

THE REALLY SIMPLE USEFUL LEGAL INFORMATION BOOKLET

*Based on over 25 years of giving
Practical legal advice*

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This Booklet is for general information purposes only and does not constitute legal advice. If you have a legal query then you should obtain specific legal advice. Given the general nature of the information provided in this booklet no liability is accepted by the authors.

First Time Buyers/Buying a House

The legal process for buying a second hand house/apartment is different to the legal process involved in buying a new build house/apartment (see next topic). It is all about the money and you don't know what you can buy until you know what you have to spend. A good starting point is the conversation with the Bank to find out what amount of money can be borrowed (limits are regulated by the Central Bank). Once the spending figure has been ascertained a budget should be drawn up to include the various costs that will be incurred including stamp duty, legal costs, survey costs, valuation fee and registration fees. For many first time buyers financial assistance from family can be important to help get on the property ladder.

Once the budget has been drawn up the next stage is to find the right home which is often about location, location, location. It is important to bear in mind that the right house might not be immediately available and patience may be required. When you do find the right house the next challenge is to negotiate the price with the estate agent who will have the advantage in terms of experience. Face to face discussions tend to work better than telephone or e-mail.

Once you get to 'sale agreed' the legal stage of the process begins. The sellers solicitor will send contracts and a copy of the title to your solicitor who will raise pre-contract enquiries and make sure that the title to the property is in order and will also deal with the requirements of your lender which will be detailed in the formal Letter of Loan Offer and Solicitors Pack sent by your lender directly to your solicitor. If you are depending on a mortgage to fund the purchase of your house you should insist on a loan clause in the contract which means that the contract is conditional on you getting your money from your lender.

The legal process takes longer than you might expect and in general from the time that your solicitor gets the contract and copy title to the time you get the keys it will take 4/12 weeks and longer if there are problems. It is important that you have the property surveyed for defects by a qualified and experienced engineer/architect/surveyor. Its often worth checking with the local authority for development plans for the area in which you plan to buy.

When your solicitor is satisfied that the title is in order he/she will meet with you and get you to sign the contract and the documents for the Bank. You will need to pay over the balance of the required 10% deposit (less the amount of booking deposit already paid to the estate agent). The contract will set out a closing date when monies are exchanged for the keys. It is important that you comply with the bank's mortgage requirements including obtaining a mortgage protection policy, house insurance policy, completing direct debit mandate and other bank documentation.

The purchase does not always complete on time sometimes the closing date can be delayed. If there are delays then the party causing the delay may be charged penalty interest or face legal proceedings. It is always a good idea to change the locks when you get the keys, and take meter readings. Subsequent to the closing your solicitor will then stamp and register the title and furnish your title documents to your lender which will be a requirement of your mortgage.

Buying a New Build House/Apartment

Buying a new build house/apartment involves a different legal process to buying a second hand house/apartment. As with buying a second hand house/apartment it is important to establish a budget (see above) but then the process differs. The purchase of a new build house/apartment can be from plans but more usually is on foot of a show house/show apartment. Usually the property to be purchased is not yet built though it may be partially constructed and in some cases near completion. Once a deposit is paid the builders solicitor will send out contracts and copy title to your solicitor together with plans and specifications in addition to a building agreement.

Usually with a new build house/apartment there will be two separate contracts to sign, a contract to buy the site and a separate building agreement to build the house/apartment. An important aspect of the building agreement is the timeframe within which the house/apartment has to be completed. Usually developers will stipulate 12/24 months and this can create a difficulty for borrowers as often a Loan Offer from a bank is only valid for 6 months. It is important that a suitable loan clause is put into the contract to protect the buyer. Usually the new build house/apartment is covered by insurance such as Homebond to cover serious structural defects for a period of 10 years and in addition there is normally a warranty in the Building Agreement to cover minor defects for a period of 6 months and major defects for a period of 18 months. Price Variation clauses which allow the builder to change the price if building supplies go up should be refused but the builder will insist on price variation clause should the rate of VAT go up. When the house/apartment is completed the developers solicitor will normally serve a completion notice on the buyers solicitor requiring completion within 2 weeks and within that 2 week period the buyer needs to drawdown their loan, comply with their lenders requirements and importantly have the new property inspected and a snag list prepared and sent to the builder for completion.

