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IPOA News

Official Newsletter of the Irish Property Owners' Association,
the National Landlords' Representative Organisation

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Custodial Deposit Protection Scheme - what a waste.

Following on from Meetings with Minister Jan O Sullivan and her officials, the IPOA made further submissions to the Minister and her Department in relation to viable alternative structures that would be much more palatable than the proposed Custodial Scheme.

We emphasised the following:

- Why a need for scheme when only 0.040% of tenants do not get refunds out of a current registration of 265,000 tenancies with the PRTB.
- Current legislation (2004 Act) incorporates a Dispute Resolution Process and all that is needed is to make it work as intended. Greater efficiency will answer the negative demands made by certain politicians, particularly Labour and organisations such as Threshold.

Do these people ever consider the consequences of their demands, not only on the property owner but on the tenants? Other jurisdictions, U.K for example, have only 64% compliance and the Government have to subsidise. Germany and France have systems, but tenants have to pay substantial deposits of up to 3 months. Under the proposed Government scheme, tenants will face a deposit of 3 months rent in advance, and at the end of the tenancy, they will have to apply for a refund to the quango which may take anything from 3 to 6 months - and where does the deposit come from for their next tenancy?

Have these so called experts not learned from past experience that many of their demands that were put into law cause untold hardship on tenants, just like the current shortage of accommodation and subsequent costs? Who is to blame - the Landlord, they cry. But that is blatantly not so. Was the landlord the cause of the bust that brought rents down to unsustainable levels? Was it the landlord that capped Rent Supplement? Was it the landlord who called for traditional bedsits to be abolished? Was it the landlord that arranged for rental income to be classed as "unearned"?

A Deposit Protection Scheme is not the answer in Ireland as we have legislation here that no other jurisdiction has. We suggest that the State apparatus should make proper use of it instead of always kicking to touch under the guise of the matter being the responsibility of a quango. If this heavy load of bureaucracy is forced on the private rental market, tenants will suffer most: three months rent in advance (or more), rent increases, months waiting for return of the deposit, guarantees for all damages, etc. etc.

Finally - will property owners really need a deposit? Because there are alternatives. The alternatives may not be palatable to tenants. They may not be palatable to the Government and left wing organisations. But let's face it - landlords today are an intrinsic part of providing accommodation that suits tenants, who are their customers. If the Government wants more so called social housing, then cough up the money. But until that happens, politicians and organisations should stop bleating about landlords who want to get on with the business of letting property for which they are due a sustainable income.

Stephen Faughnan
Chairman

Meeting for Members Negotiating with Banks 23rd July 2014

There will be a meeting for member negotiating with their banks on Wednesday, the 23rd July at 7pm in the IPOA Building, Ashtown Business Centre, Navan Road, Dublin 15. The Guest Speaker will be Nick Leeson, who has considerable experience in dealing with debt and banking generally. We would also hope to have an informal group discussion to allow people to share their experience and treatment at the hands of the banks. There is a limit on the numbers who may attend to 30 members and places will have to be booked. Please contact the office early to avoid disappointment.

Equal Status Acts 2000-2008

Be very careful to ensure that you do not discriminate when taking in tenants. The nine grounds on which discrimination is illegal are as follows:

- Gender
- Marital status
- Family status
- Sexual orientation
- Age
- Membership of the Traveller community
- Disability
- Religious belief
- Race, colour, nationality, ethnic or national origins
- Compensation of up to €6,349 can be awarded where discrimination occurs.

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Government Intervention: Serious Consequences

- **2004 Residential Tenancies Act 2004 - complex and penalises landlords by allowing non-paying tenants to remain in property.**
- **2006 BER Certification required**
- **2008 Refurbishment Relief abolished (from 2006 Budget)**
- **2008 Increased, and often unnecessary standards**
- **2009 Mortgage Interest reduced to 75% - the more borrowed the harder it hits**
- **2009 NPPR €200 not tax deductible/per unit/extreme penalties**
- **2011 Threatened abolishment of Section Relief/increased costs**
- **2012 Household Charge - again on bedsit units - not tax deductible**
- **2013 Traditional bedsits closed down/shared bathrooms unacceptable**
- **2013 NPPR and Local Property Tax had to be paid - not tax deductible**
- **2013 Law facilitating repossession of buy to lets (reversal of Dunne judgement)**
- **2014 Local Property Tax - still not tax deductible**
- **2015 Water charges**
- **2015 Custodial Deposit Protection Scheme proposed**
- **2007- 2012 Rents decreased up to 40%**
- **Rent Control threatened**
- **Rent Supplement reduced three times**
- **Refurbishment items only allowable over 8 year period, but have to be paid for when purchased.**
- **Money spent on improving property only allowable when property is sold.**
- **Income tax at marginal rate, USC and PRSI on money that does not exist - 27% of Buy to Lets in arrears**
- **One in five people currently live in private rental sector.**

Meeting with the Department of Environment

The IPOA met with the Department of Environment in April in respect of the HAP. For it to be run successfully, there are a number of issues that we would like to see addressed:

- **The HAP should be paid directly to the landlord in advance, in full and on time.**
- **The tenant needs to have confirmation of approval prior to the commencement of tenancy and the amount allowed. This will help in the sourcing of the accommodation.**
- **It is essential that the Local Authority can discuss a tenancy with the landlord - a form could be signed consenting to the contact at the outset of the tenancy in order to let the landlord know if payment is being stopped and why.**
- **Market rent needs to be paid, and if not, some simple incentive such as an additional tax allowance - maybe €2,000.**
- **It is also important for rent to be paid during the termination process for anti-social behaviour.**

Energy Engage Code

Irish Energy Suppliers have launched a new voluntary code that aims to keep domestic customers connected to their energy supply. The Energy Engage Code came into effect on June 1, 2014 and sets out a programme of measures that providers will take to encourage customers in arrears, and at risk of disconnection, to engage with them to ensure that they remain connected to their energy supply. The Energy Engage Code is a coordinated industry-led approach to further assisting customers in arrears and at risk of disconnection. The key principle underpinning the Code is a firm commitment by providers that they will never disconnect an engaging customer.



