

MORTGAGE AREAS AND SEPARATION



Q. My husband left me and my children last year. He was the one who paid the mortgage on our family home as I couldn't afford to alone on my wages. He stopped paying the mortgage at the end of last year and now I am receiving notices from the bank saying that they will repossess my home. What should I do??

A. Firstly, I would advise you to apply for family law mediation. If you cannot afford private mediation with your husband, then you should contact the Legal Aid Board and make an appointment with them. Mediation normally takes place over a six week period with an hour long session every week. Your ex-husband and you will be able to talk through issues such as finance, separation of your assets and your children with the help of a qualified mediator. If you are not comfortable taking this route or your ex-husband will not attend, then you should apply immediately for a Legal Separation through your solicitor or the Legal Aid Board. A Separation Agreement will deal with all matters such as children's maintenance, spousal maintenance, access, the family home including the payment of the mortgage and so on.

It could take quite a while to agree a Separation Agreement or to get to the Circuit Court to allow the Judge decide the terms of your Separation Agreement. (In circumstances where you cannot agree the terms). You don't appear to have the time to wait if you are getting notices of repossession from your bank. You don't mention if your ex-husband is paying you any children's maintenance or spousal maintenance. If he is not or not giving you enough, then you should apply through your Solicitor or local district court office for a maintenance summons which should be served immediately on your ex-husband. You should only have to wait a month at the longest to get a hearing date for a Family Law District Court hearing. The District Court cannot deal with the separation itself as this must be dealt with in the Circuit Court. However, it can deal with matters such as children and spousal maintenance. I have in the past seen a District Court Judge make an order for spousal maintenance which was to be directed towards the mortgage. This might assist you in the short term.

However, in the meantime, 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 in mortgage arrears.

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.



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.

Finally, you should contact your solicitor immediately for a full consultation.

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