

# Statement re Land & Conveyancing Law Reform Bill 2013

## FLAC, 30 Apr 2013

FLAC notes that the second stage of the Land and Conveyancing Law Reform Bill 2013 will be taken in the Dáil this Tuesday afternoon (30 April 2013) with debate on the Bill resuming tomorrow (Weds, 1 May). As this Bill will effectively make it easier for lenders to process repossessions through the courts, FLAC is anxious that the increase in lenders' powers proposed in the Bill be balanced by enhancement of the protection available to over-indebted borrowers.

To that end, FLAC would like to see:

1. An amendment to the legislation so that the Court examining an application to repossess a family home could also examine whether the lender had fully complied with all of the steps of the Central Bank's [Code of Conduct on Mortgage Arrears](#) (including full rights of appeal) and, if it was not satisfied as to that compliance, could refuse the application until such time as the lender could demonstrate full compliance;
2. The Bill currently proposes a 2-month adjournment to allow a person to explore a Personal Insolvency Arrangement. This period should be extended to at least 4 months and preferably 6 months to allow adequate time for that investigation to take place;
3. Currently, many lenders bring their proceedings in the High Court. This is administratively easier for them. It makes the proceedings much more expensive for the borrower however. In FLAC's view, the 2009 Act (s.101.5) envisages that all repossession proceedings on foot of a housing loan mortgage would take place in the Circuit Court. We believe that this should be the position rather than requiring borrowers country wide to come to Dublin and the High Court. However, s.96 of the 2009 Act raises some doubt about whether the exclusive jurisdiction of the Circuit Court applies only to mortgages entered into after 2009. This Bill is an opportunity to clarify that. If deputies are interested, we can do a separate note on this for Committee stage.
4. While S.94 of the 2009 Act permits a borrower to apply and a court to grant an Order for Sale on terms, the terms envisaged are all practical and technical matters. They do not cover a situation where a borrower might seek an order that the lender was responsible for all or part of any shortfall of debt on sale. This might arise (and has arisen) in circumstances where lenders refused to permit sale where a reasonable offer was made and later agreed to a sale at a lower price. It would be helpful if it was clarified that one of the terms of an order for sale could be to allow the court to determine the responsibility for the shortfall.
5. S.97 of the 2009 Act provides for borrowers to sign a Consent to repossession. Some of the forms that we have seen are complex and impose considerable financial responsibility on the borrower. It would be helpful if this section included a requirement that the borrower have access to adequate legal and financial advice and assistance where a lender proposes a form of consent. This is likely to be a growing problem into the future.

6. FLAC has a general serious concern about the lack of adequate legal and financial advice available to borrowers who are faced with negotiation under the Code of Conduct on Mortgage Arrears or faced with repossession proceedings. The current resources available to [MABS](#) and the [Legal Aid Board](#) are entirely inadequate to deal with the scale of the problem and many overindebted people cannot afford private advice and may not be able to get a practitioner to do this pro-bono. This issue is an overarching concern at a time when the law is being changed to ease the right of lenders to repossess.

## Further information:

FLAC recently prepared a [comprehensive submission](#) to the Central Bank on the Code of Conduct on Mortgage Arrears as part of the Central Bank's review. Some of the issues raised above are also raised in that submission. We have also prepared a [summary of FLAC's recommendations](#).