

THE REALLY SIMPLE SHORT USEFUL GUIDE TO BUYING/SELLING A HOUSE/APARTMENT

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

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BUYING A HOUSE

(INCLUDING FIRST TIME BUYERS)

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 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 ie. 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 your solicitor gets the contract to the time you get the keys will take 5/12 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. It is often worth checking with the local authority for development plans in the area. 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.

When you are buying a house/apartment you can buy it in joint names which means that the survivor inherits the property or as tenants in common which means that your share of the property passes under your Will. (See our Really Simple Short Useful Guide to Making a Will).

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. 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 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, 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 time frame within which the house/apartment has to be completed. Usually developers will stipulate 12 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 against 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 a 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

What you need to give to your Solicitor

1. Details of the house/apartment including address and price
2. Details of mortgage if you are borrowing
3. Your PPS Number
4. Confirmation that you have had the house/apartment surveyed for defects or snag list if a new build.
5. Estate agents/Auctioneers details including brochure of property if possible
6. Details of any extensions/alterations to the property
7. Details of any septic tank/well if not on a public supply
8. Details of rights of way if not on a public road.

9. Confirmation that you are in funds for the 10% deposit payable on signing contract.
10. Confirmation that you are in funds for stamp duty at 1% of the purchase price (if less than €1 million).
11. Details of any contents included

SELLING A HOUSE/APARTMENT

Selling a house/apartment takes longer than you might expect. There are various stages to the process. The usual 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, Spring and Autumn, but this is more fluid now.

Once the property goes sale agreed and the purchaser has paid a deposit the legal process commences and this involves the sellers solicitor sending a draft contract and a copy of the title documents to the buyers solicitor. 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 sellers solicitor with the balance of the 10% deposit. The sellers solicitor will then sit down with the 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 a month after contracts are exchanged and on that date the sellers solicitor exchanges the keys of the house for the purchase monies.

Flexibility and patience are important as not all 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.

What you need to give to your Solicitor

1. Title Deeds or details of your Mortgage if your Lender holds the Deeds
2. BER Certificate and Report
3. Details of any extensions or developments
4. Your PPS Number
5. Local Property Tax details (including a print out).
6. NPPR Certificate of Exemption/Receipt (2009 to 2013)
7. Details of Management Company if an apartment

8. Details of any third party rights affecting the property
9. Details of any right of way if not on a public road
10. Details of septic tank/well if not on public supply.
11. Details of any legal notices or difficulties which affect the property.
12. If possible any maps that you have of the property.
13. Details of any contents included

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 signing 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 the case that more often than not, 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 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 with the closing being dependent on them getting their mortgage with the consequence that you can't sign a binding contract for the purchase of your new house/apartment. Where you are depending on the sale proceeds of your house sale/apartment to fund the purchase of your new house/apartment and your purchaser fails to get their mortgage you will have serious difficulties being able to proceed with your own purchase and could find yourself in breach of that contract. Good planning and legal advice is essential to avoid these difficulties.

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.

REALLY USEFUL WEBSITES

www.prai.ie	Property Registration Authority
www.psr.ie	Property Services Regulatory Authority
www.Revenue.ie	Revenue Commissioners
www.dlrcoco.ie	Dun Laoghire/Rathdown County Council
www.dublincity.ie	Dublin City Council
www.fingalcoco.ie	Fingal County Council
www.sdcc.ie	South Dublin County Council
www.pleanala.ie	An Bord Pleanala
www.epa.ie	Environmental Protection Agency
www.leesolicitors.ie	Lee Solicitors

ABOUT THE AUTHORS

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Both Authors are strongly of the view that when you obtain legal advice that it should be easy to understand and practical.

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