



# **Buy-to-Let Mortgage Arrears: Measures Needed to Protect Homes of Tenants and Stability of Private Rented Sector**

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Submission to Joint Oireachtas Committee  
on Finance, Public Expenditure and Reform

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## 1. Introduction

Threshold welcomes the opportunity to make this submission to the Joint Committee on Finance, Public Expenditure and Reform. This submission focuses exclusively on buy-to-let mortgage arrears, the impact of the actions taken by financial institutions on tenants who make their family homes in the private rented sector, and the need for regulation.

The buy-to-let sector is currently faced with the twin problems of receivership and bank repossessions, arising from the prevalence of mortgage arrears, and both are having a negative knock-on effect on tenants living in the sector. Threshold is calling for the rights of tenants whose landlord's property has gone to receivership to be protected and for measures to be put in place to prevent the loss of tenancies arising from the appointment of receivers to BTL properties. Tenants should be facilitated to remain in occupation of the their rented property, and where this is not possible, they should be given appropriate notice in line with the provisions of landlord and tenant law as set out in the Residential Tenancies Act 2004.

### **Summary of Measures Recommended by Threshold**

Threshold is seeking the support of the Committee in calling on the Minister for Finance, the Minister of State for Housing and Planning, and the individual lending institutions, to introduce three critical measures that protect the family homes of tenants and the overall private rented sector from the volatility generated by buy-to-let mortgage arrears:

- ✓ **Amend the Residential Tenancies Act 2004 to recognise the appointment of receivers and their right to collect rent in place of the landlord, and as a result, provide that receivers must 'step into the shoes' of the landlord and take on their obligations;**
- ✓ **Introduce a code of conduct on buy-to-let mortgage arrears similar to the CCMA for residential mortgages; and**
- ✓ **Publish quarterly data on the scale of BTL receiverships, the numbers of tenancies impacted or that may potentially be impacted, and the actions taken on behalf of lending institutions.**

## **2. One in Five Families Live in the Private Rented Sector**

Historically, private renting in Ireland was described as the ‘forgotten sector’ (Threshold, 1982), regarded as a transitional tenure for groups including, for example, third-level students and couples saving to buy a home. The private rented sector today is a mainstream housing option for a growing proportion of Ireland’s population, including for those who would have traditionally accessed home ownership and local authority housing. The sector grew from 156,000 households in 2006 to 305,000 in 2011 (CSO, 2011), with almost one in five (18.5%) families now living in private rented accommodation. The proportion is higher in our major cities with, for example, with a quarter of households (25%) in Dublin renting from a private landlord. Approximately 80,000 households in the private rented sector are supported by the State under the rent supplement scheme.

Much of the growth in the supply of private rented housing in the last decade has been fuelled by the provision of buy-to-let (BTL) mortgages by financial institutions during the years of the property boom, but many of these loans are now in arrears. Of the current 146,000 residential mortgage accounts on BTL properties, almost 40,000 of these are in mortgage arrears (Central Bank of Ireland, Q4 2013). The scale of mortgage arrears, which far outstrips that in the residential market, poses a serious threat to the stability of the sector. This is especially the case for low income families who are entirely dependent on the private rented market for their home and where overall conditions are worsening with a shortage of supply and rapidly rising rents in urban centres.

## **3. Buy-to-let Receiverships Threaten the Family Homes of Tenants**

Since the beginning of 2013, there has been a significant increase in the numbers of receivers being appointed to landlords’ interests in buy-to-let (BTL) properties under the deed of mortgage. By January 2014, 2,250 rental properties had receivers appointed (Irish Mortgage Brokers, January 2014). It has been suggested that 3,700 receiverships may currently (April 2014) be in place over residential properties. Threshold is gravely concerned that insufficient policy attention has been paid to the plight of tenants affected by this serious deterioration in the BTL segment of the private rented sector and who are increasingly caught in the crossfire between financial institutions and the landlord.

The Land and Conveyancing Law Reform Act 2013 will facilitate the repossession of greater numbers of dwellings in arrears through the Courts. Both the Governor of the Central Bank and the Minister for Finance have indicated that they envisage that a significantly greater number of BTL residences will be repossessed under the new regime (Mortgage Arrears Resolution Targets and courts system). Tenants living in rented homes that are under threat of bank repossession face serious disruption, and in some instances homelessness, if consideration is not given to their status as family residences.

