

IT'S VITAL TO KNOW YOUR RIGHTS WHEN YOU ARE IN MORTGAGE ARREARS



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Q. Are you in mortgage arrears? Do you feel harassed by your bank in relation to those arrears? Are you in fear of your home being repossessed? If you are one of some 54,000 home owners who are one year or more behind on their home loan repayments and risk losing their home, you may wish to familiarise yourself with the Central Banks Code of Conduct on Mortgage Arrears (CCMA) which sets out the framework that banks must use when dealing with people just like you.

Under the CCMA, lenders must operate a Mortgage Arrears Resolution Process (MARP) when dealing with arrears and pre-arrears customers. MARP specifies five steps which the bank must comply with before any repossessions are to take place. Indeed, a recent High Court decision ruled that because the bank had not complied with the code of conduct, they were not entitled to the repossession of the house.

The first of these steps is communication. If you have been in arrears for more than 31 days the bank must inform you in writing that your arrears shall now be dealt with under the MARP's process and furnish you with contact details and web sites that may assist you with your arrears issues such as www.mabs.ie and www.keepingyouhome.ie. No more than three unsolicited communications can be made with you every month.

The second and third steps are financial information and Assessment. The bank must obtain from you all your financial information by way of a standard financial statement so that they can assess your financial position and identify the best course of action. The bank will assess your case to determine your current repayment capacity.

The fourth step is Resolution. On assessing your statement, the bank must look at all the options for an alternative repayment arrangement. These options must include an interest only payment for a specified period, payment of the interest and part of the capital for a specified period, deferring part or all of the payments for a specified period, extending the term of the mortgage, changing the type of the mortgage and any voluntary scheme to which the bank has signed up to eg. Deferred interest scheme. The bank may require you to change from an existing tracker mortgage to another mortgage type under certain circumstances.

Some banks are offering split mortgage arrangements as an option whereby the part of the mortgage which you can afford to pay will be dealt with for the term of your mortgage and the balance will be



placed in a warehouse account. This account will need to be cleared at the end of the term of the repayable term of the mortgage.

When the bank offers you one of the above alternative repayment arrangements, the bank must give you a letter explaining the details of the new arrangement, details of how interest will be applied, the impact of the new arrangement on your credit rating and information on your right to appeal the decision. Your lender must inform you that they will pay €250 for a consultation with an accountant regarding your new arrangement.

If you do not agree with the arrangement proposed by the bank, and the bank is not willing to give you an alternative repayment arrangement, they must give their reasons in writing. The bank must inform you of your right at least twenty days from the date you received notification of the alternative repayment arrangement. Up until last month, the bank could initiate proceedings for repossession of your home after 12 months of this new arrangement failing.

However, last month, changes were made by the Central Bank to this code of conduct. The most significant change being the dropping of the moratorium of twelve months to three months. Other changes were:

Banks will now be able to strip a homeowner of their tracker if the only alternative is to repossess the house. If they do this, banks must offer what is called a "sustainable solution", which may involve writing off debt.

Lenders will be able to decide a homeowner is not co-operating and write to them within 20 days. If someone is not co-operating they will have no protection from repossession.

The limit of just three successful contacts from a bank to someone in arrears has been dropped. Banks will be free to make multiple contacts with those in arrears. They will also be able to call to the door of a homeowner, but will have to write in advance to say they are going to do this at some stage.

Banks will be banned from harassing borrowers. The lender must not apply to the courts to commence legal action for repossession of your property until every reasonable effort has been made to agree an alternative arrangement.

Regardless of how long it takes your lender to assess your case, and provided that you are co-operating, you must be given three months' notice before they can commence legal



proceedings where your lender does not offer you an alternative repayment arrangement or you do not accept an alternative repayment arrangement offered to you.

This will give you time to consider other options, such as voluntary surrender, voluntary sale or a Personal Insolvency Arrangement.

If you are classified as not co-operating, your lender may commence legal proceedings immediately. Before you can be classified as not co-operating, your lender must first write to you and warn you that this might happen and tell you what steps you need to take to avoid being classified as not co-operating. The lender or its legal advisers must notify you in writing before it applies to the Courts to start any legal action on repossession.

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