Useful service - especially for absent landlords

Damage to property happens: minor damage, such as a leaking pipe, or more major perils, such as floods or fires, are unfortunately, not uncommon. But whatever the damage, it can be a headache for the landlord which is only exacerbated by the greater the distance, and time, he is from his property.

When any landlord receives a call with news of damage, he or she will immediately experience a number of concerns. Concerns such as how quickly can the damage be assessed and repaired, how much will it cost, will it affect the rent and will the insurance cover it? Then there is the disruption, inconvenience and possible stress to both tenants and landlords. Plus dealing with loss adjusters and trades people can be an extra pressure.

Using a one stop shop service which looks after both claims and repairs offers the ideal solution. An independent professional who will act on behalf of the policy holder, and co-ordinate and communicate with all parties including the insurance company, loss adjuster and contractors, ensuring that distress and hassle is minimised and that all aspects of the work is completed efficiently, with minimum effort needed by the landlord. In the economic times that we live in, it is essential to get independent help when making a claim. In fact, the Central Bank of Ireland's Consumer Protection Code recommends that all insurance brokers inform their clients that they should do so. Using a company that can look after both claims and repairs, and who are only paid once the client is satisfied with the work, is the sensible way to go.

Caring for property insurance claims and repairs

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Housing Assistance Payment

People in receipt of Rent Supplement may be transferred over to the HAP, which will be run by the Local Authorities. The HAP Payment will be paid directly to the landlord in full. The tenant will source their own accommodation. The rent cannot be more than the Rent Supplement maximum. The benefit is that it will allow tenants in receipt of it to take up employment and still retain housing support. Rents will be charged on a differential basis depending on income. People with a short term accommodation need will still be housed under the Rent Supplement Scheme.

It is a step forward, the IPOA as the national landlords representative organisation, have been lobbying since its inception for the rent to be paid directly to the landlord, which will help ensure vulnerable tenants can remain in their accommodation and reduce the amount of rent arrears cases with the PRTB.

A small scale pilot scheme has already commenced in Limerick on an administrative basis, and it is expected to be rolled out in six other counties by the end of this year, with a full rollout to the remaining 19 counties starting in 2015.

Department of Finance Meeting

The IPOA met with Officials from the Department of Finance on the 5th June. The tax treatment of the sector and the damage it is causing was discussed. The consequences of recent Government intervention on the providers of rental accommodation were detailed. The reduction of mortgage interest to 75% was outlined and the difficulties that have arisen as a result of this were explained. The unfairness of the tax treatment was outlined. The Department's view on the removal of the mortgage interest cap was that it would cost €100m. The unfairness of it, and the fact that they only targeted private rental property (and not commercial loans) was ignored. The issue of the banks' treatment of buy to let investors in debt was detailed. It would appear that the attitude adopted: it is the fault of the investors for buying without due diligence and that the banks should be allowed to continue with their current tactics.

Water Charges Update

For the avoidance of doubt on who is liable to pay water charges in rental accommodation, the IPOA arranged, for a Parliamentary Question through Noel Grealish TD and the supplied answer is below:

To ask the Minister for the Environment, Community and Local Government if the water charges to be levied on private rental properties will be billed to the user or to the landlord; his views on the Water Services (No. 2) Act which states that it will be presumed, unless the contrary is proved, that the owner of a premises is also the occupier, and in that scenario, if he will indicate the level of proof necessary to ensure that water charges are billed to the user in the same way as applies to other utilities; and if he will make a statement on the matter.

REPLY

Minister for the Environment, Community and Local Government (Mr. P. Hogan):

The Water Services (No. 2) Act 2013 defines a customer as the occupier of the premises in receipt of water services. In advance of the commencement of water charges in October 2014, Irish Water has confirmed to my Department that it will be engaging with every household to verify details particular to individual customers and addresses.

On the basis of that reply, particular care will need to be taken that the correct billing information for tenants is actually submitted, and that it should not be left to tenants to deal with it.

Meeting with Department of Social Protection

The IPOA had a meeting with the Department of Social Protection in February. Issues that affect landlords when taking tenants in receipt of Rent Supplement were aired. Non-paying tenants in receipt of Rent Supplement are a continual problem for some IPOA members. We were advised that it is already a practice, where a tenant does not pay the rent due and the CWO is already aware of a history, to have Rent Supplement paid directly to the next landlord. Unfortunately, if the CWO is in a different office and is unaware of the previous situation, it will not happen. The Department also have a difficulty because they have to comply with the current legislation which stipulates that Rent Supplement is generally paid to the tenant. CWOs have to comply with that legislation. It is not possible, the way Rent Supplement is currently structured, to pay directly to the landlord without the tenants consent. If a tenant requests in writing that the rent be paid to the landlord, that should happen. If there is any situation where it does not happen, the Department can investigate, but inevitably, that takes time.

Where a tenant is on Rent Supplement and not paying it to the landlord, and if the case is going through the PRTB, the rent will be stopped and will not be paid to the landlord.

There will be no communication between CWOs and landlords, but landlords need to tell them when rent is not being paid.

There was a discussion around market rent. There is a fear that, as the Department of Social Welfare contribute to around 28% of tenancies, an increase in Rent Supplement will influence the market and cause rents to increase. There is also a worry that as a result of Rent Supplement, people in low paid jobs will be priced out of the market and that could increase the amount of people who need the support.

