

IMPORTANT NOTICE

This guide is designed to assist consumers in understanding the licensing and regulatory regime governing Property Services Providers (i.e. Auctioneers, Estate Agents, Letting Agents and Management Agents). The information is intended to assist readers in becoming aware of the general issues.

This document is intended and should only be used as an informal guide.

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INTRODUCTION

The **Property Services Regulatory Authority (PSRA)** ("the Authority") was established on 3 April, 2012 under the provisions of the Property Services (Regulation) Act 2011 (the Act") for the purpose of regulating **Property Services Providers (PSPs)** in Ireland. The role of the Authority is multidimensional in that it includes:

- The licensing and regulation of the Property Services Industry,
- Administering an independent system of investigation and adjudication of complaints made against those licensed by the Authority, and
- Promoting consumer awareness.

The Authority licenses:

**Auctioneers,
Estate Agents,
Letting Agents and
Management Agents.**

The Licensing and Regulatory Environment

Under the Act the Authority, on 6 July 2012, became responsible for the function of licensing of Auctioneers and House Agents which was previously carried out by the District Courts in conjunction with the Revenue Commissioners. In addition, Management Agents were to be licensed for the first time.

The Complaints Investigation Environment

One of the principal functions of the Authority is to deal with complaints made to it by consumers against **licensees**. The Act provides for the independent investigation and adjudication of such complaints and sets out, for the first time, a statutory framework for the resolution of certain disputes between consumers and **licensees**.

Complaints against unlicensed operators cannot be investigated by the Authority. However, a complaint for operating while unlicensed will be pursued by the Authority.

The Promotion of Consumer Awareness

The Authority is responsible for promoting consumer awareness by providing consumers with information about the services provided by **licensees**.

Part I of this Guide outlines in detail the functions of the Property Services Regulatory Authority. **Part II** gives a brief outline of the steps involved in the purchase and sale of residential property and **Part III** outlines the services provided by service providers such as Auctioneers, Estate Agents, Letting Agents and Management Agents together with their obligations to their clients.

Part I

The Role and Functions Of The Property Services Regulatory Authority

- **Overview of the Authority’s Functions and Responsibilities**
- **The Licensing Function**
- **The Investigation and Complaints Adjudication Function**
- **Consumer Protection and Public Awareness**

The Role and Function of the Authority

Overview of the Authority’s Functions and Responsibilities

The Act, which provides for the establishment of the **Authority** on a statutory basis, repeals all previous legislation governing the licensing of Auctioneers/Estate Agents, namely, the Auctioneers and House Agents Acts 1947 to 1973. The Act introduced a new regulatory regime and an extended licensing system covering all Property Services Providers (**PSPs**) in Ireland.

A **Property Service** is defined in the Act as the provision in Ireland of any of the following services:

- (a) auction of property other than land and/or buildings;
- (b) purchase or sale, by whatever means, of land and/or buildings;
- (c) letting of land and/or buildings;
- (d) provision of services related to the management of an apartment development, housing estate or other estate containing housing which is carried out on behalf of a management body. This includes administrative services and the procurement of the maintenance, servicing, repair, improvement, or insurance of the development.

A Property Services Provider (**PSP**) is any individual, body corporate (a company registered with the CRO or co-operative society registered with the Registrar of Friendly Societies) or any unincorporated body of persons (partnership) who provides a **Property Service** in Ireland, whether or not the property concerned is located in Ireland. **PSPs** include Auctioneers, Estate Agents, Letting Agents and Management Agents.

One of the main functions of the Authority is the licensing of all **PSPs**, to carry out any of the aforementioned property services. The licensing requirement will apply to individuals providing property services either in the course of employment or as independent contractors and to companies or partnerships who employ persons to provide property services. Subject to some limited exemptions, every person who provides property services in the State is required to be licensed. In the remainder of this document a **licensee** is a person (or business) who is licensed by the Authority.

In addition to its licensing function the Act provides for the Authority to establish and administer a system of investigation of complaints relating to the provision of property services by **licensees**. This complaints system provides for a range of sanctions which may be imposed on **licensees** who engage in “improper conduct”.

“Improper Conduct” means the commission by a **licensee** of

- An act which renders him no longer a fit and proper person to provide a property service;
- A contravention of specific provisions of the Act; or
- A contravention of the provisions of regulations made under the Act.

The main functions of the Authority are:

- To operate a comprehensive licensing system covering providers of property services (i.e. Auctioneers, Estate Agents, Letting Agents and Management Agents);
- To establish and administer a system of investigation and adjudication of complaints relating to the provision of property services by licensees;
- To bring prosecutions against persons providing property services without a licence;
- To set and enforce qualification standards (e.g. education and training standards) and other requirements (e.g. the nature and minimum levels of professional indemnity insurance);
- To set and enforce standards to be observed in the provision of property services by licensees;
- To establish, maintain and administer the Property Services Compensation Fund from which compensation may be paid to parties who lose money as a direct consequence of the dishonesty or fraudulent activity of a **licensee**;
- To develop and promote the development of codes of practice;
- To establish and maintain a Register of **licensees**;
- To establish and maintain a register of the sale prices for residential property;
- To establish and maintain a register of commercial leases;
- To promote public awareness and disseminate information in respect of property services.

The Licensing Function

Application for a Licence

Under the Act any person wishing to provide a property service must be licensed by the Authority. The Authority must be satisfied that the applicant meets the minimum criteria to be licensed before a licence is issued. A licence can be issued for one, or more, property services and the licensee must be licensed to provide the service being provided.

That assessment requires applicants to submit the following to the Authority:

- evidence which demonstrates that the minimum requirements of experience and/or academic achievement are met;
- a report by a suitably qualified accountant that proper financial systems and control systems are in place for the protection of clients’ money;
- evidence of the availability to the applicant of the required level of professional indemnity insurance;
- tax clearance details;
- where the applicant is a company, a Certificate of Incorporation under the Companies Acts;
- where the applicant is using a trade name, a certificate of registration under the Registration of Business Names Act 1963;
- the licence application fee;
- the contribution to the Property Services Compensation Fund.

More details are available in the “Guide to Becoming a Licensed Property Services Provider” which is available on the Authority’s website – www.psr.ie.

Each business is issued with an A4 sized green coloured licence which must be displayed in their business premises. The licence will show the licensee's name and address, the services for which they are licensed and the expiry date of the licence. Each individual licensee is issued with a credit card sized licence which has their name, photograph, the name of the business they are working for, the services for which they are licensed and the expiry date of the licence.

Consumers are encouraged to request to see the licence (or to check the Register of Licensees on www.psr.ie which has details of all current and former **licensees**) as certain consumer protection will only accrue to clients/customers of licensees:

- **Licensees** are required to have professional indemnity insurance;
- Annual reporting to the Authority by an independent accountant on the safekeeping of client money by the **licensee**;
- Compensation Fund to make good on financial losses caused by the dishonesty or fraudulent activity of a **licensee**; and
- Access to the Authority's complaints/investigation system into allegations of improper conduct by a **licensee**.

NO LICENCE = NO PRSA CONSUMER PROTECTION

The Investigation and Complaints Adjudication Function

Investigations

The Authority conducts three different types of investigation

- On foot of a complaint;
- On the Authority's own initiative; or
- Unlicensed property service provision.

The Act provides that the Authority investigates complaints made against **licensees**. Any person may make a complaint, in writing, to the Authority against a **licensee** in relation to the provision of a property service or the conduct of the **licensees** in the course of providing that service. The Authority is required to investigate all complaints, which allege improper conduct on the part of **licensees**, unless it is satisfied that:

- It is not made in good faith;
- Is frivolous or vexatious or without substance or foundation; or
- Is likely to be resolved by mediation or other informal means between the parties.

The Authority may, of its own initiative, carry out investigations as it thinks fit to identify any improper conduct and to be satisfied that **licensees** are complying with the Act.

The Authority enforces the requirement that a person must be licensed in order to provide a property service and brings prosecutions to the District Court where it believes that a person is providing a property service without a licence. The District Court may impose a fine of up to €5,000 and/or a prison sentence of up to 12 months where an unlicensed operator is found guilty of providing a property service without the necessary licence. Where the prosecution is brought to the Circuit Court then the penalty can be a fine (no limit) and/or up to 5 years in prison.

For the purposes of an investigation (for any investigation) the Authority must appoint an Inspector to carry out the investigation and to submit an investigation report to the Authority. The Inspector is given extensive powers under the Act and, for the purpose of an investigation, may:

- Require any person who, in his opinion, is in possession of, controls or can procure, information, records, books of accounts or other documents, relevant to the investigation to supply it to him within a specified period;
- Enter, inspect, examine and search any place at which any activity in connection with the provision of a property service is being carried on (an exception is that an Inspector will not enter a private dwelling unless he has the consent of the occupier or has obtained a warrant from a Judge of the District Court);
- Make such examination and inquiry as may be necessary;
- Require the production (and where necessary obtain copies) of any records, books or accounts or any other documents or information necessary to the investigation;
- Require any person to afford him such facilities and assistance as are reasonably necessary to enable him to exercise his statutory powers;
- Require a **licensee**, or any employee or agent of the **licensee**, to authorise him to inspect any account opened by the **licensee** in any bank, and to obtain from that bank copies of any documents relating to the account;
- Require any person by or on whose behalf data equipment is or has been used in connection with the Property Services activity to afford him all reasonable assistance in respect of its use;
- Be accompanied by a member of the Garda Síochána if he has reasonable cause to fear any serious obstruction in the performance of any of his functions.

