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L.N. 463 of 2011

CIVIL CODE
(CAP. 16)

Continuation of Tenancies (Means Testing Criteria) Regulations, 2011

BY virtue of the powers given by article 1531F and 1622A of the Civil Code, the Minister of Education, Employment and the Family, in consultation with the Minister of Finance, the Economy and Investment, has made the following regulations:-

Title and commencement.

1. (1) The title of these regulations is the Continuation of Tenancies (Means Testing Criteria) Regulations, 2011.

(2) These regulations shall be deemed to have come into force on the 1st January, 2010:

Provided that nothing in these regulations shall entitle any person to revive a tenancy which has been terminated between 1st January 2010 and 30th September 2011.

Satisfying the Means Test Criteria.

2. (1) These regulations establish the criteria of the means test to be satisfied in terms of article 1531F of the Civil Code by a person with a claim to the continuation of a tenancy under the said article.

(2) In order to satisfy the means test criteria established by these regulations a person shall be required to have both an income and capital within the limits established by these regulations.

Relevant period for calculation of means.

3. (1) Without prejudice to the provisions of regulation 8 the only relevant period, hereinafter in these regulations referred to as the "relevant period", for the calculation of means for the purposes of these regulations shall be:

(a) with regard to the income criterion, the income between the 1st January and the 31st December during the year immediately preceding the year of death of the tenant;

(b) with regard to the capital criterion, the capital on the date of death of the tenant.

VERŻJONI ELETTRONIKA

Means Test Proceedings.

4. (1) Where the landlord and the person with a claim to the continuation of the tenancy do not agree that the said person meets the means test criteria established in these regulations either party may, within eighteen (18) months from the death of the tenant, file an application to the Rent Board demanding that the said Board will carry out the means test:

Provided that in cases where the death of the tenant occurred between the 1st January 2010 and the 30th September 2011 the period of eighteen (18) months referred to in this paragraph shall commence to run from the 1st October 2011.

(2) Means test proceedings shall be heard by the Rent Board behind closed doors and the record of the proceedings shall only be accessible to the parties subject to an obligation on the landlord to maintain the information contained in the said record as secret information. Any person who divulges information in breach of the provisions of this regulation shall be guilty of contempt of the Rent Board without prejudice to any other civil or criminal liability to which the said fact may give rise under any other law.

(3) Subject to any procedural rights exercisable in or in respect of means test proceedings and to the provisions of regulation 8 of these regulations a means test shall be carried out only once.

(4) In any means test proceedings the person with a claim to the tenancy shall be bound to:

(a) present a statement and authenticated documentation of his income and capital and to substantiate the same for the purpose of demonstrating his level of income and capital in accordance with these regulations during the relevant period;

(b) provide statements and authenticated documentation in respect of a period of five (5) years immediately preceding the relevant period,

so as to enable the Rent Board to determine whether such person has during the said period immediately preceding the relevant period divested himself of any capital or income without proper explanation.

VERŻJONI ELETTRONIKA

(5) Notwithstanding the other provisions of these regulations, where the Rent Board is satisfied that the person with a claim to the tenancy has, during the said period of five (5) years immediately preceding the relevant period, divested himself of any capital or income without proper explanation, the Board may decide to take into account any capital or income of which the said person has divested himself of without a proper explanation by including it in the computation of capital and income of the said person.

Income threshold in Means Test Criteria.

5. (1) For the purposes of the income criteria of the means test, "income" means income derived from any of the sources mentioned in article 5 and the following paragraphs of article 4 of the Income Tax Act:

Cap. 123.

(a) in sub-article (1), paragraph (a), paragraph (b), (c) excluding the proviso thereto, paragraph (d), paragraph (e) and paragraph (g) excluding the proviso thereto; and

(b) sub-article (2), paragraph (a) of sub-article (3) excluding the proviso thereto, and paragraph (b) of sub-article (3).