It was made clear that illegal top ups are totally unacceptable to the Association and that we advise landlords of this fact. It was pointed out that, although landlords complete the social welfare form and return it to the tenant, they are not able to ensure that items on it are not changed prior to its submission to the Department.

Housing Agency Meeting

The IPOA attended a meeting in the Housing Agency on the 25th March. The Minister of State for Housing requested a specific report on increasing rents in the cities by the end of June in order to allow time for assessment of proposals which might require further examination / costing prior to the Budget in October.

The fact that the rents are still 15% lower than their rates in 2007 is particularly important. The relevant issues and difficulties around the taxation of the sector were detailed. Increased costs, including LPT and PRSI on rental income, have increased the costs of renting property.

Rent Control is not the answer and the economic argument was made. Fair tax treatment will result in increasing supply. Adequate supply is essential to ensure a functioning rental market.

**Inspect your property
at least twice a year to
ensure that it complies
with Housing Standards.**

Meeting with Minister for Housing

A delegation from the IPOA met with the Minister for Housing, Jan O'Sullivan, on the 5th February. Issues that affect the private rental market were discussed in detail. Housing Standards for Rented Houses was the first item dealt with and difficulties and homelessness caused as a result of the requirement to integrate a bathroom within the unit were detailed. The Minister was very concerned about losing affordable accommodation and agreed to look at this issue when reviewing the standards. The white goods requirement was also discussed and the difficulty around landlords being liable for the repair and maintenance where the tenant rents unfurnished and owns the white goods. The point was understood, and it was agreed that it did not make sense. It will also be reviewed.

The proposed Custodial Deposit Protection Scheme was discussed, which the Minister announced had received Cabinet approval. The problems around putting one in place, the statistics showing that there was no need, and the costs and difficulties it would involve for both tenant and landlord were illustrated graphically. The Minister listened to the points, but stuck to the line that the scheme was approved by Cabinet and that it was in the Programme for Government.

The penalties around the NPPR were discussed and the problems they were causing in many cases were cited. The penalty should fit the crime and in this case, it does not.

Difficulties being faced by the Residential Tenancies Act were itemised and there was quite a lot discussion around the situation and the current Residential Tenancies Bill which will amend the Act.

Non-payment of rent is of particular concern to our members. The current legislation protects non-paying tenants and allows them to remain in properties for a considerable period without any effective sanction. This situation is untenable and needs to be addressed. The length of time it takes to get a non-paying tenant out of a property was highlighted. Anti-social behaviour, and the fact that the tenant causing the behaviour is protected, is a ridiculous situation. It is unacceptable that other tenants have to move out and the tenant causing problems is protected.

The Chairman stated that he felt that Labour representatives are anti-landlord in general, and that there appeared to be a political vendetta against the landlords of Ireland. The Minister refuted this, saying that landlords had her respect and that she hoped this was conveyed in her statements.



Cathal Lawlor, Margaret McCormick, Tom O'Brien, Minister Jan O'Sullivan & Stephen Faughnan

Report on Information Evening 22nd January 2014

The IPOA held an Information Evening on the 22nd January in the Red Cow Moran Hotel. In view of the importance of standards in rental accommodation, Colm Smyth from Dublin City Council was present and gave a clear and detailed presentation on the minimum standards acceptable in private rental accommodation. He outlined the procedures around inspections and the correspondence that would be issued where a property was found to be non-compliant. Prosecution can lead to a fine of up to €5,000, or up to 6 months custodial sentence. Some of the statistics around inspections were outlined including:

- **Approximately 12% of properties were compliant on first inspection.**
- **A further 70% were compliant on second inspection.**
- **The remaining 18% were for prosecution, were selling or waiting for tenants to leave before action can be taken.**
- **There are 84,000 rental properties in Dublin City Council's area, and they are targeting problem areas.**
- **The Council inspected 3,500 properties in 2012, and re-inspected just 2,000.**

The Chairman gave an update on the situation around the proposed Custodial Deposit Scheme and the work carried out by the IPOA. A document was given to the members present with points to use while lobbying their politicians. The crucial importance of this was emphasised. Information was given on the Housing Assistance Payment and also on the proposed amendments to the Residential Tenancies Act. The Chairman thanked the members for completing the SEAI/IPOA BER Survey and announced that the winner of a Tablet was K. Nagle, while a draw for a TV resulted in S. McGuinness winning.


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Deposit Protection Statistics from the UK

The latest English Housing Survey for 2011-12 published by the UK Government has highlighted some interesting statistics on tenancy deposits. The compliance rates five years on are poor.

- Only 76% of landlords take deposits.

Table 1: Landlord's taking deposits

Returning Deposits	2011-12	2010-11	2009-10	2008-09
Returned in full	69.64%	70.20%	70.50%	69.50%
Returned in part	17.16%	17.50%	15.80%	17.40%
Not returned	13.20%	12.30%	13.60%	13.00%

The return of deposits statistics from the UK make interesting reading, in so far as it appears that approximately 30% of tenancies do not get their full deposit back and this is justifiably agreed between both parties.

Table 2: Value of the deposit

Returning Deposits	2011-12	2010-11	2009-10
Less than four weeks/one months rents	10.94%	11.40%	11.90%
Four weeks/one months rent	46.88%	53.70%	52.70%
More than four weeks/one months rent	42.19%	34.90%	35.40%

New Website

The IPOA website has always been a very good source of information for members. However, the coding on the website became obsolete and it was decided to develop a new website rather than to try and modernise the old one. The new site is currently in progress and was organised for us at no charge by IPOA Committee Member, Tom Horan, and we would like to thank him for providing this for the entire membership. It is much appreciated and this contribution to the Association will help all members in the day to day management of their business.

The website will be easier to use, will contain more useful information and should be a benefit to members that require information. The website address will remain as **www.ipoa.ie** and should be available around the end of July. Members who have given their email addresses to the office will be advised when it is ready for viewing.

