



Mortgage pre-action protocol checklist

Name of court	Claim no.
Name of claimant	
Name of defendant	
Mortgage account number	

You must produce two copies of the Checklist on the day of the hearing.

Checklist

- Is the possession claim within the scope of the Protocol? Yes No
- Have you provided the defendant with the information/notice in the Protocol —
 - paragraph 5.1(1) Yes No If Yes, date provided: / /
 - paragraph 5.1(2) Yes No If Yes, date provided: / /
 - paragraph 5.7 Yes No If Yes, date of notice: / /
- Do you have evidence that the defendant has made a claim for —
 - Support for Mortgage Interest (SMI) Yes No
 - Mortgage Rescue Scheme (MRS), or Yes No
 - mortgage payment protection. Yes No

If Yes, please explain why possession proceedings are continuing.

- Is there an unresolved complaint by the defendant to the Financial Ombudsman Service that could justify postponing the possession claim? Yes No

If Yes, please explain why possession proceedings are continuing.

- Summarise the number and dates, in the three months prior to the date of this checklist, you attempted to discuss with the defendant ways of repaying the arrears.



6. In the three months prior to the date of this checklist have you rejected any proposals by the defendant to change the date or method of regular payments? Yes No

If Yes, did you respond in accordance with paragraph 5.4 of the Protocol? Yes No

If No, please explain why.

7. Have you rejected a proposal for repayment by the defendant in the three months prior to the date of this checklist? Yes No

If Yes, have you responded in accordance with paragraph 5.5 of the Protocol? Yes No

If No, please explain why.

8. Has the defendant indicated that the property will be or is being sold? Yes No

If Yes, explain why possession proceedings are proceeding.

Statement of Truth

*I believe that the facts stated in this Checklist are true.

*I am duly authorised by the claimant to sign this statement.

Signed _____ Date _____

Full name

Name of claimant's solicitor's firm

Position or office held

**Delete as appropriate*



Guidance for the mortgage pre-action protocol checklist

The Checklist

This guidance is provided for those using the new Mortgage Pre-Action Protocol Checklist. Use of the Checklist came into effect on 1 October 2009 for all claims issued on or after that date in order to provide a uniform format for the provision of information to demonstrate compliance with the Protocol.

This guide must be read with the Mortgage Pre-Action Protocol, the Civil Procedure Rules and Practice Direction 55.

The Checklist (form N123), must be completed by all claimants (lenders) or their representatives making a possession claim. The claimant or their representative should be able to explain to the court the actions taken or not by the claimant, and the reason for issuing a possession claim.

Once the claimant and defendant (borrower) have been notified by the court of the date of the hearing, a Checklist must be completed indicating the action taken by the claimant within the previous three months to reach an agreement with the defendant, and comply with the Protocol.

The claimant must present two copies of the Checklist on the day of the hearing. No additional documents are necessary unless an issue arises.

Claimants can copy this form onto their systems but the form must not go beyond two sides.

Scope

The following mortgages fall within the scope of the Protocol and Checklist –

- (i) first charge residential mortgages and home purchase plans regulated by the Financial Services Authority under the Financial Services and Markets Act 2000;
- (ii) second charge mortgages over residential property and other secured loans regulated under the Consumer Credit Act 1974 on residential property; and
- (iii) unregulated residential mortgages.

Where a potential claim includes a money claim and a claim for possession, these are also within scope.

Q1 – requires confirmation of the type of mortgage and whether it is within scope of the Protocol as indicated above. If the answer is No, there is no need to complete the rest of the form. However, you must be prepared to explain to the court why you consider that the mortgage does not fall within the scope of the Protocol.

If the answer to Q1 is Yes, all the remaining questions must be answered in full.

Q2 – answer the questions Yes or No, as appropriate, and insert the dates where relevant. Where you have not complied with one or more of these requirements, you must be prepared to explain to the court in full why that is the case.

Q3 – answer the questions Yes or No, as appropriate. Where a claim, either for Support for Mortgage Interest (SMI), Mortgage Rescue Scheme (MRS) or under a mortgage payment protection policy, has been made, you must set out clearly and succinctly why you are proceeding with a claim for possession.

Q4 – answer the question Yes or No, as appropriate. If the defendant has an unresolved complaint you must set out clearly and succinctly why you are proceeding with a claim for possession.

Q5 – you should provide here a list of dates and details of the associated media (for example, letter, telephone, etc). Where use has been made of automated diallers, which do not necessarily keep an individual record of each attempted call, you should confirm the number of attempts and frequency that your system is programmed to make.

Q6 – answer the question Yes or No, as appropriate. Where you have answered:

- No, then no further information is required.
- Yes, you must also confirm whether or not you have complied with the requirements of paragraph 5.4 of the Protocol when notifying the defendant of your decision. If the answer to that question is:
 - o Yes – then no further information is required on the Checklist but you must be prepared to explain to the court what action you took if requested to do so.
 - o No – you should set out your reasons for non-compliance clearly and succinctly.



