

Lender Seeking Possession

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In Ireland, a lender seeking possession of a private dwelling or buy-to-let property bears the burden of proving both the existence and the amount of the debt.

Contrary to what is sometimes assumed, the mortgage deed alone does not conclusively prove the amount owed.

The debt must be established by admissible evidence.

The key issue is that a mortgage possession case is not simply an action “on the mortgage”; it is an equitable remedy based on an alleged default under a loan contract.

If the amount claimed is materially disputed because of missing statements, overcharging, or unexplained interest calculations, the court may require more than a bare assertion in an affidavit.

1. The statement of account is evidence, not conclusive proof.

- it can and should be challenged if inaccuracies are identified;
- the bank must be able to explain how the figures were produced.
- If a borrower demonstrates significant discrepancies, the evidential burden should

2. Missing statements are potentially significant

- Many borrowers assume the bank is entitled simply to say,
- “The balance today is €325,000.”
- That is not how evidence normally works.
- If monthly statements are missing for extended periods, questions naturally arise:
- Was interest calculated correctly?
- Was the contractual rate applied?

- Were tracker or variable rate changes lawful?
- Were arrears interest calculations correct?
- Were insurance premiums added?
- Were legal fees capitalised?
- Were payments correctly allocated?
- Without the underlying transactional history, those questions may be impossible to answer.
- The absence of statements seriously weakens the banks' ability to prove the amount claimed if the borrower raises a genuine issue.

3. The bank / delegate should be capable of producing a complete loan ledger

- Banks do not simply possess annual statements.
- They maintain a transactional ledger showing every movement on the account:
 - drawdown;
 - every repayment;
 - every interest calculation;
 - every fee;

4. Overcharging is highly relevant

- Ireland has seen significant mortgage overcharging scandals, particularly involving tracker mortgages, but it is not confined to tracker mortgages..
- The fact that banks have previously overcharged borrowers means courts are unlikely

5. Can a credit servicer simply swear an affidavit?

- Not necessarily.
- Where proceedings are brought by a credit servicer or a deponent employed by one, they should establish:
 - their authority to swear the affidavit;

- how they have access to the original records;

6. Can the borrower demand a complete reconciliation?

- Yes.
- Where the debt is genuinely disputed, a borrower may seek disclosure of documents such as:
 - the complete loan ledger;
 - all statements;
 - interest rate histories;
 - records of capitalisations;
 - records of charges;
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7. Does the bank have to prove every euro?

- Not in the sense of proving each transaction independently if the account is not genuinely disputed.
- Courts generally accept properly authenticated business records as sufficient.
- However, where the borrower raises a credible

8. Relevant Irish authorities

- Several decisions of the Supreme Court of Ireland and Court of Appeal have clarified that lenders in possession proceedings must prove:
 - their entitlement to enforce the mortgage,
 - their standing (including where loans have been assigned),
 - and compliance with the applicable rules of evidence for business records.

In cases where the quantum of the debt is directly challenged, the quality and completeness of the accounting evidence can become a central issue, although Irish appellate courts have not laid down a rigid rule requiring production of every monthly statement in every case.

- If you are examining this from a litigation perspective, there is a substantial body of Irish case law to research on:
 - admissibility of banking records,
 - proof of assigned mortgage debts,
 - evidential requirements for affidavits in possession proceedings,
 - and the consequences of gaps or deficiencies in loan documentation.

Those authorities can be analysed together to identify precisely when deficiencies in the lender's accounting evidence may undermine its claim.

Always consult your own independent legal advisor for advice