

Increase in the amortisation of a mortgage

Topic: **Mortgage in general** Case number: **2021/12**

The clients were a couple about to retire. They explained that they owned an apartment building in an urban environment, which they partly occupied themselves and partly rented out. A few years after a comprehensive renovation of the property, the bank had carried out a new valuation and demanded additional amortisation based on a lower estimated value. The bank refused to provide the necessary transparency and to disclose the reasons for the lower appraised value. It also refused a joint reassessment by a trusted third party. After being contacted by the Ombudsman, the bank agreed to a new valuation, which returned to the old value accepted by the clients. The additional amortisation was thus no longer necessary. The bank used the opportunity to clarify further needs of the clients with regard to retirement. The client relationship could be continued to the satisfaction of both parties after the differences of opinion had been settled.

The clients were firmly of the opinion that the bank had interpreted the guidelines on minimum requirements for mortgage financing of the Swiss Bankers Agreement too strictly to their disadvantage. If the interpretation was correct, they would be entitled to an unchanged continuation of the mortgage. Based on the initial information, the Ombudsman assumed that the clients were in discussions with the bank about follow-up financing for an expiring mortgage. He explained to the clients that in such a case, the bank was free to decide whether and on what terms it wanted to grant the follow-up financing. In principle, freedom of contract applied. Even if the clients met the minimum requirements of the mentioned guidelines, the bank would be free to apply stricter criteria or to refuse the succession financing altogether. He recommended looking for alternative financing offers.

In addition, he requested copies of the mortgage contracts from the clients, which they had not yet submitted to him. It turned out that they had taken out several fixed mortgages, the first tranche of which was not due for several years. Accordingly, it was not a matter of discussions about successor financing, but of contract adjustments during the term of fixed mortgages. Such contract adjustments generally require the consent of both parties.

The Ombudsman then contacted the bank and told it that it could not unilaterally change the fixed amortisation provisions. This would only have been possible if there had been a so-called extraordinary reason for termination. Mortgage agreements often stipulate that the bank can extraordinarily terminate the mortgage before the agreed final maturity date in the event of a decline in the value of the mortgaged property and demand its repayment at short notice. However, in order for such an extraordinary reason for termination to exist, there must be a significant reduction in value which makes the continuation of the mortgage until the agreed final maturity unreasonable for the bank in good faith. A reduction in value within the usual range of an estimate would not be sufficient for this. Moreover, the bank is obliged to justify its actions transparently and comprehensibly when asserting a reason for extraordinary termination.

The bank management then clarified the case internally and came to the conclusion that there had been misunderstandings and ambiguities in the communication, which they would like to clarify in a direct discussion with the clients. They also realised that the needs of the clients and possible

adjustments to the financing in view of their upcoming retirement had not been clarified sufficiently. In agreement with the clients, the Ombudsman suspended the mediation procedure so that the parties could clarify the dispute in direct talks.

A few weeks later, the clients informed the Ombudsman that the bank had agreed to a new appraisal, which again resulted in the original appraised value accepted by the clients. The existing amortisation arrangement was discussed and could even be adjusted in favour of the clients. As the relationship of trust between the clients and their former advisor was no longer given, they were assigned a new contact person by the bank. The clients and the bank thanked the Ombudsman for his support. The Ombudsman thus definitively closed the case.