



## BANKING

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# Land and Conveyancing Law Reform Act 2013: An end to Start Mortgages

by **John Campbell**

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The Land and Conveyancing Law Reform Act 2013 (the "2013 Act") became law on 24 July 2013 and is fully operational since 31 July 2013.

The 2013 Act resolves the issues arising from the Land and Conveyancing Law Reform Act 2009 (the "2009 Act"), as highlighted in the decision of *Start Mortgages Limited v. Gunn*. It also introduces procedural provisions relating to possession of principal private residences ("PPR") of a mortgagor or their spouse/partner and also proceedings for possession in the Circuit Court and against the estate of a deceased person.

## Section 1

The 2013 Act provides that certain statutory provisions, which were repealed by the 2009 Act, continue to apply to mortgages created before 1 December 2009, notwithstanding their repeal.

The *Start Mortgages* decision held that the net effect of the repeal of certain statutory provisions by the 2009 Act restricted chargeholders from asserting their rights in certain cases, primarily unless repayment of principal monies had become due and demand for repayment made by the 1 December 2009. These statutory provisions had provided mortgagees with certain rights and powers in relation to the appointment of receivers, entering into possession, overreaching of subsequent charges and selling as mortgagee in possession.

The uncertainty created by the *Start Mortgages* decision was subsequently tempered by the High Court in a series of cases including *Kavanagh v. Lynch*, *EBS Limited v. Gillespie* and *McEnergy v. Sheahan*. However, where a statutory power, most notably the power of sale out of court and the power to overreach, did not fit within the exceptions created by these cases, the *Start Mortgages* decision still restricted the ability of a chargeholder to exercise such rights or powers.

The 2013 Act, by confirming the applicability of certain repealed statutory provisions to mortgages and charges dated before 1 December 2009, provides clarity and comfort to banks in relation to their rights under such mortgages and charges. This especially relates to a mortgagee's power of sale and the concept of overreaching. Since the coming into effect of the 2013 Act mortgagees can sell both registered and unregistered property free of subsequent encumbrances.

## Section 2

Section 2 of the 2013 Act provides that in any possession proceedings brought by a mortgagee or receiver in respect of a mortgage (irrespective of whether it was created prior to or after 1 December 2009) affecting the PPR of a mortgagor or their spouse/partner, the court may adjourn the proceedings for a maximum period of two months, having regard to a number of factors, to allow for the consideration of a personal insolvency arrangement under the Personal Insolvency Act 2012 as a more appropriate alternative to possession.

### **Section 3**

The 2013 Act also provides that in any proceedings for possession in respect of a mortgage dated prior to 1 December 2009 affecting the PPR of a mortgagor or their spouse/partner must be brought to the Circuit Court.

### **Section 4**

The 2013 Act includes a provision relating to the limitation period of possession proceedings, in respect of a mortgage dated prior to 1 December 2009, issued against the estate of deceased person where certain conditions are met.

**For further information please contact John Campbell at [john.campbell@lkshields.ie](mailto:john.campbell@lkshields.ie).**

## About the Author



**John Campbell**  
**Partner**

John has extensive experience in the areas of commercial property and property finance.

**T:** +353 1 637 1570 **E:** [fcampbell@lkshields.ie](mailto:fcampbell@lkshields.ie)