Whistleblowers

The Act includes what is generally referred to as “a whistleblower” provision for the protection of employees. The Act specifically prohibits a **licensee** from penalising any employee who informs the Authority that he is of the opinion that the **licensee** has or is engaged in improper conduct. Where a **licensee** penalises an employee in contravention of the Act he will be liable for a fine of up to €50,000 and/or 3 years imprisonment.

Complaints Adjudication

On completion of the investigation (on foot of a complaint or on the Authority’s own initiative) the Inspector submits his investigation report to the Authority for adjudication. The Authority, if satisfied on reasonable grounds, following consideration of the Inspector’s report, that the **licensee** has engaged in “improper conduct” may impose a “minor” or “major” sanction.

Under the Act a “minor sanction” is defined as the issue of advice; caution; warning or reprimand (or any combination of these) to the **licensee**,

A “major sanction” means:

- a) revocation of the **licensee’s** licence;
- b) suspension for a specified period of the **licensee’s** licence;
- c) a direction to the **licensee** to pay up €50,000, into the Property Services Compensation Fund;
- d) a direction to the **licensee** to pay up to €50,000 towards the cost of the investigation;
- e) a direction to the **licensee** to pay up to €250,000 to the Authority by way of a financial penalty; or
- f) any combination of any of the sanctions at (a) to (e).

A **licensee** aggrieved by the decision of the Authority to impose a “major sanction” may appeal the decision to the High Court. The Court may confirm the Authority’s decision, replace the decision with another decision imposing a different major sanction or a minor

sanction or imposing no sanction. Where the Authority's decision is not appealed the Authority must apply to the High Court to have its decision confirmed.

Any person aggrieved by the decision of the Authority to:

- Refuse to carry out an investigation of a complaint;
- Dismiss a complaint; or
- Impose a "minor sanction"

may appeal to the Property Services Appeal Board. The Appeal Board is also established under the Act and is independent of the Authority in the performance of its functions. A decision by the Appeal Board may be appealed to the High Court on any question of law.

Sanctions for Failure to Co-operate with Investigation

A person who:

- Withholds, destroys, conceals or refuses to furnish any information or anything else required by the Inspector for the purposes of an investigation; or
- Fails or refuses to comply with any requirement of the inspector; or
- Otherwise obstructs or hinders an Inspector in the performance of his duties is guilty of an offence and liable to a fine up to €50,000 and/or imprisonment for up to 5 years.

The Act provides that complaints may be resolved by mediation or other informal means between the parties. In this regard it should be noted that the professional bodies which represent **licensees** also have complaints and redress systems through which a person may wish to pursue a complaint against a **licensee**. Membership of a professional body is not mandatory and not all licensees are members of those bodies.

For further information on **PROFESSIONAL BODIES** see

Institute of Professional Auctioneers and Valuers - www.ipav.ie
Society of Chartered Surveyors Ireland - www.scsi.ie

Consumer Protection and Public Awareness

The Authority promotes:

- Quality service among **licensees** (through its licensing function);
- Consumer interests; and
- Increased transparency.

The Act requires the Authority to establish minimum qualifications which applicants applying for licences must satisfy before being granted a licence.

A cornerstone of consumer protection is when the consumer in engaging a licensee, is fully aware of what service is being provided, the cost of that service and any obligations which the consumer is responsible for. These issues are addressed by **licensees** being required to provide to the consumer a detailed written "Property Services Agreement" which includes:

- (a) the name, registration number, business address and other business contact details of the licensee;
- (b) any business name of the licensee;
- (c) details of the property services to be provided by the licensee;
- (d) particulars of the subject matter of the agreement (including the folio number of the land, if appropriate);

- (e) the amount or the rate, as the case may be, of any commission or other fee payable by the client under the agreement and the circumstances under which the commission or fee, as the case may be, becomes payable;
- (f) particulars of the rate of value added tax payable;
- (g) the period during which the rights or obligations of the client or licensee are to have effect under the agreement;
- (h) the length of notice to be given in the event of the termination of the agreement by the client or licensee, and the consequences;
- (i) a statement of the obligation (if any) on the licensee, pursuant to sections 42 and 43 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, to report, to the Garda Síochána and the Revenue Commissioners, suspicious transactions and transactions involving places designated under section 32 of that Act;
- (j) affirmation that no conflict of interest exists which would prevent the licensee providing the property service;
- (k) details of the professional indemnity insurance of the licensee;
- (l) details of the records to be kept by the licensee in respect of the provision of the property service;
- (m) the name and address of the bank in which the licensee's client accounts are kept;
- (n) details on the deposit of moneys paid to the licensee by the client and the application of any interest earned thereon; and
- (o) complaints and redress procedures put in place by the licensee.

Where a Property Services Agreement is for the sale of land and/or buildings ("land") then it will also include—

- (a) the advised market value of the land;
- (b) a description of the agency model (sole agency, joint agency or multiple agency);
- (c) in the case of a fee or commission expressed as a percentage of the advised market value of the land—
 - (i) if the "advised market value" is a price, the estimated total amount payable,
 - (ii) if the "advised market value" is a price range, the estimated range within which the total amount payable would fall;
- (d) the terms on or subject to which the client agrees to advertising the land and the amount of advertising outlay;
- (e) the obligations (if any) which will apply to the client should he or she dispose of any part of the land otherwise than through the licensee concerned; and
- (f) if applicable, a statement of intent by the licensee to offer to provide financial services to purchasers (including any case where there is any intent to offer to provide financial services to purchasers through a subsidiary or associated body of the licensee).

Where a Property Services Agreement is to let land and/or buildings ("land") then it will also include—

- (a) the proposed duration of the letting and the advised letting value of the land;
- (b) a description of the agency model (sole agency, joint agency or multiple agency);
- (c) in the case of a fee or commission expressed as a percentage of the advised letting value of the land—
 - (i) if the "advised letting value" is a price, the estimated total amount payable,
 - (ii) if "advised letting value" is a price range, the estimated range within which the total amount payable would fall;
- (d) the terms on or subject to which the client agrees to advertising the land and the amount of advertising outlay;
- (e) the obligations (if any) which will apply to the client should he or she let any part of the land otherwise than through the licensee concerned; and
- (f) a schedule of contents and fixtures and fittings to be included in the letting, if applicable.

Where a Property Services Agreement is to provide property management services then it will also include—

- (a) a timetable for delivery of the services;
- (b) the notice required to be given by the client to the licensee for the delivery of individual services by the licensee;
- (c) particulars of any out-of-office hours services for emergencies; and
- (d) the reporting obligations of the licensee to the client.

Sole Agency: One **licensee** is appointed to sell/let the property and that **licensee** may be entitled to a fee from the client even where he is replaced by another **licensee** who concludes the sale/letting.

Joint Agency: Two (or more) **licensees** are appointed to sell/let the property and those **licensees** may be entitled to a fee from the client even where they are replaced by another **licensee** who concludes the sale/letting. The Joint Agents will, generally agree between themselves as to how the fee will be divided between them and the client would not be involved in that agreement.

Multiple Agency: A client may appoint as many **licensees** as the client wishes to sell/let a property (unless the client has already entered into a Sole or Joint Agency agreement). The **licensee** who first introduces the buyer/tenant will be entitled to the fee and the other **licensees** will not be entitled to a fee.

Be aware, in all of the above agency types, there can be other costs (such as advertising) which may be payable to licensees where the **licensee** does not introduce the buyer/tenant. The property services agreement makes these costs transparent and the client should take time to understand the agreement before entering into it.

Property Services Compensation Fund

The Property Services Compensation Fund has been established by way of compulsory contributions by **licensees**. The Fund is to be used to make good on financial losses caused by the dishonesty or fraudulent activity of **licensees** while providing a property service.

Bidding on Property

The Act requires that, where land/buildings are offered for sale by auction, the seller is prohibited from bidding, or employing a person to bid, on the property. There are exceptions where the property is being sold under a Court order under the Family Law Act 1995 or the Family Law (Divorce) Act 1996.

Records of all offers to buy land/buildings (outside of auction) must be kept by **licensees**. These records may be inspected by the Authority.

Register of Licensees

In the interests of promoting transparency, the Authority maintains a Register of **licensees** which includes the name and business address as well as any individual who is licensed to provide property services on behalf of the business. The Register is available on the Authority's website (www.psr.ie) and also includes details of those previously licensed by the Authority.

Each licensed business is given a distinctive registration number, which they must include in all advertisements, sales brochures and stationery, in their offices and on signs erected outside

properties. This makes it easier for the consumer to check the Register of Licensees to establish if the person is licensed or not. Remember, “**No licence = No PSRA Consumer Protection**”.

Residential Property Price Register

The Authority produces the Residential Property Price Register which gives information on the price of residential property sold since 1 January 2010. This Register can help buyers to get an indication of what properties may be worth. The Register is a more useful indicator of the value of a property when the property in question is similar to one on the Register in terms of important factors such as location, age, size and condition.

Commercial Leases Database

The Authority produces the Commercial Leases Database which gives information on the commercial leases entered into since 1 January 2010 with extra information in relation to commercial lease entered into since 3 April 2012. This Register can help businesses attain an indication of true rent levels.

This consumer guide is aimed at promoting consumer awareness and sets out in Parts II and III of this Guide the process involved in undertaking property transactions together with the nature and levels of services which are provided by **licensees**.

