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*Number 22 of 2019*

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**Land and Conveyancing Law Reform (Amendment) Act 2019**

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CONTENTS

Section

1. Definition
2. Amendment of section 2 of Act of 2013
3. Procedures to apply in certain proceedings
4. Short title and commencement

[No. 22.]

*Land and Conveyancing Law  
Reform (Amendment) Act 2019.*

[2019.]

ACTS REFERRED TO

Land and Conveyancing Law Reform Act 2013 (No. 30)

Personal Insolvency Act 2012 (No. 44)

Property Services (Regulation) Act 2011 (No. 40)



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*Number 22 of 2019*

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## **LAND AND CONVEYANCING LAW REFORM (AMENDMENT) ACT 2019**

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An Act to amend the Land and Conveyancing Law Reform Act 2013 to provide for the procedure to be followed in certain legal proceedings to which section 2 of that Act applies; and to provide for related matters. [10th July, 2019]

**Be it enacted by the Oireachtas as follows:**

### **Definition**

1. In this Act, “Act of 2013” means the Land and Conveyancing Law Reform Act 2013.

### **Amendment of section 2 of Act of 2013**

2. Section 2 of the Act of 2013 is amended—
  - (a) in subsection (5), by the substitution of “this section or section 2A,” for “this section,”, and
  - (b) in subsection (7), by the substitution of “this section, section 2A and section 3” for “this section and section 3”.

### **Procedures to apply in certain proceedings**

3. The Act of 2013 is amended by the insertion of the following section after section 2:

“2A. (1) This section applies to proceedings brought by a mortgagee seeking an order for possession of land to which the mortgage relates and which land is land to which section 2 applies—

  - (a) which were adjourned under section 2 and, on the expiry of the period of adjournment (including any period of further adjournment under that section), subsection (5) applies,
  - (b) in which a relevant person made an application under section 2(2) (b) which application was refused, or
  - (c) where the mortgagor has, prior to or following the commencement of the proceedings—
    - (i) participated in good faith in a designated scheme, or
    - (ii) engaged the services of a personal insolvency practitioner to assist him or her to resolve his or her mortgage arrears and, following such engagement, subsection (5) applies.

- (2) In proceedings to which this section applies, the court—
- (a) shall, when considering whether to make or refuse to make an order for possession, and
  - (b) may, when considering whether to make any other order it considers appropriate in the circumstances, take account of—
    - (i) the matters referred to in subsection (3), and
    - (ii) such additional matters as it considers appropriate.
- (3) The matters referred to in subsection (2)(i) are the following:
- (a) whether the making of the order would be proportionate in all the circumstances;
  - (b) the circumstances of the mortgagor and his or her dependants (if any) in respect of whom the principal private residence the subject of the proceedings is their principal private residence;
  - (c) whether the mortgagee has made a statement to the mortgagor of the terms on which the mortgagee would be prepared to settle the matter in such a way that the mortgagor and his or her dependants referred to in paragraph (b) could remain in the principal private residence;
  - (d) the details of any proposal made, whether prior to or following the commencement of the proceedings by, or on behalf of, the mortgagor to enable the mortgagor and his or her dependants referred to in paragraph (b)—
    - (i) to remain in the principal private residence, including any proposal for participation by the mortgagor in a designated scheme, or
    - (ii) to secure alternative accommodation;
  - (e) the response, if any, of the mortgagee to any proposal referred to in paragraph (d)(i);
  - (f) the conduct of the parties to the mortgage in any attempt to find a resolution to the issue of dealing with arrears of payments due on foot of the mortgage.
- (4) The matters to which the court may have regard for the purposes of subsection (3)(a) include the following:
- (a) the total amount that remains to be paid to the mortgagee on foot of the mortgage or any associated loan agreement;
  - (b) the amount of arrears of payments due on foot of the mortgage;

- (c) the advised market value of the principal private residence on the date on which proceedings were commenced.
- (5) This subsection applies where a proposal for a Personal Insolvency Arrangement that includes a proposal in respect of the principal private residence concerned—
  - (a) has not been made, or
  - (b) has been made, and the Personal Insolvency Arrangement procedure has come to an end.
- (6) For the purposes of this section, a Personal Insolvency Arrangement procedure shall be considered to have come to an end where—
  - (a) section 106(3), 108(8)(b), 111A(8) or (9) or 114(3) of the Act of 2012 applies to that procedure,
  - (b) an application under section 115A of the Act of 2012 has been made in relation to a proposal for a Personal Insolvency Arrangement, and the court refuses to make an order under subsection (9) of that section, or
  - (c) the Personal Insolvency Arrangement concerned has terminated under section 123 of the Act of 2012.
- (7) The Minister may, for the purposes of this section, by order designate a scheme where he or she is satisfied that—
  - (a) the objectives of the scheme include providing persons who are dealing with arrears of payments due on foot of a mortgage on their principal private residence with assistance that is reasonably likely to—
    - (i) enable such persons to address difficulties in dealing with such arrears, and
    - (ii) facilitate, in so far as is possible, such persons in remaining in their principal private residence,
  - and
  - (b) it is reasonably likely that the assistance referred to in paragraph (a) will be provided under the scheme.
- (8) A reference in this section to the advised market value of a principal private residence is a reference to such value as specified in a statement of the advised market value of the principal private residence, provided by a licensee.
- (9) In this section—
  - ‘Act of 2011’ means the Property Services (Regulation) Act 2011;

‘advised market value’, in relation to a principal private residence valued for sale by a licensee, means the licensee’s reasonable estimate, at the time of such valuation, of the amount that would be paid by a willing buyer in an arm’s length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion, and a reference to the advised market value of a principal private residence at a particular date is a reference to the licensee’s reasonable estimate of the amount that would have been so paid on that date;

‘designated scheme’ means a scheme that is designated under subsection (7);

‘licence’ has the same meaning as it has in section 2(1) of the Act of 2011;

‘licensee’ means the holder of a licence which is in force in respect of a property service that falls within paragraph (a) or (b) of the definition of ‘property service’ in section 2(1) of the Act of 2011;

‘Personal Insolvency Arrangement procedure’ has the same meaning as it has in the Personal Insolvency Act 2012.”.

#### **Short title and commencement**

4. (1) This Act may be cited as the Land and Conveyancing Law Reform (Amendment) Act 2019.
- (2) This Act shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.