



## **FREQUENTLY ASKED QUESTIONS ABOUT THE CGP/CBP Code of Good Practice**

*Royal Legislative Decree 6/2012, of 9 March, on urgent measures for the protection of mortgage debtors without resources, modified by Law 1/2013 of 14 May on measures to strengthen mortgage debtors, debt restructuring and social renting and by Royal Decree-Law 1/2015, of 27 February, on the second chance mechanism, reduction of financial burden and other social measures.*

### **Introduction**

The purpose of the Code of Best Practices is to establish measures aimed at restructuring the mortgage debt of those who are experiencing exceptional difficulties in meeting their repayments (given their personal and financial circumstances).

### **Who is it aimed at?**

The Code of Good Practices is aimed at debtors of loans and credits secured by mortgages on their primary residence who are on the exclusion threshold. It is also aimed at mortgage guarantors and non-debtor mortgage guarantors with respect to their habitual residence and with the same terms and conditions as those established for the mortgagor.

### **Who is on the threshold of exclusion?**

Those debtors of a credit or loan secured by a mortgage on their habitual residence, when all of the following circumstances apply to them:

- That the total income of the members of the family unit<sup>1</sup> exceeds the limit of three times the annual Multi-Purpose Public Income Index (IPREM) for fourteen payments.

The limit will be four times the annual IPREM of fourteen payments in the event that any of the members of the family unit has a declared disability of more than 33%, a situation of dependency or an illness that is proven as permanently incapacitating for work. It will be five times the IPREM, in the event that a mortgage debtor is a person with cerebral palsy, with mental illness, or with intellectual disability, with a recognised degree of disability equal to or greater than 33%, or a person with a physical or sensory disability, with a recognised

degree of disability equal to or greater than 65%, or in cases of a recognised degree of disability equal to or greater than 65%, with mental illness or intellectual disability, or in cases of serious illness that incapacitates the person or their carer to carry out a work activity.

- That, in the four years prior to the time of application, the family unit has undergone a significant change in its economic circumstances (the mortgage burden on the family income has increased by at least 1.5 times) or particularly vulnerable family circumstances have arisen (large family, single parent with two dependent children, family unit with a child under the age of three years, family unit with a member with a disability of over 33%, dependency situation or illness that permanently incapacitates them to carry out their work activity, debtor over 60 years of age, even if they do not meet the requirements to be considered a family unit).
- That the mortgage payment is more than 50% of the net income of the family unit as a whole (more than 40% in the cases of the first point).
- All of the following conditions must be met in the cases of debt reduction and dation (payment in kind):
  - a) The family unit has no other assets.
  - b) That the mortgage loan is for that single dwelling and was granted for its purchase.
  - c) There are no other secured debts.
  - d) If there are co-debtors who are not part of the family unit, they must be included in circumstances a), b), and c) above.

The application of the Code of Good Practice shall extend to mortgages constituted as security for loans or credits when the purchase price of the mortgaged property does not exceed:

**1** - For preliminary restructuring and ancillary measures (debt reduction) the purchase price of the mortgaged property:

Does not exceed 20% of that which would result from multiplying the size of the property by the average price per square metre for non- social housing shown in the Housing Price Index prepared by the Ministry of Development for the year of acquisition of the property and the province in which the property is located, with an absolute limit of €300,000. Properties purchased before 1995 will take the average reference price for 1995 as the reference price.

**2** - For the complementary measure (payment in kind) the purchase price of the mortgaged property:

Does not exceed that which would result from multiplying the size of the property by the average price per square metre for non-social housing shown in the

Housing Price Index prepared by the Ministry of Development for the year of purchase of the property and the province in which the property is located, with an absolute limit of €250,000. Properties purchased before 1995 will take the average reference price for 1995 as the reference price.

### **How can I check these figures?**

Click on the link <http://www.fomento.gob.es/BE2/?nivel=2&orden=35000000> and when the page opens, go to option 2.- Assessed value of non-social housing.

### **What is the Code of Good Practice?**

The Code of Good Practices consists of a set of measures to protect mortgagors without resources.

