



SEANAD ÉIREANN

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

**LEASUITHE TUARASCÁLA
REPORT AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS TÍOLACTHA, 2013 —AN TUARASCÁIL

LAND AND CONVEYANCING LAW REFORM BILL 2013 —REPORT

Leasuithe Amendments

1. 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.
- (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.”.

—*Senators Denis O'Donovan, Thomas Byrne, Mark Daly, Terry Leyden, Marc Mac Sharry, Paschal Mooney, Brian Ó Domhnaill, Labhrás Ó Murchú, Darragh O'Brien,*

Ned O'Sullivan, Averil Power, Jim Walsh, Mary M. White, Diarmuid Wilson.

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

- “4. Where the property which is being repossessed is the subject of a residential tenancy, the protections afforded to tenants under the Residential Tenancies Act 2004 shall be complied with by the financial receiver who shall comply with all obligations of landlords under that Act.”.

—*Senators Sean D. Barrett, David Norris.*