Q7 – answer the question Yes or No, as appropriate. Where you have answered:

- No, then no further information is required.
- Yes, you must also confirm whether or not you have complied with the requirements of paragraph 5.5 of the protocol when notifying the defendant of your decision. If the answer to that question is:
 - o Yes – then no further information is required on the Checklist but you must be prepared to explain to the court what action you took if requested to do so.
 - o No – you should set out your reasons for non-compliance clearly and succinctly.

Q8 – answer the question Yes or No, as appropriate.

Where the defendant is trying to sell their property you need to explain clearly and succinctly why you are bringing proceedings including, specifically, whether or not the defendant has complied with the requirements of paragraphs 6.2 and 6.3 of the Protocol.

The statement of truth

The statement of truth must be signed and completed by the claimant or representative. This section must be completed in order to validate the information provided.

Service of the Checklist

Two copies of the Checklist must be brought to the hearing.

BIBLIOGRAPHY

ABBREVIATIONS

AHRLJ	African Human Rights Law Journal
ABI Jnl	American Bankruptcy Institute Journal
ABI L Rev	American Bankruptcy Institute Law Review
ABA Jnl	American Bar Association Journal
AL & Ec Rev	American Law and Economics Review
AmULRev	American University Law Review
AS	Annual Survey of South African Law
Ariz L Rev	Arizona Law Review
Boston BJ	Boston Bar Journal
Buff Hum Rights L Rev	Buffalo Human Rights Law Review
Camb LJ	Cambridge Law Journal
Can Bus LJ	Canadian Business Law Journal
Cap Univ L Rev	Capital University Law Review
CBA Record	Chicago Bar Association Record
Col JL& Soc Probs	Columbia Journal of Law and Social Problems
Colum L Rev	Columbia Law Review
Common L World Rev	Common Law World Review
CILSA	Comparative & International Law Journal of Southern Africa
Consumer Fin LQ Rep	Consumer Finance Law Quarterly Report
Conv & Prop Law	Conveyancer and Property Lawyer
Denning LJ	Denning Law Journal
ESR Rev	Economic and Social Rights in South Africa Review
EHRLR	European Human Rights Law Review
Fundamina	Fundamina: A Journal of Legal History
Geo J Pov L & Policy	Georgetown Journal on Poverty Law and Policy
Insolv Intell	Insolvency Intelligence
Insolv Lawr	Insolvency Lawyer
Int Co Comm LR	International Company and Commercial Law Review
Int Insolv Rev	International Insolvency Review
Iowa LR	Iowa Law Review
J Am Hist	Journal of American History
JBL	Journal of Business Law (Juta Cape Town South Africa)
J Bus L	Journal of Business Law (Sweet & Maxwell England)
J Civ Rights & Ec Dev	Journal of Civil Rights & Economic Development
J Corp L Studies	Journal of Corporate Law Studies
JIBFL	Journal of International Banking and Financial Law
JIBL	Journal of International Banking Law
J Int Bus L	Journal of International Business Law
J L & Soc	Journal of Law & Society
J Leg Studs	Journal of Legal Studies

J Rom Studs	Journal of Roman Studies
J Soc Hist	Journal of Social History
J S Pacific L	Journal of South Pacific Law
JBL	Juta's Business Law
J Bus L	Journal of Business Law
JQR	Juta's Quarterly Review
L Hist Rev	Law and History Review (Stanford School of Law)
Law Dem Dev	Law, Democracy & Development
LQR	Law Quarterly Review
Leg Hist Rev	Legal & History Review
Loy J Pub Interest L	Loyola Journal of Public Interest Law
MB	Modern Business Law
Nev LJ	Nevada Law Journal
NLJ	New Law Journal
NYUL Rev	New York University Law Review
NZLR	New Zealand Law Review
NC Bank Inst	North Carolina Banking Institute
NILQ	Northern Ireland Law Quarterly Review
Notre Dame L Rev	Notre Dame Law Review
Osg Hall LJ	Osgoode Hall Law Journal
Ox J L Studs	Oxford Journal of Legal Studies
Pace L Rev	Pace Law Review
PELJ	Potchefstroom Electronic Law Journal
PCB	Private Client Business
Rev Litig	Review of Litigation
Rutgers L Rev	Rutgers Law Review
Santa Clara L Rev	Santa Clara Law Review
SAJHR	South African Journal on Human Rights
SALJ	South African Law Journal
SA Merc LJ	South African Mercantile Law Journal
SAPL	South African Public Law
S M U Sch L	Southern Methodist University School of Law
Sw Hist Q	Southwestern Historical Quarterly
Stell LR	Stellenbosch Law Review
Suffolk U L Rev	Suffolk University Law Review
Temp L Rev	Temple Law Review
Tex L Rev	Texas Law Review
Tul L Rev	Tulane Law Review
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
TSAR	Tydskrif vir Suid-Afrikaanse Reg
U Colo L Rev	University of Colorado Law Review
U Penn L Rev	University of Pennsylvania Law Review
Utah L Rev	Utah Law Review
Wisc L Rev	Wisconsin Law Review

EU European Union
EC European Communities
UNCITRAL United Nations Commission on International Trade Law

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