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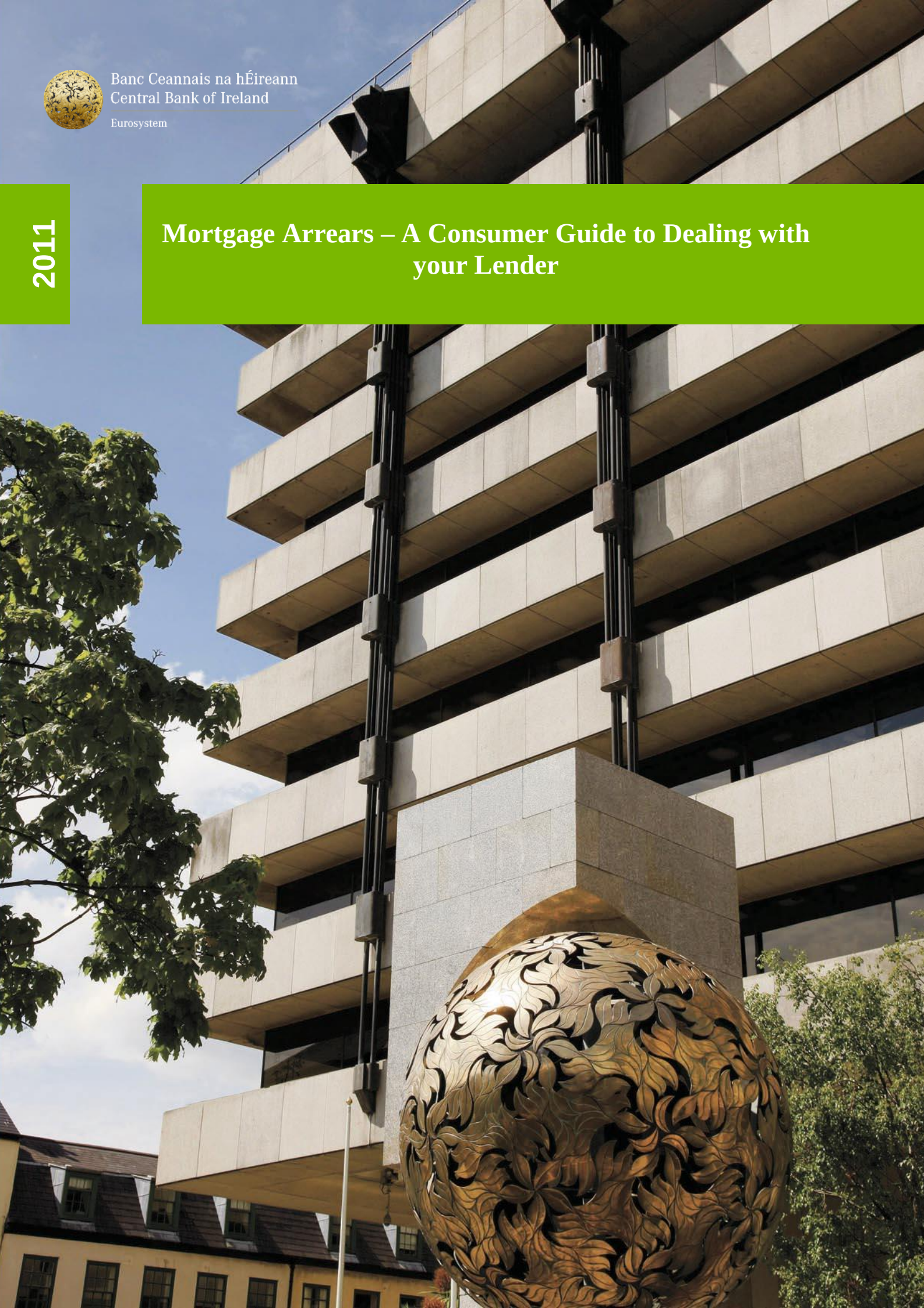
Mortgage Arrears – A Consumer Guide to Dealing with your Lender



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Introduction

Are you having trouble paying your mortgage? Do you think you may have trouble paying your mortgage in the near future? The Central Bank's Code of Conduct on Mortgage Arrears (the Mortgage Arrears Code) sets out clearly how your mortgage lender will deal with you. This Code came into effect on 1 January 2011 and relates to the mortgage payments on your sole or main property. It replaces our previous Mortgage Arrears Code. It does not cover mortgages from credit unions.

