



An Bille um Dhaoine a Choimeád ina dTeaghaisí, 2017
Keeping People in their Homes Bill 2017

Mar a tionscnaíodh

As initiated



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ACT REFERRED TO

Land And Conveyancing Law Reform Act 2009 (No. 27)



AN BILLE UM DHAOINE A CHOIMEÁD INA dTEAGHAISÍ, 2017
KEEPING PEOPLE IN THEIR HOMES BILL 2017

Bill

entitled

An Act to provide that adequate consideration be afforded to the principle of proportionality in the context of proceedings which are directed at the repossession of a mortgaged property in which the mortgagor ordinarily resides, and for that purpose to amend the Land and Conveyancing Law Reform Act 2009; and to provide for related matters. 5

Be it enacted by the Oireachtas as follows: 10

Definition

1. In this Act “Principal Act” means the Land and Conveyancing Law Reform Act 2009.

Amendment of section 96 of Principal Act

2. The Principal Act is amended in Chapter 3 of Part 10 by substituting the following for section 96(3)— 15

“(3) The provisions relating to the powers and rights conferred by this Chapter apply to any housing loan mortgage notwithstanding any stipulation to the contrary and notwithstanding any powers and rights expressly conferred under such a mortgage, but in relation to any other mortgage, except where section 97 applies, or except where this Part provides to the contrary, take effect subject to the terms of the mortgage.”. 20

Substitution of section 97 of Principal Act

3. The Principal Act is amended in Chapter 3 of Part 10 by substituting the following for section 97— 25

“Taking possession

97. (1) Subject to section 98, a mortgagee shall not take possession of the mortgaged property without a court order granted under this section, unless the mortgagor consents in writing to such taking not more than 7 days prior to such taking. 30

(2) A mortgagee may apply to the court for an order for possession of the

mortgaged property and on such application the court may, if it thinks fit, order that possession be granted to the applicant on such terms and conditions, if any, as it thinks fit.

- (3) In granting, adjourning, varying, postponing, suspending or executing an order for possession of a mortgaged property in which the mortgagor ordinarily resides or attaching terms or conditions to such an order, the court shall have regard to all of the circumstances of the case, including the proportionality of the order or proposed order by reference to the considerations set out in subsections (4) and (5). 5
- (4) In considering the proportionality of an order or a proposed order under this section, the factors to be considered by the court shall include, without limitation, the following: 10
- (a) whether the order being sought pursues a legitimate aim;
- (b) whether the order being sought—
- (i) is justifiable by reference to a pressing social need, and 15
- (ii) is proportionate to the legitimate aim being pursued and is the least onerous means of achieving the legitimate aim, based on consideration of the following factors:
- (I) the amount of the principal paid by the mortgagor in relation to the total amount borrowed; 20
- (II) the amount of interest paid by the mortgagor in relation to the total amount owed;
- (III) the amount the mortgagor is able to pay on a monthly basis in relation to the amount sought by the mortgagee;
- (IV) the suitability or otherwise of the mortgage to rent scheme; 25
- (V) the suitability or otherwise of a lifetime mortgage;
- (VI) the suitability or otherwise of the sale of the existing loan to an approved housing body;
- (VII) the suitability or otherwise of a Personal Insolvency Arrangement; 30
- (VIII) whether the mortgagee has attempted to have the matter resolved by reference to mediation;
- (IX) the adherence to the Code of Conduct on Mortgage Arrears;
- (X) obligations imposed on regulated lenders under European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (S.I. No. 142 of 2016); and 35
- (XI) the application of the forbearance measures set out in guidance on non-performing loans published by the European Central Bank, including interest only payments, reduced payments, grace period/payment moratorium, 40

