



# **DÁIL ÉIREANN**

---

## **AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS TÍOLACTHA, 2013 LAND AND CONVEYANCING LAW REFORM BILL 2013**

### **LEASUITHE COISTE COMMITTEE AMENDMENTS**

---



# DÁIL ÉIREANN

---

## AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS TÍOLACTHA, 2013 —ROGHCHOISTE

### LAND AND CONVEYANCING LAW REFORM BILL 2013 —SELECT COMMITTEE

---

#### *Leasuithe Amendments*

---

#### SECTION 2

1. In page 4, to delete lines 6 to 17 and substitute the following:

“(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, and where no previous engagement with a personal insolvency practitioner has taken place the court, shall:

- (a) adjourn proceedings for a period of at least six months;
- (b) instruct the mortgagor to consult with a personal insolvency practitioner with a view to the making of a proposal for a Personal Insolvency Arrangement;
- (c) instruct the personal insolvency practitioner to make a proposal for a Personal Insolvency Arrangement under the Act of 2012; and
- (d) instruct the mortgagee to cover the initial costs of the personal insolvency practitioner from its own resources, including any costs arising from consulting with the personal insolvency practitioner with a view to making an application for a personal insolvency agreement and any costs resulting for the mortgagee rejecting a proposal from the personal insolvency practitioner.”.

—Pádraig Mac Lochlainn.

2. In page 4, line 12, to delete “for a period not exceeding 2 months” and substitute “for a minimum of 6 months”.

—Pádraig Mac Lochlainn.

3. In page 4, line 12, to delete “2 months” and substitute “4 months”.

—Finian McGrath.

4. In page 4, between lines 39 and 40, to insert the following:

“(f) whether possession is being sought of the family home as security against another property, which may be financially distressed or in mortgage arrears.”.

[SECTION 2]

—Finian McGrath.

5. In page 4, between lines 39 and 40, to insert the following:

“(f) the adherence of the mortgagee to the Code of Conduct on Mortgage Arrears;  
(g) evidence that the mortgagee has refused to accept a reasonable proposal to restructure the debt, such that the family home would not be repossessed;  
(h) whether an appeal by the mortgagor was initiated, and the rigour and independence of the mortgagee’s appeal process if it was.”.

—Finian McGrath.

6. In page 5, between lines 1 and 2, to insert the following:

“(5) Where the court adjourns proceedings under this section, the court may, where it considers it appropriate to do so, direct that the proceedings stand adjourned to another venue within the same circuit of the Circuit Court.”.

—An tAire Dlí agus Cirt agus Comhionannais.

7. In page 5, between lines 1 and 2, to insert the following:

“(5) In the case of any adjournments granted under *subsection (2)*, the mortgagor will pay any costs relating to the services provided by the personal insolvency practitioner in full.”.

—Finian McGrath.

8. In page 5, between lines 7 and 8, to insert the following:

“ “court” means Circuit Court;”.

—Pádraig Mac Lochlainn.

SECTION 3

9. In page 5, between lines 17 and 18, to insert the following:

**“Power of Court to determine the rejection of a proposal for a Personal Insolvency Arrangement as unreasonable**

3. (1) Where in an application by a mortgagee for repossession of a property to which *section 2(1)* applies, a proposal for a Personal Insolvency Arrangement made pursuant to section 98(1)(c) of the Act of 2012 which included the debt of the property had been rejected by reason, in whole or in part, of a vote by the mortgagee at a creditors meeting held pursuant to section 109 of the Act of 2012, the Court shall, with the consent of the mortgagor, direct the Personal Insolvency Practitioner concerned to provide to it a report in writing which shall include the content of the proposal, and any amendments made thereto, for a Personal Insolvency Arrangement.
- (2) The Personal Insolvency Practitioner shall cooperate in providing the written report to the Court within a period prescribed by the Court to be not more than 2 months. In making the report to the Court under this section the Personal Insolvency Practitioner

[SECTION 3]

shall provide an opinion as to whether the rejection by the mortgagee of the proposal for a Personal Insolvency Arrangement was reasonable.