Usually developers are optimistic when they give estimated completion dates at the outset. It is also important to bear in mind that a change of job or health circumstances can affect a loan offer which is relevant if there is a significant time lag in the build. You should look into the 'Help to Buy' Scheme at www.revenue.ie

Selling a House/Apartment

Selling a house/apartment takes longer than you might think. There are various stages to the process. The first stage of the process is to engage an estate agent and take his/her advice in terms of preparing the property for sale. Getting to 'Sale Agreed' takes time with some types of properties selling quicker than others. Traditionally there were two main selling seasons being Spring and Autumn, but this is now more fluid. Once the property goes sale agreed and the purchaser has paid a deposit the legal process commences and this involves the seller's solicitor sending a draft contract and a copy of the title documents to the buyer's solicitor who then raises pre-contract queries. When the buyers solicitor is satisfied that the title is in order he/she will sit down with the buyer and sign the contract and send it back to the seller's solicitor with the balance of the 10% deposit. The sellers solicitor will then sit down with seller, witness his/her signature and return one part of the contract to the buyers solicitor.

It is only when one part of the contract has been returned to the buyers solicitor that a contract comes into place. Often the buyer will insist that the contract is made conditional on his/her obtaining a mortgage. The contract will contain a closing date which is typically 4/12 weeks after contracts are exchanged and on that date the seller's solicitor exchanges the keys of the house for the purchase price. Flexibility and patience are important as not all house sales go to plan but what can help is getting documents to your solicitor as early in the process as possible and regular communication with your solicitor. If there are delays then the party causing the delay may be charged penalty interest or face legal proceedings. It is important to take meter readings and check the requirements of utility providers prior to closing.

At the outset your solicitor will require the following from you: your title deeds or details of your mortgage if your lender holds them; your PPS Number; BER Certificate and Report; Local Property Tax details; NPPR Certificate of Exemption/Receipt; details of any extensions/alterations that you have carried out to the property; details of any legal notices served.

Moving House/Apartment - Trading Up/Trading Down

Co-ordinating a sale and purchase can be difficult and stressful. For most people the money from the sale of the existing house/apartment will be needed to fund the purchase of their new house/apartment in which case a legally binding contract needs to be in place before they can sign a legally binding contract for the purchase of their new house/apartment. Many people would like to complete their sale and purchase on the same day but this is often not possible usually because the funds from the sale of one property do not become available early enough in the day to be available for the purchase. It is now a case more often than not that same day sale and purchase is not possible which means that overnight arrangements need to be made for accommodation and storage of furniture.

If you are fortunate enough not to be dependent on the sale proceeds of your existing house then the ideal way of moving house/apartment is to buy the new house/apartment one week before selling your existing house/apartment but the reality is that most people won't have the funding for this and banks are very reluctant to make bridging finance available. A particular difficulty can arise where the buyer of your house/apartment insists on a conditional contract (dependent on their mortgage) with the consequence that you can't sign a contract for the purchase of your new house/apartment until your buyer is in funds. If you are depending on the sale proceeds of your house sale/apartment to fund the purchase of your new house/apartment and your purchaser's mortgage falls through with the consequence that your purchaser can't buy your house/apartment then you in turn will not be able to complete your own purchase and will wind up being in breach of any contract that you have signed and in all likelihood would forfeit your deposit and possibly worse. Each transaction is different and what helps to reduce the high stress levels are good communication with your solicitor and an understanding that you need to be flexible.

Switching Mortgage/Re-Mortgaging Your Property

Switching mortgage provider and re-mortgaging are now back in fashion having disappeared during the recession. Controls are now in place with the banks/lenders having to comply with greater regulation from the Central Bank. The reasons for switching mortgage provider and re-mortgaging are twofold; obtaining better terms or raising additional finance. The legal process is not as complicated as buying a house/apartment but normally does entail an exam-

ination of the title to the house/apartment by a solicitor as the lender will usually require that a solicitor certify that the title is in good order.

Any extensions or works carried out to the property since the previous mortgage will need to be covered with appropriate Engineers/Architects Certificates. It is also worth bearing in mind that an existing lender may be in a position to advance additional funds without the formality of a new Solicitors Certificate of Title.