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- arrears/interest capitalisation, long term interest rate reduction, extension of maturity/term, additional security, sale by agreement, rescheduled payments, other alterations of contract, new credit facilities, debt consolidation, partial or total debt forgiveness,
- (c) the likely impact of such an order on the human rights of the mortgagor and other household members by reference to the rights which they can expect to enjoy pursuant to the European Convention on Human Rights or the EU Charter of Fundamental Rights, including but not limited to consideration of the following factors:
- (i) the availability of suitable and affordable alternative accommodation that will allow the relevant family or household to continue to live together;
- (ii) where there are older persons, persons with disabilities, other vulnerable persons, or dependants in the household:
- (I) the extent to which such alternative accommodation will ensure their independence, social and occupational integration and participation in life of the community;
- (II) the extent to which care and support arrangements are in place for children and vulnerable members, and dependants in the household; and
- (III) evidence of an examination of the impact of relocation or repossession on such persons, including whether the best interests of any children have been prioritised;
- (iii) the extent to which an order under this section will affect the physical and mental health of all members of the household;
- (iv) the extent to which an order under this section will intrude into the personal sphere of the household, including the effect on the maintenance of relationships with others; and
- (v) the extent to which an order under this section will impact the future aspirations and opportunities of all members of the household,
- (d) examination of all of the circumstances surrounding the execution of the mortgage contract, including the level and extent of information provided, the position of the parties, legal advice given in relation to the mortgage contract, vulnerability of the consumer, the extent to which original lending decisions, made at the time of granting the mortgage application, were reasonable and responsible, and an evaluation of the application of—
- (i) any unfair terms and any appropriate adjustments, and
- (ii) Consumer Protection Codes of 2006 and 2012 (where applicable),

- (e) the extent and availability of State support to the enforcing entity in grants, tax relief on non-performing loans, subvention, Central Bank support, or other State supports; and
 - (f) the estimated costs, per week, to the State of providing—
 - (i) emergency accommodation and alternative housing to the household, and 5
 - (ii) support services to the household from State resources per week.
- (5) Where the enforcing entity is not the credit institution which first granted the loan or mortgage to the mortgagor, in considering the proportionality of the order or a proposed order under this section, the factors to be considered by the court shall in addition to the factors provided for in subsection (4), also include, without limitation, the following: 10
- (a) the amount paid by the enforcing entity for the purchase of the loan or mortgage by reference to the amount of debt outstanding in respect of that loan or mortgage; 15
 - (b) in circumstances where paragraph (a) applies, whether the loan or mortgage was also offered for sale at that reduced cost to the mortgagor; 20
 - (c) the value of the loan or mortgage on the enforcing entity’s balance sheet, and the market value of the property at time of court hearing;
 - (d) the availability of tax relief for the enforcing entity in relation to the relevant non-performing loan, or in respect of its non-performing loans generally. 25
- (6) Subsections (3) to (5) apply—
- (a) to proceedings initiated after the coming into operation of subsections (3) to (5) which have been brought by a mortgagee seeking an order for possession of a mortgaged property in which the mortgagor ordinarily resides, 30
 - (b) to proceedings initiated before the coming into operation of subsections (3) to (5) which have been brought by a mortgagee seeking an order for possession of a mortgaged property in which the mortgagor ordinarily resides, provided an order for repossession has not yet been granted by the court, and 35
 - (c) to proceedings initiated before the coming into operation of subsections (3) to (5) which have been brought by a mortgagee seeking an order for possession of a mortgaged property in which the mortgagor ordinarily resides where an order for repossession has been granted but not yet executed and in relation to which a variation or suspension of the repossession order is now being sought. 40

- (7) In this section ‘household’ includes:
- (i) a household comprising a person who lives alone; or
 - (ii) a household comprising two or more persons who have a reasonable requirement to live together, which includes family and shared homes,
- and ‘household members’ shall be construed accordingly.”.

5

Short title

4. This Act may be cited as the Keeping People in their Homes Act 2017.

An Bille um Dhaoine a Choimeád ina
dTeaghaisí, 2017

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú chun go ndéanfar leorbhreithniú ar phrionsabal na comhréireachta i gcomhthéacs imeachtaí atá dírithe ar athshealbhú maoine morgáistithe ina bhfuil gnáthchónaí ar an morgáisteoir, agus chun na críche sin do leasú an Ahta um Athchóiriú an Dlí Talún agus Tíolactha, 2009; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An Teachta Caoimhín 'Boxer' Ó Móráin a thug
isteach,*

23 Feabhra, 2017

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Introduced by Deputy Kevin 'Boxer' Moran,

23rd February, 2017

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