



**SEANAD ÉIREANN**

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

**LEASUITHE COISTE  
COMMITTEE AMENDMENTS**

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# SEANAD ÉIREANN

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

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

#### *Leasuithe Amendments*

*\*Government amendments are denoted by an asterisk*

#### SECTION 4

\*1. In page 6, between lines 7 and 8, to insert the following:

#### **“Provision in respect of certain proceedings**

4. (1) Where after the coming into operation of this section a mortgagee commences proceedings seeking possession of land in which they rely upon the statutory provisions or the amended provisions, the proceedings shall be deemed to be commenced within time for the purposes of section 9 of the Civil Liability Act 1961 where the conditions specified in *subsection (2)* are met.

(2) The conditions referred to in *subsection (1)* are that—

- (a) prior to the coming into operation of this section the mortgagee had commenced proceedings seeking possession of land relying on the statutory provisions or the amended provisions,
- (b) the proceedings concerned were commenced within the time limit applicable for the purposes of section 9(2) of the Civil Liability Act 1961,
- (c) the proceedings concerned were not determined before the coming into operation of this section,
- (d) the mortgage concerned was created prior to 1 December 2009,
- (e) the land the subject of the proceedings referred to in *subsection (1)* is the same land or a part of the same land as the land the subject of the proceedings referred to in *paragraph (a)*.

(3) *Subsection (1)* shall only apply to proceedings issued within 6 months from the coming into operation of this section.

(4) In this section—

“Act of 2009” means the Land and Conveyancing Law Reform Act 2009;

“amended provisions” means section 62(2) and (6) of the Act of 1964 as those provisions stood immediately prior to the coming into operation of section 8(1) and Schedule 1 of the Act of 2009;

[SECTION 4]

“mortgage” has the same meaning as it has in the Conveyancing Act 1881;

“mortgagee” includes a person deriving title from a mortgagee and a receiver appointed by a mortgagee;

“statutory provisions” means sections 2 and 18 to 24 of the Conveyancing Act 1881, sections 3, 4 and 5 of the Conveyancing Act 1911 and section 62(3), (7) and (8) of the Act of 1964.”

2. In page 6, between lines 7 and 8, to insert the following:

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

4. (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 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.

[SECTION 4]

- (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 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 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:
    - (i) 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.”.

—*Senator Denis O'Donovan.*