



letters

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Ulster Bank mortgage condition anomaly

From: John Redmond, Fitzsimons Redmond, Solicitors, Grand Canal Quay, Dublin 2

The Ulster Bank Ireland Limited housing loan mortgage conditions (2009 version) are, at first glance, on a par with the mortgage conditions used by the other main lenders in the home mortgage market – but, on a closer reading, it should be noted that condition 11, which lists the instances in which the total debt becomes repayable, includes at condition 11(f): “On the expiration of one month’s notice given by the lender to the borrower”.



Accordingly, the loan can be called in at any time at the whim of the bank, without any default on the part of the borrower or any change in the borrower’s

circumstances or ability to service the loan.

There is no comparable condition in the Irish Banking Federation General Housing

Loan Mortgage Conditions (version 1.0 2009) or, in my experience, in the conditions currently used by the other main lenders in the home loans market.

When I raised the matter with the bank and suggested that this condition was not appropriate, I was advised that this was a condition of the loan and that, if the borrower did not like it, he did not have to take up the loan – that is, take it or leave it.

The condition should be brought to the attention of borrowers, and they should be advised to look at alternative sources of funding where this is possible.

Architects’ qualifications and EU law

From: Christophe Krief, CK Architecture, Palmerstown, Dublin 20

In August this year, I lodged a complaint to the European Commission against section 22 of the *Building Control Act 2007*, because this part of the act discriminates against some of the experience that I gained while working in Britain. I believe that the European Commission is now in contact with the Irish government through the EU pilot scheme to discuss this matter.

The reason for this letter is that I was recently provided with a file containing Dr Gerard Hogan’s legal opinion in relation to the *Building Control (Amendment) Bill 2010* and its incompatibility with EU law. This opinion was emailed to members of the government

by the director of the Royal Institute of Architects of Ireland.

Supporters of the bill are concerned with the content of the opinion, because it states that the *Building Control (Amendment) Bill 2010* is not compatible with EU law. I have practised as an architect during the last 17 years, and I have been attentively following the evolution of the profession within the European Union. I understand that European law does not control the use of the title ‘architect’ within each European state, but that it imposes the recognition of some professional qualifications within the European Union.

Directive 2005/36/EC on the recognition of professional qualifications does not impose a minimum standard for

practising architecture within a state. The directive only sets standards of qualifications for the purpose of allowing freedom of movement within the EU.

I consulted Directive 2006/123/EC relating to the provision of services within the EU. It appears to me that this directive gives instructions to facilitate the movement of services proposed by self-employed and small companies within the EU. In respect of the architectural profession, it includes a reference to Directive 2005/36/EC on the recognition of professional qualifications.

In the Republic of Ireland, registered architects do not have recognition abroad. Only full membership of the Royal Institute of Architects

of Ireland (RIAI) gives such a privilege. The suffix ‘MRIAI’ is listed in Directive 2005/36/EC for the recognition of Irish architects within the EU.

The RIAI recently created a new suffix, ‘MRIAI (Irl)’. It will be used by practitioners who register as architects through the *Building Control Act 2007*, without holding a qualification that is in compliance with the European directive.

The issue that did lead to the draft of the *Building Control (Amendment) Bill 2010* is related to the assessment of self-trained architects set up by the RIAI. These assessments are very onerous, and they do not consider the qualities and skills acquired by established architects. It is thought that many mature architect members of the

RIAI would not be successful in these assessments, because they require the skills and knowledge of newly qualified professionals rather than those of mature and established architects.

The *Building Control (Amendment) Bill 2010* was drafted to remedy to this problem, but it was never drafted to allow self-taught architects in Ireland to practise abroad. The *Building Control (Amendment) Bill 2010* is only supposed to replace the existing registration system for self-trained architects as per the *Building Control Act 2007*, which is financially and practically inadequate.

In Denmark and Sweden, as previously in Ireland and the Netherlands, self-trained architects are permitted to

practise, and this does not appear to be in conflict with EU law. In the same way, the *Building Control (Amendment) Bill 2010* is proposing to allow professionals with seven years of experience in the field of architecture to register for the purpose of practising in Ireland. This does not represent the highest professional standard within the EU, but this is not the lowest standard either. In Britain, the system for architectural services is such that the practice of architecture is open to everyone and only the use of the title 'architect' is protected. The Irish system for architectural services is organised in such a way that it does not allow non-registered practitioners to work lawfully. The problem resides mainly in the self-certification

procedure. While in Britain the state delivers certificates of compliance with planning and building regulations, it is the privately-appointed architects who do so in the Republic of Ireland.

In the Netherlands, a very practical examination exists for self-trained architects, and part-time courses are available to achieve registration. This facility is not available in Ireland. The cost of the Irish Architects' Register Admission Exam (ARAE) is €11,500, plus €2,000 for optional lectures. The cost of the Dutch equivalent is €3,500. The Irish ARAE would require the applicant to stop his current activities for weeks or months for the purpose of preparing and attending examinations. The Dutch equivalent would

allow someone to prepare for a two-day examination during the evening.

There is concern among self-trained architects about the RIAI misleading the public in relation to European law imposing standards for the registration of architects in Ireland. In fact, European law only sets standards for the mutual recognition of qualifications and freedom of movement on this matter. If the document in my possession is authentic, Dr Gerard Hogan's legal opinion is that the *Building Control (Amendment) Bill 2010* is not compatible with EU law. However, Dr Hogan has not provided any relevant reference that would confirm his opinion, and supporters of the bill are wondering why. **G**

Gwen Malone.
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