

Protection of Tenants – a note to Mortgagees...

The Mortgage Repossession (Protection of Tenants etc.) Act 2010

■ Ian Norman, 5 September 2010

■ Background

In the face of economic strife and the inevitable increase in Landlords who default on their mortgage, Parliament has passed the Mortgage Repossession (Protection of Tenants etc.) Act 2010 ('the Act').

Previously, unauthorised tenants of mortgaged property, whose Landlords did not obtain the prior consent of their mortgagee for the letting, would only find out that they were being evicted as a result of mortgage arrears when the court bailiff knocked at the door. Alternatively, they would return home to find the locks had been changed.

The Act received Royal Assent in April and is due to come into force on 1st October 2010. This brief update summarises the key changes this short but long awaited piece of legislation will bring:

■ Summary of Content

The Act comprises four sections and makes the following key changes:

1. Whilst District Judges would generally allow unauthorised tenants to be heard at possession hearings, the Act now gives them a formal right of audience;
2. Upon application by the unauthorised tenant, the court has power to delay the delivery of possession to the mortgagee for a period not exceeding 2 months;
3. Upon an application by an unauthorised tenant, the Act gives the court power to stay or suspend the execution of a warrant for possession for a period not exceeding 2 months, provided that the court did not make such an order at the initial possession hearing. In order to make the application, the unauthorised tenant must have asked the mortgagee to give an undertaking in writing not to enforce the possession order for a period of 2 months and the mortgagee must have refused to give it.

In deciding whether or not to exercise the above powers granted to it under the Act, the court must have regard to the circumstances of the unauthorised tenant and whether the tenant has breached any of the terms of the unauthorised tenancy, the nature of the breach and whether the tenant might reasonably be expected to have avoided the breach or have remedied any such breach.

Further, the court can make any suspension or adjournment of the delivery of possession conditional upon the unauthorised tenant making payment directly to the mortgagee for the occupation of the mortgaged premises. In doing so, the Act stipulates that no tenancy will be created between the mortgagee and the unauthorised tenant.

■ How Will the Unauthorised Tenant Find Out About the Proceedings?

The Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010 ('the Regulations') prescribe a form of notice that must be served on the unauthorised tenant before the mortgagee takes a "prescribed step" under the Act. The "prescribed step" by the mortgagee is the application to court for a warrant for possession in respect of the mortgaged premises.

The prescribed notice set out in the Schedule to the Regulations must be given 14 days (beginning with the day on which the notice is given) before the possession order is executed.

The prescribed notice must be given to the unauthorised tenant either:

- (i) By first class or registered post addressed to the unauthorised tenant by name, or if the name is unknown to the mortgagee, to the "Tenant" or "Occupier;" or
- (ii) By leaving the notice at the mortgaged premises in an envelope addressed as above; or

- (iii) By affixing a notice in a prominent place at the mortgaged premises which can be read by a person entering the property; or
- (iv) By personal service to a person who appears to be in residence at the mortgaged property.

■ **Conclusion**

Whilst the Act will afford unauthorised tenants more time to seek alternative accommodation when faced with eviction often through no fault of their own, it will inevitably create yet more obstacles and delays for mortgagees who may be faced with significant arrears. Mortgagees may be well advised to seek information on who is in occupation of the mortgaged property at the earliest possible opportunity when faced with arrears.

The Act can be found by clicking on the following link:

<http://bit.ly/bUzsyR>

For a copy of the Regulations including the prescribed form of notice to be used to comply with the Act, click here:

<http://bit.ly/bRJ3gJ>

Click [here](#) to view a short presentation on this subject.

For further information or advice in relation to Consumer Credit Litigation and/or Consumer Credit Regulation and Compliance, please contact:

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