



**AN BILLE UM CHAOMHNÚ ÁRAS AN TEAGHLAIGH
(FORÁLACHA ILGHNÉITHEACHA), 2011
FAMILY HOME PROTECTION (MISCELLANEOUS
PROVISIONS) BILL 2011**

EXPLANATORY MEMORANDUM

Purpose of this Bill

The purpose of this bill is to provide for the courts to be able to take into consideration certain key matters when deciding on a proceeding for possession of a family home. The current situation, as stated in *Bank of Ireland v Smyth* and *Anglo Irish Bank Corporation PLC v Fanning*, is that the courts do not have discretion in this area. If a homeowner is in default on a mortgage, and the lender seeks possession, the courts have no discretion in deciding whether or not to award possession, irrespective of whether the home is a family home. This is despite the protections afforded the family in Article 41.1 of the Constitution, which “recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law”, and “guarantees to protect the Family in its constitution and authority, as the necessary basis of social order”. Giving the courts limited discretion would allow for greater protection of the family home, in the broader societal interest, without prejudicing the interests of the party seeking possession. This discretion should allow consideration of matters including the ability of a homeowner to service their mortgage debt, any likely appreciation in value of the property, and other factors relevant to an assessment of the fairness of proceedings for repossession of the home.

Provisions of the Bill

Section 1 defines terms used in the Bill.

Section 2 sets out the matters to which the Court may have regard when deciding on an application for possession of a family home. These are:

- (a) Any offer, including an offer involving the restructure of the loan, made by or on behalf of the borrower;
- (b) The level of arrears on the loan;
- (c) The current market value of the home and the amount of the mortgage debt as a proportion of that;

- (d) Evidence from an expert or experts as to the expected value of the family home over a period of 5 years from the date of the hearing of the proceeding for possession;
- (e) Any Code of Conduct or other such agreement or regulation to which the party applying for the order of possession is a party to, for the time being in force
- (f) The conduct of the lender;
- (g) Any other matter that the Court shall, in its opinion, consider proper to take into consideration.

*Deputy Stephen Donnelly,
November, 2011.*