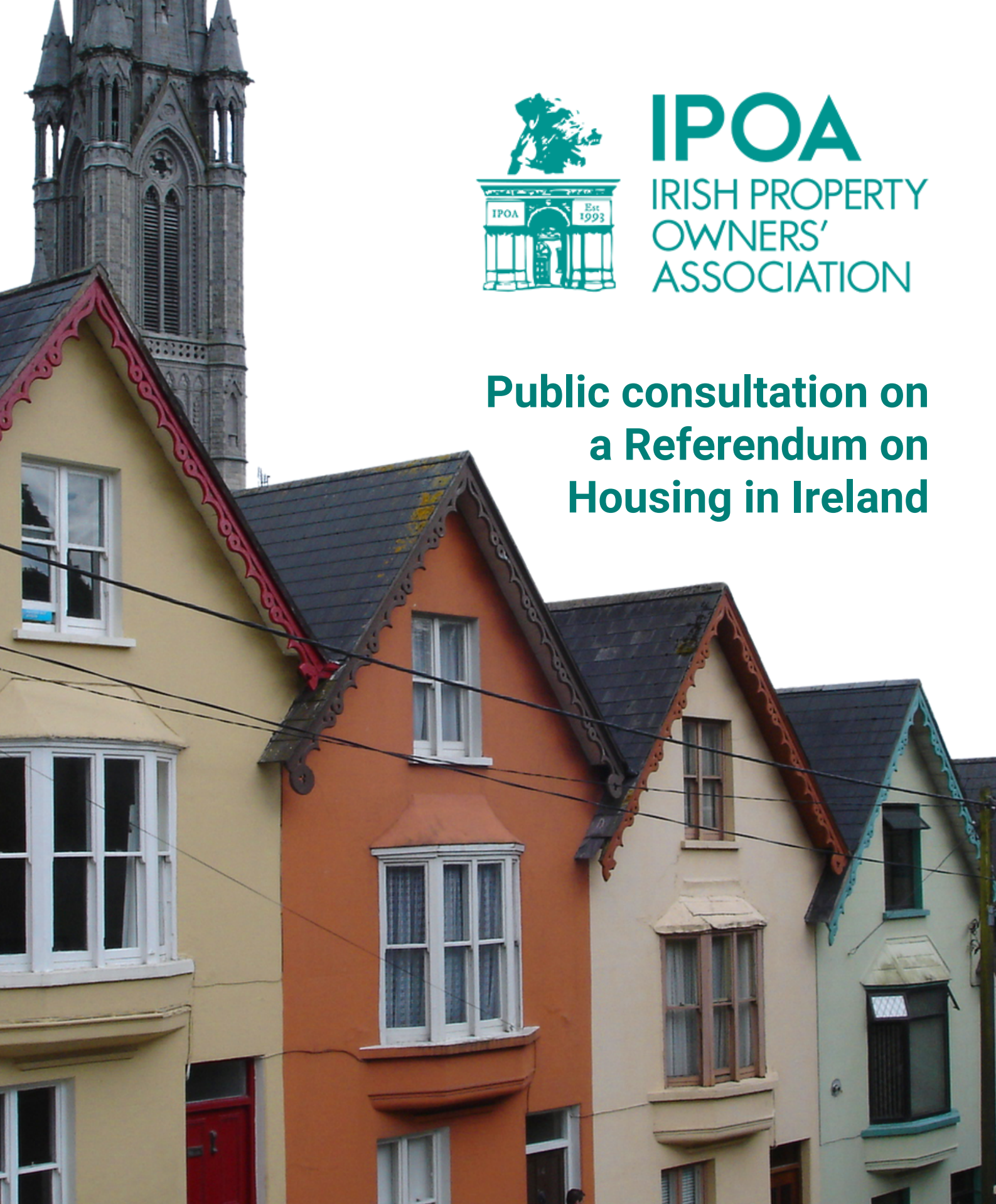




**IPOA**  
IRISH PROPERTY  
OWNERS'  
ASSOCIATION

## **Public consultation on a Referendum on Housing in Ireland**



Submission from the  
**Irish Property Owners Association (IPOA)**  
September 2022



# 1. Preface

**The Irish Property Owners Association (IPOA) is Ireland's longest standing membership organisation for private residential landlords, supporting and representing landlords throughout the country.**

IPOA members range from full-time landlords running property portfolios to landlords letting single units, Property Agents and Property Managers. We provide help and advice to new landlords and to those that are well established in the sector.

