



Commercial Property Update

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Property Services (Regulatory) Bill 2009

On 11 May 2009 the long awaited Property Services (Regulation) Bill 2009 was published. It will repeal the Sale of Land by Auction Act 1867, the Auctioneers and House Agents Act 1947, the Auctioneers and House Agents Act 1967, the Auctioneers and House Agents Act 1973 and the Auctioneers and House Agents Act 1947 (Accountant's Examination and Certificate) Regulations 1968.

The Bill is designed to improve the current system of regulation of auctioneers, house agents, letting agents and property management agents and it gives effect to the recommendations in the Auctioneering/Estate Agency Review Group Report 2005 which was established to examine the licensing and regulatory arrangements applicable to property service providers.

The principal recommendation of the Group was that the existing District Court-based licensing system for auctioneers and house agents should be transferred to a new Authority (the National Property Services Regulatory Authority which is currently operating on a non-statutory basis) and that it should be strengthened and extended to cover property management agents. It also recommended that the Authority should be given comprehensive investigative and enforcement functions and that it should be responsible for establishing and administering a new compensation fund.

Once established on a statutory basis, the Authority's main functions will be to:

- operate a comprehensive licensing system covering all providers of property services, that is, auctioneers, estate agents, house agents and property management agents;
- control and supervise licensees and maintain and improve standards in the provision by them of property services;
- set and enforce standards, for example, qualification requirements including levels of educational training and expertise and minimum levels of professional indemnity insurance;
- establish and administer a system of investigation and adjudication of complaints;
- promote increased consumer awareness and protection, and draw up or approve codes of practice;
- establish a compensation fund (the Property Services Compensation Fund) to compensate parties who lose money as a consequence of a licensee's dishonesty;
- conduct investigations and impose sanctions including an application to the High Court for confirmation of the imposition of major sanctions on licensees.



Multi-Unit Developments Bill 2009

The Multi-Unit Developments Bill 2009 was published on 27 May 2009 and sets out a comprehensive statutory framework for multi-unit developments and for governance of property management companies which own and manage the common areas of these developments.

This new framework will apply to new and existing developments, as recommended in the Law Reform Commission's June 2008 report on Multi-Unit Developments. "Multi-unit development" is defined to mean a building which is divided into at least five units intended for residential use. Notwithstanding this, the Bill provides that some of its provisions (such as annual service charge schemes, establishing a sinking fund and dispute resolution procedures) will apply to multi-unit developments comprising two to four units.

The Bill proposes that the developer of a multi-unit development must establish an owners' management company and transfer ownership of the common areas to it before any apartment is sold. This transfer of ownership does not relieve the developer of his obligations to complete the development. The owner of each apartment will have one vote and when an apartment is sold, membership of the management company will transfer automatically to the new owner. The company will have to prepare an annual report which must be discussed at a management company meeting and a copy must be given to each apartment owner.

In addition, an owners' management company must maintain a scheme of annual service charges which must be approved by a general meeting of the management company's members; be calculated on a transparent basis and be fairly apportioned between the apartment owners. Service charges for any unsold units must be paid by the developer. They must also establish and maintain a 'sinking fund' for non-recurring maintenance and repairs.

The Bill also provides for a new court-based dispute resolution mechanism which will apply to both new and existing multi-unit developments.

Compulsory registration of ownership of land

There are two separate systems for recording transactions in relation to property in Ireland managed by the Property Registration Authority:

- The Registration of Title system operated by the Land Registry. This system registers transactions relating to registered land.
- The Registry of Deeds system operated by the Registry of Deeds. This is a system of voluntary registration for deeds affecting land not registered in the Land Registry and to give priority to registered deeds over unregistered registrable deeds.

On 18 May 2009 the Registration of Title Act 1964 (Compulsory Registration of Ownership) (Cavan, Donegal, Galway, Kerry, Kildare, Leitrim, Limerick, Mayo, Monaghan, North Tipperary, Offaly, South Tipperary and Waterford) Order 2009 was signed and will extend compulsory registration of ownership of land to 12 further counties with effect from 1 January 2010. The counties are as follows: Cavan, Donegal, Galway, Kerry, Kildare, Leitrim, Limerick, Mayo, Monaghan, Offaly, Tipperary and Waterford.

This will have a significant impact on conveyancers and those acquiring land not registered in the Land Registry. Only counties Dublin and Cork will remain outside the compulsory registration system after 1 January 2010.



Landlord and tenant: recovering possession

Background. Under section 17(1)(a)(v) of the Landlord and Tenant (Amendment) Act 1980 a tenant is not entitled to a new tenancy if “the tenancy terminated otherwise than by notice to quit and the landlord either refused for good and sufficient reason to renew it or would, if he had been asked to renew it, have had good and sufficient reason for refusing.” “Good and sufficient reason” means a reason which emanates from or is the result of or is traceable to some action or conduct of the tenant and which, having regard to all the circumstances of the case, is in the opinion of the court a good and sufficient reason for terminating or refusing to renew (as the case may be) the tenancy.