A copy of the Mortgage Arrears Code is available to download here.

The Mortgage Arrears Code sets out a range of rules which lenders must follow. This guide gives a summary of the Mortgage Arrears Code and includes information on:

- **Dealing with your lender;**
- **The information your lender must give you;**
- **The Mortgage Arrears Resolution Process (MARP); and**
- **Repossession**

Alongside this Consumer Guide is a list of answers to frequently asked questions on mortgage arrears. To view these click here.

Dealing with your lender

If you are having difficulties meeting your mortgage repayments or think you will in the near future, your first step should be to contact your lender as soon as possible to discuss your situation.

Your lender will have a specially trained person in each branch to deal with your case and any meetings between you and your lender to discuss your situation must be conducted in private. If you would feel more comfortable and need some support, bring a relative or friend with you to discuss your mortgage arrears situation with your lender.

Don't be embarrassed to tell your lender that you are in difficulties. You will be treated with sympathy and respect. They will work with you to help you get back on track. Don't be worried about losing your cheap tracker – your lender is not allowed to take you off the tracker rate just because you are in arrears.

If you want someone else to discuss your situation with your lender (for example, an advisor from the Money Advice and Budgeting Service (MABS)), the lender must discuss

your mortgage arrears situation with the person nominated by you as long as you give your permission in writing. However, this does not prevent the lender from contacting you directly in relation to other matters. Details of the MABS service are available at www.mabs.ie.

In the same way, if your lender appoints someone else (a third party) to engage with you in relation to your mortgage, for example, a solicitor, they must inform you in writing and explain the role of that person.

The Mortgage Arrears Code requires your lender to work with you to help you meet your mortgage obligations. However, they don't have to offer you an alternative repayment arrangement. In practice, most lenders will agree an alternative arrangement with you, if you work with them.

If your lender is not willing to offer you an alternative repayment arrangement, they must give you the reasons for their decision in writing.

Before making their decision whether to offer you an alternative repayment arrangement, your lender will ask you to fill out a form called a Standard Financial Statement (SFS). This is used to gather all your financial information and helps the lender to assess your financial situation. After assessing your case, your lender will consider if your mortgage should be re-scheduled and what alternative repayment arrangement is appropriate to your particular circumstances.

Such arrangements may include:

- an interest-only arrangement for a period of time
  - Under this arrangement, you would only have to pay the interest on your mortgage for a period of time and the balance outstanding on the capital amount of your mortgage would remain unchanged for the interest-only period;

- extending the term of the mortgage
  - Under this arrangement, you would be able to pay the mortgage over a longer period of time. This would mean that your monthly repayments will be lower, but you will pay more interest as the mortgage would now be payable over a longer period of time;

- capitalising the arrears and interest
  - If you are not able to pay off the arrears, the lender may agree to collect them over the balance of the mortgage term;

- availing of any voluntary scheme to which your lender has signed up e.g. Deferred Interest Scheme.
  - Under a deferred interest scheme, your lender will normally consider allowing you to defer paying up to 34% of the interest on your mortgage for a limited period. However, you must pay what you can afford. No additional interest will be charged on this unpaid interest element during the period.

If you have agreed an alternative repayment arrangement with your lender and you continue to meet that alternative arrangement, your lender is not allowed to impose any charges on your mortgage account relating to your arrears situation.

For example, they cannot charge for sending you a letter demanding payment of the arrears (sometimes known as a 'collections letter'). It is important to remember that interest will build up on any arrears you owe but your lender cannot charge you additional interest, sometimes called penalty or surcharge interest, just because you are in arrears.

Where you co-operating with your lender, the lender must wait at least twelve months from the date you are classified as a Mortgage Arrears Resolution Process case (see 'The Mortgage Arrears Resolution Process' below), before applying to the courts to commence legal action for repossession of your primary residence.

If an alternative repayment arrangement is not offered, your lender must discuss other options with you including, voluntary surrender, trading down or voluntary sale and the implications of each of these for you.

