of Exemption is produced and issued to the Heritable Creditor's mailing address.

> *Scotlis (Register of Scotland) is not updated upon repossession. The owner's details will remain on the title sheet until such time as it is sold by the Heritable Creditor. At that time, the new owner's name will show on the title sheet. Therefore, you should not use Scotlis to check whether a property has been repossessed. There are, however, other reasons why you may want to use Scotlis, as set out in later in this guide.*

## What to do if a property is not shown as exempt from council tax

If council tax does not show a repossession exemption, it is likely that either;

**a)** repossession proceedings at the Sheriff Court are still ongoing,

**b)** an order for repossession has been granted, but the lender is yet to complete the process for taking formal possession of the property,

**c)** the application for repossession was dismissed by the Sheriff Court,

**d)** the application has been discontinued as the lender and owner have reached an agreement (normally a rearranged payment plan to cover mortgage arrears),

**e)** the owner has voluntarily surrendered the property, but the lender is yet to complete the process for taking formal possession of the property, or

**f)** repossession proceedings have not yet reached the stage where the lender has made an application to the Sheriff Court.

There is more information on each of these options, and what they may mean for empty homes work, later in this guide.

## Ways to find out if repossession proceedings have commenced and what stage they have reached

**Check with the owner**

If the owner wasn't the person who told you that the property had been repossessed, you should try to contact them to find out what the current position is.

However, the owner themselves may mistakenly believe that the property has been repossessed. Therefore, if council tax records still show the owner as liable for council tax, you should assume that repossession proceedings have not concluded even if the owner says the property has been repossessed.

*While the mortgage provider or their solicitor should also know whether repossession proceedings are ongoing, and what stage they have reached, they are unlikely to be able to share this information with you due to data protection rules.*

*Remember, the information you are asking for relates to the financial status of the owner. You are a third party, you are not the owner of the property, nor a representative of the lender. This is not information a bank or solicitor can legally disclose to you.*

**Council homelessness section**

Lenders are required to notify the relevant local authority (i.e the local authority where the property is) under Section 11 of the Homelessness Etc (Scotland) Act 2003, both when;

- they notify an owner that they are intending to raise proceedings for repossession (referred to as notice to local authority of calling up), and when;
- they have raised court action (notice to local authority of application to court).

A Section 11 notice informs the local authority that the lender intends to repossess the property and the owner could end up being homeless. The lender is required to send these, irrespective of whether the owner is still living in the property.

The notices are received by the council's homelessness section.

For this reason, you should check with the homelessness section to see if they have received at least one Section 11 notice in relation to the property. If they have, check the wording of the notice. This should state whether it is a notice of calling up, or a notice of application to court.

*If you cannot check the notice, or if it the wording is unclear, a broad rule of thumb is where they have received more than one notice, it is likely that formal court proceedings for repossession have commenced. If they have received one notice only, it is likely that an application to court has not been made.*

**Sheriff Court**
If there has been a Section 11 notice of application to court, you can contact the Sheriff Court to find out whether that application has been heard and, if it has, what the outcome was.

Repossession action will be listed under ordinary cause hearings on the Sheriff Court Roll which lists all the week's court action. If a hearing was scheduled, you can then check with the Sheriff Clerk to find out what the outcome of the hearing was.

If the outcome is 'repossession order granted', it will mean that the lender has been given permission to repossess the property. There are other steps that need to happen after this before the lender takes possession of the property and notifies the council so that the council tax status can be changed to exempt. These should be concluded within two months. If it has been more than two months since the hearing, and council tax have not been notified, then it is possible that there has been an appeal against the order (referred to as a Minute for Recall), or there is some other reason why the lender has not acted on the repossession order. The court may be able to advise you on this, if you are unable to contact the owner.

If the outcome is shown as 'case continued' it is likely to mean that a further court hearing date has been, or will be, set and repossession proceedings are ongoing. You should contact the owner for more information in these instances.

If the outcome is 'case dismissed', it means that the court dismissed the lender's application. The lender may look to recommence proceedings dependant on the reason for dismissal. If they do this, they will need to send further Section 11 notices to the local authority, so you should check with homelessness section to see if this has happened, as well as contacting the owner where possible.