The Housing Commission has invited submissions on whether there should be a referendum on the introduction of a constitutional amendment regarding housing, and, if so, what form such a constitutional amendment might take. The IPOA is pleased to be given the opportunity to make a submission to the Commission on this key debate on behalf of its membership.



## 2. Introduction

**The IPOA is of the view that a constitutional amendment, centring around a formula of words on housing rights, is a misguided attempt to pursuing objectives by adjudication.**

There has been a tendency for some to view constitutional amendments as a means to enshrine certain rights around property such as a right to adequate housing. It is our considered view that this will not improve access to good quality, affordable housing for all as some bodies working in the housing sector have suggested. Ultimately, a constitutional provision to a general right to housing would be examined in the superior courts in a series of 'test cases' to define what is meant by the wording and it is questionable as to whether, in the context of a wider debate on justiciability, the courts would involve itself in the redistribution of scarce state resources – the judiciary has correctly, in our view, resisted such a move to date, mindful of the necessity to maintain a clear distinction surrounding the separation of powers.

It is also our view that by enshrining a right to housing in the constitution future Governments will simply abdicate their responsibilities to the housing sector. What is needed is a comprehensive housing strategy that centres on meeting the accommodation demands of a growing population, complete with investment in a sustainable built environment that is driven by eco-friendly policies. Expecting the courts to decide future housing policy and the minimum standards that ought to be met, is a clear abdication of responsibility by our law-makers.

Further, if a certain threshold were to be established by the courts following a constitutional referendum regarding a general right to housing, there would be serious concerns that property owners who have rented out accommodation will be unable to sell their properties, and that termination notices would be ineffectual where tenancy rights would trump property rights.

The IPOA believes many private landlords would leave the housing market in such a scenario and in those circumstances, a right to housing would simply not increase the security of tenure for private renters but make an already shrinking rental market even smaller. Mortgage interest rates, already the highest in Europe are likely to rise even further where the county's housing market would be framed with uncertainty concerning the rights of property owners which would be eroded by vague constitutional wording.

### 3. The folly of pursuing objectives by adjudication

**Justiciability advocates have taken hope with the prospect of a constitutional referendum on housing as the final step to the realisation of minimum core obligations to citizens, that a constitutional right to housing would, somehow, put in place a basic floor of protection. The IPOA believes this is a misguided approach to the issue. Introducing a formula of words to guarantee some level of housing rights into the constitution in circumstances where such wording will ultimately be tested in the Supreme Court will be a regressive step, and open to claims of inequality.**

Property owners have rights too. The State has guaranteed in the Constitution (Art 43) that it will vindicate the property rights of every citizen and that the State guarantees to pass no law to abolish these rights. Article 43 acknowledges that these rights ought to be regulated by the principles of social justice, but by allowing the focus to shift to the constitutional courts to determine housing rights, successive governments have failed to develop a coherent long-term housing plan that meets the needs of all family groupings in an eco-friendly environment.

The unwavering belief in recent decades that social transformation is achievable only through constitutional or legal rights commitment is misguided and fails to deliver change in the lives of those affected. The use of courts or the legislature to advance socio-economic rights in the area of housing law is a persistent uncertain method of delivery.

Across Europe and in other countries, such as South Africa and Brazil housing rights have been enshrined in constitutions, but the advancement of such rights have not progressed. According to Housing Europe, the European Federation of Social Housing, more and more people are being affected by the lack of affordable housing. South Africa's experience is a definitive signal to the rights industry that the pursuit of justiciability before adjudication bodies needs revaluation. This hierarchical approach to the advancement of housing rights brings only pyrrhic advancement and allows Governments to abdicate responsibility in the provision of housing.

Furthermore, the Irish judiciary, if called upon to define a series of housing rights in the aftermath of a constitutional referendum, could well find a right to housing that equates to a right to mere access to basic shelter in the form of temporary accommodation that we already currently see being provided i.e., temporary or emergency B&B and hotel accommodation that meets a minimum standard.

