



Buying & Living in a Property with Common Spaces

THE LAW SOCIETY
OF NORTHERN IRELAND



BUYING AND LIVING IN A PROPERTY WITH COMMON SPACES

Introduction

Many purchasers are finding that properties which they wish to buy are in developments with what are known as common spaces and common facilities. These can sometimes be requirements of the planning permission which the developer has obtained to develop the site. This leaflet covers some of the issues involved in buying a property (be that a detached or semi-detached house or a town house in such a development). If you are buying an apartment please see the Law Society leaflet entitled "Buying & Living in an Apartment". If you are buying an apartment in a development with common spaces, please consider both leaflets.

Obviously only general matters can be discussed here. We recommend that you discuss fully with your solicitor all aspects of your purchase including references to the Management Company, service charge and other issues.

How do developments with common spaces differ from other developments?

The key distinguishing feature of a property in a development with common spaces is that you will share in the benefit of common areas, amenities and services with your fellow owners. These areas may include:

- Gardens & green areas
- Play areas
- Internal roads and or footpaths

You will have exclusive ownership of your property. In addition when you purchase your property you, along with the other owners, may be responsible for the upkeep, maintenance, repair and insurance of the common areas, amenities and services.

Ask your solicitor for (i) a copy of the map or plan of your property and the development to check what exactly you will own outright and what you will be responsible for with the other owners and (ii) a copy of the deed and any other relevant documents in relation to the purchase. This is so that you have these for future reference. Your solicitor will explain the contents of these documents.

How are the common spaces managed?

One such arrangement is that a Management Company will be set up and be responsible for the upkeep, maintenance and insurance of common areas, amenities and services. This Management Company will be made up of the owners, who will each have an equal share in the common areas, amenities and services and each will have equal voting rights. This arrangement is the most common and will be the focus of this leaflet. Other arrangements which may be put in place include; the developer retaining ownership of the common spaces; all unit owners sharing the ownership of the communal areas; a private company assuming ownership and responsibility for the maintenance of common spaces; and a system of covenants/obligations and easements/rights being put in place providing for the management and maintenance of common spaces.

What is a service charge?

A service charge is the fee that owners pay as a contribution towards the maintenance, upkeep, repair and insurance of the common spaces, amenities and services. You should confirm the following in relation to the service charge before agreeing to purchase a property in the development:

- How much is the service charge?
- Is it paid monthly/every six months or every year?
- How is it paid? By direct debit or standing order or by cheque?
- How is the service charge made up?
- Is the service charge paid up to date?

- Is there a sinking fund?
- Is the service charge reasonable given the nature of the development?
- Can I afford to pay the service charge in addition to all other outgoings in respect of the property?

What should I look out for when considering purchasing a property in a development with common spaces?

The key thing to identify is what system for the management of the development is in place and whether it is working effectively. Your solicitor will be able to help you with these two issues. If it is the case that a Management Company has been established you should obtain:

- copies of the minutes of the latest meetings;
- copies of any correspondence relating to the management company or the service charge;
- copies of the latest available accounts;
- details of any planned future expenditure, if any;
- details of any “sinking fund”;
- details of the public liability insurance arrangements;
- has a managing agent been appointed? If so, on what basis?; and
- any other relevant documents

Remember the amount of the service charge can vary from year to year and may go up in the future.

From this information you and your solicitor should be able to make a reasonable assessment as to whether the development is currently being managed effectively, if there is likely to be a requirement for any significant investment to ensure the upkeep of the common spaces in the near future and whether there is adequate provision to pay for this from the sinking fund.

What is a “sinking fund”?

A “sinking fund” is a term for the proportion of collected service charge monies which are put away to cover significant investments that may be required to ensure the long term sustainability of the development in the future, for instance replacing electric gates. They are generally more common in apartment developments. However, you may wish to raise the matter with your solicitor.

What are my responsibilities?

Your most significant responsibility is to pay your service charge as and when it falls due.

In addition to paying your service charge, you may have additional responsibilities depending on the management arrangements put in place.

If you are a shareholder of a Management Company, you have a general responsibility to keep actively involved in the work of the Management Company. You should do this by:

- Attending annual & extraordinary meetings;
- Contributing to discussions and decisions relating to the management of the development; and
- Analysing the accounts and ways in which the service charge monies are spent.

It is important that you do this to ensure that your home is properly maintained and your money is properly used.

Keep copies of all paperwork in connection with the property. You may need this in the future and will need to be able to pass this on to a purchaser if you decide to sell your property.

How will management of the common areas work in practice where provision is made for a Management Company ?

When you first move into your property, it may be the case that not all of the properties in the development have been sold by the developer and so the developer, or his agents, may be responsible for the maintenance and upkeep of the development. You will wish to confirm the position with your solicitor.

If all properties have been sold the Management Company should be fully established and have appointed Directors and perhaps a Company Secretary. It is likely that the Management Company will appoint a managing agent to carry out the day to day management of the development. A managing agent may indeed act as a Company Director. In these circumstances, the managing agent will carry out cleaning, maintenance work and should make recommendations to the Management Company for more substantial works.

It is important that the Management Company maintains overall control of the development and ensures the managing agent executes his/her duties effectively. You have a part to play in this and should stay involved in the Management Company and raise any concerns about the effectiveness of the managing agent with the Company Directors and Secretary or at meetings.

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