There will be an opportunity for advertising on the new site and if you would like further information, please do not hesitate to contact us.



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DÁIL QUESTION addressed to the Minister for Finance (Deputy Michael Noonan) by Deputy John Browne
18/02/2014

To ask the Minister for Finance if he will confirm previous statements that the recipient of private residential rental income is a business person in respect of their rental income; if it is not recognised as a business, the legislation or Ministerial Orders that are needed to ensure that the taxation system recognises the normal costs of that rental business as being deductible from the applicable gross rent; and if he will make a statement on the matter.



REPLY

An individual involved in the letting of property may be considered, in the broadest sense, to be engaged in a business or enterprise and, as such, be considered a business person. However, it appears to me that the thrust of the Deputy's question is more to do with whether an individual in receipt of rental income can be considered to be engaged in a trading activity. In that regard, I am advised by the Revenue Commissioners that under existing legislation, income tax is charged under Schedule D of the Taxes Consolidation Act (TCA) 1997 in respect of a number of sources of income, which are classified into five separate Cases. Under this provision, rent received by landlords (individuals and companies) from property in the State is chargeable to tax under Case V, while income from trading activity in the State is chargeable under Case I. Therefore, for tax purposes, rental income is viewed as distinct from income arising from trading activity.

In the case of trading activity, the law provides that taxable income is closely aligned to the accounting profit (subject to certain explicit prohibitions). In the case of rental activity, however, taxable income is the gross rent as reduced by a limited number of specified deductions as set out in section 97 (2) TCA 1997.

These are:

- **any rent payable by the landlord in the case of a sub-lease;**
- **the cost to the landlord of any goods provided or services rendered to a tenant;**
- **the cost of maintenance, repairs, insurance and management of the property;**
- **the interest paid on borrowed money used to purchase, improve or repair the property (which, in the case of residential property, is restricted to 75% of the interest and is subject to compliance with PRTB registration requirements for all tenancies that existed in relation to the property in the relevant year); and payment of local authority rates.**

In addition, wear and tear capital allowances are available in respect of the capital expenditure incurred on fixtures and fittings provided by a landlord for the purposes of furnishing rented residential accommodation. These allowances are granted at the rate of 12.5% per annum of the actual cost of the fixtures and fittings over a period of 8 years.

I have no plans to change the current taxation distinction between rental income and income arising from trading activity. Neither have I plans to extend the range of allowable deductions from gross rental income in arriving at taxable income for Case V purposes, save for my intention, as stated in earlier Parliamentary Questions, to allow for a deduction for Local Property Tax. Such a change will require an amendment to the primary law, but the manner and timing of this has not yet been considered.

Landlords urged to file early and avoid fines

Any Irish taxpayers who fall into the self-assessed tax return category are obliged to file a tax return before the October 31st deadline. That may seem like a long way off, but many tax specialists are encouraging taxpayers to file now to avoid a last minute panic later in the year. Rental income is computed on the basis of the gross amount of rents

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receivable, less any allowable expenses and capital allowances available. A common misconception from landlords is that they are only taxable on their rental income after the deduction of mortgage repayments. This is incorrect. The following are examples of allowable expenses which may be deducted in calculating your rental profit:

- **Rates payable to local authorities (but not LPT)**
- **Maintenance of the property, i.e. repairs, cleaning, decorating and painting**
- **Insurance of the premises**
- **Management fees**
- **Accounting fees**
- **Advertising costs**
- **Legal fees for drafting up lease**
- **Mortgage interest (only 75% allowable if it is a residential property, landlord also must be registered with the PRTB).**

It is important to note that pre-letting expenses are not allowed, i.e. expenses incurred prior to the date the property was first let. There is an exception for auctioneer letting fees, advertising costs, and legal cost expenses incurred prior to the date the property was first let.

Capital allowances are one of the most valuable deductions which are commonly overlooked by landlords. Wear and tear allowances are available for the capital cost of fixtures and fittings (for example, furniture, kitchen appliances, etc) provided to furnish rented residential accommodation. The rate of wear and tear allowances for capital items is 12.5% over 8 years. For example, if you purchase a suite of furniture for €1,000, a capital allowance of €125 per year can be off-set against the rental income for tax purposes for the next 8 years.

To reward early bird customers, Taxback.com is offering a 10% discount on their tax return filing service for people who register for the service during the months of June and July.

Standard Financial Statement (SFS)

If you are having difficulty meeting your mortgage repayment, early engagement with your mortgage provider is essential.

A Standard Financial Statement has been agreed among the mortgage providers, to assist you in establishing your financial position. This form needs to be completed in great detail; and it can be a challenge to get the relevant accurate information on the form.

You are expected to complete the form in full, giving full disclosure of your monthly and yearly household expenditure. The SFS provides the basis for the mortgage provider to agree a repayment schedule with you.

It has been often found that the form is inaccurately completed – human nature is to produce the answers we think the bank want to hear. Consequently in most cases household expenditure is underestimated. Unfortunately, this gives a false and misleading picture to the mortgage provider, who in turn will seek additional repayments as a result.

A useful guideline on household expenditure can be found on Insolvency Service website, these are minimum guidelines only. Your own circumstances will vary depending on the size of your household.

http://www.isi.gov.ie/en/ISI/Guidelines_under_section%2023_June_13.pdf/Files/Guidelines_under_section%2023_June_13.pdf

Before submitting your SFS form, you should

- 1. Check the form is as accurate as possible**
- 2. Make sure the figures add up and make sense to you**

3. Compare the results with guidelines on the Insolvency website

4. Get the figures checked by a third party (a useful website <http://www.keepingyourhome.ie/>)

Keep a copy of your SFS form for your own records, as the mortgage provider will!