Extending Your Home

Extending your home will add value and comfort to your property. It is worth getting it right and taking good professional advice. Rear single storey extensions over 40 square metres require planning permission with the limit to include any previous extensions. Extensions should comply with the Building Regulations and Planning Laws. You should consult with an Architect/Engineer whose certificate will be required in any future sale of the property. Another important issue that comes up with extensions are party walls. Usually the walls and fences dividing properties are party walls and owned by both parties.

Consent of your neighbour should be obtained for removing a party wall or for building on a party wall, preferably this should be in writing. Another difficulty that can occur is building on land that you assumed you owned, if in doubt the legal title should be checked. In many instances extensions will be financed with a re-mortgage which will take the form of a letter of loan offer which will have conditions in it including the possibility of stage payments. It is important that all the financial aspects are dealt with prior to commencing the building works.

Transferring Property To Children/Family

Transferring property to children/family such as the gift of a site to a child gives rise to important tax considerations including capital gains tax for the person giving the property and gift tax and stamp duty for the person receiving the property. The tax liability is calculated on the open market value of the property not the price paid (if any).

Tax advice should be obtained as appropriate. Some parents, particularly living with their adult children will transfer ownership or part ownership of their house to a child and retain rights

for themselves which might be part ownership or a right of residence. In these situations a balance needs to be struck as between protecting the interests of the parents and the needs of the child.

Making Your Will

Wills should be clear and simple. A typical Will would be a spouse leaving everything to their spouse and then everything equally to their children. Where there are family members with special needs then a simple form of discretionary trust should be used. A spouse and children have rights and their entitlements need to be considered. Where you have young children you should appoint legal guardians and trustees in your Will. When considering what to include in your Will a good approach is to remember the people who are close to you and you might also like to consider your favourite charities. Inheritance Tax is an important consideration.

There is no inheritance tax between spouses. Children are currently allowed €310,000, with brothers/sisters/nieces/nephews/grandchildren having a threshold of €32,500 and friends having a threshold of €16,250 after which tax is then charged at 33% on anything over these thresholds. The thresholds are cumulative with all gifts and inheritances being aggregated in each category since the 5th December 1991 (excludes small gifts). Wills are rarely challenged but where they are challenged the grounds would be undue influence and non-compos mentis. Property can be gifted prior to death. For spouses consideration should be given to putting property into joint names (including bank accounts) with the intention that on a death the property would pass automatically to the survivor.

Probate and Administration Of Estates

When somebody dies their affairs need to be put in order. The majority of people will have made a Will. The Will will have appointed an Executor who will take charge of things. In the minority of cases where there is no Will (known as Intestacy) the Succession Act sets out who is to take charge. After a death it is important that a period of grieving is allowed so that people can come to terms with their loss. Often a Will will not be opened until after a funeral. For this reason funeral and burial/cremation directions should be included in a Letter of Wishes and given to immediate next of kin. It is the job of the Executor/Administrator to

firstly protect the assets of a deceased, pay off outstanding bills and then distribute the Estate to the beneficiaries in accordance with the Will and where there is no Will then distribution is in accordance with the Succession Act. Executors should make sure that property insurance cover is kept in place. This can be an issue particularly if property has become vacant.

Where there is a Will the Executor needs to validate and probate the Will which he or she can do by personal application to the Probate Office or more usually with the assistance of a solicitor. Where there is no Will then Letters of Administration are obtained from the Probate Office. Once Probate or Letters of Administration are obtained then the Executor/Administrator can get on with administering the Estate which involves collecting in the assets, paying the bills and distributing the estate to the beneficiaries. Tax is an important consideration for Executors/Administrators and appropriate tax advice should be taken particularly where there are non-resident beneficiaries.

Often solicitors where they are involved in the administration of an estate will pay the inheritance to beneficiaries on a net of tax basis and file appropriate returns. Inheritance Tax is a self-assessment tax which means that the onus to pay the tax is on a beneficiary but a secondary liability may arise on the Executor particularly where the beneficiary resides outside the Jurisdiction. Where land and property is involved it is important that the Executor/Administrator assent to the vesting of the property to the beneficiary which is sometimes overlooked.

