



FINANCIAL REGULATOR  
*Rialtóir Airgeadais*

# Code of Conduct on Mortgage Arrears

17 February 2010

## Code of Conduct on Mortgage Arrears

This Code applies to:

the mortgage lending activities of all regulated entities operating in the State, including:

- the lending activities of all regulated entities operating in the State for which they require to be authorised by, or registered with, the Financial Regulator; and
- the lending activities of persons with an equivalent authorisation or registration in another EU or EEA Member State when providing services in this State on a branch or cross-border basis; and
- the lending activities that are subject to the regulation of the Financial Regulator under the Central Bank Act 1997 or the Consumer Credit Act 1995, for which a separate authorisation is not required.

This Code applies only to mortgage lending activities to consumers in respect of their principal private residence in this State.

To assist with the rectification of a mortgage arrears problem it is important that the borrower promptly advise the lender of any problems with repayments.

Lenders are reminded that they are required to comply with this Code as a matter of law.

Lenders must be able to demonstrate that they are in compliance with this Code.

This Code should be read as one with the Financial Regulator's Consumer Protection Code.

All terms appearing in this Code shall have the same meaning as in the Consumer Protection Code.

## 1. Scope

- a) This Code covers the provision of finance for the primary residence. This Code sets out a framework within which mortgage lenders (referred to in this document as “lenders”) must operate, with due regard to the fact that each lender adopts a different competitive approach to mortgage lending and each case of mortgage arrears is unique and needs to be treated differently. Mortgage lenders must adopt flexible procedures for the handling of arrears cases. Such procedures must be aimed at assisting the borrower as far as possible in his/her particular circumstances.
- b) This Code sets out what the lender must do when managing mortgage arrears cases. However, the lender may enforce the mortgage in circumstances where application of this Code is not appropriate, such as, but not limited to, in the case of fraud or breach of contract other than the existence of arrears.
- c) This Code does not relieve the borrower of his/her contractual duties, except where agreed by the lender.

## 2. Legal Background

This Code is issued under Section 117 of the Central Bank Act 1989.

## 3. Avoiding a Mortgage Arrears Problem

- a) A mortgage arrears problem arises as soon as the borrower fails to make a mortgage repayment by the due date.

As soon as an arrears situation develops, the lender must communicate promptly and clearly with the borrower to establish in the first instance why the repayment schedule has not been adhered to and, secondly, how the situation may be rectified.

- b) This Code recognises that it is in the interests of both the lender and the borrower to address a 'missed payment situation' as speedily and as effectively as circumstances allow. Failure to do so could give rise to a more serious arrears problem with negative consequences for both parties: for the lender, amongst other things greater difficulty in normalising the repayment situation; for the borrower, accumulating arrears that will affect his/her credit rating and give rise to the risk of losing his/her home.

## 4. Handling a Mortgage Arrears Problem

- a) Where action taken under Section 3 above is unsuccessful - for whatever reason - and the arrears situation continues, the lender must continue in its endeavours to make contact with the borrower. This can be by way of further correspondence, telephone contact or a meeting with the borrower.
- b) Once contact has been established, and assuming co-operation from the borrower, a plan for clearing the mortgage arrears can be developed that is consistent with the interests of both the lender and the borrower. In this regard, all viable options open to the borrower must be examined during which consideration must be given to his/her repayment capacity, previous payment history and any equity remaining in the property.
- c) If a third repayment is missed, the lender may issue a formal demand. With the issue of a formal demand for either the full amount due on foot of the mortgage or for possession of the property, the borrower must have been advised in writing of the following:
  - i. the total amount of arrears;
  - ii. where applicable, any excess interest (expressed as a rate or an amount) that may continue to be charged and the basis on which this will be charged; and/ or any charges that may be payable (the basis for which will have been detailed in the original contract documentation);
  - iii. advice regarding the consequences of failing to respond - namely, the potential for legal proceedings and loss of his/her property - together with an estimate of the costs to the borrower of such proceedings.

- d) Where the arrears situation persists, the lender may reserve the right to enforce the mortgage agreement. However, it must wait at least twelve months from the time arrears first arise before applying to the courts to commence enforcement of any legal action on repossession of a borrower's primary residence.
- e) The lender must notify the borrower when it commences the enforcement of any legal action on repossession.

## 5. Addressing a Mortgage Arrears Problem

Lenders may distinguish between borrowers who are genuinely unable to pay – because of changed circumstances - and those who could pay some/all of the arrears but will not. All genuine cases must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his/her obligations.

In addressing a mortgage arrears problem, the following considerations apply:

- a) As each arrears situation is different, the lender must examine each on its individual merits and the outcome is likely to differ as a result.
- b) The lender must take into consideration the borrower's overall indebtedness in establishing his/her ability to repay. This should include full details of household income and expenditure, as advised by the borrower.
- c) The lender must explore with the borrower one or more of the following alternative repayment measures:
  - An arrangement on arrears could be entered into whereby the amount of monthly repayment may be changed, as appropriate, to help address the arrears situation.
  - Deferring payment of all or part of the installment repayment for a period might be appropriate where, for example, there is a temporary shortfall of income.
  - Extending the term of the mortgage could be considered in the case of a repayment loan - although this may not make a significant difference to the monthly repayments.
  - Changing the type of the mortgage might be appropriate if this could give rise to a reduction in the level of monthly mortgage outgoings (i.e., mortgage and related assurance payments).

- Capitalising the arrears and interest could arise where there is insufficient capacity over the short term to clear the arrears but where repayment capacity exists to repay the capitalised balance over the remaining term of the mortgage. This measure may be considered where a pattern of repayment has been established and where sufficient equity exists.

The appropriateness of these measures must be determined by the factors of each individual arrears case. The borrower must be advised to take appropriate independent advice.

- d) Whichever of the options outlined in (c) might be pursued, the lender must provide the borrower with a clear explanation, in writing, of the alternative repayment arrangement that is being agreed, together with details of any additional interest or administration charges that may arise.
- e) The lender must continue to monitor the repayment arrangement. To this end, the borrower must be advised of a relevant contact point.
- f) The lender must advise the borrower that it is in his/her own interests to ensure that his/her income is being maximised and that a budgeted approach to expenditure is maintained. Where circumstances warrant it, the lender must refer the borrower for guidance to his/her local Money Advice and Budgeting Service (MABS) or appropriate alternative.
- g) At the borrower's request and with the borrower's written consent, the lender will liaise with a third party nominated by the borrower.
- h) Where appropriate, the borrower must be made aware of other options such as trading down, voluntary sale or alternative refinancing through another lender.

## **6. Resorting to Repossession Proceedings**

- a) The lender must not seek repossession of the property until every reasonable effort has been made to agree an alternative repayment schedule with the borrower or his/her nominated representative. However, where it is clear that the borrower is deliberately not engaging with the lender, or where other circumstances reasonably justify, the lender may seek repossession in the absence of any engagement with the borrower.
- b) Repossession of a property may come about by voluntary agreement with the lender, through abandonment of the property

by the borrower without notifying the lender, or by Court Order.

- c) Even where legal action is being taken to obtain an Order for Repossession, the lender must endeavour to maintain contact with the borrower or his/her nominated representative. If agreement can be reached, the lender must enter into repayment arrangements and put a hold on proceedings in the event of agreed regular repayments being maintained.
- d) The lender must inform the borrower that irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case.

## **7. Retention and Production of Documents**

A lender must keep and maintain adequate records of all the steps taken, and all of the considerations and assessments required by this Code, and must produce all such records to the Financial Regulator upon request.



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