**Scotlis**
While Scotlis (Register of Scotland) will not show if a property has been repossessed, it may still assist you in locating the owner of a property.

The owner's address at the time of purchase will be on the title sheet. Therefore, if the owner did not live at the property at time it was registered (for example, because the property had been purchased to use as a rental property or second home) this may offer a route for contact.

Additionally, if the home has been empty for several years, it is possible that it was repossessed or surrendered voluntarily, and has since been resold. If the new owner never moved into the property (for example, where the property was sold at an auction and purchased by an individual or company as part of a property portfolio, without ever intending to live in it or rent it out), it is possible that neighbours will be unaware of the sale. For this reason, it is worth checking Scotlis to establish whether the property has changed hands, and who the current owner is.

## Points to note when speaking to owners

**Many owners believe that any responsibility they may have had in relation to the property ceases at the moment the court orders repossession. Others may be unaware of the legal processes associated with repossession and believe that they can simply hand the keys back into the bank if they wish to give up ownership of the property.**

This is not the case. The owner retains full responsibility for most financial liabilities until the bank formally takes possession of the property. After that point, it can be a slightly grey area. For example, many lenders will add the property to their own insurance policy, but others may deduct this from the money that is eventually returned to the former owner following sale of the property.

It is important to make the owner aware of this, and also to let them know that repossession proceedings do not prevent them from taking action themselves to sell the property or discuss other options for bringing the property back to use with the lender.

The following is a summary of some of the payments an owner will still be responsible prior to and after repossession has taken place.

- **Council tax**
  The owner is liable for any council tax until the lender takes possession of the property (which is later than the date at which the court grant the order for repossession). If the lender has, for any reason, failed to notify council tax of the date of repossession, then council tax will still be showing the owner as liable for council tax even after repossession has been completed. If the property has been empty for more than a year, they will be liable to pay the council tax surcharge on the property too. However, it should be noted that it is the responsibility of the lender's solicitor to notify the council tax office when they take possession of a property either at the culmination of repossession proceedings or following voluntary surrender.

- **Mortgage Payments**
  Until the bank takes possession of the property mortgage payments and interest will still be charged to the account. While no mortgage payments are due after repossession interest will be charged on the outstanding amount due. This will be deducted from the proceeds of selling the home.

- **Repairs & Maintenance**
  After taking possession of a property, lenders are responsible for ensuring it is wind and watertight where possible and safe to market. Although it is extremely rare for lenders to instruct works on a property whilst in their possession, there may be work in progress at the time of repossession, or subsequently required in response to a statutory notice. In these instances, the cost of essential repairs and maintenance may be deducted from the proceeds of selling the property.

- **Insurance**
  While the lender is unlikely to ask a customer to insure a property after it has been repossessed, they may in some circumstances deduct the cost of insurance from the proceeds of sale. This may vary between lenders. Where this is the case, it should also be noted that the costs of insuring an empty property are usually higher than insuring an occupied property.

# The repossession process

**Before an application for repossession of a property is lodged with the Sheriff Court, there are several other procedures lenders have to follow to advise owners of mortgage arrears, the potential consequences of them, and their intention to go to court.**

The next part of this guide gives an overview of each stage of the pre-court process, and options that may be available to the owner to halt proceedings and/or bring the property back into use. It also gives details of when the lender will send a Section 11 notice to the local authority.

**Missed payment letters**
As mentioned on the first page of this guide, before a lender can commence repossession proceedings they have to written to the owner about their mortgage arrears, to give them the opportunity to bring the arrears up to date or agree a new repayment plan, and to explain to them the possible consequences if they don't do either of these. There are normally two letters that will be sent before the lender writes to say it will be applying to the court for repossession.

The first letter will be sent where an owner has missed one or more mortgage payments. The letter will be sent by the bank and ask the borrower to bring their payments up to date or make contact with the lender to discuss any difficulties that they may have.

If the owner does not respond to this letter, misses further payments or does not bring their payments up to date, then a second letter will be sent.