We note in this regard that in many instances a receiver can be appointed to a property once the loan which that property secures is in arrears (i.e. in many instances receivers can be appointed in advance of the loan being in arrears for 90 days). Families should be facilitated to continue renting these properties, where this is possible, and where bank enforcement is unavoidable, families should be informed at the earliest opportunity and receive appropriate notice in line with the Residential Tenancies Act 2004 (RTA).

#### **4. Lack of Regulation of Receivers is Undermining Tenants' Rights**

Threshold provides a national advice, advocacy and housing support service, mainly for tenants living in the private rented sector, with approximately 20,000 queries received by our housing advisors annually. The problem faced by tenants affected by the appointment of receivers first came to prominent attention in Threshold's advice centres in 2012 and the scale of queries received has grown since. Threshold's housing advisors assisted 405 households in 2013, with 139 cases received in the first quarter of 2014 (see Appendix B). Some receivers have become more open to taking into consideration the rights and circumstances of tenants through repeated contacts with Threshold and increased familiarity with the legislation which governs landlord and tenant situations, which the receiver has been placed into; however, this is far from universal and there is widespread inconsistency in how tenants are treated.

**Threshold is concerned that tenants' rights established in law are being seriously undermined by a lack of regulation of the actions of receivers and confusion in relation to who has to respect tenants' rights and how. The primary areas which are being undermined are tenants' rights to security of tenure which is safeguarded under the Residential Tenancies Act 2004, the right to have their rental deposit returned 'promptly' and the right to live in accommodation that meets minimum required standards and to have repairs addressed.**

#### **5. Measures Recommended by Threshold**

Threshold is seeking the support of the Committee in calling on the Minister for Finance, the Minister of State with responsibility for Housing and Planning, and the individual lending institutions, to introduce three critical measures that ensure that the family homes of tenants and overall stability of the private rented sector is protected from the volatility generated by mortgage arrears in the buy-to-let sector:

## **i. Amendment to Residential Tenancies Act 2004**

The purpose of the RTA is to clearly specify the rights and obligations of both landlords and tenants, but it not explicit regarding the extent to which a receiver has to comply with the statutory obligations of the landlord. As a result, tenants are being placed in stressful situations where they are in the middle of a dispute between receivers and their landlord. Many receivers are interpreting the RTA in a manner which does not uphold the tenant's security of tenure, the right to legal notice of termination or the obligation to carry out repairs.

In Threshold's experience, receivers are ignoring the RTA in a number of ways including: i) treating tenants as illegal occupiers ii) seeking to remove tenants without giving appropriate notice (i.e. eviction) and iii) collecting rent but stating they have no obligations to the tenant. Tenants are being told to approach their former landlord when they are seeking repairs or the return of the rental deposit. Clearly no tenant will obtain satisfaction from a destitute landlord who retains no interest in the property.

In addition, some landlords, who do not accept the appointment of the receiver, are seeking to rely on uncertainty in the RTA to continue to collect rent and to seek to terminate tenancies if the tenant deals with the receiver.

**In order to safeguard the stability and sustainability of the private rented sector, Threshold believes that clarification may be achieved through amendments for inclusion in the Residential Tenancies (Amendment) (No. 2) Bill 2012 which is coming before the Seanad. The introduction of an amendment that clearly places the landlord's obligations on the receiver is needed. It will clarify that the receiver 'steps into the shoes' of the former landlord in all respects.** Threshold welcomes a commitment by the Minister for Housing and Planning that she will examine legislative change in this area. It is important to note that such an amendment will not impede the lender's security as under the Residential Tenancies Act 2004 a property may be legally recovered by giving the appropriate notice set out in law. In fact, the amendment will benefit the lender in removing the confusion and confirming that once a receiver is appointed to a property, the tenant must cease paying rent to the existing landlord/borrower and instead divert rent to the receiver.

Please see Appendix A for proposed wording of the above amendments.