Voluntary Surrender

- This means that you agree with your lender that they can take full ownership of the property. Your lender will probably ask you to sign a legal document to give effect to this. You may feel that the only realistic option is to allow your lender to take back your property. It is important to remember that you will remain liable for any amounts that you owe to your lender and which they do not recover from the sale of the property

Trading Down

- This means selling your property and buying a cheaper one. Trading down may be an option to reduce your mortgage, resulting in more affordable monthly repayments. Before considering this option, you will need to be certain that you would have enough funds from the sale to buy another property, after paying off the mortgage on your current property. You should also bear in mind other costs relating to buying and selling property, such as solicitors fees, auctioneer fees and stamp duty.

Voluntary Sale

- You may consider the option to sell your property. In this case, your lender will be entitled to recover the mortgage balance and legitimate charges from the sale. You will only be entitled to receive amounts in excess of the amount owed to your lender.

Don't just abandon your house and post back the keys

If you do this, the lender will sell the house and you will still owe the lender the difference between the mortgage and the sale amount. For example, if your mortgage is €200,000 and they sell the house for €120,000, you will still owe the lender €80,000

Information Your Lender Must Give You

All lenders must have a section on their website providing information for customers who are having problems making mortgage repayments or are worried that they may have problems in the near future. You should be easily able to find this information from a link on their home page. If you don't have access to the internet, ask a friend or relative to help you or you can use the internet in your local library. This section of your lender's website must include other relevant information, for example, the level of charges that may be charged to borrowers that do not co-operate with the lender and an information or explanatory booklet on its Mortgage Arrears Resolution Process (see below). This section on their website must also include an explanation in plain English of the alternative repayment arrangements offered by your lender.

If you do not pay some or all of three mortgage payments and an alternative repayment arrangement has not been put in place, your lender will notify you, in writing, of the following:

- The potential for legal proceedings for repossession of the property, together with an estimate of the costs to you of such proceedings;
- The importance of taking independent advice from the local Money Advice and Budgeting Service (MABS) or an alternative; and
- That regardless of how the property is repossessed and disposed of, you will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case.

Where you request any documentation from your lender which you need to apply for social welfare benefit, such as mortgage interest supplement, your lender must provide these to you within 10 business days.

The Mortgage Arrears Resolution Process

The Mortgage Arrears Resolution Process (MARP) is the name given in the Mortgage Arrears Code to the process for dealing with customers in or at risk of mortgage arrears. Under the Mortgage Arrears Code, your lender must have an information booklet which explains its MARP. The stages of the MARP process numbered 1 to 5 are listed below:

Stage 1: How your lender must communicate with you

If your mortgage account goes into arrears and the arrears remain outstanding for 31 days, your lender must write to you and inform you of the status of your account within 3 business days. The letter must, among other things:

- State the date the mortgage fell into arrears, the number and total amount of full or partial payments missed and the amount of the arrears in euros;
- Highlight the importance of you co-operating with the lender during the MARP process and notify you that, if co-operation stops, the protections of the MARP no longer apply and that the lender may start legal proceedings for repossession;
- Confirm that it is treating your case as a MARP case;
- Include a statement that fees, charges and penalty interest in relation to the arrears will apply (and what they are) where you do not co-operate the lender; and
- Include the information booklet on the MARP process.

Apart from communications that your lender must give you as part of the Mortgage Arrears Code, there are limits on the number of communications your lender can make with you.

Unless you have asked your lender to contact you or given them your permission to contact you in relation to your arrears situation, they are only allowed to contact you 3 times per month in relation to your mortgage payments (this limit applies to unsolicited or unasked for contacts). This includes contacts by phone, by email, by text message, by letter or by calling to your home and includes missed calls or where messages are left for you.

Stage 2: Financial Information

Your lender will ask you to complete a form called a Standard Financial Statement. In this form you will have to provide information on your current income, expenses and other amounts you owe. It is important that you include all your basic living expenses in the Standard Financial Statement. You can use a budget planner from the National Consumer Agency [www.itsyourmoney.ie/iym/budgetplanner] or the Money Advice and Budgeting Service [www.mabs.ie] to work out exactly what you need for day-to-day expenses. You may have to produce documents which support the information in the Standard Financial Statement.