This letter will come from either the lender or their solicitor. It will again ask the owner to bring their mortgage payments up to date, but this time it will set a time limit for doing this (normally within seven days), and notify them that they will commence repossession proceedings if mortgage payments are not brought up to date within this time frame.

At this stage an owner can bring their payments up to date or speak to the bank to discuss difficulties and try and agree a plan to clear their arrears. If they don't do this, or they fail to reach a satisfactory arrangement with the lender in relation to the arrears, then the lender may commence repossession proceedings.

It is important to note that, 'commence repossession proceedings' does not mean apply to the court for repossession of the property. Instead, it means sending them a formal notice setting out clear actions and timescales that the owner must comply with in order to prevent the lender from applying to the court.  This is done by way of a Calling-up Notice.

**Calling-up Notice**
A calling-up notice is a legal document which 'calls-up' the mortgage. This means that it ends the mortgage agreement and asks the owner to repay the whole amount of the outstanding loan.

When a lender serves a calling-up notice they are also required to send the council a section 11 notice informing them about the calling-up notice. Where you have not been able to contact the owner, or where the owner is unaware of what stage proceedings have reached, you should check with the homelessness section to see if they have received a section 11 notice. If they haven't, it is unlikely that a calling-up notice will have been sent to the owner. The calling-up notice will give the owner two months from the day after the notice is served on them (it will be sent by recorded delivery) to repay the whole loan and inform them that, if they fail to do this, the lender may apply to the Sheriff Court to repossess and sell the property.

There are several options available to the owner that may mean the lender does not go on to apply to the court for repossession at the end of this period.

**The owner can:**

**Pay off the whole loan within the two month time limit**
This is effectively complying with the request in the calling up notice and paying off the mortgage in full. For most owners, this is unlikely to be an option. Given that lenders are reluctant to start repossession proceedings where the outstanding amount of the loan is comparatively small, the amount an owner would need to pay is likely to be very large – possibly the equivalent of ten or more years of mortgage payments in one go.

If they have been unable to meet monthly payments, then, unless they have suddenly come into a large amount of additional money, possibly through realisation of other assets, they are unlikely to have sufficient money to clear the entire loan.

**Negotiate with the lender**
If the owner can't pay off the whole amount of the loan, they may still be able to negotiate an arrangement with the lender to repay the arrears and continue with the mortgage. In these instances, the lender may still take the case to court so that the arrangement can be monitored and, if the owner misses future payments, they can bring the matter back to court and then request the court to grant repossession.

It is important to note that where a Calling-up notice has been sent to the owner it does not prevent the owner from trying to sell the property themselves. However, if they wish to bring the property back into use by renting it out however, it is likely that they will need the approval of their lender unless the mortgage specifically allows for this.

**Challenge the calling-up notice**
An owner can challenge a calling-up notice in court if they think there is something wrong with it. Calling-up notices can only be challenged on a technical ground, for example if there are no arrears. This option should only be taken by the owner following legal advice.

Negotiating with the lender or successfully challenging the calling-up notice may mean the lender never applies to the court to repossess the property, however, in some cases, it may only represent a stay of execution. For example, if the owner successfully challenges the notice, it may simply be a matter of the lender correcting an error in the notice, and sending a new notice to the owner. Also, if further arrears arise following any renegotiated arrangement, repossession proceedings may also be recommenced.

**Apply to the mortgage to rent scheme**
The mortgage to rent scheme is run by the Scottish Government. The scheme aims to help people, whose homes are at risk of being repossessed, to stay in their homes. Under the scheme, the home will be bought by the council or a housing association, but the owner will continue to live there as a tenant.

## Voluntary surrender

**Voluntary Surrender is a further option available at this stage, and, if the owner chooses to do this, it may mean that the lender goes on to sell the property without commencing formal repossession proceedings in court. Under voluntary surrender the owner and any other entitled resident agree to reduce the period of notice specified in the Calling Up Notice so that the lender can immediately move forward with taking possession of the property. The lender can then take possession by using a contractor to carry out a lock change and secure the property.**

A common misconception amongst owners is that all they need to do if they wish to voluntarily surrender a property is to give the keys back to the bank.

