

LAND AND CONVEYANCING LAW REFORM BILL 2013

An Act to provide that certain statutory provisions apply to mortgages of a particular class notwithstanding the repeal and amendment of those statutory provisions by the Land and Conveyancing Law Reform Act 2009, to provide for the adjournment of legal proceedings in certain cases and to provide for related matters.

Application of certain statutory provisions.

1.__(1) This section applies to a mortgage created prior to 1 December 2009.

(2) As respects a mortgage to which this section applies, the statutory provisions apply and may be invoked or exercised by any person as if those provisions had not been repealed by section 8(3) and Schedule 2 of the Act of 2009.

(3) As respects a mortgage to which this section applies the amended provisions apply and may be invoked or exercised by any person as if those provisions had not been amended by section 8(1) and Schedule 1 of the Act of 2009.

(4) *Subsections (1) to (3)* are without prejudice to any right or entitlement which a person may otherwise have to rely on the statutory provisions or the amended provisions.

(5) This section does not apply to proceedings initiated before the coming into operation of this section.

(6) In this section -

“Act of 1964” means the Registration of Title Act 1964;

“Act of 2009” means the Land and Conveyancing Law Reform Act 2009;

“amended provisions” means section 62(2) and (6) of the Act of 1964;

“mortgage” has the same meaning as it has in the Conveyancing Act 1881;

“statutory provisions” means sections 2 and 18 to 24 of the Conveyancing Act 1881, sections 3, 4 and 5 of the Conveyancing Act 1911 and section 62(3), (7) and (8) of the Act of 1964.

Adjournment of proceedings to facilitate making of proposal for Personal Insolvency Arrangement.

2.__(1) This section applies to land which is the principal private residence of the mortgagor or a person whose consent would be required under the Family Home Protection Act 1976 to the conveyance within the meaning of that Act of an interest in that land.

(2) In any proceedings brought by a mortgagee seeking an order for possession of land to which the mortgage relates in a case to which this section applies, the court, without prejudice to any other power which a court may have to adjourn proceedings, may –

- (a) of its own motion, if it considers it appropriate to do so,
- (b) on application being made to the court by a relevant person and having regard to the matters specified in *subsection (3)*, if it considers it appropriate to do so,

adjourn the proceedings for a period not exceeding 2 months to enable the relevant person –

- (i) to consult with a personal insolvency practitioner with a view to the making of a proposal for a Personal Insolvency Arrangement, and
- (ii) where appropriate, to instruct the personal insolvency practitioner to make a proposal for a Personal Insolvency Arrangement under the Act of 2012.

(3) The court in considering an application under *subsection (2)(b)* shall have regard to such matters as it considers appropriate and in particular shall have regard to the following:

- (a) whether the mortgagor has participated in any process relating to mortgage arrears operated by the mortgagee concerned which has been approved or required by the Central Bank of Ireland and which process relates to the land the subject of the mortgage;
- (b) whether the mortgagor has made any payments to the mortgagee in respect of monies advanced on foot of or secured by the mortgage in the 12 months immediately preceding the application and, if so, the amount of any such payments, the number and frequency of such payments, and the proportion which the amounts paid bear to the amount of any regular payments which the mortgagor was required to make under the terms of the mortgage or any associated loan agreement;
- (c) whether the proceedings have been adjourned on any previous occasion at the request of the mortgagor, and, if so, the number of any such adjournments and the period of such adjournments and the reasons for such adjournments;
- (d) the conduct of the parties to the mortgage in any attempt to find a resolution to the issue of dealing with arrears of payments due on foot of the mortgage; and
- (e) whether, having regard to the circumstances of the case, the application for an adjournment appears to the court to be

primarily for the purpose of delaying the progress of the proceedings.

(4) On the expiry of any period of adjournment granted under *subsection (2)*, the court may grant a further adjournment of the proceedings concerned where it considers that significant progress has been made in the preparation of a proposal for a Personal Insolvency Arrangement.

(5) This section applies as respects mortgages created before or after the coming into operation of Part 10 of the Land and Conveyancing Law Reform Act 2009.

(6) In this section---

“Act of 2012” means the Personal Insolvency Act 2012;

“conveyance” has the same meaning as it has in the Family Home Protection Act 1976;

“mortgage” means a deed of mortgage and includes a charge;

“mortgagee” includes a person deriving title from a mortgagee and a receiver appointed by the mortgagee;

“Personal Insolvency Arrangement” has the same meaning as it has in the Act of 2012;

“personal insolvency practitioner” has the same meaning as it has in the Act of 2012;

“relevant person” means a person---

- (a) who is a party to the proceedings referred to in *subsection (2)*,
and
- (b) who is a person who may, under the provisions of the Act of 2012, make a proposal for a Personal Insolvency Arrangement.

Short title and commencement.

3.__(1) This Act may be cited as the Land and Conveyancing Law Reform Act 2013.

(2) *Section 2* comes into operation on such day as the Minister may by order appoint.