The current discussion on housing is set against a backdrop of an estimated 60,000 people on Ireland's social housing waiting lists, some 10,500 in emergency homeless accommodation and a private housing demand outstripping supply with a parallel decline in public expenditure and an emphasis on leasing rather than construction. In the past two decades, successive Government policy, though not unique to Ireland, is to claim a lack of resources and financial constraints preventing the greater implementation of dedicated funding to eliminating social housing lists, a position often criticised. This lack of housing cannot be reset by a constitutional amendment that will be challenged and open to varying interpretations by the courts.



## 4. Property rights must be respected

**A more critical analysis of the current approach to how civil society is advancing housing rights, must be permitted, without supporters of such rights browbeating opposing views into moral submission. Opposing a housing rights referendum should not be used as a stick to beat the interests of property owners and landlords in the rental market. As has been suggested, in arguing the case for socio-economic rights to be presented through a theory of justice, that it is easy for proponents of such rights to “make their opponents sound heartless.”<sup>1</sup>**

Years of onerous, complex legislation and aggressive tax policy have led to the exodus of private traditional landlords which is exacerbating the homelessness crisis. Private landlords have been the backbone of the rental market for many years providing homes in the absence of the building of social housing. The Government needs to be brave and act responsibly and refocus its energies away from a housing referendum to incentivise the traditional landlord to remain by adjusting their policies and introduce substantial and meaningful tax and regulation supports for landlords providing rental accommodation.

Advocates of socio-economic rights have abandoned collective social movement in favour of lobbying Governments for legislative or constitutional change, or by seeking justiciability of such rights before the Courts. The IPOA feels it is unwise to propose a constitutional referendum on housing rights, pitting the courts against the legislature in an attempt to secure such rights. The Supreme Court’s well-established distinction in the past between commutative and distributive justice must be respected – it is not the job of the courts to redistribute taxpayer’s money to satisfy some vague notion of housing rights.<sup>2</sup>

The proposed inclusion of housing rights in the Constitution as justiciable is unlikely to address the issue of providing accommodation for those in need, nor will it address societal needs for a debate on housing policy, such as the type of housing required or the built environmental needs for the various forms of family life. Much of the State strategy has been allowed to focus narrowly on accommodation provision numbers, as opposed to the merits of the built environment. Various government housing strategies have repeatedly failed to meet their targets, compounded in recent years by a covid pandemic.

Ireland requires an all-inclusive housing policy – it should be as much about supply as it is about the type of supply. One of the primary reasons rents continue to increase at a high level, 9.2pc nationally, is because of the scarcity of properties. High taxes, about 52pc of rental income, and deeply onerous and ever-increasing regulation, being a private landlord has become unviable for many. A study by economist Jim Power and commissioned jointly by IPAV and the Irish Property Owners’ Association concluded the rental market is in a state of crisis exacerbated with the exit of non-institutional landlords in significant numbers, reducing supply and putting upward pressure on rents.

<sup>1</sup> Jeremy Waldron, ‘Socioeconomic Rights and Theories of Justice,’ (2010) New York University School of Law, Public Law and Legal Theory Research Paper Series Working Paper No 10-79.

<sup>2</sup> TD v Minister for Education [2001] 4 IR 259, 282 and the comments of Keane CJ when he expressed “the gravest doubts as to whether the courts at any stage should assume the function of declaring what are today frequently described as ‘socio-economic rights’ to be unenumerated rights guaranteed by Article 40.

## 5. Lawful terminations of tenancies

A potential constitutional right to housing will also negatively impact on rental properties where tenants will argue that they have a permanent right to residency. Landlords must be allowed to continue to have the right to end a residential tenancy. Some 70% of landlords own just one rental property and 86% of landlords own just one or two such properties.

A proportionate balance must be maintained between the rights and obligations of tenants and landlords which recognises the legitimate interests of property owners. A constitutional wording tilting the balance in favour of tenants will see continued exit from the housing market of 'mom and pop' landlords.