*An owner cannot simply hand in the keys to the bank. Therefore, if an owner says that they no longer own the property because they returned the keys, you should advise them that this is not the case and that they remain liable for mortgage payments, council tax, insurance and all other charges arising from ownership of the property.*

The process an owner must follow if they wish to voluntarily surrender their property is as follows;

Confirm to the lender in writing on a voluntary surrender form that:
- they no longer live in property
- that the property is empty
- they agree to the voluntary surrender, and
- that the agreement is given freely.

They must also get written consent from their husband, wife, civil partner or partner agreeing to the voluntary surrender.

*An owner may be attracted to the idea of voluntary surrender, seeing it as a way of avoiding court proceedings and the negative effect that a repossession order may have on future credit applications. However, they should not see it as ending all their obligations in relation to the property, and it may be better for them not to surrender the property and instead to actively try to sell the property themselves. This may result in a quicker sale, a higher price and fewer deductions from proceeds of sale than if the lender sells the property.*

*However, individual circumstances will vary, and whatever option an owner is considering, it is important that they seek legal advice, and that Empty Homes Officers do not try to push owners to make a decision.*

## Court proceedings for repossession

**If, two months after receiving a calling up notice, the owner does not repay the loan, clear the arrears, come to a repayment arrangement, or voluntarily surrender the property, the lender may then make an application to the sheriff court to repossess and sell the property.**

Where the lender does this, they file two notices with the court:

- an initial writ
- a notice of application to court under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

These notices are then served on the owner of the property by the court. They are also served on any entitled residents. Broadly speaking, entitled resident include current partners of the owner (without any requirement for them to be married or in a registered civil partnership) and former partners where they and a child of the partnership are living in the property. Entitled residents do not include tenants of the property, unless they are (or were) in a relationship with the owner. The full list of entitled residents is set out in 24c(1) of the Conveyancing and Feudal Reform (Scotland) Act 1970.

The writ and notice of application will normally be sent by recorded delivery. The court will also set a date for the first hearing of the application and notify the owner of the date at the same time as they serve the writ and notice of application. The hearing date will be at least 21 days after the day the notice is served.

The lender will send the council a Section 11 notice stating that they have made an application to the court. They should do this at the same time that the application is made to the court (which will be before the court has served the notice of the application on the owner). As this notice will be specifically about the application to court, it will look different from the earlier section 11 notice sent when the lender issued the Calling-up notice.

As before, where you have not been able to contact the owner, or where the owner is unaware what stage the proceedings have reached, you should check with the homelessness section of the council to find out if they have received the second Section 11 notice. If a notice hasn't been received it is unlikely that an application has been made as yet, and there are steps an owner can take (or has already taken) to prevent an application being made.

If a notice has been received, but council tax have not been told that the property has been repossessed, there may still be steps an owner can take to prevent repossession and/or sell the property themselves, but time is running out for them to do so.

The steps an owner can take after they are served with the writ and notice of application are:

**Defend the court action**
The owner has 21 days from the day the notices are sent to reply to the court notifying them that they wish to defend the action. Reasons for defending the action may include that the pre-action requirements have not been complied with (for example, they have not informed the owner of the option to negotiate a repayment) or that it would not be reasonable for the sheriff to grant the application.

**Negotiate with their lender**
Even at this stage, the owner can try to negotiate a repayment arrangement with the lender and prevent the case having to go to court. However, even if the lender does agree to a repayment arrangement, they may still continue with legal action so that the court can monitor the repayments.

In both instances, it is likely that the first hearing date will still take place on the scheduled date. This will also be the case where the owner does not take any action after service.

**Sheriff Court Hearing**
At the court hearing the sheriff can make the following decisions:

- dismiss the case
- continue the case
- grant a decree for repossession of the property.

The paragraphs below explain what each of these decisions mean and what may happen when they are made by the court.

**The case is dismissed**
The sheriff can throw the case out of court if they think the lender has not followed the correct procedure and/or they don't have the right to repossess the home.

