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Industry Information

## New Courts and Land and Conveyancing Law Reform Bill announced

June 2018

On 29 May 2018 the Minister for Justice and Equality [announced that a new Courts and Land and Conveyancing Law Reform Bill](#) (the “Bill”) will be drafted increasing protections for mortgagors facing repossession proceedings. The Bill has its origins in the Keeping Persons in their Homes Bill (previously introduced as a Private Member’s Bill in 2017) and proposes amending the Land and Conveyancing Law Reform Act 2013 to include provisions for persons facing repossession who cannot avail of an insolvency remedy under the Personal Insolvency Act 2012.

The Minister’s press release states that the Bill would require the court, when considering an application for a possession order in such cases, to have regard to the following factors:

- » *“the overall proportionality of the application for a repossession order;*
- » *the circumstances of those resident in the property;*
- » *the details of, and responses to, any proposals put forward by either party which would enable the borrower to remain in the property, including participation in a Government scheme for distressed mortgage holders (for example, the Mortgage to Rent Scheme or the Abhaile scheme); and*
- » *where the mortgagee is not the original mortgagee that granted the loan or mortgage to the mortgagor, the amount paid for the purchase of the loan or mortgage by reference to the amount of debt outstanding in respect of the loan or mortgage.”*

The provisions, if implemented, may have significant implications for lenders enforcing security and for purchasers of and bidders for loan portfolios containing principal private residences, including:

- » taking repossession could become a slower and more expensive process - and perhaps more unpredictable - due to the additional circumstances to which the court should have regard. Time will tell whether the Bill as drafted will oblige the court to consider of its own volition such factors or whether it will provide the court with a broader discretion to consider such factors.
- » the disclosure of details of prior proposals put forward by borrowers may require mortgagees to alter their internal procedures and ensure that it can demonstrate that alternative options and proposals were reasonably considered and explored before instituting possession proceedings. While full disclosure in respect of relevant open communications would generally be considered mortgagee best practice to mitigate against unnecessary litigation costs, this may add time and cost to internal escalation processes and procedures;



- » the disclosure of the purchase price of loans may require the public disclosure of commercially sensitive information in enforcement proceedings. The basis by which the price of a loan is to be determined is also unclear from the Minister's announcement, given that prices are typically agreed for an entire loan book and are often not referenced to individual loans. Additional complications may arise where loan purchase agreements include terms regarding confidentiality - it could be argued that to seek to override such a provision entered into prior to the enactment of the legislation would be unconstitutional; and
- » although a little early to tell at this stage, it may impact on pricing of loan portfolios as purchasers consider the potential impact of the increased process cost arising out of the proposed reforms.

Further detail surrounding the scope of the proposed Bill and other important considerations such as grandfathering provisions for historic loan purchases will hopefully be set out in due course when the General Scheme of the Bill is published. The target date for publication is this legislative session (before mid-July).

## Contacts

If you have any queries on the above or would like to discuss in more detail please do not hesitate to contact us or your regular Walkers contact.



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