## ii. Code of Conduct on Buy-to-let Mortgage Arrears

A code of Conduct on Mortgage Arrears (CCMA) has been introduced by the Central Bank for residential mortgage arrears and Threshold is seeking the introduction of a similar code of conduct on buy-to-let mortgage arrears. Such a code would:

- Introduce a transparent process for financial institutions, landlords and tenants;
- Set out the required steps for engagement with the landlord and tenant and the forms of communication required; and
- Ensure that financial institutions respect and uphold tenants' rights.

Threshold has raised this issue with the Minister for Finance and we have recommended that this code would be drafted in consultation with the relevant State stakeholders including the Department of the Environment, Community and Local Government and the Department of Social Protection as well as those representing the experiences of landlords and tenants. **A code of conduct on buy-to-let mortgage arrears would ensure that the requirements of landlord and tenant law become an explicit consideration in the receivership and repossession processes and safeguard the private rented sector from volatility arising from a higher scale of repossessions and receiverships.**

We believe that both of these measures would bring greater certainty and stability as all of the parties would have legal certainty as to their position. A tenant will be empowered to switch rent payment to the receiver at an earlier stage because they are certain as to the identity of the landlord and because there is no adverse impact on their tenancy. A receiver will be aware of the correct legal procedure to obtain possession of a buy-to-let property in accordance with landlord and tenant law.

## iii. BTL Mortgage Arrears and Statistics

Insufficient data is available on the nature and extent of BTL mortgage arrears and the actions taken by financial institutions. In addition to the current information provided via the Central Bank of Ireland on the scale and duration of BTL mortgage arrears, restructuring arrangements and repossessions, the following information should be provided on a quarterly basis:

- Total number of receiverships in place in relation to BTL properties, including the name of the financial institution and name of receiver(s) appointed;
- Of those properties in mortgage arrears, the total number of properties where tenants are in occupation and the total number of vacant properties;

- Of those properties in receivership, the total number of properties where i) tenants remain in occupation and ii) where tenants have been issued with notice of termination by the receiver.

**More detailed statistics on BTL mortgage arrears, the circumstances of tenants, and the actions taken on behalf of lending institutions is necessary to inform policy decisions around the continuing impact of receiverships and repossessions on the stability of the private rented sector.**

### **Conclusion**

Threshold would be pleased to provide further information and to discuss the above recommended measures, in relation to the impact of buy-to-let mortgage arrears on tenants who make their home in the private rented sector, with the Joint Oireachtas Committee on Finance, Public Expenditure and Reform.

## **Appendix A: Threshold's proposed amendments to Residential Tenancies Act, 2004**

Regulation of the private rented sector is governed by legislation (Residential Tenancies Act 2004) but there is currently no clear process as to how financial institutions should engage with landlords and tenants. In some cases, a tenant may only become aware of a repossession order at the time it is enforced by the Sheriff. In addition, many receivers are demanding rental payments without providing confirmation that they are legally entitled to the rent or that the tenant's rights will be upheld. This is causing significant confusion for both tenants and landlords.

### **Proposed Amendments to Residential Tenancies Act 2004**

In order to safeguard the stability and sustainability of the private rented sector, Threshold is seeking two amendments to the Residential Tenancies Act 2004 (RTA) to clarify the obligations of receivers appointed to BTL properties. The following amendments have been proposed by Threshold to the Department of the Environment, Community and Local Government for inclusion in the Residential Tenancies (Amendment) (No. 2) Bill 2012 which is due to be enacted this year:

#### ***Amendment to 5(1) of the Residential Tenancies Act, 2004 – Amendment of the definition of "landlord" to include the underlined –***

*"landlord" means the person for the time being entitled to receive (otherwise than as agent for another person) the rent paid in respect of a dwelling by the tenant thereof, which for the avoidance of doubt includes any receiver appointed to a previous landlord's interest in the dwelling, provided that such a receiver has all the necessary powers to comply with all landlord obligations under this Act, and, where the context so admits, includes a person who has ceased to be so entitled by reason of the termination of the tenancy.*

#### ***Insertion of new section 5A into the Residential Tenancies Act, 2004***

*A tenant who has received confirmation of the appointment of a receiver to the landlord's interest in the dwelling is not required to inquire whether the receiver is authorised to act or has been validly appointed.*

