



The Code of Conduct on Mortgage Arrears 2013

Background and Overview

In a development that will be of interest to financial institutions, sellers and purchasers of loan portfolios and investors in Irish RMBS, the Central Bank of Ireland (the “CBI”) published the revised Code of Conduct on Mortgage Arrears (the “Code”) on 27th June, 2013. The Code came into effect on 1st July, 2013. The Code amends the previous Code of Conduct on Mortgages Arrears (which came into effect on 1st January, 2011) in a number of ways, and is seen as assisting mortgage lenders to formulate long term, workable solutions to mortgage arrears cases by facilitating early and constructive engagement with borrowers.

The publication of the Code follows engagement with consumer and industry stakeholders and incorporates a high volume of feedback received from the CBI’s public consultation.

The CBI has said that it recognises that compliance with the Code will, in some instances, require changes to lenders’ systems and procedures, and may necessitate staff training, and so it has given lenders a six month window to allow for this transition, provided that they are actively progressing the implementation of the new requirements. The CBI has said that it will closely monitor the implementation of the Code by lenders. The Code applies to existing arrears cases, and not just to those arising after 1st July, 2013.

The Code sets out a revised series of rules on how lenders should deal with borrowers who are in arrears. It provides a strong consumer protection framework which requires that lenders treat borrowers in a fair and transparent way, while ensuring that lenders can agree long term and sustainable solutions with borrowers in

For further information on any of the issues discussed in this article please contact:



Conor Houlihan
DD: + 353 (0)1 6731719
conor.houlihan@dilloneustace.ie



Kate Curneen
DD : + 353 (0)1 6731738
kate.curneen@dilloneustace.ie

respect of mortgage arrears.

Borrowers who are “not cooperating”

The Code introduces greater clarity to the question as to whether or not a borrower can be said to be cooperating, and in light of the potentially serious consequences of a borrower being categorised as “not-cooperating”, a new provision requires lenders to provide a warning letter, giving at least 20 days’ notice to the borrower that they are at risk of being classified as not cooperating, outlining the implications for the borrower if they are so categorised, and providing specific information to the borrower on how to avoid falling into this category.

Repossession Proceedings against Cooperating Borrowers

In circumstances where a lender is not prepared to offer a borrower an alternative repayment arrangement, or if a borrower is not willing to enter into an alternative repayment arrangement offered by a lender, the lender must, in the letter that it is required to send to the borrower outlining the borrower’s options, inform the borrower that repossession proceedings may be brought at the later of three months from the date of the letter or eight months from the date that the borrower’s arrears first arose.

In addition, at the end of the Mortgage Arrears Resolution Process (“**MARP**”), lenders will be required to provide a newly introduced 3 month notice period to allow cooperating borrowers to consider their options, such as voluntary surrender of their property or an arrangement under the Personal Insolvency Act 2012, before legal action can commence.

Communication with Borrowers

The Code abolishes the previous limit of three successful, unsolicited contacts per month from lenders to borrowers in arrears; however, lenders must now have a communications policy, approved by its board of directors, which protects borrowers against unnecessarily frequent contacts and harassment. All communication must be “proportionate and not excessive” and at the time that any communication is made, an effort must be made to agree future communications with that borrower. This strikes a welcome balance between ensuring that borrowers are not contacted unnecessarily or aggressively, and allowing lenders to progress the resolution of arrears cases, taking into account the relevant circumstances of the particular case.

In addition, unsolicited house visits can now be made by lenders but only in circumstances where; (i) all other attempts at contact in relation to that borrower’s arrears have failed and (ii) immediately prior to classifying that borrower as non-cooperating. However, the lender must give the borrower five days’ notice on paper or another durable medium and must provide the specified time-frame in which they intend to make the visit.

The Standard Financial Statement/Temporary Arrangements

A further new requirement of the Code is that lenders must now provide borrowers with the Standard Financial Statement (“**SFS**”) (this is what the lender must use to obtain relevant financial information from a borrower in arrears or pre-arrears) at the earliest possible opportunity and must offer assistance to borrowers to complete it. In addition, lenders can now agree with borrowers to put a temporary arrangement in place to prevent arrears from increasing while the SFS is being completed by the borrower.

Alternative Repayment Arrangements

The Code has expanded significantly the list of types of alternative repayment arrangements that a lender must consider for borrowers in arrears. These include principal reduction, split mortgages, equity participations, permanent interest rate reductions and temporary interest rate reductions. In addition, the Code contains a new provision allowing a lender to offer an alternative repayment arrangement to a borrower, which involves the borrower coming off a tracker rate. However, a lender can only offer this option to a borrower where the lender has come to the conclusion that this is more appropriate and sustainable for the borrower than remaining on the tracker rate. Lenders must be able to show that this constitutes a long-term sustainable solution that is affordable for the borrower.

Transparency and Information Requirements for Lenders

The Code introduces new provisions to enhance transparency and provides additional information requirements for lenders. More detail must be included in the lender’s MARP booklet on how the alternative repayments arrangements offered by the lender work, and their key features. The information provided should include details on alternative options open to borrowers, such as surrender or trading down, an explanation of the meaning and implications of not cooperating (such as the impact on the borrower’s ability to successfully apply for a personal insolvency arrangement under the Personal Insolvency Act 2012), and a summary of the lender’s communications policy. In addition, the MARP booklet must contain a link to keepingyourhome.ie, where borrowers can obtain further information and assistance.

Conclusion

Overall, the changes brought about by the Code represent a significant step in enabling mortgage lenders to seek long term and viable solutions for distressed borrowers. The Code allows borrowers and lenders to constructively address the challenge presented by mortgage arrears, and in so doing, strikes a balance between their respective rights.

DILLON  EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

Hong Kong

604 6F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2013 Dillon Eustace. All rights reserved.