Where this happens, it is unlikely to mean it is the end of the matter if there are still mortgage arrears and the lender still wants to repossess the property. The lender can correct any procedural errors or oversights and then start court proceedings again.

In some instances, this may mean going right back to the start of the process and sending letters advising of missed payments and requesting repayment of arrears.

*Where a case has been dismissed, there is nothing to prevent the owner from trying to sell the property or take other legal action that would mean repossession was unnecessary even if the lender has indicated they will recommence proceedings.*

**The case is continued**

This is a broad term and can cover a range of scenarios. Essentially, it means that the court will not issue a decree for repossession on that day but will set a further date to review the case. This is likely to be done where the owner has already indicated that they intend to defend the proceedings, or where:

- the owner or lender asks for time to provide additional information in support of their case, or
- the owner and lender have reached a negotiated settlement but the court has been requested to continue the case so that payments can be monitored and the case brought back to court for reconsideration if further arrears arise.

Where the former is the case, the next court date may not be too far ahead. Where the latter is the case, it may be more open ended.

*If the case is continued and the house was empty at the time of the hearing, it does not necessarily follow that the owner may move back into the property, even where there has been a negotiated settlement. A lot may depend on how they intend to pay any arrears (i.e. will it be cleared through rental income, by them returning to the property and perhaps avoiding rental costs of living elsewhere, or through other income or financial sources).*

**A decree for repossession is granted**

If the court decides that the lender's application meets 'the reasonableness test' as defined by Section 10 of the Homeowner and Debtor Protection (Scotland) Act 2010, it will issue a decree granting the lender the right to repossess the home.

## What happens when a decree for repossession is granted?

**The first thing to note is what doesn't happen – the lender does not immediately take possession of the property on the day a decree is granted. Nor will it receive a copy of the decree granting repossession at the hearing.**

There is a minimum 14 days gap between the decree being made and the court serving an Extract Decree. The extract decree confirms that the repossession application was granted and also that the owner and any other person living in the property should now vacate it.

During the 14 days, and immediately after it, the owner, or any entitled resident, may apply to the court for the case to be heard again if they were not at the hearing where the decree was granted. The procedure for doing this is called a Minute of Recall. There is further information on this process at the end of this section.

Additionally, an owner can still try to negotiate with the lender at this stage, notwithstanding that the right to repossession has been granted. However, for this to be successful, they are likely to be required by the lender to:

- pay a lump sum, and
- make an offer to pay the balance of the arrears, and
- pay the lender's legal costs, and
- show that they will be able to meet monthly payments too.

If no arrangement has been agreed between the lender and the owner, then the lender (or their solicitor) will set a date for ejection after they receive the Extract Decree. They do this by lodging a Charge to Remove with the Sheriff Court. The Sheriff Officer then serves this to the address of the property. The owner does not need to be in the property at the time of service.

There will be a minimum of 14 days between the date the charge is served and the date of ejection, and during this time there is still the opportunity for the owner and lender to reach an agreement that means repossession does not take place.

It is only after the 14 days have expired and the Sheriff Officer goes back to the property, ejects any person in the property at that time, and changes the locks that the repossession process is completed.

**Minute of recall**
If the owner did not appear in court (and was not represented by someone in their absence) they can apply to get the case heard again by lodging a minute of recall. A minute of recall can also be applied for by other 'entitled residents' as defined in 24c(1) of the Conveyancing and Feudal Reform (Scotland) Act 1970. The minute of recall effectively asks the court to reverse the decision to issue a decree and dismiss the repossession application. An application can be made at any time up to the point where the Sheriff Officer has gone to the property and changed the locks following a Charge to Remove.

Where an application is made, it will mean that the lender cannot proceed with repossessing the property until such time as the application has been determined by the court.

The court will set a hearing date for the recall application. If the applicant attends the hearing, the court has similar powers to those it had at the first hearing. (i.e if it approves the application, it may overturn the decree for repossession or it may dismiss the application meaning that the decree still stands, or it may set a further date for consideration of the application).

