

LAND AND CONVEYANCING LAW REFORM BILL 2013

EXPLANATORY MEMORANDUM

Introduction

This Bill is designed to provide that certain statutory provisions apply to mortgages created prior to the commencement of the Land and Conveyancing Law Reform Act 2009 (1 December, 2009) notwithstanding the repeal and amendment of those statutory provisions by the Land and Conveyancing Law Reform Act 2009.

The Bill also provides for the adjournment of actions for repossession in certain cases relating to the principal private residence of the borrower where it is considered by the court that the matter could be resolved by recourse to the Personal Insolvency Act 2012.

The Bill arises from case law in various repossession proceedings which have created uncertainty in the law relating to the exercise by lending institutions of their repossession rights. The consequences of this case law were unintended at the time of enactment of the 2009 Act and the purpose of the Bill is to restore the intended position.

Provisions of the Bill

Section 1 of the Bill seeks to ensure continued application of certain repealed provisions of the Conveyancing Acts 1881 to 1911 and the Registration of Title Act 1964 to mortgages created prior to 1 December 2009 (the date on which the repeals entered into force on commencement of the 2009 Act). The intention behind the section is to remove the uncertainty created in the law relating to repossession rights.

Subsection (1) provides that the section applies to mortgages created prior to 1 December, 2009 — the date on which the 2009 Act came into operation.

Subsection (2) provides that, in relation to a mortgage to which the section applies, certain “statutory provisions”, as defined in *subsection (6)*, which were repealed by the 2009 Act may be invoked or exercised by a person as if those provisions had not been repealed in the 2009 Act.

Subsection (3) provides that, in relation to a mortgage to which the section applies, certain “amended provisions”, as defined in *subsection (6)*, which were repealed by the 2009 Act may be invoked or exercised by a person as if those provisions had not been repealed in the 2009 Act.

Subsection (4) is a without prejudice provision which provides that *subsections (1) to (3)* do not affect the ability of any person who is in a position to rely on other rights or entitlements to exercise those rights or entitlements.

Subsection (5) provides a saver for any proceedings initiated before the coming into operation of the section.

Subsection (6) is a standard provision which defines certain terms included in the section.

Section 2 of the Bill provides that a court, where it considers it appropriate or on application by a borrower, in proceedings for repossession of a principal private residence, may in certain circumstances adjourn the proceedings to enable the parties to consider whether a Personal Insolvency Arrangement (PIA) under the Personal Insolvency Act 2012 would be a more appropriate course of action than repossession.

Subsection (1) makes it clear that the provision relates only to principal private residences. The provision is worded to allow for situations where the mortgage on the property is in the name of one person only but that person has, for whatever reason, ceased to live in the house and the Family Home Protection Act 1976 applies.

Subsection (2) allows the court, either of its own motion or on the application of a person, to consider the granting of an adjournment, for a maximum of 2 months, to enable the parties to consider the use of a Personal Insolvency Arrangement.

Subsection (3) outlines certain matters the court may take into account in its consideration of the application for an adjournment. These include whether the borrower has engaged in a process relating to mortgage arrears, whether payments have been made by the borrower in the preceding 12 months, whether the matter has been adjourned previously and the conduct of the parties to the mortgage in seeking to resolve issues concerning arrears on the mortgage.

Subsection (4) provides that at the end of the adjournment period the court may grant a further adjournment if it considers that sufficient progress has been made on the matter of a PIA.

Subsection (5) provides that the section will apply to mortgages created both before and after the coming into operation of Part 10 of the 2009 Act (1 December, 2009).

Subsection (6) defines certain meanings in the context of the section.

Section 3 of the Bill is a standard provision relating to the short title and commencement.

Financial implications

As regards public expenditure, the Bill does not create any additional costs for the Exchequer.

An Roinn Dlí agus Cirt agus Comhionannais,