

## Mortgage Actions in the Isle of Man

Land law in the Isle of Man has developed rather differently from that in the United Kingdom, giving rise to different requirements when a lender has to apply to the Court for possession.

In the Isle of Man there is no concept of "mortgagee in possession," nor of mortgagees having a power of sale. This actually results in a simplification of the process of applying to the Court, with the first step being a Default Summons for the full amount of the debt owed. The mortgage is secured by what is known as a Deed of Conditional Bond and Security: this includes a personal covenant by any borrower to repay in full which continues even after a sale of the property in the event of there being a shortfall.

In order to justify an application for possession, there must be a minimum of two full months instalments outstanding under a mortgage. Although it will be useful for the Advocates to receive copies of the title deeds, this is not essential as the originals are held at the Land Registry Office in the Isle of Man from where the Advocates can obtain copies direct.

Once issued, the Summons is passed to the local Coroner (whose powers are similar to but more extensive than that of the Court Bailiff in United Kingdom) for service. Where for any reason it is not possible to effect service on the borrowers or at the property, there are provisions allowing the Advocates to apply to the Court for substituted service or to dispense with service.

Following service of the Summons the borrowers have 14 days within which to

lodge an Acknowledgment of Service, and if they indicate an intention to defend they then have an additional 28 days within which to serve a Defence. If they fail to lodge an Acknowledgment and/or a Defence, default judgment can be obtained purely by administrative process through the court office. There is no Affidavit required. If the matter is defended, then it proceeds as a normal court action requiring directions leading on to eventual trial. Unfortunately, although the Isle of Man legal system has provision for default judgment, there is no provision for summary judgment, meaning that if the borrowers enter a hopeless defence, there is normally no way of defeating this short of full trial (unless it is so defective that it makes it susceptible to striking out).

Once judgment has been obtained, whether by default or following trial, the judgment is placed in the hands of the Coroner for execution. He is then automatically empowered to arrest any money, possessions or property of the borrowers, including the property subject of the mortgage. However, if the property is occupied, the Coroner must apply to the Court for leave to arrest it, a short process which can in certain circumstances be done overnight if necessary. The borrowers are at this stage able to apply to the Court for an extension of time if for example they are looking for alternative accommodation and/or they are in a position to offer payments towards the mortgage. It is relatively common in this sort of situation for the Coroner to be granted an

Order of Arrest but with any advertisement of the property for sale being deferred as long as the borrowers continue to keep up satisfactory payments.

If no stay on arrest or sale is agreed or ordered, the Coroner must wait at least 21 days from the date of arrest before advertising the property for sale in the local paper, then giving a minimum of 14 days notice of the Coroner's Auction he intends to hold in respect of the property. Interestingly, although sale by auction can sometimes result in the property being sold at a relatively low price, the Coroner is often able to achieve a better price than that anticipated by private treaty. Equally, the borrowers often make particularly strenuous attempts to find a private purchaser prior to auction in the hope of obtaining a better price, and the auction can be aborted or postponed to allow for a private sale in appropriate cases.

It is usual for the lender's Advocates to obtain two independent valuations prior to auction and to then advise on the setting of a

reserve price at which the Advocates will buy the property on behalf of the lender in the event of auction offers being so low that it is preferable for the lender to try to sell the property privately at a later stage.

Because of the lack of any concept of "mortgagee in possession" the lender cannot simply accept a voluntary surrender of the property nor dispose of an abandoned property without court proceedings. The only way round this problem is where the borrowers are prepared to grant a power of attorney to the lender or its Advocates in order to sell the property.

The Court has power to award costs according to normal principles, and will usually do so. However, these will be at a relatively modest level and it is therefore preferable for the lender to include provision for costs in the mortgage document. When the Coroner sells property he receives a small commission from the sale proceeds, deducted before the balance is paid to the Lender.

*This document is intended to provide a general overview and should not in any way be construed as legal advice. Always seek specific advice in respect of any particular issue.*

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