UIPI Updates

The UIPI continue to be very active on behalf of property owners in Europe. Their presence in Brussels is very important and they are lobbying and keeping us abreast of a myriad of issues affecting, or which may affect, property owners. It is very important for the IPOA to be one of the thirty member organisations making up the UIPI across 28 EU countries, as it gives us a strong-voice and allows us to be proactive rather than reactive in regard to EU proposals affecting Ireland. Over the last few years, almost every EU country has substantially increased property taxation, and this has been particularly evident in the private rental sector where property has become the most taxed asset, and renting property has become the most taxed business in Europe. The UIPI President, Stratos Paradias from Greece, says: "Government must create housing policies that foster housing development and balance the needs of owner-occupiers, social housing and the private rented sector. Favouring any one sector over the others will only serve to distort the housing market and be detrimental to all the people."



The UIPI identified a non-exhaustive list of twelve areas presently under scrutiny by the European Commission which directly impact on property owners:

- 1. Moving from income based taxation policies to property tax and/or other taxation such as environmental tax.**
- 2. Restructuring property tax**
- 3. Updating property tax valuations as a tax base.**
- 4. Reviewing reduced VAT rates on repair and renovation of housing, etc.**
- 5. Strengthening rent regulation.**
- 6. Reducing mortgage interest payments.**
- 7. Phasing out tax deductibility of interest payments.**
- 8. Planning and zoning controls.**
- 9. Reducing obstacles to cross-border construction and real estate services.**
- 10. Increasing construction competition.**
- 11. Energy efficiency measures.**
- 12. Reduction of energy costs.**

However, not all recommendations come down as positive or negative for property owners. Examples of that include Sweden, where the Commission recommended that the efficiency of its housing market would be improved by phasing out remaining elements of Rent Control, while on the other hand, the Commission recommended moving away from income-related taxes in countries like Austria and the Czech Republic and relying on other taxation sources such as recurrent property taxes. In Ireland, the Government seems intent on adopting both of these ideas – but in a typical Irish solution: introduce Rent Control and increase taxation on property owners. So we could get the worst of everything!

The IPOA make continual submissions in respect of our members, and the IPOA Chairman is a member of the European Affairs Committee. This is a very challenging situation for the IPOA as there are continual demands for submissions.

Local Government Reform Act 2014 – Changes to NPPR

The consequences of the non-payment of the now abolished NPPR are particularly severe. The penalties are penal and totally unfair. The IPOA lobbied and campaigned to stop the penalties from continually accruing. If a person was unaware of the liability, they currently owe over 4 times the charge. The Local Government Reform Act 2014 has amended the situation. If you have not already paid the NPPR and have a liability, it would be prudent to address the situation before the end of August.



Our reading of the Act is as follows:

1. NPPR arrears (comprising NPPR fees and late payment penalties) will be frozen as at 1 March 2014 provided they are discharged in full by 31 August 2014;
2. Where the NPPR arrears remain unpaid on 1 September 2014, an additional fee of €120 in respect of each liability date (ie. each year for which there are arrears) will be applied;
3. Where (2) above applies, a penalty of 50% of the total arrears (including the €120 at 2 above) will be applied and the total of all arrears will be frozen from this point forward.

Set out below is a working example showing the impact of the above on a property where the NPPR has never been paid:

Arrears at end of March 2014 - €4,220

- **Total amount to be paid if discharged by 31 August 2014 - €4,220**
- **Total amount payable if not discharged by 31 August 2014**
 $\text{€4,220} + \text{€600} (5 \text{ assessable years} \times \text{€20 p/m} \times 6 \text{ months}) + \text{€2,410 (being 50\% of €4,820)} = \text{€7,230}$
- **Overall saving per property by paying by 31 August 2014 - €3,010**

As can be seen from the above, it would be worthwhile to review the NPPR position on your overall portfolio as there are significant savings to be had from dealing with any arrears within the 6 month window from March to August. Section 76 of the Act also gives local authorities the power to negotiate settlements in circumstances where they deem it is beneficial to do so:

Sections 74 – 77 Local Government Reform Act 2014

Arrears of NPPR charge and late payment fees

74. (1) All NPPR charges and late payment fee liabilities relating to any such charge or any part thereof that remain undischarged on 1 March 2014 shall not be subject to additional late payment fees if collected on or before 31 August 2014.

(2) Notwithstanding subsection (1), where an NPPR charge and late payment fee liability in respect of such charge, or any part thereof, remain undischarged on 1 September 2014, an additional late payment fee of €120 shall apply in respect of each liability date.

(3) All NPPR charge and late payment fee liabilities, in respect thereof, including that provided for by subsection (2), which remain undischarged on 1 September 2014 shall be increased by 50% on that date.

(4) Where, in any case, the period of 3 months referred to in subsection

(6) of section 6 of the Act of 2009 applies, but had not expired on or before 1 March 2014, then subsection (1) shall apply to such a case.

Deceased sole owner and payment of NPPR charge and late payment fees

75. (1) Where a person who is the sole owner of a residential property (within the meaning of section 2 of the Act of 2009) dies and, at the date of his or her death, an NPPR charge, a late payment fee in respect of such a charge, or any part of such charge or fee, remains unpaid in relation to that property, then no further late payment fee shall be payable in relation to that property until a grant of representation to the estate of the deceased person issues to the personal representative of such deceased person.

(2) The personal representative of such deceased person shall, as soon as a grant of representation to the estate of the deceased person issues to him or her, be liable to pay to the relevant local authority the full amount due and owing by the deceased, at the date of his or her death, in respect of an NPPR charge and each related late payment fee in respect of such a charge, which said full amount is, in this section, referred to as the “full amount”.

