

Application of the international day-count convention for the calculation of interest rates on a forward mortgage

Topic: **Mortgage in general** Case number: **2023/13**

The client was looking for real estate financing via a mortgage broker. After examining the various offers, he decided in favor of the bank's offer. When he received the first interest statement, he noticed that the interest rates were slightly higher than those listed in the offer. He complained to the bank, which explained to him that the difference was due to the application of the international day-count convention. This was applicable on the basis of the mortgage agreement concluded with him. The client took the view that the interest had to be calculated in such a way that it corresponded to the interest charges listed in the offer. The bank was not prepared to make any concessions, referring to the contractual provision. In the Ombudsman proceedings, it relented and promised to reduce the interest rates to the amounts shown in the offer for the entire term of the current contract.

In the offers from the various banks that the mortgage broker presented to the client, the annual interest rate was listed as a percentage for the desired mortgage amount. The offers further specified the term and the specific monthly interest charge. After he had accepted the bank's offer, the bank drew up the mortgage agreement, in which it was actually stated that the international day-count convention was to be applied. The contract was signed by the client.

While the national day-count convention multiplies the mortgage amount by the interest rate, the international day-count convention multiplies the result by the actual number of days in the year (365 or 366) and divides this by 360. As a result, the interest charge is slightly higher, as interest is charged for 5 or, in a leap year, 6 days more. According to the Ombudsman's observations, the international day-count convention is rather unusual for fixed-rate mortgages but does occur for forward and money market mortgages. Ultimately, the decisive factor is which interest rate has been contractually agreed. If this is the international day-count convention, a sufficiently clear and transparent regulation is particularly important, as in the Ombudsman's experience this appears unusual to many clients.

In this case, the problem obviously was that the bank, when preparing the offer, had not taken into account that it was applying the international day-count convention for the forward mortgage. When the offered interest rate was calculated with the international convention, the monthly interest charges no longer matched the result, and the annual total was slightly higher.

In the opinion of the Ombudsman, the amounts offered by the bank were decisive for the client in the present case. He had to be able to rely on the fact that the interest calculation provisions set out in the written mortgage agreement were drafted in such a way that they corresponded to the result offered. Under the specific circumstances, the international day-count convention listed in the standard contract had not been validly agreed. It would have been different if the bank had made him specifically aware of the regulation and its consequences before he signed the contract. However, this was not the case.

The Ombudsman therefore asked the bank to reconsider its position and propose a solution that was in line with the offer accepted by the client. The bank decided to calculate the interest on the basis of the national convention during the term of the mortgage agreement concluded with the client.

However, should he wish to obtain follow-up financing from her, it reserved the right to switch to the international day-count convention.