## 6. Housing Rights – Other Country Experiences

Several countries have adopted housing rights into their respective constitutions, including across Europe,<sup>3</sup> but it is the contention of the IPOA that such moves have failed to deliver any substantive improvement in meeting the housing needs of citizens. Housing referendums are expensive and ultimately the ambitions of such constitutional amendments are left unfulfilled.

Across Europe, 'Housing First' strategies and constitutional guarantees strengthening rights to housing have failed to address the wider societal problems of homelessness, rising rents and house prices, scarce supply and difficulties in obtaining housing loans. Housing is in short supply across Europe, despite increasing demand. Governments, including in Ireland, must adopt sustainable, long-term and inclusive solutions, not just providing emergency and individual solutions. Constitutional guarantees to housing across Europe have not managed to improve the provision of adequate, secure and affordable housing for all.

The leading case post the new South Africa is *The Government of South Africa v Irene Grootboom and Ors*<sup>4</sup> which has been held out by advocates of housing rights as a landmark judgment. While *Grootboom* declared provincial and national housing policies unconstitutional, its Constitutional Court nevertheless limited reliefs to a declaration with no specific guidance on how to remedy the defect. It also refused to retain jurisdiction to ensure administrative compliance or to oversee any measures of oversight. Indeed, it can be argued that housing rights cases such as *Grootboom* merely established a right of access to adequate housing, as opposed to a right to housing per se. In Ireland, a similar type of case could very well define a right to adequate housing as equating to emergency accommodation such as we currently have in B&B, hotels and hostels dotted around the country - the standard of alternative accommodation can be set as low as the vaguely constructed term, 'adequate shelter.' The view that local government as much as national and provincial administration is obliged to protect basic rights and promote the realisation of a right to adequate housing<sup>5</sup> misplaces the emphasis on 'a right' as opposed to a positive promotion of access to such a right.

In Brazil there are a number of detailed constitutional provisions concerning socio-economic rights and the right to housing. However, while housing rights are mentioned, the country's Constitution is silent on which authority is responsible for implementing such protection while the Courts do not give any indication how such rights can be vindicated, a familiar nebulousness to constitutional provisions in South Africa. Indeed, a practice has developed in Brazil whereby the Courts offer monetary compensation for constitutional breaches as opposed to ensuring the relevant social rights are implemented. This trading of rights for monetary compensation encourages those who can afford legal representation to pursue constitutional cases at the expense of actually building houses. This represents a clear warning to Ireland. Having housing rights enshrined in a constitutional framework does not guarantee that those rights will filter down to those who would most benefit from them and those who most need them, particularly in the area of social housing. And neither does it address the wider shortage of housing for all citizens.

<sup>3</sup> The right to housing is recognised in Europe in the Constitutions of Belgium, Finland, Greece, the Netherlands, Portugal, Spain, and Sweden and in the legislation of Austria, France, Germany, Luxembourg, and the United Kingdom.

<sup>4</sup> 2001(1) SA 46 (CC) October 4, 2000.

<sup>5</sup> See Jaap de Visser, 'A perspective on local government's role in realising the right to housing and the answer of the Grootboom judgment' (2003) 7 (2) Law, Democracy and Development, 201, 210.

## 7. Conclusion

**As seen across much of Europe, South Africa and Brazil, even where the legal framework is in favour of housing rights claimants, the ambiguity of housing rights-type constitutional provisions remain problematic with Courts reluctant to direct plans of action to realise such rights when various 'test' cases come to be adjudicated. This would be particularly difficult in Ireland where courts have been reluctant to dictate to the legislature on where public monies ought to be spent.**

A housing referendum will simply allow future governments the opportunity to pass the proverbial buck by failing to provide a comprehensive, cohesive housing strategy for all the country's citizens, that will encompass sustainable living in an environmentally friendly fashion.

Aspiring home owners, particularly those on average incomes, have seen their ambition thwarted by a number of factors – the financialisation of housing on a global basis; a lack of supply leading to continually increasing house prices; over-zealous mortgage lending rules; a turgid planning process and a failure to support SME builders.

All aspects of housing need to be brought together to bring in a suite of sensible measures and stop the ever-growing level of piecemeal initiatives and regulations that have had adverse consequences such as the flood of private non-institutional landlords leaving the market.