Part II

Steps in Purchasing Property

- Introduction
- Finance
- Making an Offer and Paying a Booking Deposit
- Arranging Survey of the Property
- Credit Rating
- Legal Work
- Registration of Title



Steps in Purchasing Property

Introduction

Before dealing with the roles and responsibilities of **licensees** and their relationships with their clients and customers we would first like to give consumers an overview of the process involved in the purchase or sale of a property and also to direct attention to other sources of useful information which may be of assistance to them in this regard.

The purchase or sale of property involves a number of steps and on some of these professional advice and assistance will be necessary. When buying or selling property it will always be necessary to deal with legal issues and, in practice then, it will always be necessary to engage a solicitor.

For further information on **ENGAGING A SOLICITOR** see

The Law Society of Ireland - www.lawsociety.ie

Finance

A buyer should establish his budget which may involve the arrangement of a mortgage. A mortgage is a special type of long-term loan that is secured against a property. Generally, the loan is secured against the property being bought so it is important for the buyer to understand that unless he is able to repay the mortgage he could end up losing his home to the financial institution who lent the money to him.

The institution lending the money may have its own valuation of the property carried out by a valuer and the buyer may have to pay for this valuation. The fee may be payable in advance, usually when the buyer sends a completed mortgage application form to the lender.

It should be noted that lending agencies may make it a condition of granting a loan that the buyer take out a mortgage protection insurance policy and fire and other risks insurance on the property. The lender may also request that specific surveys be undertaken (e.g. plumbing, electrical, etc.) during the course of the loan application.

For further information on **MORTGAGES** see
The Central Bank of Ireland - www.centralbank.ie

Credit Rating

An important matter to have regard to when looking for a loan is ones **credit history**. Lenders will usually want to look at an applicant's credit history so that they can see a pattern of borrowing and repayment in the past. When a person signs a mortgage or loan application he automatically gives the lender permission to send information about his repayments to a Credit Reference Agency (CRA) and to seek information about his credit history from a CRA.

In Ireland the CRA used most by lenders is the Irish Credit Bureau which holds an electronic database containing information on the performance of "credit agreements" between lenders (e.g. banks, building societies) and borrowers. A credit agreement can include a mortgage, car loan, personal loan, a leasing or hire purchase agreement or a credit card. Other data relating to individual loan accounts and judgments on mortgages is also kept by Experian Ireland.

Every person has a right to obtain from either the Irish Credit Bureau or Experian Ireland a full copy of any data which is held relating to their credit history.

For further information on **CREDIT HISTORY** see
Irish Credit Bureau - www.icb.ie
Experian Ireland - www.experian.ie

Making an Offer and Paying a Booking Deposit

Where a property is being sold by private treaty (i.e. not at an auction) through a **licensee**, offers from prospective buyers will be put to the seller. If the seller does not accept the first offer put to him the buyer can decide to make an increased offer. The seller may, in order to

be satisfied that the buyer has the resources to complete the purchase, request “proof of funds” (which may include an agreement in principal from a lender that a mortgage would be available). Where a buyer makes an offer which is acceptable to the seller it is normally made “subject to contract”. It may also be appropriate, in certain circumstances, to make the offer “subject to loan” or “subject to survey”. This means that the buyer will not be committed to the purchase before finding out more about the state of the property.

Once a buyer has made an offer, which is acceptable to the seller, the buyer will generally be required to pay a booking deposit as an indication of his serious intention to purchase the property. However, payment of a booking deposit, which is made “subject to contract”, does not create any contractual obligations - this only happens when a booking deposit is paid at an auction and contracts are exchanged and signed - (see Part III - Paying Booking Deposits - Gazumping/Gazundering). The buyer should at that stage request that a copy of the “Contract of Sale” be sent by the seller’s solicitor to his solicitor and both he and his solicitor should examine it very carefully.

Now that the booking deposit has been paid the buyer should attend quickly to the other matters which are essential before the “Contract of Sale” can be signed. In particular, the buyer should have arrangements in place for the following:

- Structural Survey
- Finance
- Legal Work

From the buyer’s point of view, the sooner he signs the contract, the less opportunity there is for the seller to accept an offer from another person. However, the buyer should be aware that the contract is a binding legal document, which may have long term implications, so the buyer should take advice and give it very careful consideration before signing. The buyer should ensure that he allows adequate time to consult a surveyor and a solicitor so that he can make an informed decision.

If a buyer wishes to secure his chosen property it is important that he moves quickly on the arrangements for the structural inspection and any loan and legal requirements.

While it is important to move quickly it is also important to move cautiously.

Arranging a Survey of the Property

If purchasing a new property, it will be necessary for the buyer to deal with the builder on property details, extras, and arranging for a qualified Architect, Civil Engineer or Building Surveyor to do periodic inspections and prepare a “snag list”. If purchasing a second-hand property, it is advisable for the buyer to have a condition survey carried out by a qualified Architect, Civil Engineer or Building Surveyor. Either way it is vitally important that this work be carried out before signing any contracts.

It is normal for the financial institution lending the money to the purchaser to have its own valuation of the property carried out before advancing a loan. However, this valuation is concerned with the market value of the property and not with its structure. It is important therefore that the buyer consider whether or not to have an independent survey carried out in addition to the valuation. Such a survey could identify any existing or potential problems.

A condition survey reports on the general condition of the property, indicating visible quality defects and necessary repairs and may include:

- Foundations (to the extent possible without opening up);
- The condition of all structural timber, (i.e. floor joists, rafters);
- All load bearing walls and members;
- The outer skin of the building (which may be brick, stone, timber);
- Plumbing and electrical wiring;
- Kitchen and bathrooms.

Before engaging an Architect, Civil Engineer or Building Surveyor, the buyer should confirm exactly what the inspection entails and what further inspections, if any, may be required. The person should have the proper qualifications to enable him to identify any areas of concern.

For further information on **SURVEYS** see

The Royal Institute of Architects of Ireland - www.riai.ie
Engineers Ireland - www.engineersireland.ie
The Society of Chartered Surveyors Ireland - www.scsi.ie

Legal Work

It is important when engaging a solicitor to ensure that he is registered with the Law Society of Ireland. The solicitor will undertake all of the conveyancing work for the buyer including:

- Pre-contract matters – title enquiries and planning searches
- Exchange of contracts
- Drafting closing documentation
- Title searches
- Closing

The Contract of Sale

The “Contract of Sale” specifies exactly what is being sold and the terms and conditions of the sale. This contract, once signed by both parties, binds the parties to the completion of the transaction. The completion date will be set out in the contract and the balance of the agreed purchase price will be due on that date. Where a property is being sold at auction the “Contract of Sale”, which is normally drawn up by the seller’s solicitor, must be prepared and available for inspection before offering the property for sale. Where a property is being sold by private treaty the seller is under no obligation to draw up a draft contract beforehand but neither he nor the buyer is bound to sell/buy the property until a contract is signed. That is why a booking deposit paid beforehand does not oblige either party to buy or sell (see Part III - Paying Booking Deposits - “Gazumping”/“Gazundering”).

Enquiries to be made by the Solicitor

Before the contract is signed, the buyer’s solicitor will make certain enquiries which include planning searches and enquiries from the sellers in relation to the ownership of the property.

Exchange of Contracts

The final contract will be signed when the buyer’s solicitor is satisfied with the response to the pre-contract enquiries. Many contracts may be signed before a formal mortgage offer has been received and in such circumstances the contract should contain a special condition making it “subject to formal loan or mortgage approval” being obtained by the buyer within a specified period.

When all the reports are in order and the loan is formally approved, solicitors for both the buyer and the seller will organise the exchange of contracts. The contract is prepared in duplicate by the seller's solicitor and forwarded to the buyer's solicitor for approval and signature by the buyer. Both signed copies are forwarded to the seller's solicitor to be signed by the seller. One copy of the contract (signed by both seller and buyer) is sent to the buyer's solicitor and the other copy is retained by the seller's solicitor.

Once the contracts have been exchanged most enquiries are raised by way of "Requisitions on Title" which is a set of questions which the buyer's solicitor puts to the seller, or his solicitor, seeking additional information about the title of the property. The raising of questions on title and awaiting responses can be both complex and time consuming and is often the main reason for delay between the time of signing the contract and completion. However, "Requisitions on Title" are very important, as they occasionally highlight problem areas that need to be addressed before completing the purchase of the property.

Completion of Purchase

Completion of the purchase usually takes place about four weeks after exchange of contracts, although this can vary. Once the Deed of Conveyance is approved by the seller's solicitor, the buyer's lending institution will be contacted by the buyer's solicitor to issue the approved loan cheque, the remaining balance of the purchase price is paid to the seller's solicitor and all documentation, and keys to the premises are handed over to the buyer's solicitor. On the day agreed for completion:-

- the mortgage lender releases the money
- the deeds to the property are handed over to the buyer's solicitor
- the seller must hand over the keys and leave the property by an agreed time.

On the date of closing the sale the buyer's solicitor will make arrangements for searches to be made against the seller to ensure that there are no judgements registered against him (e.g. bankruptcy or sheriffs' searches). The buyer's solicitor will also obtain an up-to-date copy of the Land Registry folio (if the property is registered in the Land Registry) or conduct a search of the records in the Registry of Deeds to ensure that there is nothing adverse attaching to the property.

After Completion of Purchase

Once the sale is completed there are two important jobs to be done (usually by the buyer's solicitor)

- Pay stamp duty to the Revenue Commissioners
- Register the transfer of ownership with the Property Registration Authority

Stamp Duty is a tax payable on the sale of property and the amount of duty payable is determined by the value of the property and if the property is commercial or residential (and other factors, such as being bought under a social housing scheme, which apply to a small number of transactions). More details on Stamp Duty are available from www.revenue.ie.

For further information on **STAMP DUTY** see

The Revenue Commissioners - www.revenue.ie

Registration of ownership of property confirms the owner's rights to that property. The ability to demonstrate good title to the property also facilitates the sale of the property and allows the owner to use the asset to gain access to borrowing.

The **Property Registration Authority** is the registering authority in relation to property registration in Ireland. The Authority was established, on 4 November, 2006, under the Registration of Deeds and Title Act. The main functions of the Authority are to manage and control the Registry of Deeds (founded in 1707) and the Land Registry (founded in 1891).

The Land Registry and Registry of Deeds systems are mutually exclusive in the sense that in a particular transaction relating to land the title will be either:

- **“registered”** (i.e. the title has been registered in the Land Registry and so the Registry of Deeds system is irrelevant), or
- **“unregistered”** (i.e. the title is not yet registered in the Land Registry and so the Registry of Deeds system may apply).

It is compulsory to register ownership in respect of all transfers of ownership, since 1 June 2011, with the Land Registry - including property where deeds had previously been registered with the Registry of Deeds.

For further information on **REGISTRATION OF PROPERTY** see

The Property Registration Authority www.prai.ie

services” within the meaning of the Act and are not subject to the licensing or complaints/adjudication function of the Authority.

- **Lettings Agents** to:
 - Let any estate or interest in land and/or buildings wherever situated;
- **Management Agents** to:
 - Provide services in respect of the management of an apartment block, housing estate or other estate containing housing, on behalf of a Management Body. This includes the provision of administrative services and the procurement of the maintenance, servicing, repair, improvement or insurance of the development or any part of the development.

Auctioneer

An auction is the process of selling property in public to the highest bidder and all types of personal property such as antiques, fine arts, farm machinery, livestock, buildings, land, etc., are sold in this way. All auctions must, except in very limited and specific instances, be conducted by a licensed Auctioneer who is engaged by the seller to auction the property.

Where property (other than buildings and/or land) are being sold by auction it is possible that there is a buyer’s premium i.e. in addition to the paying for the item the buyer must also make a payment to the auctioneer. Buyers should be aware of all of the costs and charges involved to avoid any unwelcome surprises in paying for the goods after the auction.

Estate Agents

Relationship between Estate Agent, Seller and Buyer

It is open to any person either buying or selling property to engage an Estate Agent to act as their agent in the sale or purchase of the property. The majority of people engage an Estate Agents to sell their property.

Where an Estate Agent is engaged by a seller to sell property there is often considerable confusion as to the relationship between the Estate Agent and the buyer, with the buyer often believing that the Estate Agent is acting on his behalf.

A buyer should be fully aware that an Estate Agent is contracted by the seller to sell the property. The Estate Agent has no contractual relationship with the buyer.

A buyer must, at all times, be conscious that the Auctioneer/Estate Agent is selling the property for the seller and is acting in the seller’s interest only. The Auctioneer/Estate Agent is not acting on behalf of the buyer.

The Act requires that before engaging in the provision of services the Estate Agent must issue a “Property Services Agreement” to the seller which includes the details set out in Part I of this Guide. The Agreement sets out the obligations which the seller and the Estate Agent have agreed.

A buyer should be aware that the seller is usually under no obligation to disclose defects either to the Estate Agent or the buyer.

Ways of Selling/Purchasing buildings and/or land

A licensee, who holds a licence to buy or sell “land” may buy and sell any interest in land and or buildings by Private Treaty, Auction or Tender (or any other means). Private residential property is usually sold by auction, by private treaty or by tender. Interested parties should be aware of the sale method and that the sale method may change.

Auction

An auction is the process of selling property in public to the highest bidder. The process is generally by way a series of increasing bids but there are other auction processes. All auctions must, except in very limited and specific instances, be conducted by a licensee who is engaged by the seller to auction the property.

In advance of the auction, the Auctioneer/Estate Agent conducts inspections of the property. The viewing times are specified, giving everyone an opportunity to inspect the property.

If a bid is accepted, contracts are exchanged on the spot. The successful bidder will be required to pay a booking deposit (usually 10% of the purchase price) immediately on signing the contracts. These monies are usually handed over to the seller’s solicitor or on occasion to the Auctioneer/Estate Agent.

The Sales of Goods Act, 1893 provides that:

“A sale by auction is complete when the Auctioneer announces its completion by the fall of the hammer, or other customary manner. Until such announcement is made any bidder may retract his bid.”

When property is sold by auction a contract comes into being when “the hammer falls”. A written memorandum of the sale signed by the buyer, or someone authorised to sign on his behalf, makes the contract enforceable. The Auctioneer has authority to sign the memorandum on behalf of both the seller and buyer and the Courts have held that such authority is irrevocable.

If the highest bid is not accepted, then the property is withdrawn. The property may subsequently be sold by another method. If the reserve price is not reached, but the seller still wants to sell the property, the highest bidder usually has the first opportunity to negotiate with the seller through the Auctioneer/Estate Agent. This is not a legal right but a custom and, if granted, is for a limited period.

On exchange of contracts the successful bidder is legally bound to buy the property. Consequently, any person wishing to purchase at auction must have their finance formally approved and clearly understand any conditions imposed by the lending body, before attending the auction.

When buying property, such as land or residential/commercial property, at auction there are a number of matters which a prospective buyer should address in advance of the Auction. He should:

- Obtain a copy of the contract and have his solicitor or legal representative check the terms and conditions and make sure he understands exactly what is included in the sale;
- Have a pre-purchase property inspection;
- Consider having a valuation done on the property if he is unsure of an appropriate price for the property.
- Understand if the bids are inclusive of all elements of the price (such as VAT)

Unlike at the auction of other property, an Auctioneer/Estate Agent who is selling land and/or buildings is prohibited from requiring a buyer to pay him a fee (buyer's premium) or otherwise bear his costs.

At Auction

When property is sold by auction a contract comes into being when "the hammer falls". A buyer should be conscious of his finance limit at all times. If he goes above his limit he may find himself with a legal duty to buy but without the means to do so. This could have serious legal and financial consequences.

A buyer should remain calm and bid only FOR the property not AGAINST another bidder.

Private Treaty

All types of property including residential/commercial property, land, etc. may be sold by Auction. However, in so far as residential property is concerned it is the norm for it to be sold by Private Treaty. Private Treaty sales include either:

- Buying directly from the seller; or
- Buying through a licensed Estate Agent.

The former is known as a "private sale" because the seller does not engage an Estate Agent. Instead, the seller negotiates directly with potential buyers. Where the property is being sold through an Estate Agent it is worth repeating that it is important for the buyer to understand that the Estate Agent is acting for the person selling the property and not for the buyer. Remember that the owner or his Estate Agent is trying to 'sell' the property and will therefore emphasise its benefits; he is not obliged to point out faults.

Public Tender

The property is advertised and potential purchasers are invited to submit an offer in writing together with a deposit which is usually 10% of the submitted offer. The tender document must be completed and this involves the potential purchaser entering into a conditional contract, the main condition being that the contract is subject to the seller's acceptance of the offer.

Sale by tender is usually appropriate where it is known that there is going to be very active interest in the property but the value may be difficult to determine. The value may be relative to the potential purchaser and the particular use to which the property may be put. All potential purchasers who wish to submit a tender must "put their best foot forward".

Private Tender

Private tenders are by invitation only. This can be to a group of bidders already involved in a private treaty negotiation or to a selected number of potential purchasers.

It is important to understand that a tender, whether public or private involves the issuing of contracts into which tendering parties insert their purchase price and perhaps some other conditions or information and the tender document is returned with usually a 10% deposit which is contractually binding on the tendering party once the seller accepts the price (and conditions, if any) offered. A tender is not the same as 'best and final offers' as these are not binding or contractual but merely bring private treaty negotiations to a head.

DO NOT become rushed, pushed or persuaded by either the seller or his Estate Agent. A buyer should take time, ask questions and, if he considers it necessary he should not hesitate to ask to look at the property for a second or third time.

“Caveat Emptor” – Buyer Beware

A term, which is often heard in connection with the purchase or sale of property, is “Caveat Emptor”. It is a Latin term meaning, "let the buyer beware." It is a legal maxim stating that the buyer takes the risk regarding the quality or condition of the property purchased, unless protected by warranty (i.e. he has a separate guarantee that the property is free from defects). This puts the burden onto the buyer to be satisfied as to the suitability and condition of the property before purchasing. Consequently, the buyer should make sure to carefully inspect the property, or engage a professional to do it on his behalf, and satisfy himself as to its suitability before entering a contract. The buyer is responsible for finding out the condition of the property and should use a competent professional to undertake the necessary surveys. Any matters affecting the legal title to the property should be undertaken by a solicitor.

The seller is usually under no obligation to disclose defects. However, if asked, he may not deny a known defect. The Buyer should question the seller, or his Estate Agent, about defects before deciding on a property. If the Estate Agent does not have the necessary information the buyer should make sure to ask him to obtain it from the seller.

As the seller is under no obligation to disclose defects in the property, the buyer should, through legal requisitions and surveys, establish what defects, if any, exist before finalising the purchase of the property.

Paying Booking Deposits – “Gazumping”/“Gazundering”

The question of the “gazumping” of buyers by sellers or the “gazundering” of sellers by buyers often gives rise to expressions of public disquiet.

“Gazumping” occurs where there has been an oral pre-contract agreement between a buyer and a seller, including the payment of an initial “booking deposit”, for the sale of property at a particular price and, subsequently, the **seller** either

- Refuses to execute a formal contract of sale to the buyer in question and sells to someone else for a higher price; or
- Refuses to execute a formal contract of sale to the buyer in question unless the buyer agrees to pay a higher price.

“Gazundering” occurs where there has been a pre-contract agreement between a buyer and a seller, including the payment of an initial “booking deposit”, for the sale of property at a particular price and, subsequently, the **buyer** refuses to execute a formal contract of sale and revises his original offer downwards.

“Gazumping” and “Gazundering” are market-driven phenomena. “Gazumping” typically occurs in a “seller’s market” where house prices are rising rapidly. Sellers, knowing that buyers are extremely anxious to secure a house before prices rise further, can put pressure on buyers to increase their offer above the agreed amount. “Gazundering”, on the other hand, happens in a “buyer’s market” where a buyer becomes aware of a general lack of interest in the property and decides that the original offer is too high given the prevailing market

conditions. Where such practices are perceived as commonplace public disquiet often gives rise to calls for “booking deposits” to be equated with an option to purchase the property.

There is a general lack of understanding as to the legal effect of paying “booking deposits” on property, outside of an auction situation. In general, “booking deposits” are made against a specified price and accepted on the basis, expressed in writing by the seller at the time, that the sale of the property is “subject to contract”.

While the law on contracts for the sale of land and/or buildings is complex it is for the most part well established and indeed the Law Reform Commission “Report on Gazumping” gives a very detailed account of the law in this area. Consequently, it is not proposed to go into the detail of the law in this guide but to simply address certain issues which might help place the problems and misconceptions associated with “booking deposits” in context.

A central element of the law is *Section 2* of the Statute of Frauds (Ireland) Act, 1695. *Section 2* governs contracts for the sale of land and/or buildings and provides that, even if there is a concluded oral agreement, it will not be enforceable unless the provisions of the section are satisfied. *Section 2* effectively provides two ways in which an enforceable contract for the sale of land and/or buildings can come into being: either the agreement itself is in writing, or there is an oral agreement of which there is “a written memorandum or note”. This means that an oral contract for the sale of land can be enforced provided the person seeking to enforce it can produce appropriate evidence in the form of “a written memorandum or note”. It is possible therefore that a very informal document, which was not intended to have any legal effect, may constitute evidence of an oral agreement and render it enforceable. As this can have significant implications, legal advisers for the parties concerned will be anxious to avoid “accidentally” creating “a memorandum” which may inadvertently bind their client in circumstance which may not be in their client’s best interests.

There are dangers associated with committing to an enforceable agreement without a formal contract, particularly for the buyer. The buyer runs the risk of finding himself bound to buy a property which has problems that were not apparent at the time of agreeing to the purchase and the payment of a booking deposit. For example, the buyer may not, at the time of agreeing to purchase the property and paying the booking deposit, have secured the necessary finance and it is most unlikely that he will have had the necessary professional surveys carried out to ensure that there are no structural defects before being legally bound.

At the stage where “booking deposits” are taken, no contracts are signed by either party. However, some written record of the agreement usually exists, for example a receipt for the booking deposit, and legal advisers for the parties will endeavour to ensure that such written record does not constitute “a memorandum” which satisfies *Section 2* of the 1695 Act. In order to avoid creating “a memorandum”, a denial that any contract exists is invariably inserted into any written document or note. That is usually done by heading the document “subject to contract,” or “subject to contract/contract denied” or similar meaning words. This means that, even where there is a concluded oral agreement, without “a memorandum” that oral agreement is not enforceable.

While there have been cases where the Courts have held that the use of the words “subject to contract”, or similar meaning words, did not prevent the creation of “a memorandum” and that the agreement was therefore enforceable, such cases have been few and are regarded as exceptional. **The traditional view, and that which is strongly supported by case law, is that a written note such as “subject to contract”, which denies the existence of a contract, cannot constitute a memorandum for the purposes of the Statute of Frauds.** This phrase means that no agreement has been concluded since the parties have agreed that they will not be bound in the absence of a formal contract, and, as a result, any note which is headed with this phrase cannot constitute “a memorandum”.

It is important for the reader to remember that neither “Gazumping” nor “Gazundering” is illegal and such practices arise from the fact that legally binding contracts are not entered into by the parties at the time the price is agreed and a “booking deposit” is paid. During this pre-contract period, the seller may, in a “seller’s market”, try to exploit the buyer by threatening to withdraw from the deal unless an increased price is paid or the buyer may, in a “buyer’s market”, try to exploit the seller by threatening to withdraw from the deal unless the seller lowers the price.

As distinct from buying at Auction it is important to understand that, in a “Private Treaty” sale, the payment of an initial “booking deposit” is no more than an indication of the seller’s and buyer’s good faith in entering into negotiations for the sale/purchase of the property.

Payment of a “booking deposit” in that situation neither obliges nor entitles the buyer to complete the purchase nor does it impose any such obligations on the seller. The seller, in other words, remains free to sell to somebody else as no contract has been signed.

No legal obligations are created on either side solely as a result of a “booking deposit” having been paid. The buyer is of course normally entitled to get back the booking deposit should he wish not to proceed with the sale.

For further information on **GAZUMPING/GAZUNDERING** see

The Law Reform Commission of Ireland - www.lawreform.ie

Letting Agents

Relationship between Letting Agent, Landlord and Tenant

As with the relationship between an Auctioneer/Estate Agent and the seller of a property, to which we have already referred, it is important to understand that a Letting Agent is contracted by the landlord to let property and consequently, as the landlord’s agent, he must act in the landlord’s interests at all times. The Letting Agent may be the person with whom the tenant has most regular contact. However, the tenant should always be conscious of the fact that the letting agreement is between him and the landlord and not between him and the Letting Agent. In this context it is of particular importance to be aware that this relationship is governed by statute, namely, the Landlord and Tenant Acts 1967 to 1994 and the Residential Tenancies Acts 2004 to 2015. This legislation sets out the statutory rights and obligations, relating to rented housing, of both landlords and tenants.

The Residential Tenancies Board (RTB), which was established under the 2004 Act, deals with disputes arising between landlords and tenants of dwellings to which the 2004 Act applies. The following rights and obligations were taken from the “Being a Good landlord” and “Being a Good Tenant” documents produced by the RTB and the full documents are available on their website.

Rights of Landlords

- Set the rent once every two years, according to the current market rent. This does not apply to Approved Housing Bodies.
- Receive the rent from a tenant on the date it is due.
- Pay any charges related to the property e.g. taxes and duties. End the tenancy without reason within the first six months of the lease agreement. However, special care should be taken when dealing with fixed term tenancies as a reason will always have to be given. (please see the note on fixed term tenancies on the website at www.rtb.ie).
- Be informed of who is living in the property.
- Decide whether to allow sub-letting by the tenant (does not apply to Approved Housing Body landlords).
- Be informed of any repairs needed and be granted reasonable access to fix them.
- Refer disputes to the Residential Tenancies Board (RTB) once the tenancy is registered via post or online at www.rtb.ie.

Obligations of Landlords

By law, a landlord cannot refuse to rent property to any prospective tenant because of their gender, marital status, family status, sexual orientation, religion, age, disability, race, receipt of payment under the Social Welfare Acts or membership of the travelling community.

- Register your tenancy. You can register online at www.rtb.ie or alternatively you can contact 0818 30 30 37 to request a paper application form be posted to you.
- Provide your tenant with a rent book and receipts of payment where requested.
- Make sure that your property is in good condition.
- Maintain the property to the standard it was at the start of the tenancy.
- Reimburse the tenants for any repairs carried out on the structure.
- Insure the property.
- Provide your tenant with your contact information, and the contact details of any agent who deals on your behalf.
- Give tenants a written notice of termination of tenancy. There is a sample notice available on the RTB website www.rtb.ie
- Return Deposit to your tenant at the end of the tenancy unless lawfully withheld.
- Give tenants notice of any impending inspections of the property.
- Ensure that refuse storage facilities are available to the tenant(s).

Rights of Tenants

- The rented accommodation must be in good condition. e.g. structurally sound, availability of hot/cold water, adequate heating, appliances in working order, electricity and gas supply in good repair.
- The tenant must have privacy. Landlords can only enter the rented accommodation with your permission unless it is an emergency.
- Tenants must have a rent book, written contract or lease with the landlord.
- Tenants must be informed of increases to their rent. For private rented tenancies, a rent increase can only occur once every two years in accordance

with the current market rent and a 90 day written notice must be given. For approved housing body tenancies rent reviews are determined by each tenancy agreement. If there is no provision in the tenancy agreement for a rent review, then rent can only be reviewed once every 12 months. The legislation does not provide for a notice period but does state that notice to the tenant must be given “as soon as practicable”.

- Tenants must be able to contact their landlords at any reasonable time.
- Tenants must be reimbursed by the landlord for any repairs that are carried out on the accommodation. If the damage is beyond normal wear and tear, then it is the tenant’s responsibility to pay for them.
- Tenants must be given valid notice before the termination of the tenancy agreement.
- Tenants can refer disputes to the Residential Tenancies Board (RTB).