It is important to fill out the form honestly and provide any documentation your lender asks for. If you do not, you can be classified as not co-operating with your lender and the 12 month waiting period (moratorium) for beginning legal action for repossession of your property will no longer apply to you.

Stage 3: Assessment

All mortgage lenders must have an Arrears Support Unit (ASU). Your completed Standard Financial Statement and other factors relating to your case will be assessed by the ASU which will decide whether or not to offer you an alternative repayment arrangement and what type of alternative repayment arrangement is appropriate to your circumstances.

Stage 4: Resolution

A lender cannot move you from an existing tracker mortgage to another mortgage type as part of any alternative arrangement offered to you.

Your mortgage lender must consider all the options available for an alternative repayment arrangement for example, an interest-only arrangement for a period of time, extending the term of the mortgage or capitalising the arrears and interest so that they are collected over the balance of the mortgage term. While they must consider such arrangements, they are not obliged to offer you such an arrangement.

Where you are being offered an alternative repayment arrangement, your lender must give you a clear explanation of the proposed arrangement and any implications for you.

If your lender is not willing to offer you an alternative repayment arrangement, the reasons must be given to you in writing.

If you are not willing to enter into the alternative repayment arrangement offered to you by your lender, your lender must notify you of other options available and your right of appeal to the lender's Appeal Board. But be aware, that if you do not enter the arrangement offered and decide not to appeal your lender's decision, the 12-month waiting period on the lender taking legal action against you, including possible repossession, no longer applies. However, if you do appeal, the time taken by your lender's Appeals Board to consider your appeal is not included in the 12-month waiting period.

Stage 5: Appeals

All lenders must have an internal Appeals Board in place. You can take an appeal on any of the following grounds:

a) Your lenders' decision on your case; and/or
b) How your lender treated you under the MARP process; and/or
c) Whether you feel your lender has not complied with any of the requirements under the Mortgage Arrears Code.

You will have 20 business days, following the lender's decision on your case, to submit an appeal to your lender's Appeals Board.

If you are not happy with the outcome of the appeal you can make a complaint to the Financial Services Ombudsman. Further information on how to make a complaint is available at www.financialombudsman.ie

Repossession

Lenders will only consider repossession after they have carefully assessed every other way of solving the problem.

Your lender cannot apply to the courts to commence legal action for repossession of your property until every reasonable effort has been made to agree an alternative arrangement with you.

Where you are co-operating with your lender, the lender must wait at least twelve months from the date you are classified by your lender as being under its Mortgage Arrears Resolution Process (i.e. day 31 from when arrears first arose), before applying to the courts to start legal action for repossession.

If you agree an alternative repayment arrangement for your mortgage with your lender and continue to meet your revised repayments, your lender cannot start legal action against you to seek repossession.

If you appeal your lender's decision, the time taken by your lender's Appeals Board to consider your appeal is not included in the 12-month period. The 12 month period is extended by the time taken for the Appeals Board to decide on your appeal.

Your lender must tell you the time period remaining during which they cannot start legal action for repossession of your home if you ask for this information.

Remember, if you do not co-operate with your lender in relation to your mortgage arrears, the lender does not have to wait for 12 months before commencing legal action.

Additional Information

If you are on social welfare, you may qualify for help with the interest payments on your mortgage. The contact details for your local Social Welfare Office is available at www.welfare.ie

Useful Contacts

Contact	Phone
Citizens Information: www.citizensinformationboard.ie	1890 777 121 or 01 6059000
Dept of Social Protection: www.welfare.ie	
Financial Services Ombudsman: www.financialombudsman.ie	1890 88 20 90 or 01 6620899
Free Legal Advice Centres: www.flac.ie	1890 350 250 or 018745690
Irish Bankers Federation: www.helpinghomeowners.ie	
Money Advice & Budgeting Service (MABS): www.keepingyourhome.ie www.mabs.ie	1890 283 438 or 01 8129350
National Consumer Agency: www.itsyourmoney.ie	1890 432 432 or 01 4025500

Banc Ceannais na hÉireann
Central Bank of Ireland
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Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland