An Bille um Chosc ar Dhíol gan Toiliú, 2019
No Consent, No Sale Bill 2019

Mar a tionscaíodh
As initiated
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ACTS REFERRED TO

Building Societies Act 1989 (No. 17)
Central Bank Act 1942 (No. 22)
Bill

entitled

An Act to provide that Lenders may not transfer mortgages on residential property without the consent of the borrower and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act—

“borrower” means a person, or where there is more than one person, each of such persons, to whom a lender advances a housing loan;

“Central Bank” means Central Bank of Ireland;

“lender” means any regulated financial service provider within the meaning of the Central Bank Act 1942 or any company, partnership, business or other entity engaged in the provision, management or administration of dwelling house mortgage loans;

“Minister” means the Minister for Finance.

Conditions for the transfer of residential mortgages

2. (1) A loan secured by the mortgage of a residential property shall not be transferred without the written consent of the borrower.

(2) When seeking consent from either an existing or a new borrower the lender must provide a statement to the borrower containing sufficient information in order to make an informed decision.

(3) The statement provided pursuant to subsection (2) must be approved in advance by the Central Bank and shall include:

   (i) a clear explanation of the implications of a transfer including with respect to the borrower’s membership status where the lender is a building society; and

   (ii) how the transfer might affect the borrower.

(4) Each borrower shall be approached individually and shall be given a reasonable time within which to give or decline to give their consent.
Lender to act as agent of transferee
3. In circumstances where a consent is being sought under this Act and it is intended that there may be an arrangement whereby the original lender will service the mortgage as an agent of the transferee, the lender shall confirm that the transferee’s policy on the handling of arrears and in the setting of mortgage interest rates will be the same as that of the original lender, and that the original lender will handle arrears as its agent.

Loss of control
4. Where the lender in the ordinary course of business would no longer have control in relation to:
   (a) the setting of interest rates; and/or
   (b) determining the conduct of relations with borrowers whose mortgage payment are seriously in arrears.

The lender must seek the borrower’s consent notwithstanding any previous consent the borrower has given.

Information to be provided by the lender
5. A lender who is seeking the consent of a borrower to the transfer of the borrower’s mortgage pursuant to section 2 of this Act shall provide the borrower with the following information:
   (i) the name and address of the intended transferee, and of any holding company applicable;
   (ii) the relationship, if any, between the lender and the transferee;
   (iii) a description of the intended transferee and of its business, including how long it has been in operation, and details of its involvement in the management of mortgages;
   (iv) details of the policies and procedures which will apply for the setting of mortgage interest rates and for the making of repayments if the transfer takes place;
   (v) confirmation that in the absence of a specific consent the existing arrangements will continue to apply.

Terms of transfer agreement
6. The terms of a transfer agreement pursuant to this Act shall require the transferee to:
   (i) allow transferred mortgages to be redeemed without charging a redemption fee, unless permitted under section 6 of the Building Societies Act 1989;
   (ii) continue any existing mortgage protection insurance arrangements;
   (iii) allow the borrower arrange their own insurance;
   (iv) adhere to the principles of section 26 of the Building Societies Act 1989 where applicable;
   (v) provide to the relevant authorities the mortgage statistics previously provided by
Exemptions

7. In this section “serious business difficulties” shall be interpreted as difficulties of a gravity that the Central Bank determines that a lender is failing or likely to fail.

The provisions of this Act shall not apply to:

(i) a transfer connected with the making of further advances to the borrower;

(ii) a transfer of engagements in whole or in part effected under Part X of the Building Societies Act 1989;

(iii) a winding up effected under Part XII of the Building Societies Act 1989;

(iv) a transfer within the same group or a transfer arising from serious business difficulties, where the lender satisfied the Central Bank that, in the circumstances, the application of this Act would not be appropriate and that the transfer is being effected on terms which are just and equitable and which a borrower would reasonably be entitled to expect.

Powers of Central Bank

8. The Central Bank may—

(a) require any licence holder or other person supervised by it to provide all relevant information to the Central Bank to enable the Central Bank to satisfy itself as to compliance with this Act by such licence holder or other person,

(b) issue a direction in writing to such licence holder or other person to comply with practices specified in the direction where this is necessary, in the opinion of the Central Bank, to secure compliance with this Act.

Enforcement

9. A lender in breach of this Act shall be subject to the administrative sanctions regime as per Part IIIC of the Central Bank Act 1942, as amended.

Regulations

10. The Central Bank may, following consultations with the Minister make regulations not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed (other than a matter required or permitted to be prescribed by the Government or the Minister), or that is necessary or expedient to be prescribed, for carrying out or giving effect to this Act.

Short title and citation

11. This Act may be cited as the No Consent, No Sale Act 2019.
No Consent, No Sale Bill 2019

BILL
(as initiated)
entitled
An Act to provide that Lenders may not transfer mortgages on residential property without the consent of the borrower and to provide for related matters.

Introduced by Deputy Pearse Doherty,
24th January, 2019

An Bille um Chosc ar Dhiol gan Toiliú, 2019

BILLE
(mar a tionscnaíodh)
dá ngairtear

Acht do dhéanamh socúr nach bhféadfaidh Iasachtóirí morgáistí ar mhaoin chónaithe a aistriú gan toiliú an iasachtaí a fháil agus do dhéanamh socúr i dtaoibh nithe gaolmhara.

An Teachta Piaras Ó Dochartaigh a thug isteach,
24 Eanáir, 2019