Obligations of Tenants

- Pay your rent in full and on time.
- Maintain the property in good order and inform the landlord when repairs are needed, allowing him/her or others access for this.
- Do not engage in any activities that may harm the property e.g. drying clothes inside the accommodation without proper ventilation, as this may cause damp to spread.
- Allow the landlord to do routine inspections of the property.
- Inform the landlord of who is living in the property.
- Avoid causing damage, nuisance or breaking the law.
- Comply with the terms of the tenancy agreement whether written or verbal.
- Give the landlord proper notice before the termination of the tenancy agreement.
- Keep a record of all repairs, payments and dealings with the landlord.
- Not to do anything that could affect the landlord’s insurance premium on the dwelling

For further information on **LANDLORD AND TENANT DISPUTES** see

Residential Tenancies Board - www.rtb.ie

Management Agents

Overview

Management Agents provide services in respect of the management of Multi-Unit Developments (MUD). However, before examining the role which Management Agents play in this regard it is important to first address certain issues which prospective buyers or owners of properties in such a development need to consider.

Most Multi-Unit Developments share a high degree of interdependence in that they involve the sharing of many common facilities and amenities such as pipes, wires, cables electricity, gas, water, drainage and sewerage. They may also share such common areas as entrance halls, stairs, lifts, corridors, common passageways, footpaths, roads, open spaces and car parking facilities.

A “**Unit**” (e.g. self-contained flat/apartment/house) in a Multi-Unit Development is “self-contained” only in the sense that it is designed to provide all the accommodation and facilities needed for day-to-day living. However, as “**Unit Owners**” share many common areas and services there is interdependence between them which places an obligation on them to:

- Pay for the maintenance of common areas;
- Pay for common services;
- Contribute to a Building Investment/Sinking Fund maintained to pay for capital expenses and larger, long-term, structural repairs (e.g. re-roofing, lift replacement).

Buyers or owners of units in a Multi-Unit Development should be aware of the following:

- When purchasing a property in a Multi-Unit Development the interest acquired in the property by the buyer is generally a “leasehold interest” rather than a “freehold interest”.
- The owner of a unit in a Multi-Unit Development:-
 - Is a member of the **Owners’ Management Company – OMC**) which ultimately assumes responsibility for the management of the Multi-Unit Development, and
 - Assumes certain rights and responsibilities under the terms of the lease and by virtue of being a member of the **OMC**.

Some Multi-Unit Developments appear to be a typical housing estate but they may still have an obligation to maintain common areas – these are sometimes called “gated estates”. Some of the features described above apply, in a modified way, to houses in a Multi-Unit Development and those houses may be “freehold” (owned outright) rather than a “leasehold” (subject to a long lease) but the owner will have entered covenants when buying the house which places obligations on the owner. These obligations are generally less onerous than those of an apartment owner.

Buying in a Multi-Unit Development

Where the property being offered for sale is part of a Multi-Unit Development, managed by an Owner Management Company (**OMC**) or a Management Agent engaged by the company, the buyer should find out:-

- Who the OMC is (as an owner of such property he will become a member of the Management Company).
- The level of annual ‘service charge’ for the maintenance and upkeep of the common areas in the Multi-Unit Development (bear in mind that the service charge may increase following the expiration of any warranties)
- The level of annual contribution to the Building Investment Fund (also referred to as a “sinking fund”) to cover future major maintenance and repairs to the common areas of the Multi-Unit Development.
- The current value of the sinking fund.

OMC and Management Agent

It is important for a buyer or owner of a unit in a Multi-Unit Development to understand the clear distinction which exists between the **OMC** and the **Management Agent**. The **OMC** is a company which is established for the management of a Multi-Unit Development. It is structured so that ultimately it is to be exclusively owned and controlled by all the owners of the units within that development. The **Management Agent**, on the other hand, as the definition in the Act makes clear, is a person or company, which may be engaged by the **OMC** to provide services in respect of the management of a Multi-Unit Development on behalf of the **OMC**. Typically, a **Management Agent** is engaged to arrange the maintenance and service delivery on behalf of the **OMC** and may also be involved in the management of several different estates or developments on behalf of different **OMC**’s.

The Act provides for the licensing of “persons who provide property management services” (i.e. Management Agents). Property management services are defined in the Act as:

services in respect of the management of a Multi-Unit Development carried out on behalf of a management body, including administrative services and the procurement of or any combination of, the maintenance, servicing, repair, improvement or insurance of the development or any part of the development.

Owning a Property in a Multi-Unit Development

While the steps involved in the purchase of a unit in a Multi-Unit Development are much the same as outlined in Part II of this guide there are a number of additional issues which a buyer of such a property must consider very carefully. It is the norm in Ireland when purchasing a house to acquire a “freehold interest” in it (i.e. the owner owns the building and the land on which it stands outright subject only to any mortgages, charges, easements, covenants etc. shown by the deeds). However, when purchasing a property in a Multi-Unit Development the interest acquired in the property is, generally, a “leasehold interest”.

When a Developer builds and markets a Multi-Unit Development, all that is put up for sale are the units themselves: not the common areas such as hallways, staircases, car parks, etc. These units are usually conveyed to the owner by way of long leases for a period of, say, 999 years. The lease will usually provide an entitlement for the buyer to possession of the unit itself during the entire period of the lease and rights over the common areas/services in the development.

Typically, long leases of this sort will include the following provisions but a buyer should note that not all leases include all of these provisions:

- An entitlement for the buyer to possession of the unit itself during the entire period of the lease;
- Rights of way for the buyer to/from the unit over the common areas of the development;
- If granted, rights for the buyer to use one or more identified car-parking space within the development (and no others);
- Rights to connect to, and avail of, the pipes, drains, sewers, cables and other conduits which have been placed in the common areas to service all of the individual units;
- Rights to use the common areas (e.g., lifts, refuse disposal areas) in common with all other unit owners - subject to reasonable rules and regulations for their common enjoyment;
- Rights to benefit from any restrictions which, by virtue of the conveyancing documents, are imposed on each and every one of the unit owners: e.g., covenants by unit owners that they will use their units only for the purpose of single private residences;
- Covenants to keep the units and the common areas in good order;
- Controls on what sorts of pets may be kept within the development;
- Controls on the amount of noise which will be permitted to escape from any unit;
- Covenants not to hang advertising signs or laundry from balconies;
- Covenants not to do any other acts or things that may be or become a nuisance to other unit owners;
- Rights to benefit from insurance policies, which will be put in place in respect of the development as a whole, against hazards such as fire, flooding, explosion, subsidence, etc.;
- Rights to have the common areas (e.g., hallways, staircases) maintained in a good state of repair and decoration and for common facilities (e.g., lifts, intercoms, security gates etc) to be kept in good working order and for common amenities (e.g., gardens, shrubberies etc) to be kept well-tended;

- Rights to enjoy the services of a caretaker, concierge, security guard, CCTV monitoring service etc;
- Rights to benefit from reserve funds or contingency funds (e.g. Building Investment/Sinking Fund) which are intended to be established to meet future expenditures incurred in the maintenance and/or repair of the development;

In instances where the property is “freehold” the owner will have entered into certain covenants (agreements), which place obligations on the owner to the **OMC**, at the time of buying the property instead of entering into a lease with the **OMC**.

The Owners’ Management Company (OMC)

For the rights prescribed in the leases (or covenants) to become a practical reality it is normal, in a Multi-Unit Development, for an **OMC** to be established for the purpose of managing the common areas/services and internal and external structures of the building not belonging to or the responsibility of any single unit owner. There are five key features of such a company:-

- The **OMC** is a corporate body and, therefore, subject to company law.
- Membership of the **OMC** comprises all the unit owners in the development. This means that unit owners have two ownership interests- each owns the lease of his unit and, as a member of the **OMC**, a share in the company’s interests. Membership of the company also confers the right to participate in the company’s operation, including voting rights at meetings;
- The **OMC** owns the common areas of the development and the reversionary interest in unit owners’ leases. In essence the **OMC** owns all the parts of the development which are not included in the individual units and has vested in it the reversionary interest in the lease acquired by each unit owner.
- The **OMC** is the landlord of the development. As owner of the reversionary interest on each unit, the **OMC** will have a landlord’s responsibility to enforce various covenants which may have been entered into by each unit owner, such as complying with various “house rules”.
- The **OMC** is responsible for the management of the development on a permanent basis. As owner of the common areas the **OMC** will usually have extensive responsibilities for their maintenance and repair and the provision of a variety of other services, such as employment of caretakers, cleaners, decorators, gardeners, etc. Consequently, the company is empowered to levy an annual service charge on each unit owner to meet its obligations.

In addition to the usual obligations of a company under Company law an **OMC** has other requirements placed on it under the Multi-Unit Developments Act 2011 (MUD Act). These include:

- No director appointed for longer than 3 years (the director can be re-appointed for successive terms);
- No contract (entered into since 25/1/2011) for the provision of goods or services to the **OMC** can be longer than 3 years;
- Provide an annual report to unit owners setting out particular financial details of the **OMC**;
- Give an estimate of expected costs to be incurred and to propose the annual service charge based on those costs.
- Establish a sinking fund for costly infrequent events such as maintenance of a non-recurring nature, refurbishment or improvement – the MUD Act sets a contribution of €200 per unit unless the **OMC** decides to set a different (higher or lower) level of contribution.
- The unit owners have voting rights in relation to the annual service charge and sinking fund contribution.