### **What are these measures and when do they apply?**

#### **1- Debt restructuring**

Within one month of the customer submitting the application for the restructuring of their mortgage debt together with proof that they are on the exclusion threshold, the feasibility<sup>2</sup> of the restructuring plan must be communicated, which will consist of the joint implementation of the following measures:

- 5-year principal amount grace period at EURIBOR + 0.25%
- Extension of the repayment period up to 40 years from the date of granting.
- Non-application for an indefinite period of time of floor clauses set out in mortgage loan and credit agreements.
- No compensation for early repayment within 10 years of plan approval.
- Maximum default interest: agreed interest + 2%.

In addition, the debtor's debts as a whole can also be re consolidated.

This application cannot be made by debtors who are already being foreclosed in enforcement proceedings in which the date of the auction has already been set.

### **What documentation must the debtor submit with the application for restructuring?**

- To prove the receipt of income by the members of the family unit:
  - Certificate of income and, where applicable, certificate relating to the filing of Wealth Tax, issued by the Spanish Tax Authority or the competent body of the Autonomous Community, where applicable, in respect of the last four tax years.

- Last three pay slips received.
  - Certificate issued by the entity managing the benefits, showing the monthly amount received as unemployment benefits or allowances.
  - Certificate as proof of receipt of social welfare income, minimum job-seeker's allowance income or similar social assistance aid granted by the Autonomous Communities and local entities.
  - In the case of self-employed workers, if they are receiving unemployment benefit, the certificate issued by the managing body showing the monthly amount received.
- To prove the number of people living in the dwelling:
    - Family record book or document as proof of registration as a domestic partner.
    - Certificate of census registration relating to the persons registered in the dwelling, with reference to the time of presentation of the supporting documents and to the previous six months.
    - Declaration of disability, dependency or permanent incapacity to work.
- To prove the ownership of the assets:
    - Certificates of ownership issued by the Property Registry for each of the members of the family unit.
    - Deeds of sale of the dwelling and of the constitution of the mortgage collateral and other supporting documents, if applicable, of the rest of the real or personal guarantees constituted, if any.
- Certificate of compliance by the debtor(s) regarding compliance with the requirements to be considered as falling within the exclusion threshold according to the standard form approved by the commission set up to monitor compliance with the Code of Good Practices.

## **2- Debt reduction**

If the restructuring plan proves to be unfeasible<sup>3</sup>, the customer may request a debt reduction, the granting of which is optional. The Royal Decree-Law offers several options.

It can be requested by debtors who are in a foreclosure process with an auction or those who, included in the exclusion threshold of Royal Decree-Law 1/2015, are not eligible for payment in kind because the property is encumbered by charges subsequent to the mortgage.

## **3- Payment in kind**

Within 12 months of the request for restructuring, debtors within the scope of application of article 2 of Royal Decree 6/2012 of 9 March, for whom the restructuring and complementary measures (debt reduction), if applicable, are not viable, may request payment in kind of their principal residence when there are no further charges on the mortgage, and there is an obligation to accept the payment in kind. This means the total cancellation of the debt.

- Possibility of rental for two years without extension, unless otherwise agreed in writing by the parties.
  - Annual rent of 3% of the outstanding principal for the first two years. The rest according to market rent.
  - Default interest: 10%.

It does not apply to debtors who are in foreclosure proceedings with a scheduled auction or where the property is encumbered by subsequent charges.

Advantages for non-debtor guarantors and mortgagors

Non-debtor guarantors and mortgagors who are within the exclusion threshold may request that they not be required to pay the debt until the principal debtor's assets are exhausted, without prejudice to the application to the latter, where applicable, of the measures provided for in the Code of Best Practices, even if they have expressly waived the right of excussion in the contract.

Tax advantages of the Code of Best Practices:

The measures of the Code of Best Practices will benefit from the following tax advantages:

- Exemption from transfer tax on deeds of novation.
  
- In the event of payment in kind:
  - Municipal tax on the increase in the value of urban land (*plusvalía municipal*) payable by the financial institution.
  - Exemption of the debtor of the accrued collateral from personal income tax
  - A 50% discount on the payment of the notary and registry fees.