

Procedures for Sale & Purchase of Property

England and Wales land law is similar to Irish land law although it has been modernised considerably in recent years. Although the land law is broadly similar, conveyancing practice is quite different in each country. The matters which are emphasised differ considerably. For example, in England and Wales, it is standard practice to undertake a Local Authority Search which will give a significant amount of information in relation to the property under a whole host of headings. There is no equivalent obligation on Irish Councils to collate and maintain information in the same way, so the practice does not exist here.

Since 1990, title registration has been compulsory in the whole of England and Wales. Because of this, unregistered title based on deeds is almost never encountered. Under the Land Registry system, the State guarantees each person's ownership. There is a "title" number, equivalent to an Irish Folio. This contains details of owners, mortgages, rights affecting the property and describes each property with reference to a high quality Ordnance Survey map. The Land Registry website is user friendly and the information on it (including prices) is public.

Although the detailed procedures are different, the broad steps involved in a conveyancing transaction are quite similar to those in Ireland. There is a "pre-contract" stage during which neither party is bound and either may walk away. After contracts are "exchanged" both parties are bound and completion follows at a stipulated date, usually four to six weeks later.

Step 1

When a buyer is secured, a booking deposit is normally paid to the Estate Agent. Unlike the case in Ireland, some English Estate Agents have conditions providing that the booking deposit is non-refundable. The majority of Agents do not have these conditions and in these cases the practice is the same as in Ireland i.e. the deposit is refundable on demand prior to exchange of contracts. The Estate Agent will usually issue details of the sale to the seller, buyer and their solicitors. Neither seller nor buyer will be bound until contracts are signed and exchanged through the parties' solicitors.

Step 2

The seller's solicitor prepares and issues draft sale contracts to the buyer's solicitor. There is a protocol for domestic conveyancing which is nearly always adopted. There is usually a longer gap, than in Ireland, before contracts are exchanged. Detailed pre-contract enquiries are raised and replied to by the seller's solicitor prior to contract

The buyer's solicitor undertakes pre-contract enquiries with various Government bodies which take at least two to three weeks. These searches usually a local authority search,

a search with the Water and Sewage Company, and an Environmental search. Depending on the situation of the land, other searches may be appropriate.

Step 3

Once searches, enquiries, title, pre-contract replies and other issues are in order and the buyer has a satisfactory building survey and loan finance, it is possible to move to a binding contract. Once this occurs, both seller and buyer are legally committed to the transaction. Unlike in Ireland, there is instantaneous exchange over the telephone so both buyer and seller are immediately bound. In contrast, the position in Ireland is that the buyer signs contracts in duplicate and sends them to the seller. The seller may then wait for a week or two before signing e.g. to ensure that he has obtained binding contracts for the purchase of an alternative property in that period.

Step 4

Because of the strong emphasis on Local Authority Searches and pre-contract enquiries in England and Wales, there tends to be fewer issues to deal with between contract stage and completion. Generally the main issue will be the completion of the loan offer conditions. Issues may also arise in co-ordinating purchase and sale dates with the seller.

Step 5

The process in dealing with lending institutions is broadly similar to that in Ireland. Sometimes banks will use their own solicitors. If this is done, then it will be necessary to satisfy the bank's solicitor's requirements. Alternatively, the bank may advance funds to the buyer's solicitor on foot of an undertaking to put the mortgage in place.

Upon completion, the purchase monies are paid, and possession of the property is delivered to the buyer. The buyer must put his solicitor in funds for stamp duty. See the separate note in relation to stamp duty and other tax issues arising.

Step 6

Since 2003, the purchase deeds themselves are not stamped. Instead, a detailed return is made to the England and Wales Revenue on-line or by DX/post. Once the stamping certificate is returned the purchase and mortgage deeds are lodged in the Land Registry and registration takes place within about six to eight weeks.

Step 7

The deeds are sent to the buyer's lending institution where there is a loan. If there is no loan, they are held for the buyer.



What Lavelle Coleman does:

Lavelle Coleman offers a full service on the purchase, sale, mortgage and re-mortgage of residential, agricultural and commercial property.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

© Lavelle Coleman 2009