

# Revised Pre-Action Protocol for Possession Proceedings

September 2011



The Lord Chief Justice's Office announced on 30 August 2011 that the "Pre-Action Protocol for Possession Proceedings based on Mortgage Arrears in respect of Residential Property" has been revised. The Pre-Action Protocol was revised following consultation with and consideration by members of the judiciary and of the legal profession representing relevant interests.

The revised Pre-Action Protocol will come into effect for all mortgage repossession cases from Monday 5 September 2011. The basic premise of the original Protocol (to reduce repossession Court proceedings through negotiation and exploring alternative ways of reaching a settlement) remains the same. The revised Protocol sets out the steps that lenders are expected to take before bringing a claim in the Courts. Lenders should ensure that Repossession action is a last resort.

Lenders are expected to demonstrate that they have tried to discuss and agree alternatives to repossession with borrowers when they encounter difficulty with their mortgage repayments. Once the case has reached Court, lenders are required to tell the Court precisely what they have done in order to comply with the Pre-Action Protocol.

It is imperative that all lenders ensure that their policies and procedures comply with the Protocol and seek advice on specific cases, where appropriate, to avoid unnecessary delays if proceedings are finally issued.

It is important to note that the Protocol applies only to mortgage arrears in respect of residential properties and does not apply to proceedings brought in relation to what are commonly known as "buy to let" mortgages. It is now also important to note that a new addition to the revised Protocol is clause 9.2 whereby if a party unreasonably fails to comply with the terms of the Protocol, the Court may take that failure into account in arriving at its decision either on costs or generally.

The Mortgage Repossession Unit at Cleaver Fulton Rankin is experienced in a range of alternative dispute resolution procedures and therefore is well placed to aid both lenders and borrowers through the Pre-Action Protocol. Cleaver Fulton Rankin currently advise both lenders and borrowers, therefore if you feel that you need advice or assistance on either taking or defending a mortgage repossession action, please contact Fergal Maguire, or another member of the Mortgage Repossession Unit, who will be happy to assist you.