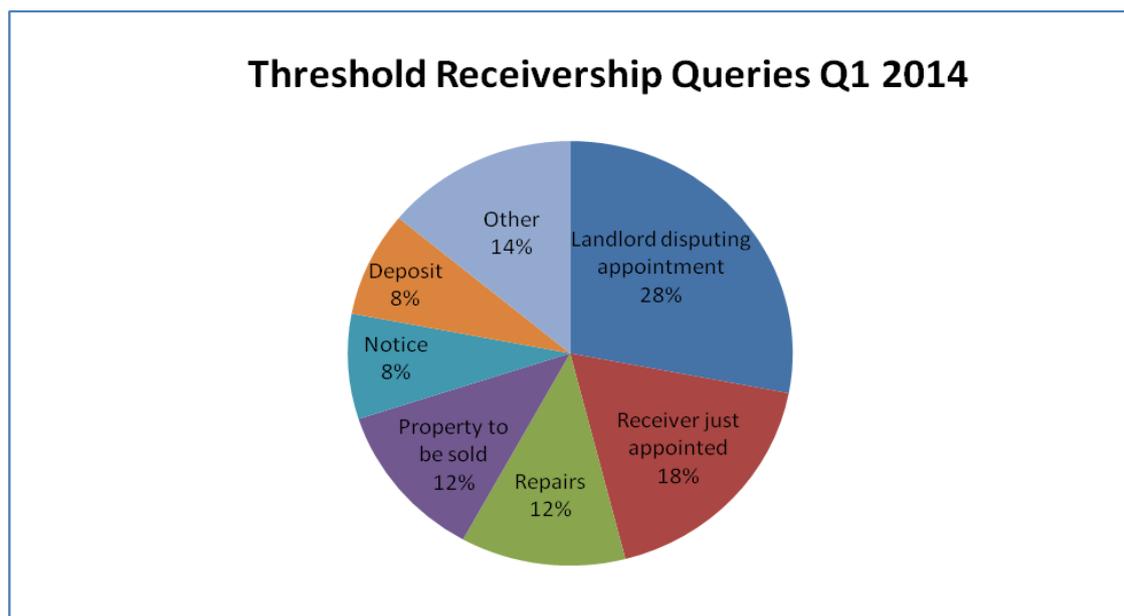
Threshold believes that the introduction of these amendments will be important from a financial perspective as they will help to optimise the income to be derived from the receivership process. The tenant will switch rent payment to the receiver at an earlier stage because they are certain as to the identity of the landlord and they will remain paying rent because there is no adverse impact on their tenancy.

Threshold would be pleased to provide additional information on any of the above, should this be required.

## Appendix B: Receivership Queries to Threshold's Advice Centres

To date, Threshold has assisted 590 individual households with queries in relation to receivers. A total of 405 of these were for the year 2013 and Threshold has received 139 queries in Q1 2014, which is indicative of the greater activity that is currently happening around the appointment of receivers.

Threshold's main centres of operation are in Dublin, Cork and Galway: an analysis of Q1 2013 queries from tenants shows that over half (56%) of queries received were from tenants in Dublin, followed by 26% in Galway and 18% in Cork.



The issues presenting can be divided into two broad categories:

1. Almost half (46%) of all tenants contacting Threshold were unclear as to who they should regard as their landlord/ to whom they should pay the rent (as the relevant legislation does not currently specifically provide for receivers).
  - The majority (28%) were those where the appointment of the receiver has been disputed by the landlord (such dispute is not always through formal/legal procedures, often the landlord informs the tenant to ignore the receiver and deal with the landlord only);
  - A further 18% of cases where a receiver was recently appointed and the client sought advice on the process and their rights.
2. The second category (54%) comprises specific issues affecting the tenant as a result of receivership, including

- Difficulties in getting repairs addressed (12%);
- Receiver has indicated that the property is to be sold (12%);
- Non-return of deposits (8%) where neither the landlord nor the receiver are taking responsibility for repayment;
- Receiver has issued notice of termination (8%);
- Other issues including rent arrears, being issued with a new lease, rent supplement etc (14%)