If the applicant does not attend the hearing, the application will not be automatically dismissed. Instead the Sheriff will set a further date where the applicant will be required to attend. If they fail to attend that hearing, the Sheriff may, but does not have to, dismiss the application to recall. Unless and until the Sheriff dismisses the application, the lender is unable to complete repossession of the property.

## What happens after the locks have been changed?

**After the locks have been changed, the lender will notify council tax giving the date of repossession.**

While it is highly unlikely that the lender will fail to notify council tax, or the exemption will not be applied following notification, it is still theoretically possible. Therefore, if council tax has not been notified of repossession, and there is no record of any subsequent proceedings at the sheriff court, you may want to look to establish whether the property has been, or is, advertised for sale or listed for auction, and the date when this happened. If it has been, you should contact the agent selling the property to seek to establish whether the sale is following repossession.

The lender will appoint an asset manager and conveyancing solicitor who will deal with the sale of the property. In most instances, the property will be placed for sale as soon as the home report is completed and photos of the property are available for marketing.

As the lender is required under legislation to obtain the best possible price for the property, it has to allow a reasonable marketing period before any offers are considered. This will normally be around three months from the date the property is put for sale, however, it may be considerably shorter if there is a fair offer or offers received on the property earlier, or longer than this if there is little or no interest in the property.

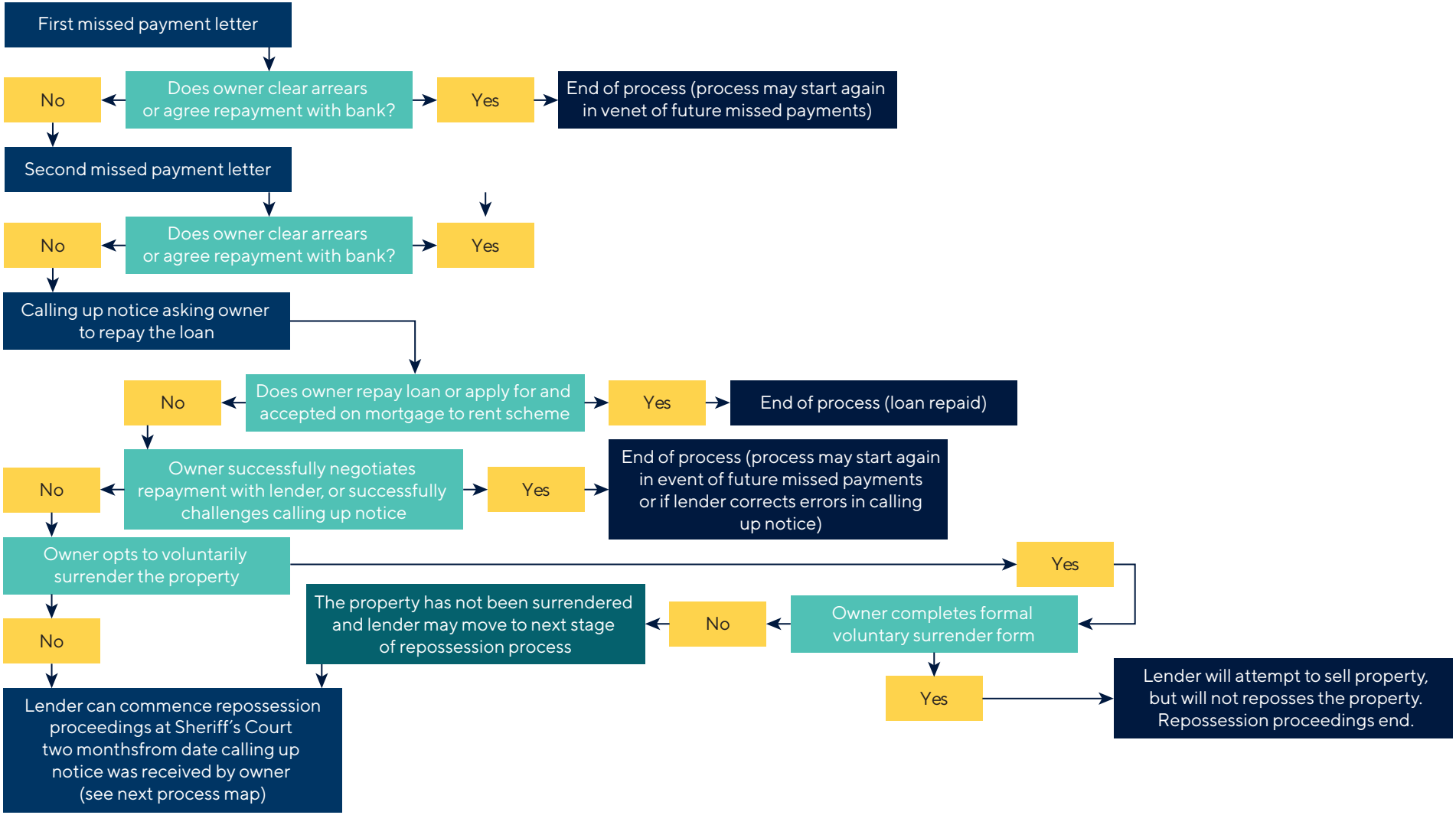
A repossessed property is no different from any other property brought to the market. In some instances, the property may be in a poor state of repair, particularly if it has been empty for some time, or if the owner had been struggling to maintain the property before it was repossessed. In these instances, as with any home, a decision has to be made on whether the home will sell unless and until it is brought up to standard. If it is placed on the market and doesn't sell, a decision has to be made on whether to lower the price or make alterations to increase the chance of sale.