(3) If the said full amount is paid by the said personal representative within 3 months of the date of issue of the grant of representation to the estate of the deceased person, he or she shall have no further liability in respect of the NPPR charge concerned, and each related late payment fee in respect of such a charge due and owing by the deceased at the date of his or her death.

(4) If the said full amount is not paid by the said personal representative within 3 months of the date of issue of the grant of representation to the estate of the deceased person, he or she shall be liable to pay to the relevant local authority the said full amount.

(5) If the grant of representation is issued on or after 1 June 2014, and if the said full amount is not paid by the said personal representative within 3 months of the date of issue of the grant of representation to the estate of the deceased person, notwithstanding subsection (1), any late payment fees which would have applied under subsections (2) and (3) of section 74 had the person who is the sole owner of a residential property (within the meaning of section 2 of the Act of 2009) not died, shall apply.

(6) (a) In this section, a reference to “grant of representation” is, where 2 or more such grants are issued to the estate of a deceased person, a reference to the first of such grants to issue.

(b) In this section, a reference to “late payment fee” includes reference to the 50% increase provided for in section 74(3).

(7) This section shall apply on and from 2 March 2014.

Collection of undischarged liabilities relating to NPPR liabilities

76. Subject to Section 77, a local authority may act as it sees fit to most efficiently collect un-discharged NPPR charge and late payment fee liabilities in respect of any such charge including, in the case of an individual being liable, reducing such late fee liabilities in circumstances in which the local authority considers that to do so would be most efficient for the collection of the undischarged charge and liabilities.

Guidance by Minister

77. For the purposes of Sections 74 to 76, the Minister may issue written guidance to local authorities concerning any matter to which those Sections relate and each local authority shall have regard to any such guidance.

Maintenance of core business must be primary objective in bank resolutions for small businesses in financial difficulties



**Noreen O'Sullivan (Vintners Federation of Ireland)
Pat Smith IFA, Eddie Downey IFA, Tara Buckley (RGDATA),
Stephen Faughnan IPOA**

While the Irish economy is beginning to recover from the worst recession experienced in a generation, a significant number of small, family-owned enterprises are still facing financial difficulties. There remains a pressing need to ensure that these difficulties are resolved in order to maximise the numbers employed in small enterprises across Ireland. Regrettably, it has become clear to the bodies representing family businesses in key sectors that the action of some of the banks is actively damaging the recovery for some businesses.

The Irish Farmers' Association, the Vintners Federation of Ireland, Irish Property Owners Association and RGDATA, have now come together to send a clear message to the Government that the current basis on which negotiations between banks and small businesses dealing with credit difficulties is not working. Acceptable compromise and viable solutions are not being reached. In some instances, banks are imposing unreasonable conditions on customers seeking to refinance, which are just not achievable. This results in high levels of stress and anxiety for the business owner and their family. The breakdown of negotiations and appointment of receivers is a completely unacceptable outcome.

The Government and Central Bank must ensure that engagement between these enterprises and the banking sector is undertaken with the primary objective of retaining the viability of the core business and keeping people in employment. Lenders must adhere to the existing Code of Conduct for Business Lending to Small and Medium Enterprises; however, the Code does not provide sufficient protection to a customer under pressure facing unreasonable demands from their bank. The problem is particularly acute with the banks exiting the Irish market place, who are taking a very aggressive approach to seeking judgments and appointing receivers. To address this, the Group has outlined a protocol for the banks which, if implemented, will result in greater levels of cooperation, with more positive and sustainable outcomes for both the lender and borrower.

The Group's key demands are:

- **Banks must seek resolutions that preserve the viability of the underlying business and maintain employment.**
- **For all negotiations, a clearly identified point of contact in the bank must be agreed, who has responsibility for delivering a sustainable solution acceptable to both parties.**
- **A dispute resolution/mediation service must be employed where banks and borrowers cannot reach agreement.**
- **Agreements reached must be full and final**

IFA President, Eddie Downey, said: "If we are going to maintain the maximum number of viable farm businesses, there must be a fundamental change in the process of negotiation with the banks. Both the borrower and lender must be prepared to contribute to a sustainable solution, with negotiations entered into on the basis of reaching full and final settlement".

VFI President, Noreen O'Sullivan, said: "For too long, there has been inadequate engagement by the banks towards finding sustainable solutions. Commitment to this protocol by all parties will lead to better and fuller solutions to the problems facing many small and medium sized businesses".

RGDATA director, Tara Buckley, said: "Viable business will close and jobs will be lost unless the Banks are forced to change their approach to customers in distress. The problem is particularly acute with customers of foreign banks that are winding down their Irish businesses. All banks must be forced to be reasonable in trying to reach a resolution with co-operative customers. The Banks should be stopped from driving retailers out of business through withdrawing credit facilities and rushing to forced sales. It's time the banks focused on helping, not hindering, retailers who are the heart of the majority of town centres in Ireland".

IPOA Chairman Stephen Faughnan said: "Financial institutions are not adhering to the current Codes and lack a basic understanding of the pressures that vulnerable people face. This is an opportunity for joint consultation to reach a satisfactory conclusion. While it may not solve all cases, it should go a long way to resolving the majority of them on a mutual basis. Pain will have to be endured on both sides if these issues are to be resolved".



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Code and protocol for the resolution of credit difficulties

Lenders must adhere to the existing Code of Conduct for Business Lending to Small and Medium Enterprises (2012), which states that:

A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

1. Acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;
2. Acts with due skill, care and diligence in the best interests of its customers;
3. Does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service;
4. Has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code;
5. Seeks from its customers information relevant to the product or service requested;
6. Makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer;
7. Seeks to avoid conflicts of interest;
8. Corrects errors and handles complaints speedily, efficiently and fairly;
9. Does not exert undue pressure or undue influence on a customer;
10. Ensures that any outsourced activity complies with the requirements of this Code;
11. Without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services;
12. Complies with the letter and spirit of this Code.

