

SALE & PURCHASE OF RESIDENTIAL PROPERTY

Background

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

Since late 2007, it has been unlawful to market an England and Wales residential property, without a Home Information Pack. See the separate note on HIPS which we have prepared. The pack will need to be available before any marketing or advertising takes place. Arguably, the legislation would not apply to a sale by one Irish seller to another where there was no element of marketing in the UK. However, this would greatly restrict the available market for the property.

Step 2

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 both the seller, buyer and their solicitors. Neither seller or buyer will be bound until contracts are signed and exchanged through the parties' solicitors.

Step 3

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. The seller's solicitor pre-empts a lot of the standard enquiries by having the seller complete standard questionnaires which are sent to the buyer's solicitor with contract documents. There is usually a longer gap, than in Ireland, before contracts are exchanged. Detailed pre-contract enquiries are often raised and replied to by the seller's solicitor prior to contract. If the Protocol has been used, this step is reduced or eliminated. If an apartment is involved, a detailed response is often required from management company.

Until recently, it was necessary for the buyer's solicitor to undertake pre-contract enquiries with local Government bodies which took at least two to three weeks. These searches must now be included in the HIP, so that they are available at a much earlier stage.

Step 4

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.

The practice of instant exchange means that chains of purchasers develop more rapidly in England and Wales. There are particular procedures to deal with chains whereby a purchaser's solicitor can commit to exchange within a two to four hour period provided he exchanges on the sale of the purchaser's existing property. The Law Society allow conditions whereby a deposit on a sale can be passed on to fund part payment of the deposit on the new purchase.

Step 5

Because of the strong emphasis on Local Authority Searches and pre-contract enquiries in England and Wales, there tends to be less 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.

Most lending institutions use a Certificate of Title system by which the buyer's solicitor also acts for the banks and completes the legal requirements for the mortgage.

Step 6

Most Irish residential investment property purchasers use Irish based lenders who provide England and Wales lending. England and Wales based lenders are also used.

The process in dealing with lending institutions is broadly similar to that in Ireland. The bank advances 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 7

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 8

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.

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.