Facts. The plaintiffs sought to recover possession of a house in Limerick, the subject of two leases that expired in 2004. The leases were subject to a covenant to repair on the part of the tenant. The plaintiffs were the successors in title of the original landlord and served an Equity Civil Bill for over-holding on the defendant tenant. The tenant served a Notice of Intention to Claim Relief and claimed a right to a new tenancy. The plaintiffs alleged that the house was unfit for human habitation. They successfully relied on “good and sufficient reason” for refusing to renew the lease under the Landlord and Tenant (Amendment) Act 1980 in the Circuit Court in that the tenant failed to keep the premises in good repair.

Decision. On appeal the High Court held that every part of the house was in an appalling state of disrepair and the plaintiffs had established the tenant had failed to keep it in good repair, could not afford the repairs and could not afford to pay a market rent. Therefore the plaintiffs could rely on “good and sufficient reasons” for refusing to renew the lease and were entitled to recover possession.

Case: McCarthy, Bolding, Cambridge v Larkin [2009] IEHC 75

Rights of way and development land

Facts. The plaintiff purchasers agreed to purchase an apartment for €330,000 in a large development subject to contract and good marketable title. A deposit of €16,000 was paid. An issue arose about a right of way over County Council lands from a roadway to the land on which the apartment block is situated as the development site did not have direct access to the public road. The purchasers maintained that the right of way offered by the vendor was not a general right of way, but merely gave the developer the power to make a road from the public roadway to the development site. Over a number of months, correspondence continued between the parties and eventually the purchasers’ solicitors served a 28 day Completion Notice on the vendor. Before the expiration of the notice, the vendor’s solicitors gave the purchasers a deed of grant of right of way from the County Council in which the Council consented to the registration of the deed as a burden on the land. The purchasers maintained that the granting of a right of way by the County Council required a resolution of the Council which had not been obtained.

The vendor insisted that proper evidence of a right of way was provided and that the purchasers were exploiting a downturn in the property market so that they could rescind the contract. A Vendor and Purchaser Summons was issued. This is a special summary procedure for the settlement of certain disputes arising out of the sale of land and involves asking the court questions concerning the interpretation of a contract and the matters incidental to it.

Decision. The High Court held, on the evidence, that the vendor had shown good and marketable title. The deed of grant of right of way and the Council’s assent to the registration of the deed as a burden on the land gave the purchasers the assurance they needed that they had a sufficient right of way and that this would be registered as a burden. Therefore the purchasers were not entitled to rescind the contract for sale and to the return of their deposit.

Case: Byrnes & Nealon v Meakstown Construction Ltd [2009] IEHC 123



New Planning Bill

The Planning and Development (Amendment) Bill 2009 was published on 3 June 2009 and will amend the Planning and Development Acts 2000 to 2007 with the principal aim of supporting economic renewal and promoting sustainable development by ensuring that the planning system supports targeted investment on infrastructure by the State and by further modernising land zoning.

The Bill seeks to strengthen local democracy and accountability by maintaining the central role of local government in the planning process. It also aims to ensure a closer alignment between the National Spatial Strategy, Regional Planning Guidelines, development plans and local area plans. The Bill introduces a requirement for regional authorities to produce an evidence based “core strategy” in development plans which will provide relevant information as to how the development plan and the housing strategy are consistent with regional planning guidelines and the National Spatial Strategy. The location, quantum, and phasing of proposed development must be shown as well as growth scenarios, details of transport plans, and retail development, and proposals for development in rural areas.

The Bill also aims to:

- improve the performance of An Bord Pleanala;
- remove any legal impediments to e-planning;
- provide for the implementation of the Law Reform Commission’s recommendation on multi-unit developments as they relate to planning;
- allow planning authorities to refuse permission where the applicant has previously carried out a substantial unauthorised development or has been convicted of a planning offence;
- provide for cost recovery of An Bord Pleanala’s costs on all project categories under the Planning and Development (Strategic Infrastructure) Act 2006;
- update penalties for offences and strengthen the legal effect of Ministerial guidelines;
- provide for the extension of planning permission in certain circumstances where substantial works have not been carried out;
- give greater flexibility to effect a wider distribution of existing development levy monies and extend the powers of the Minister for the Environment, Heritage and Local Government to issue directions regarding local area plans.

If you have any queries on the contents of this update or if you require advice on any aspect of commercial property, please contact Ainsley Heffernan, Head of the Commercial Property Department.

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