Accidents*

Accidents happen to all of us from time to time. The primary concern should always be assisting injured parties. From a legal perspective the person who caused the accident is generally liable to compensate the injured party for their loss whether it be a road traffic accident, an accident at work or otherwise. Often it is clear who is in the wrong but sometimes it is not clear cut. Names and addresses of witnesses are important particularly if liability is disputed.

The Gardai should be called in respect of all non-minor accidents. Usually insurance policies require that they are notified immediately in the event of an accident and that letters alleging liability are furnished to them unanswered. Not all accidents give rise to legal claims but where there is a possibility that a legal claim will arise it is helpful to take photographs and take a

careful record of what transpired (your mobile phone is important in this regard). If you witness an accident it is important to realise that those involved in the accident are most likely to be in a state of shock and not thinking clearly.

They may need medical assistance. Writing down your name and address as a witness and giving it to the parties can be helpful. In general a person has a period of two years within which to make a claim for personal injury after which time it becomes statute barred but there are exceptions.

*In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement

Power of Attorney/Enduring Power of Attorney

These are important legal documents particularly for the elderly as they facilitate trusted family members to look after your affairs subject to any limitations that you might impose. A simple power of attorney means that another person has your authority to look after your affairs for you but this comes to an end on your death or should you lose mental capacity. An Enduring Power of Attorney permits a trusted family member/friend to look after your affairs for you should you lose your mental capacity for any reason such as head injury, stroke or dementia. Enduring Powers of Attorney are particularly useful in terms of providing peace of mind in that they provide a safety net.

Separation and Divorce

One of the hardest things for any person to do is to separate/divorce from their spouse. Support is essential (see list of websites). In general where people are getting separated/divorced the assets are split equally. Counselling should be considered in the context of healing the relationship and if this is not possible mediation should be considered with a view to formalising the separation/divorce with agreement to be reached on arrangements for children and property.

With successful mediation a formal legal Deed of Separation can be drawn up. Where parties are unable to agree then legal separation/divorce proceedings may be the only option. These type of court proceedings tend to be very difficult on both parties.

The primary concern of the courts will be the welfare of any children and proper provision for both parties. In many instances parties may be able to agree a settlement with the assistance of their solicitors. Parties may be entitled to legal aid in respect of court proceedings (see www.legalaid.ie).

Residential Lettings

Tenants and landlords have rights and obligations which are regulated by the Residential Tenancies Acts. Once a tenant has been in possession for more than 6 months they may be entitled to stay for 6 years (4 years for tenancies commencing prior to 24th December 2016) except in certain circumstances such as where the landlord wishes to sell the property or put a family member into occupation. Tenancies must be registered by the landlord with the Residential Tenancies Board. Where a tenancy is being terminated due notice must be given. In addition to the statutory provisions there may also be additional contractual obligations on landlords and tenants set out in formal tenancy agreement/contract entered into by the parties at the commencement of the tenancy. For more information see www.rtb.ie

Employment Rights

Employers and Employees have rights and obligations. Employee rights include a right to written terms/contract of employment, written payslips, holiday entitlements and rest periods. Employees acquire a right not to be unfairly dismissed after 12 months (and shorter in limited circumstances) in addition to a right to redundancy payments after 2 years. Employers have the obligation to provide for the safety of their employees including safe place of work, safe method of work and proper safety equipment. For more information see www.workplacelrelations.ie

USEFUL LEGAL INFORMATION FOR BUSINESS:

Buying and Selling a Business

Valuations, due diligence and finance are critically important. It can be difficult to measure the true value of a business but in general the approach taken is a multiple of turnover or profit averaged over a 3 or 5 year period. Due diligence is crucial from a purchaser's point of view in order to test the valuation and ascertain if there are circumstances which might give rise to difficulties.

A seller should review the business before sale to identify the best method of sale which can be to either sell the company or sell some or part of the assets of the company. Raising finance to secure the purchase needs careful consideration to ensure that regulations set out in the Companies Act 2014 are not infringed. Succession planning is often an important element of selling a business and there are often many possible options including pre-sale planning to avail of significant tax reliefs.

Risk Management In Business

Managing risk is an essential part of all business and this can be achieved legally in a number of ways including forming a limited liability company and having terms and conditions of business which include clauses that put a cap on liability. Regardless of the size of your business you can minimise and apportion risk in all transactions through the use of legal contracts/agreements.