Where an obligation under the MUD Act is not being met it is a matter of bringing an action in the Circuit Court.

Generally, the role and responsibilities of an **OMC** evolve over the lifetime of a Multi-Unit Development from the commencement of the development to final sale, by the Developer, of the last unit in the Development. Typically, there are two main phases in its evolution.

The first phase involves the incorporation, by the Developer, of the **OMC** as a company under the Companies Acts at the commencement of work on the Multi-Unit Development. At this stage the only members of the company are generally persons nominated by the Developer (e.g. directors or employees of the development company) and the **OMC** is very much under the control of the Developer. During this phase the Developer arranges for his solicitor to draw up the lease under which each of the units will be sold. This lease lays down the principal rights and obligations of the **OMC** and the unit owners vis-à-vis each other. The **OMC** is relatively inactive during this phase.

The second phase commences as soon as the first unit is sold. As each owner signs the conveyancing documents, which gives them title to their individual units, they also become members of the **OMC**. The membership of the **OMC** is now comprised of the unit owners – including the Developer (as the owner of any unsold units). The unit owners, operating through the **OMC**, have power to make their own decisions in relation to their development. One vote is associated with each unit so as more units are sold the Developer’s voting power diminishes.

During the early part of this period many difficulties can arise, including delays by the Developer in completing the development and resolving “snagging” issues such as absence of safety lighting in car parks, ill-fitting doors and windows, etc. During this phase also, owners may become concerned at the possibility of the service charges and/or sinking fund being used by the Developer to remedy defects instead of being applied as appropriate to the maintenance of the common areas. The MUD Act requires at least 65% of the units to have been sold and approval, in writing, from 75% of the unit owners for the service charge to be used in such a fashion. The MUD Act limits the use of the sinking fund to maintenance of a non-recurring nature, refurbishment or improvement.

For further information on **OWNERS’ MANAGEMENT COMPANIES** in relation to [company law](#) see

“A Property Owners’ Guide to Company Law”
from the

Office of the Director of Corporate Enforcement – www.odce.ie

Relationship between OMC, Owner and Management Agent

As a matter of property law, the **OMC** has an obligation to manage and administer the development and provide a range of services to it. Similarly, as a matter of property law, the unit owners (through their leases or covenants) have each assumed an obligation to pay service charges to the **OMC** to fund the provision of those services, abide by the “house rules” and to contribute to the Building Investment/Sinking Fund.

While there is nothing preventing the **OMC** from engaging in the direct management of the Multi-Unit Development itself on behalf of its members, Management Agents are usually engaged by the company to discharge some or all of the company’s responsibilities and to provide professional advice on the running of the **OMC**. A number of reasons contribute to

this including the fact that, often, the members and directors of the **OMC** may have little or no experience of operating a company or carrying out the sort of tasks which are the **OMC's** responsibility.

Notwithstanding the clear distinction which exists between **OMC's** and **Management Agents** there is considerable public confusion as to their respective roles and responsibilities. The relationship which exists between the **OMC** and the **Management Agent** is set out in a Property Services Agreement. The Agreement exists between the **OMC** and the Agent and not between any individual unit owner and the Agent. That Agreement alone determines what the obligations of the Agent are and, unless it provides otherwise, those obligations are owed to the **OMC** – not to the unit owners. It is important therefore not to confuse **OMC's** and **Management Agents**. Agents are engaged by the **OMC** and may act only under the instructions of the **OMC**.

When purchasing a property in a Multi-Unit Development a buyer should ascertain whether a Management Agent has been engaged to manage the development and the annual charges/contributions which must be paid

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A Buyer should insist on getting a copy of the lease from his solicitor.

It is important for a buyer to realise that once he becomes the Owner of a property in a Multi-Unit Development:

- He will become a member of the OMC;
- He will be required to pay an annual 'service charge' for the maintenance and upkeep of the common areas in the development;
- He may have to pay into a Building Investment/Sinking Fund to cover future major maintenance and repairs to the common areas of the development.

As a member of the OMC an owner should ensure he gets:

- An up-to-date copy of the Memorandum and Articles of Association of the OMC so as to ascertain the objects of the company, and
- His Membership Certificate or Share Certificate, depending on the type of OMC involved.
- An up to date copy of the "house rules" (if any)

Functions and Responsibilities of OMC

The **OMC** has a number of statutory duties under the Companies Acts. Principal among these are:

- To maintain proper books of account;
- To prepare annual accounts;
- To have an annual audit (subject to exceptions);
- To maintain certain registers and other documents;
- To file certain documents with the Registrar of Companies;
- To hold general meetings of the company.

In this regard it is important to note that every member of the company is entitled to a copy of the annual accounts.

It is important that all owners attend the Annual General Meeting of the OMC and that they read and understand the report given to them by the OMC.

In addition to its statutory functions under the Companies Acts the **OMC** has a wide range of responsibilities for the day to day management of the development. While the scope of the management undertaken by **OMCs** differs from arrangement to arrangement, **OMCs** will typically be involved in the following five broad categories of activity:

Administrative and Corporate Services

This entails arranging and holding meetings and recording the proceedings of such meetings, keeping all necessary correspondence and records to enable the company to fulfil its obligations under the Companies Acts. It also includes the administrative arrangements associated with the engagement of service providers.

Legal Services

This includes taking the necessary steps to enforce lease conditions and “house rules”, ensuring compliance with relevant statutory obligations and when units are being sold, providing responses to buyers’ solicitors on requisition on title.

Financial Management

This involves setting the annual budget, collecting service charges, paying for services and monitoring budgets.

Insurance Management

This includes identifying and arranging appropriate insurance for the development including fire and standard perils and public liability insurance.

Building Management

This entails the general maintenance and upkeep of the development such as cleaning, lift maintenance, grass cutting, refuse collection, pest control, etc.

A non-exhaustive list of the range of activities which may be undertaken by an **OMC** is at Appendix I.

It is important to remember that an owner of a unit in a Multi-Unit Development is a member of the OMC.

Where a Management Agent is engaged by the OMC he acts on behalf of the OMC and must, at all times, act only in accordance with the OMC’s instructions and directions (subject to the necessary money being available from the OMC).

It is important that owners fully discharge their responsibilities as members of the OMC and even though an Agent may be engaged this does not relieve any directors or members of the OMC of their duty to fulfil their legal obligations.

Annual Service Charge and Building Investment/Sinking Fund

For unit owners in Multi-Unit Developments the payment of **Annual Service Charges** and contributing to the **Building Investment/Sinking Fund** are a source of much debate. There are many factors which give rise to this not least the belief that having in effect “bought” their units they find it difficult to comprehend why they should be paying “additional annual charges”.

As with houses in conventional housing estates, a unit in a Multi-Unit Development needs constant investment, attention and maintenance if it is not to deteriorate. However, in a Multi-Unit Development, in addition to maintaining the unit itself, the unit owner must also contribute to the upkeep of the building in which the unit is located and all the interior and exterior common areas. This is a fundamental element which distinguishes Multi-Unit Developments from conventional housing developments. Some conventional housing estates are Multi-Unit Developments in that they share common roads, footpaths and open spaces which are the responsibility of an **OMC** rather than the responsibility of a Local Authority. While some of the costs associated with apartment block maintenance do not arise there are costs which do arise and must be paid for by the **OMC**.

Service charges are an essential feature of Multi-Unit Developments. They provide the funding for the management of the common areas and structures which includes all conduits to services, interior and exterior structures of the building, interior and exterior common areas as well as services provided on a communal basis. In essence they are annual charges levied on the unit owners to meet the various expenses incurred by the **OMC** in carrying out its various functions. These range from the cost of insurance, energy, maintenance and repair of the building to the expense of engaging *Management Agents*, caretakers, gardeners, professional advisers, etc. The MUD Act provides that service charges in respect of any unsold units must be paid by the Developer.

In a new Multi-Unit Development, it is likely that the Developer, being the owner of many of the units, will have a big influence in setting the level of annual service charge. In such circumstances the buyer should obtain from the Developer a detailed explanation of what the annual service charge is, what it covers and what the service charges are likely to be on completion of the development. A buyer may find that in the initial years the annual service charge may be set at a low level and be subject to significant increases after a number of years. This may be due to a number of factors including the fact that in the initial years of a new development the level of maintenance may be low, warranties may be in place to pay for faults or it may be due to a desire on the part of the Developer to set a low level of annual service charge in the initial years as an inducement to prospective buyers. However, it is a matter for the **OMC** to set the level of annual service charge.

When buying a second-hand unit, the buyer should obtain from the seller full details of the annual service charge and what it covers. Generally, apart from the first year, charges are levied on the basis of what is calculated to be the likely costs and expenses in the coming year, together with an adjustment to cover any surplus or shortfall from the previous year. Whether buying a new or second-hand unit it is important for the buyer to determine, at the outset, precisely what his short, medium and long term annual service charge and sinking fund contribution commitments are likely to be.

It is imperative that unit owners, as members of the **OMC**, ensure that, from the outset, an appropriate level of service charge is established. They should also ensure that the service charge bears a close relation to realistic anticipated costs and expenses likely to be incurred by the **OMC**. In addition, the **OMC** should make it transparently clear how the charges are calculated and the anticipated costs and expenses which they are intended to cover.

A buyer should, before purchase, establish the current level of service charges and what they are likely to be on completion of the development.

Unit owners should be very conscious of the very serious implications of individuals failing to pay service charges.