In addition, the following Protocol must be followed by lenders in their negotiations with borrowers in financial difficulties. Acceptance and implementation of these guidelines will result in greater levels of cooperation, with more positive and sustainable outcomes for both the lender and borrower.

1. Lenders must fully engage with borrowers, without recourse to harassment or intimidation.
2. Lenders must provide at the outset to borrowers, all information they hold on the borrower, in line with the requirements of the Data Protection Acts 1988 and 2003.
3. Education and training must be provided for staff in financial institutions to ensure that they understand the small business sector with which they are dealing, including relevant taxation and management issues.
4. Lenders must respond to correspondence from the borrower in a prompt and business-like manner, within 15 working days.
5. Lenders must appoint an individual to deal with the account and give that individual the responsibility for delivering a sustainable

solution acceptable to both parties. This person must be the main point of contact for the borrower throughout the negotiations. Where there is a change of personnel, this must be immediately communicated with the borrower, with a new point of contact identified. If a borrower cannot work constructively with the assigned individual, they must be offered another person to deal with.

6. Full disclosure of all assets and liabilities must be provided at the outset of negotiations. This is provided on the basis that any outcome negotiated has, as a primary objective, the maintenance of a viable core business. This must be set out in writing in advance of any further discussions. Agreement on the treatment of the family home and residual debt must be included in this discussion.
7. Lenders must be prepared to negotiate on the basis of reaching full and final settlement with the borrower, without any further, or future, conditions attached to the settlement. Both the borrower and the lenders should be prepared to materially contribute to the solution, as both share the problem.
8. Where a solution cannot be reached by negotiation between borrowers and lenders, an independent Dispute Resolution / Mediation Service should be engaged. This should be funded by the lenders.
9. The Dispute Resolution / Mediation Service providers must be authorised to put forward workable solutions, which would be binding on all parties.

Housing (Miscellaneous Provisions) Bill 2014

The main purpose of the Bill is to provide for the following—

- **issue of a tenancy warning by a housing authority where there has been a breach of the tenancy agreement for one of its rented dwellings and a review of such a warning;**
- **a revised procedure for a housing authority to recover possession of a dwelling where there has been a serious or repeated breach of a condition of the tenancy agreement, where the dwelling has been abandoned by the tenant, or where there is no tenancy in the dwelling and the dwelling is occupied by a person who has no lawful authority to reside there;**
- **a scheme of tenant purchase of existing local authority houses broadly along the same lines as the incremental purchase schemes for new local authority houses and existing local authority apartments set out in Parts 3 and 4 of the Housing (Miscellaneous Provisions) Act 2009, respectively;**
- **a new scheme of Housing Assistance Payments (HAP) by housing authorities in respect of rent payable by households qualified for social housing support for private rented accommodation sourced by the households concerned. Households qualified for social housing support that are long-term recipients of Rent Supplement from the Department of Social Protection will transfer to the new scheme;**
- **a mandatory facility for the deduction from social welfare payments due to local authority tenants, and HAP and RAS beneficiaries of rents, rent contributions and rent arrears payable to housing authorities.**



Submission made to Joint Oireachtas Committee on Finance

In April, the IPOA made a submission to the Oireachtas Finance Committee on the mortgage and banking situation. This submission concentrated heavily on mortgage arrears and banking issues. The tax treatment of the sector, including the reduction of mortgage interest, the Local Property Tax and the NPPR were included.

Local Property Tax

Payment of the 2014 LPT liability was due by 1 January 2014. If you have not already made arrangements to pay the tax in full or by phased payments throughout 2014, you should go on-line immediately to file your 2014 Payment Instruction in order to avoid interest charges. If you require assistance with filing on-line, you can call the LPT helpline on 1890 200 255.



Water Charges

The first bills will issue in the first quarter of 2015, based on charging from October 2014. Ensure that your tenants are aware of their liability for payment.



Housing Standards

All properties let must comply with the Housing Standards for Rented Houses Regulations. At a recent presentation, Colm Smyth from Dublin City Council, stated that quite a high percentage of properties fail in respect of the fire requirements. These requirements from S.I. 462 of 2009 are as follows:

Fire Safety

11. (1) Subject to sub-article (2), the house shall contain a fire blanket and either a mains-wired smoke alarm or at least two 10-year self-contained battery-operated smoke alarms.
- (2) Each self-contained house in a multi-unit building shall contain a mains-wired smoke alarm, a fire blanket and an emergency evacuation plan.
- (3) Emergency lighting shall be provided in all common areas within a multi-unit building."

You are in breach of the housing standards for rented houses if you let traditional bedsits; these are bedsits that do not have a bathroom within the unit. If your tenant has to go outside the bedsit to use a bathroom, even where it is exclusively theirs, you are still in breach. The tenant is not breaking any laws by remaining in the property, but may take a case against you to the PRTB if you are failing in your obligations to them by not complying with the standards. Tenants may then be awarded compensation.

We are aware that there are landlords who have not terminated the tenancies because their tenants have not got alternative accommodation, but in spite of repeated requests to Government to amend the Statutory Instrument, it has not happened. Urgent consideration will have to be given to serving Notice of Termination on these tenants. Please contact the office before serving any notice to ensure that it is carried out correctly. If your tenant does not leave on foot of the Notice of Termination, you will have to commence a case with the PRTB. This could take a considerable time which may allow your tenants to lobby their public representatives to prevent them from losing their

accommodation. Sadly, the State has caused this situation which will lead to more homelessness.