(2) For a person who is younger than forty-six (46) years of age on the date of death of the tenant to meet the income criteria of the means test, the income of the said person during the relevant period shall not exceed twenty-five thousand euro (€25,000).

(3) For a person who is forty-six (46) years of age or older to meet the income criteria of the means test, the income of the said person during the relevant period shall not exceed forty-two thousand euro (€42,000).

(4) For a person who is younger than forty-six (46) years of age and is a disabled person registered with the National Commission for Disabled Persons and the type of disability is considered to be of a severe nature, to meet the income criteria of the means test, the income of the said person during the relevant period shall not exceed forty-two thousand euro (€42,000).

(5) For a person who is forty-six (46) years of age or older and is a disabled person registered with the National Commission for Disabled Persons to meet the criteria of the income part of the means test, the income of the said person during the relevant period shall not exceed fifty-five thousand euro (€55,000).

VERŻJONI ELETTRONIKA

(6) For the purposes of determining the severity of disability of such person, as required in sub-articles (4) and (5), such assessment is to be carried out in the same manner as that applicable in the case of claims for an invalidity pension under paragraphs (e) and (f) to the first proviso of article 106 (e) of the Social Security Act, with the involvement of the National Commission for Disabled Persons.

Capital Criteria in Means Test Criteria.

6. (1) For a person who is younger than forty-six (46) years of age to meet the capital criteria of the means test, the capital of the said person shall not exceed one hundred and twenty-five thousand euro (€125,000).

(2) For a person who is forty-six (46) years of age or older to meet the capital criteria of the means test, the capital of the said person shall not exceed one hundred and seventy-five thousand euro (€175,000).

(3) For a person who is younger than forty-six (46) years of age and is a disabled person registered with the National Commission for Disabled Persons and the type of disability is considered to be of a severe nature, to meet the capital criteria of the means test, the capital of the said person during the relevant period shall not exceed one hundred and seventy-five thousand euro (€175,000).

(4) For a person who is forty-six (46) years of age or older and is a disabled person registered with the National Commission for Disabled Persons to meet the capital criteria of the means test, the capital of said person during the relevant period shall not exceed two hundred thousand euro (€200,000).

(5) For the purposes of determining the severity of disability of such person, as required in sub-articles (3) and (4), such assessment is to be carried out in the same manner as that applicable in the case of claims for an invalidity pension under paragraphs (e) and (f) to the first proviso of article 106 (e) of the Social Security Act, with the involvement of the National Commission for Disabled Persons.

Calculating the capital.

7. (1) In calculating the capital criteria of the means test, account shall be taken of:

(a) the value of any immoveable property belonging fully to the person with a claim to the tenancy only if the said person holds vacant possession of the said property;

VERŻJONI ELETTRONIKA

(b) money deposited in a bank which can be withdrawn at less than three months' notice;

(c) cash in hand;

(d) time deposits;

(e) bonds;

(f) stocks;

(g) securities;

(h) any other financial instrument or financial product.

Means Test in cases of continuation of a lease by persons who are eligible in solidum.

8. Where several persons have a claim to the tenancy in solidum in accordance with the provisions of article 1531F of the Civil Code, it shall be enough if one of the said persons satisfies the income and capital conditions of the means test provided for in these regulations:

Provided that any person who, in the situation referred to in this regulation passes the means test, such person shall be eligible to continue the tenancy notwithstanding the demise of any other claimant to the tenancy:

Provided further that where the means test of only one claimant has been effected or where several claimants have been tested but only one has successfully met the means test criteria, or where several claimants have successfully met the means test and have all died or do not qualify as tenants any longer, then when and each time that the last person who satisfied the income and capital criteria of the means test ceases to be a tenant, the means test shall be carried out afresh in respect of the other persons holding the tenancy in solidum and for the purposes of any subsequent means test carried out in terms of this regulation, the "relevant period" shall be calculated with reference to the date when the said person ceased to be a tenant.

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