

Obligation to keep a bank account in the credit institution granting a mortgage loan

Banco de España's Market Conduct and Claims Department has received several enquiries from banking customers who want to know if there is a legal obligation to keep an account open in the credit institution that grants a mortgage loan, even though it may be exclusively used to pay monthly instalments, especially when keeping the account may involve paying maintenance and management fees.

The first thing that must be analysed is whether the contract includes this obligation. If this is not the case, the customer might pay the mortgage instalments through direct debits from another credit institution's account as well as by transfer or through cash deposits.

On the contrary, if the contract stipulates the obligation to maintain an account in the same credit institution, it is very important to check the date when the mortgage loan was signed. If it was before 29th April 2012 -the date in which the *Orden EHA/2899/2011, de 28 de octubre, de transparencia y protección del cliente de servicios bancarios* entered into force- charging fees in an 'instrumental' account would be contrary to best banking practices, as long as the account is used exclusively for the loan.

This criteria does not apply for contracts signed after 29th April 2012 since it is considered that customers had the guarantee established by new regulations, according to which those fees must be expressly mentioned in the pre-contractual information documents the credit institution must give to their customers. In particular, the above-mentioned *Orden* enforces credit institutions to comply with the following requirements:

- Inform their customers in the pre-contractual document that must be compulsory provided, about the obligation, if that is the case, to take out a linked account.
- Inform about the part of the cost that corresponds to the maintenance of that account.
- Expressly include in the contract both the taking out of the account and its cost.
- Such cost cannot not be unilaterally modified by the credit institution throughout the life of the loan, credit or deposit.

More information in Chapter 3, page 181 of the [Annual Claims Report 2016 \(only available in Spanish\)](#).