Lenders have to balance the need to bring the property back to use, with the need to ensure they obtain the best possible price for the owner. There are no hard and fast rules on how to achieve this balance, and there are a variety of things a lender will have to consider when making decisions. Practice will vary from lender to lender.

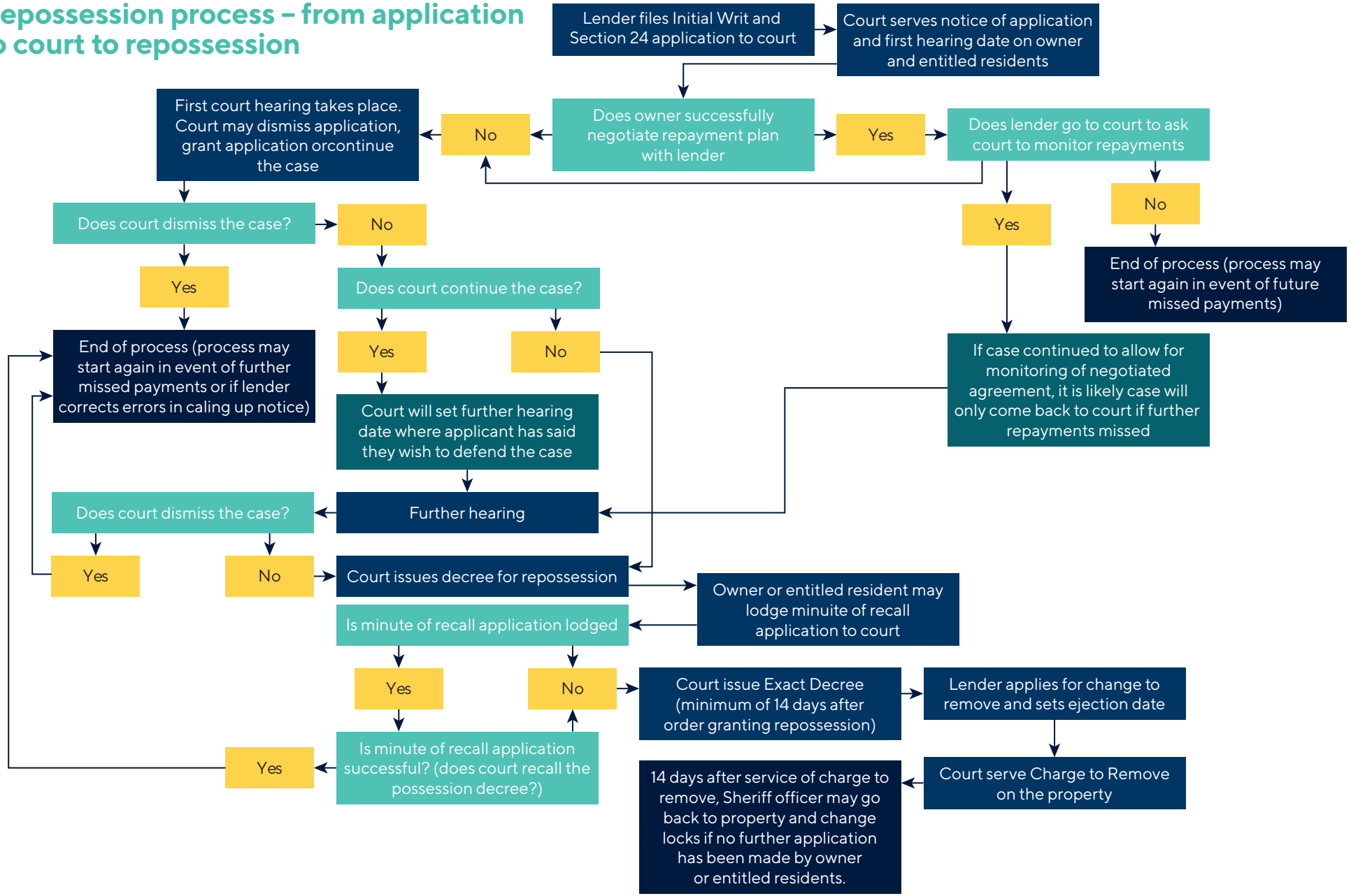
## Repossession procedure flowcharts

**The next two pages of this guide have tables showing the repossession procedures prior to an application being made to court and after an application is made. Both tables are summaries of information in this leaflet and should be read in conjunction with the rest of the leaflet for fuller information.**

# Repossession process - from missed payment to application to court



## Repossession process – from application to court to repossession



## In conclusion

**Repossession is a complex and time consuming process because of the importance of the issues involved. The end result is someone loses their property, may be at risk of homelessness, the amount they receive back may be less than the mortgage payments they have made, and they may find that they still owe money to the lender after the property is sold. All of which will affect their ability to purchase a property in the future.**

Where repossession has not taken place, it is always recommended that an EHO attempts to trigger engagement with the owner to explore options that may help them to bring the property back into use. However, in some instances an owner may be unwilling or unable to take any action themselves. For example, if the property is in a poor condition, has substantial mortgage arrears and the owner cannot afford to undertake any work required to increase the chances of selling or renting the property, there is unlikely to be anything you can do to enable them to bring the property back to use and/or halt repossession proceedings. If this is the case, it is still worth encouraging the owner to contact the lender as this may mean that any misunderstandings about where the process has reached can be cleared up.