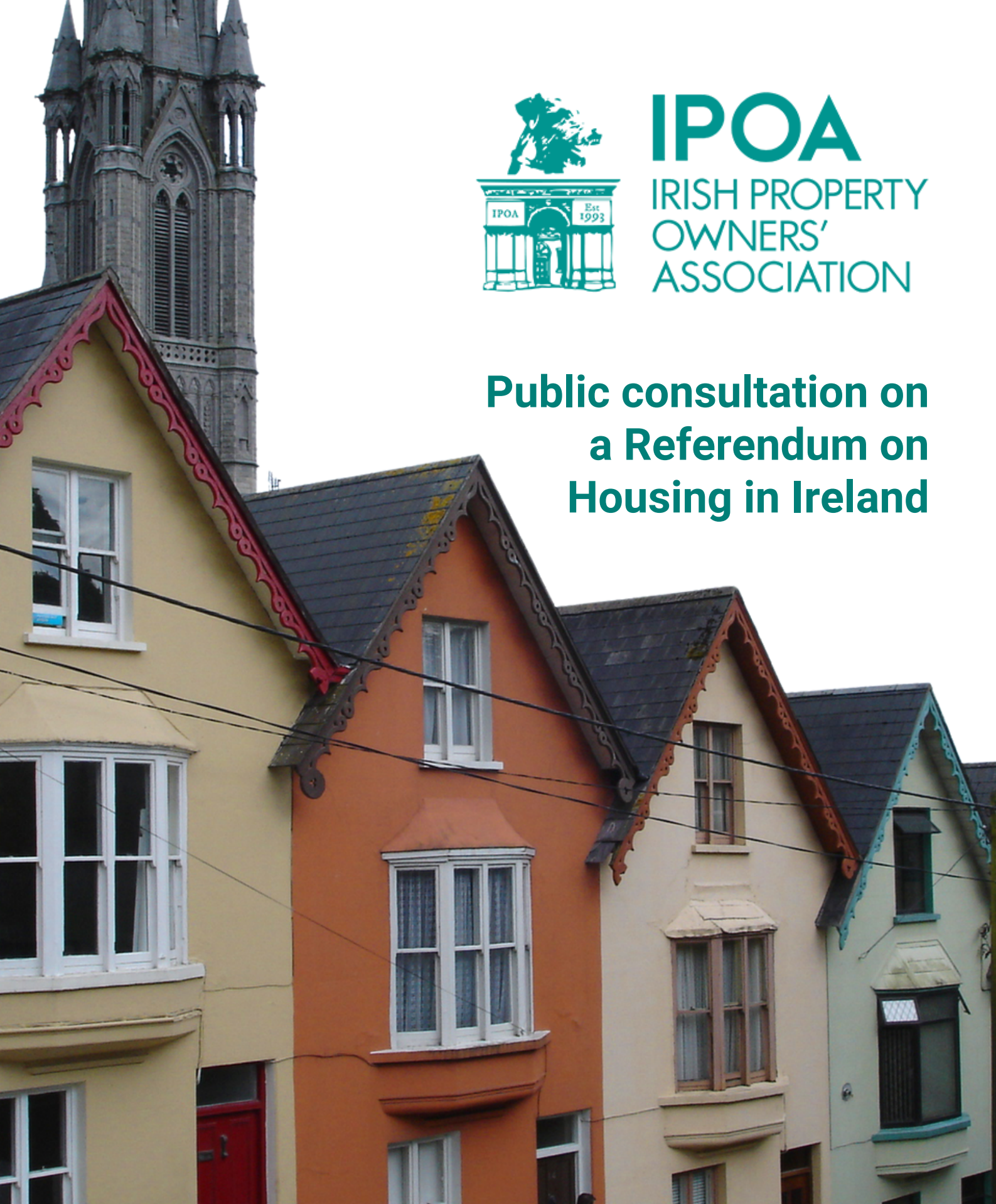
A referendum on housing rights, likely to centre on a right to adequate housing is not the solution to the ills of the housing market. Government needs to draw all actors in the housing sector together to advance a sustainable residential model for all its citizens. A housing referendum will not advance such proposals but will become a lightning rod for further state inaction on the issue and lead to greater inequality.





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