- (3) In providing an opinion pursuant to *subsection (2)* the Personal Insolvency Practitioner shall have regard to whether the proposal of a Personal Insolvency Arrangement constituted an offer to repay an amount, whether on a restructured basis or not, equal to the current value of the property and any other matter considered relevant by the Personal Insolvency Practitioner having regard to his or her experience in the proposing of Personal Insolvency Arrangements.
- (4) The Court on receipt of the written report from the Personal Insolvency Practitioner shall cause to be made available to the mortgagor and to the mortgagee a copy of the report and shall provide a reasonable period of time for any response in writing to be provided by either party such period not to exceed one month.
- (5) On receipt of any response provided by the parties the Court shall proceed to fix a date of a hearing for the purposes of determination by the Court of the reasonableness or unreasonableness of the rejection by the mortgagee of the mortgagor's proposal for a Personal Insolvency Arrangement.
- (6) Any creditor being the subject of the proposal for the Personal Insolvency Arrangement shall be notified in advance of the hearing and shall, on request, be provided with a copy of the report of the Personal Insolvency Practitioner and any responses provided by the mortgagee or mortgagor and shall be entitled to make submissions at the hearing under this section.
- (7) In determining whether or not the rejection of the proposal for a Personal Insolvency Arrangement was reasonable or unreasonable the Court may have regard to the following matters:
  - (a) the report of the Personal Insolvency Practitioner and any responses received by the mortgagee or mortgagor;
  - (b) the submissions of any creditor;
  - (c) whether the proposal of the Personal Insolvency Arrangement constituted an offer to repay an amount, whether on a restructured basis or not, equal to the current value of the mortgaged property;
  - (d) the housing needs of the mortgagor and his or her dependants;
  - (e) the conduct of both parties including the conduct of the mortgagee in underwriting the loan/s secured by the mortgage;
  - (f) any other circumstances or matters that the Court considers relevant.
- (8) If the Court determines that the mortgagee's rejection of the proposal for a Personal Insolvency Arrangement was unreasonable the Court may do any one or more of the following:
  - (a) adjourn the application for repossession for such time as is necessary to enable the mortgagor to make another proposal for a Personal Insolvency Arrangement and for a vote on such proposal to be taken pursuant to section 109 of the Act of

[SECTION 3]

2012;

- (b) stay the coming into effect of the Order of repossession for a period not exceeding 24 months;
  - (c) without prejudice to the Courts discretion as to any order for costs it might make order that the mortgagee pay the costs or part costs of and incidental to the following, such costs to include the reasonable costs of the Personal Insolvency Practitioner:
    - (ix) the making of the proposal for a Personal Insolvency Arrangement;
    - (ii) the application for the Order of repossession;
    - (iii) the hearing under this section.
- (9) A copy of the Personal Insolvency Practitioner’s report together with any responses received and any Order made under this section shall be provided to the Insolvency Service of Ireland.”.

—Niall Collins.

**10.** In page 5, between lines 17 and 18, to insert the following:

- “**3.** 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, when making its decision whether to grant a possession order shall consider:
- (a) whether a mortgagee has fully complied with the Central Bank’s Code of Conduct on Mortgage Arrears;
  - (b) whether a mortgagee has behaved in a manner deemed reasonable by the court. In determining whether the mortgagee has behaved reasonably the court will consider any responses by the mortgagee to proposals from the mortgagor or a personal insolvency practitioner aimed at resolving outstanding arrears;
  - (c) whether, in cases where the mortgagee has rejected a proposal from a personal insolvency practitioner, the mortgagor has been given adequate opportunity to appeal the substantive decision of the mortgagee to reject the proposal; and
  - (d) the intentions of the mortgagee with respect to the residual portion of the debt that remains after any possession and sale of the property and the impact this plan may have on the financial circumstances of the mortgagor.”.

—Pádraig Mac Lochlainn.

**11.** In page 5, between lines 17 and 18, to insert the following:

- “**3.** Where the court grants an order of possession the court shall instruct the mortgagee to abide by the full terms of any tenancy agreement in place with respect to the property and for the mortgagee to assume the full responsibilities of the landlord as stipulated in that tenancy agreement.”.

[SECTION 3]

—Pádraig Mac Lochlainn.

**12.** In page 5, between lines 17 and 18, to insert the following:

- “3. Where the court grants an order of possession the court shall provide for a stay of at least six months where there are adults living in the property and of at least nine months where there are children resident in the property.”.

—Pádraig Mac Lochlainn.

**13.** In page 5, between lines 17 and 18, to insert the following:

- “3. Where a possession order is granted by the court to land which is the principal private residence of the mortgagor the mortgagee assumes full liability for all debts relating to the mortgage on that property and agrees not to pursue the mortgagor for any outstanding liabilities on that mortgage.”.

—Pádraig Mac Lochlainn.

**14.** In page 5, between lines 17 and 18, to insert the following:

- “3. Where a possession order is granted by the court to land which is the principal private residence of the mortgagor the mortgagee assumes full liability for all costs related to the repossession of the property and any costs related to the subsequent sale of the property.”.

—Pádraig Mac Lochlainn.

**15.** In page 5, line 20, to delete “the Minister” and substitute “the Minister for Justice and Equality”.

—An tAire Dlí agus Cirt agus Comhionannais.