If the charges are not paid, the OMC will not be able to carry out essential tasks, such as the provision of communal services, insuring the building and attending to its maintenance and repair.

This can only harm the unit owners themselves and, if the situation spirals out of control, the value of the development as a whole, and of individual units, could be very significantly diminished. In very serious cases it could lead to a situation where units in a development become difficult or impossible to sell.

In addition to the payment of the annual service charge, owners will also be required to make a contribution to the **Building Investment/Sinking Fund**. All structures have a natural life span and it is inevitable that parts of the building in which the unit is located will wear out or cease to function. It is important therefore that all of the owners of units in a Multi-Unit Development anticipate having to replace certain external parts of the building such as roofs and windows and internal systems such as lifts, heating systems, etc. While the common areas of the development are vested in the **OMC** each unit owner, as a member of that company, co-owns the common areas and building structure and is therefore obliged to contribute to the capital cost of such long-term refurbishment, replacement and structural repairs. The cost of such work will be substantial and will impose a very heavy financial burden on each unit owner if contingency plans have not been put in place at an early stage for the financing of such work.

Long term investment in the development is unavoidable if the value of the property is to be maintained. To postpone such major works or fail to carry them out will ultimately lead to the development falling into such disrepair that owners may find it difficult to sell their units. It is therefore in the owners' own interests to ensure that appropriate financial planning is carried out to meet the cost of major refurbishment and replacement work.

Unit owners must understand that the value of their unit, and the development as a whole, will be substantially affected by the value of a Building Investment/Sinking Fund. Consequently, not only have existing owners an interest in the existence of such a fund but so too do prospective buyers as the sale price of the unit will reflect the value of the fund. For this reason, annual contributions are never refundable when an owner sells a unit.

The MUD Act makes it a statutory requirement for **OMC's** to set up a Building Investment/Sinking Fund.

It provides that:-

- The **OMC** must establish and maintain a Building Investment/Sinking Fund for maintenance of a non-recurring nature, refurbishment or improvement.
- The fund must be set up within three years of the sale of the first unit;
- An annual contribution of €200 per unit but this can be amended (up or down) by the unit owners voting a different contribution.
- Sinking fund contributions in respect of any unsold units must be paid by the Developer.

Owners should ensure that:

- A Building Investment/Sinking Fund is established by the OMC from an early date to meet the capital cost of long-term refurbishment, replacement and structural repairs, and
- Each unit owner contributes to the fund on an ongoing basis.

For further information on **OWNERS' MANAGEMENT COMPANIES** in
relation to the Multi-Unit Development Act see

Competition and Consumer Protection Commission –
www.consumerhelp.ie/MUD

Appendix I

Owners' Management Company Responsibilities for Managing the Development

- **Administration and Corporate Services**
 - Preparation of notices for AGM, EGM, Committee and Board meetings;
 - Preparation of supporting material used at meetings such as agenda, accounts, reports on the management of the development or proposed budget;
 - Distribution of notices and other supporting materials;
 - Preparation of minutes of meetings;
 - Distribution of minutes;
 - Maintenance of equipment inventory;
 - Conducting tender exercises;
 - Maintenance of records of work carried out, tender exercises and other records related to service provision;
 - Secure document storage;
 - Provision of newsletter/circular/notices;
 - Dissemination of the Management Agent's contact details and the appropriate means of communication with the Management Agent, and
 - Ongoing communication with lessees and residents;

- **Legal Services**
 - Safe keeping of Estate Title Documentation and other vital records;
 - Safe keeping of any warranties or guarantees;
 - Provision of replies to Requisition on Title;
 - Provision of memorandum and articles of association;
 - Maintenance of OMC Membership;
 - Provision of membership certificates to new lessees;
 - Enforcement of lease conditions;
 - Development of "house rules";
 - Enforcement of "house rules";
 - Compliance with relevant legislation such as
 - Companies Acts,
 - Data Protection Acts 1988 to 2003,
 - Fire Services Act 1981,
 - Occupier Liability Act 1995,
 - Multi-unit Developments Act 2011
 - Safety, Health and Welfare Act 2005,
 - Residential Tenancy Act 2004,
 - Waste Management and Litter Pollution Acts.

- **Financial Management**
 - Establishment of an annual budget for the Multi-Unit Development;
 - Analysis and determination of the level of Building Investment/Sinking Fund provision needed;
 - Calculation of appropriate service charges informed by the annual budget, Building Investment/Sinking Fund requirements and apportionment set out in the leases;
 - Notification to lessees of the annual budget and the service charges set by OMC;
 - Billings of service charges;
 - Collection of service charges, including arrears and interest;

- Instruction of solicitors on recovery of unpaid service charges;
 - Provision of receipts;
 - Maintenance of records on service charge administration;
 - Maintenance of bank accounts;
 - Provision of regular/monthly/quarterly income and expenditure reports for the OMC Directors;
 - Reconciliation of bank statements;
 - Pay invoices;
 - Investment of funds (both current and Building Investment/Sinking Fund);
 - Preparation and dissemination of the OMC accounts and financial statements; and
 - Arrangement of audit of the OMC accounts.
- **Insurance Management**
 - Arrange for the carrying out of Building Surveys and Valuation;
 - Ensure that the insurance broker arranges the following scope of Cover;
 - Fire and Standard Perils,
 - Public Liability,
 - Employers Liability,
 - Lift Engineering,
 - Directors and Officers Liability,
 - Identification of potential insurers;
 - Arrangement of insurance cover; and
 - Claims Management
- **Building Management**
 - Identification and delivery of Planned Maintenance
 - Cleaning
 - Common Areas,
 - Windows/Carpets,
 - Grounds and Landscape Maintenance
 - Refuse Collection
 - Identification and delivery of Mechanical & Electrical Maintenance
 - Lifts,
 - Sewage & Water pumps,
 - Heating Systems,
 - Fire Safety Systems,
 - Access Systems,
 - Intercom Systems,
 - Electrical Systems,
 - Vehicular/Pedestrian Access Gates,
 - Security Systems e.g. CCTV/patrols,
 - Identification and delivery of Reactive Repairs & Renewals
 - Lighting,
 - Signage,
 - Building vandalism (Graffiti/Soils/Stains),
 - Mat Wells/Letterboxes,
 - Locks and Access,
 - Identification and delivery of Refurbishment Programmes
 - Painting & Decoration,
 - Carpet Replacement,
 - Betterment Works,
 - Contractor Management/Supervision
 - After Hours Emergency Service
 - Health & Safety Inspections
 - Janitor Management

Appendix II

Useful Contacts

Competition and Consumer Protection Commission - www.consumerhelp.ie

PO Box 12585
Dublin 1
D01 C576
Lo-call: 1890 432 432
Phone: 01 402 5500

Consumers' Association of Ireland - www.thecai.ie

26 Upper Pembroke Street
Dublin 2
Phone: 01 6373961
Email: cai@thecai.ie

Data Protection Commissioner - www.dataprotection.ie

Canal House, Station Road
Portarlinton
Co. Laois
R32 AP23
Phone: +353 57 8684800; Lo Call: 1890252231
Email: info@dataprotection.ie

Engineers Ireland - www.engineersireland.ie

22 Clyde Road
Ballsbridge
Dublin 4
D04 R3N2
Phone: +353 1 6651300

Financial Services Ombudsman - www.financialombudsman.ie

3rd Floor, Lincoln House
Lincoln Place
Dublin 2
D02 VH29
Phone: +353 1 6620899; Lo Call: 1890 88 20 90
Email: enquiries@financialombudsman.ie

Institute of Professional Auctioneers and Valuers - www.ipav.ie

129 Lower Baggot Street
Dublin 2
D02 HC84
Phone: +353 1 6785685
Email - info@ipav.ie

Irish Credit Bureau - www.icb.ie

ICB House, Newstead
Clonskeagh Road
Dublin 14
D14 PX09
Phone: +353 1 2600388

Law Reform Commission - www.lawreform.ie

35-39 Shelbourne Road
Ballsbridge
Dublin 4
D04 A4EO
Phone: +353 1 6377600
Email: info@lawreform.ie

Law Society of Ireland - www.lawsociety.ie

Blackhall Place
Dublin 7
D07 VY24
Phone: +353 1 672 4800
Email: general@lawsociety.ie

Office of the Director of Corporate Enforcement - www.odce.ie

16 Parnell Square
Dublin 1
D01 W5C2
Phone: +353 1 8585800
Email: info@odce.ie

Property Registration Authority - www.prai.ie

Land Registry Offices - 2 locations in Dublin, 1 in Waterford and 1 in Roscommon- See www.prai.ie.
Registry of Deeds Office
Henrietta Street
Dublin 1
D01 EK82

Residential Tenancies Board - www.rtb.ie

PO Box 4
Clonakilty
Co. Cork
P85 YH98
Phone: +353 818 303037

Revenue Commissioners - www.revenue.ie

The Office of the Revenue Commissioners has many offices and their contact details are on its Website.

Royal Institute of the Architects of Ireland - www.riai.ie

8 Merrion Square
Dublin 2
D02 YO68
Phone: +353 1 6761703
Email: info@riai.ie

Society of Chartered Surveyors Ireland - www.scsi.ie

38 Merrion Square
Dublin 2
D02 EV61
Phone: +353 1 6445500
Email: info@scsi.ie



Údarás Rialála Seirbhísí Maoine
Property Services Regulatory Authority

www.psr.ie