



How to deal with a vulture fund

Vulture funds are commercial entities and want to make money, so deals can be done

Emma Kennedy

For the almost 90,000 mortgage borrowers in arrears, and for thousands of business borrowers with problem debt, it is no longer their bank that they need to worry about, as vast tranches of Irish debt are now owned by so-called vulture funds.

What rights do borrowers have if their loan is sold?

As major international funds and private equity giants snapped up Irish loan books in recent years, the government came under pressure to legislate to ensure that borrowers were protected. As a result, in July 2015, the Regulation of Credit Servicing Act was introduced.

"If the firm who bought the loans from the original lender is an unregulated firm then the loans must be serviced by a credit servicing firm which is regulated by the Central Bank," a spokeswoman for the Central Bank said.

"Credit servicing firms must act in accordance with Irish financial services law that applies to 'regulated financial service providers'. This ensures that consumers whose loans are sold to another firm maintain the same regulatory protections they had prior to the sale."

While credit servicing is regulated, the government did not regulate the ownership of credit. According to Paul Joyce, senior policy analyst at the Free Legal Advice Centres (Flac), the legislation gives rise to some questions.

For example, under the rules the "determination of overall strategy" is a decision for the loan owner, not the credit servicing firm, meaning that key

decisions on things like interest rates, writedown policy and so on could rest with an unregulated entity.

Joyce said the specifics of what exactly "overall strategy" included was a little unclear, but said it was "a question that requires answering".

Are borrowers at a disadvantage if their loan is sold?

Experts are divided on this one: some say that the hype around vulture funds has been overplayed, while others suggest that borrowers could face a David and Goliath type battle against a behemoth with huge resources.

Getting a letter to say your loan has been sold to an entity that you've never heard of is not necessarily a bad thing – in fact, some, such as barrister Ross Maguire of debt advisory group New Beginning, see it as "a good thing".

"There's no legal disadvantage whatsoever," said Maguire. "People think they will be thrown out of their house, but it is not true and it is not helpful."

In Maguire's view, people are "by far better off than they are dealing with the banks. These guys are commercial, and in my experience actually have a better understanding of customers", he said. "They are far more proactive, and a lot have experience of distressed assets in other markets."

Trevor Grant, chairman of the Association of Expert Mortgage Advisers (AEMA), said that different types of borrower tended to have different reactions to the sale of their loan. "Generally homeloan customers panic as they don't really have a sense of who they are dealing with, and they are wondering what rules apply," he said.

However, business borrowers tend-

ed to react more favourably, Grant said. "When a commercial customer gets that letter, they tend to think: 'Great, I can do a deal now'."

In Joyce's view, the situation for borrowers varies depending on which entity has bought their loan. "There's certainly evidence of some degree of pragmatism, with some offering split mortgages on reasonable terms, for example," he said. However, he also pointed to anecdotal evidence suggesting that some funds were beginning to take a more "hardline approach" when dealing with debtors.

"They are in it to make money and that's the bottom line," Joyce said. "They want to get in and get out."

What should borrowers expect if their loan is sold?

First off, bear in mind that you will not necessarily be negotiating with the new owner of your loan, and rather will interact with the aforementioned credit servicing firm. "Often the new owner of your loan will outsource business to companies who engage with you on their behalf," Grant said.

According to Maguire, the person the borrower is dealing with might not call all the shots when it comes to negotiating on problem debt.

"My experience is that on the family home side, the people you are dealing with have reasonably wide autonomy," Maguire said. However, he suggested that for bigger debts and SME loans, loan owners tended to be a bit more involved in the decision-making process.

What should borrowers do if their loan is being sold?

According to one restructuring expert, borrowers can prepare in advance for a loan sale.

"The agreement they have with their bank stands," he said. "If they're worried the bank might sell their loan and they're on a six-month interest only period, they should seek better terms and conditions – go from six to 12 months, or go and renegotiate your loan. Those conditions have to transfer."

Some borrowers in difficulty might take a different view, and stop paying altogether ahead of a loan sale, but Grant warned against this approach. He said that someone who decided to stop paying their loan in advance of its sale to another entity could find that the new owner of their debt is less disposed to striking a deal on problem debt.

How should borrowers approach negotiations with their loan's new owner?

There's no one size fits all approach here. "There are so many variables, most of which are outside the control of the hapless borrower," said Joyce.

"Funds vary from one to another, just like banks do," Grant said. "Broadly speaking though, if you engage, it helps. They'll be commercial, practical. Forget about who you are repaying and look at your own situation."

For many borrowers, the starting point for negotiations when their problem debt is sold is looking at how much the new loan owner paid to acquire that debt. However, this is a tactic that experts caution against.

"Never ask them what they bought the loan for," said Maguire. "What's relevant to the loan owner and their representative is the value of the security and what you can afford to pay."

Grant agreed. "Funds and their representatives aren't interested in borrowers saying 'you bought the loan for X, so here's what I owe you'. The starting

point is the asset value. What they paid is irrelevant because of your contractual obligation to repay."

However, Joyce believes that borrowers should be entitled to this information. "As it stands they are not entitled to know how much it [the loan] was bought for," he said. "At least the borrower should be entitled to know if it was sold at a reduction."

The sale price of the loan is a relevant factor, Joyce argued, as the borrower's likelihood of striking a deal on problem debt is a "function of how much the loan owner paid" for that debt.

Ultimately any deal done will boil down to sums, with Grant saying that funds are commercial, and simply want to make money. "So it is a numbers game," he said.

Maguire said that loan owners and their representatives have "no problem writing off debt". "They will do deals, and will do them fast," he said, adding that the entities buying loans tend to work on a reasonably short-term timescale – want-

ing in and out of the Irish market within a few years.

Borrowers should make sure they have someone independent in their corner for the negotiations. "Get assistance, don't be afraid to communicate," Joyce said.

People think they will be thrown out of their house, but it is not true and it is not helpful