## Secured loans, Sequestration and repossession of property

**Secured loans**

A secured loan is a loan that uses the home as a guarantee for payment. If the borrower does not keep up with their repayments the lender can also start proceedings to repossess the home. As with repossession applications following mortgage arrears, there are several steps the lender must take before they can commence legal action, and there are opportunities at each stage for the owner to clear arrears. Options for selling the property may vary however, given that on sale, mortgage repayments would take precedent over repayment of any amount outstanding on the secured loan.

Where legal proceedings have commenced, if the loan is covered by the Consumer Credit Act, the owner may be able to apply to the sheriff court for a time order to give them the opportunity to repay their debt and prevent the lender taking further action to repossess the home.

**Sequestration**

Sequestration proceedings are a further reason why an owner may lose a property. Sequestration applications are made where an owner has a lot of debt and no realistic prospects of paying this off. They can result in a person being declared bankrupt.

Where this happens, any assets, including any property, can be used to pay debts during a period of two to three years. This may result in the person's property being sold (although the property would not go through repossession proceedings where this happens) At the end of the two to three year period, most remaining debts will be written off, and it is likely that the person will be discharged from bankruptcy. During the two to three year period, although the owner may take steps to identify a potential buyer for a property, they will not be able to independently instruct an estate agent to sell the property on their behalf.