

Conclusion of a fixed-rate mortgage for a property held for sale by a community of heirs

Topic: **Fixed-rate mortgage** Case number: **2021/11**

The complainant was a member of a community of heirs. He disputed an early repayment penalty that the bank had charged the community of heirs. This had been calculated on the basis of a negative reinvestment rate, and the bank had also known that the property would very probably be sold during the term of the two-year fixed-rate mortgage. The bank had therefore knowingly concluded unsuitable financing with the community of heirs. He therefore demanded repayment of the early repayment penalty. The bank was not prepared to meet the demand and denied wrongdoing, whereupon the client submitted the case to the Ombudsman. In the mediation procedure, it turned out that the heir's statement of facts was incorrect in essential points. The Ombudsman therefore advised him to clarify the facts within the community of heirs and pointed out that, in his opinion, no misconduct on the part of the bank was apparent if the facts as described by the bank were correct.

The complainant stated that the heirs had not been able to find the mortgage agreement concluded by the deceased. He could only produce the product agreement concerning the disputed fixed-rate mortgage, which had not been signed. He stated that the community of heirs had not signed any new contracts after the deceased's death. The Ombudsman asked the complainant to send him an authorization form signed by all the heirs, as the community of heirs could only assert the claim for recovery of the early repayment penalty jointly. When the form arrived after several weeks, the Ombudsman contacted the bank and asked it to comment on the complainant's allegations.

In its statement to the Ombudsman, the bank explained that the heirs had issued a power of attorney in favour of an heiress. This heir's representative had conducted the negotiations in connection with the disputed two-year fixed-rate mortgage. The bank had indeed known that the property of the community of heirs was for sale. It had therefore proposed two financing options to the heirs' representative, which could have been terminated at short notice without an early repayment penalty. The interest rates offered for these short-term financing options were higher than the interest rate for the two-year fixed-rate mortgage. The latter was the fixed-rate mortgage with the shortest term in the bank's product segment. The bank had drawn the heirs' representative's attention several times to the early repayment penalty that was due in the event of early termination and had also explained its calculation to her.

After consultation with the other heirs, the representative of the heirs had nevertheless decided to conclude a two-year fixed-rate mortgage in view of the still undetermined date of the sale. When concluding this fixed-rate mortgage, the representative of the heirs had accepted the bank's new credit regulations, which expressly stated that in the event of a premature termination of the fixed-rate mortgage, a possible negative reinvestment rate was owed in addition to the agreed interest rate for the remaining term. The community of heirs had thus consciously accepted the risk of a possibly considerable early repayment penalty in the event that the property could be sold earlier than expected.

The Ombudsman explained the bank's position to the complainant. He pointed out to the complainant

that some banks had in the meantime amended their mortgage contracts, expressly reserving the right to calculate early repayment penalties on the basis of negative reinvestment rates. He advised the heir to clarify the facts within the community of heirs and informed him that if the bank's well-documented facts were true, he could not see any wrongdoing on its part. The complainant thanked the Ombudsman for the explanations and explained that the other heirs were no longer aware that they had granted the one heiress a power of attorney some years ago.