It is also important to have a mechanism for dispute resolution with customers/suppliers/employees in contracts/agreements. A simple mediation clause requiring that any dispute would be discussed at mediation before going to court is beneficial for all parties. Shareholder/Partnership Agreements are also important in business to cover management of the business and what should happen if one party wants to sell their share of a business or what should happen if a death occurs.

Company Reorganisation/Restructure

Businesses change and develop as do the needs of their owners. Company law and tax incentives are also subject to regular change. Sometimes it can be prudent to re-structure a business to obtain tax advantages which otherwise might be unavailable. It can be beneficial to

re-organise a business into one or more separate companies to facilitate a part sale or succession planning. Business development/expansion can sometimes be better served through the formation of a new company. Transferring business assets from individuals to a holding company can give rise to tax planning opportunities. Occasional business review coupled with professional tax advice is often a profitable exercise.

Commercial Leases

Commercial Leases tend to be either 4 years and 9 months or 10/20 years. In general once a business tenant has been in possession for more than 5 years they acquire a business equity which means they are entitled to a renewal at open market rent. It is possible for a tenant to renounce this right to a business equity which most Landlords will now request. The repair clause in a business lease is very important. With leases of less than 5 years the landlord is usually responsible for repairs except for internal non-structural repairs which would fall to the tenant. In leases longer than five years the tenant is often responsible for all repairs including structural repairs and roof repairs hence it is important to have a survey carried out. It is also prudent for a tenant taking on any commercial lease to have a condition survey done which in simple terms means a pictorial record of the state of the premises before the tenant took it on. Tenants are obliged to register the terms of a new lease with the Property Services Regulatory Authority (www.psr.ie)

A Better Way To Resolve Legal Disputes

Legal disputes are a feature of business and can't be avoided but you do have control over how you deal with them. The nature of legal disputes is that they escalate, attitudes harden and positions become entrenched. Going to court should be a last option. The Mediation Act 2017 was commenced on the 1st January 2018 and now gives parties in a dispute another option which is to resolve their difficulties with the assistance of a mediator/conciliator in a confidential and without prejudice process. Mediation provides more flexible solutions than going to court and is far less expensive.

Really Useful Websites

www.leesolicitors.ie

Lee Solicitors

www.citizensinformation.ie

Citizens Information

www.ccpc.ie

Competition and Consumer Protection Commission

www.legalaid.ie

Legal Aid Board

www.prai.ie

Property Registration Authority

www.psr.ie

Property Services Regulatory Authority

www.Revenue.ie

Revenue Commissioners

www.flac.ie

FLAC, free legal aid centres

www.workplacerelations.ie

Workplace Relations Commission

www.courts.ie

Courts Service of Ireland

www.cro.ie

Companies Registration Office

www.dataprotection.ie

Data Protection Commissioner

www.tusla.ie

Tusla Child & Family Agency

www.dlrcoco.ie

Dun Laoghaire/Rathdown County Council

www.dublincity.ie

Dublin City Council

www.fingalcoco.ie

Fingal County Council

www.sdcc.ie

South Dublin County Council

www.justice.ie/

Department of Justice and Equality

www.lawsociety.ie

The Law Society of Ireland

www.ombudsman.ie

Office of the Ombudsman

www.accord.ie

Marriage and Relationship Counselling

www.legalaidboard.ie

Family Mediation Services

www.womensaid.ie

Womens Aid

www.fspo.ie

Financial Services & Pensions Ombudsman

www.oco.ie

Ombudsman for Children

www.charitiesregulatoryauthority.ie

Charities Regulator

www.hse.ie

Health Service Executive

www.welfare.ie

Department of Employment Affairs & Social Protection

www.rtb.ie

Residential Tenancies Board

www.pleanala.ie

An Bord Pleanala

www.businessregulation.ie

Business Regulation

www.dbei.ie

Department of Business Enterprise and Innovation

www.epa.ie

Environmental Protection Agency

<http://hsa.ie>

Health and Safety Authority

www.irisoifguil.ie

Irish Oifigiuil

www.irishstatutebook.ie

Irish Statute Book

www.lrc.ie

Law Reform Commission

www.nsai.ie

National Standards Authority of Ireland

www.odce.ie

Office of Director of Corporate Enforcement



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