S.I. No. 534 of 2008: Housing (Standards For Rented Houses) Regulations 2008

Sanitary Facilities

6. (1) There shall be provided within the habitable area of the house, for the exclusive use of the house:
 - (a) A watercloset, with dedicated wash hand basin adjacent thereto with a continuous supply of cold water and a facility for the piped supply of hot water, and
 - (b) A fixed bath or shower with continuous supply of cold water and a facility for the piped supply of hot water.
- (2) The requirements of sub-article (1) shall:
 - (i) be maintained in good working order;
 - (ii) have safe and effective means of drainage;
 - (iii) be properly insulated and secured;
 - (iv) have minimum capacity requirements for hot and cold water storage facilities;
 - (v) be provided in a room separated from other rooms by a wall and a door and containing separate ventilation.



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Rent Control – not necessary

Earlier this year, we heard Minister Jan O Sullivan outline her thinking on the introduction of Rent Control in Ireland, first in the Irish Examiner and then on the Vincent Browne show on TV3. At a subsequent meeting with the Minister, the IPOA asked her if she was serious and she said that she made a statement to the Irish Examiner around Christmas to the effect that it could be an option in the future. Soon after, the Minister's strident supporter, Senator Aideen Hayden, also Chairperson of Threshold, hit the airwaves demanding the urgent introduction of Rent Control, using the argument that Germany and France were leaders in this field. Between them, another new misguided concept was born under the guise of controlling landlords, which is really a code for more and more interference in the business of the private rental sector. Around the same time, the Bundesbank came out against Rent Controls - and this view was amplified again in recent days in the Irish Independent where a strong case was made for the notion of Rent Control to be put back in its box, considering it was just a dangerous distraction in the housing crisis.

How could anyone conceive such a concept in our Ireland of today? Crippled with debt, no banks lending, repossessions increasing - nothing but doom and gloom, and international investors taking control of our misfortunes with the tacit agreement of the Government and NAMA. We need more property investment urgently in Ireland and introducing Rent Control will not attract it. The oft quoted situation in other countries does not equate to the unique situation of Ireland in regard to private rental property. Politicians in the Labour Party, and other like minded people, cop on and help the country - not continue to destroy it under the guise of helping tenants when all you are doing is heaping misery on them and interrupting their relationship with their landlords with whom the majority of tenants are quite happy.

Survey of Rental Sector

The private rental sector is being surveyed. The survey has been commissioned by the PRTB following a request from Jan O'Sullivan, Minister for State for Housing. It is required to help formulate the Government's Social Housing Strategy, which is expected in the autumn. The Board's report to Government will also seek to profile property owners and tenants, with research being carried out by DKM Economic Consultants, the ESRI, Red C Research and Marketing, and Ronan Daly Jermyn Solicitors. Elements of the research will include rental property in mortgage arrears, and the increasing role of the sector in the provision of State supported accommodation (Rent Supplement and the Rental Accommodation Scheme), the social rented sector, and the new Housing Assistance Payment (HAP) scheme. The impact of changes in regulations regarding accommodation standards, including the outlawing of traditional bedsits last year, will be a further element. An assessment of the likely future of the sector will form part of the study and will look at best practice abroad, including how to ensure a supply of "affordable rented accommodation into the future, particularly in high demand areas". In this context, the operation of the private rented sector in other countries (e.g. Germany, Belgium, Holland, Sweden, Switzerland, France, the UK or the US) will be examined.

The IPOA have met with DKM and the ESRI as part of the research and discussed the problems faced by landlords. The unfair taxation treatment and problems with the Residential Tenancies Act were outlined. It is essential that the tenancies of anti-social tenants and non-paying tenants can be terminated efficiently and quickly to protect both landlords and tenants. The legislation needs amendment to be effective and the

PRTB needs to be adequately resourced with sufficient staff to avoid needless delays.

Understanding REITS

The name REIT is an acronym for Real Estate Investment Trust, which was first established in the US in the 1960s. These investments were designed to provide investors access to investing in commercial property without having to invest in the physical bricks and mortar, but through the purchase of shares in a company.

REITs generate investment returns by:

1. Exposing investors to the value of the property assets that the REIT owns and
2. Rental Income

Unit Linked property funds invest directly in bricks and mortar. This has been the traditional route for investors looking for exposure to the Irish Commercial Property Market. Throughout 2013 Commercial Property in Ireland has indicated a recovery and this demand for prime, well located properties continues to be strong in 2014.

In 2013 the finance minister Michael Noonan announced in his budget that he would introduce legislation allowing for the establishment of REITs in Ireland, which was passed in the Finance Act 2013.

REITs are listed companies and their shares can be bought or sold like any other share on the stock market. It's main activity is the ownership and management of property related assets. In order to qualify as a REIT in Ireland, certain conditions must be met, for example:

- **To distribute at least 85% of its rental income (net of management costs), by way of dividends to shareholders**
- **75% of its income must be generated from property rental**
- **The loan to value of the asset must be less than or equal to 50% i.e. borrowing levels cannot exceed more than 50% of the market value of any properties held in the fund**

Why invest in REITs instead of unit linked property funds?

- **Unit Linked property funds are not required to distribute at least 85% of their net property income to shareholders, REITs are.**
- **Liquidity – If an investor wishes to access their funds in a unit linked property fund, the fund can use inflows from other investors or from investing cash within the fund or through property sales. However if there is a period of market stress e.g. the Irish property market crash, a "deferral period" can be implemented and investors may not be able to access their funds for some time. REITs have liquidity i.e. as REITs are traded on the stock market, they can be bought or sold at any time, therefore, no "deferral period" can be applied to a REIT.**

REIT legislation will prohibit over gearing and over exposure to higher risk property development.

REITs & Their RISKS

As REITs are listed companies on the stock exchange, this leaves investors exposed to stock market volatility. Therefore it is important to remember that you are investing in property shares, not the actual physical property.

It is now possible to invest in REITs through certain Funds, which may be an attractive proposition for investors.

By Glenda Faughnan, B. Comm CB QFA APA