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Relate

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Contents

Buying a home

This issue of *Relate* provides an overview of what you need to know if you are planning on buying a house or apartment. For most people, buying a home is the most important purchase they will make and they will generally need to take out a mortgage – a long-term loan from a commercial lender (see page 2). Buying a property involves a complex set of legal arrangements and you will need to engage a solicitor (see page 3). We outline the various steps in the process and explain some of the terms that are used. We also cover some issues that arise after the sale is complete.

Things to consider before buying your home

One of the first things to consider is how much you can afford to spend. Your budget will dictate the type of property and the general locations in which you can afford to buy. The amount of money that you can get as a mortgage loan is governed by Central Bank rules (see page 3) so you will have to provide the balance of the purchase price from your own resources. You will also have to budget for the other costs involved, for example, solicitor's fees, survey fees, stamp duty, Land Registry fees, auction fees, service charges if applicable.

Finding a property

Property websites, auctioneers and estate agents are the main ways of finding property for sale. It is important to remember that the estate agent or auctioneer is acting on behalf of the seller, is being paid by the seller, and is acting in the seller's interests.

There is a public register of regulated auctioneers and estate agents available from the Property Services Regulatory Authority (PSRA) at **psr.ie/website/npsra/npsraweb.nsf/page/publicregister-reg-of-propserv-prov-en**.

The PSRA also publishes a Residential Property Price Register available at **propertypriceregister.ie/website/npsra/pprweb.nsf/page/ppr-home-en**. This register includes the date of sale, price and address of all residential properties purchased in Ireland since 1 January 2010, as declared to Revenue for stamp duty purposes.

Sometimes individual sellers advertise their property themselves. Newspapers may also have property supplements or publish advertisements of properties for sale.

All homes advertised for sale must show the Building Energy Rating (BER) grade as part of the advertisement. This rating tells you how energy efficient the property is, with an A-rating being the most efficient and a G-rating the least efficient. It will help you make an informed choice when comparing properties. It also offers guidance on steps that can be taken to improve the energy efficiency of a property.

The Environmental Protection Agency recommends that you also check whether a property is in a "high radon" area on its radon map. If it is, you should enquire if the property has been tested for radon. More information on radon in homes is available at **epa.ie/radiation**.

Booking deposit

If you are buying a house through an estate agent, you may have to pay a *booking deposit*. A booking deposit is the sum of money paid by a potential purchaser to an estate agent in order to demonstrate real interest in purchasing the property. It is usually between 1% and 3% of the purchase price. The booking deposit is fully refundable up to the point that the contract for sale is signed.

Once the estate agent receives the booking deposit, they will prepare and issue a *notice of sale* to the solicitors of the seller and purchaser. The notice of sale is a simple document containing the address of the property in sale, the purchase price, the estimated closing date of the sale, the details of the seller and purchaser and the names and addresses of the solicitors acting for the seller and purchaser. Once the solicitor for the seller receives the notice of sale they will send the *title* documents (see page 4) of the property and the *contract for sale* (see page 5) to the solicitor for the purchaser.

Mortgages

A mortgage is a loan, usually from a bank, which is secured on the property bought with the loan. Lenders offer a range of mortgage rates and products. You should contact a number of different mortgage providers or brokers to find the mortgage that best suits your needs. An independent mortgage adviser can also assist you if you are unsure about the best way to go about obtaining a mortgage or what type of mortgage would most suit you and your financial situation. More information on mortgages is available from the Competition and Consumer Protection Commission at **consumerhelp.ie/mortgages**.

Under the European Union (Consumer Mortgage Credit Agreements) Regulations 2016, lenders must provide a European Standardised Information Sheet (ESIS) setting out details of the mortgage offer (see below); must use common mandatory requirements when calculating the annual percentage rate of charge; and must conduct a creditworthiness assessment before offering a mortgage loan.

Mortgage offer

The mortgage offer set out in the ESIS must include:

- The borrowing rate, indicating whether this is fixed or variable or a combination of both
- Details of any charges included in the total cost of the credit to the borrower and the total amount of credit
- The annual percentage rate of charge (this should feature at least as prominently as any interest rate)
- The duration of the credit agreement
- The total amount payable by the borrower
- The amount of the instalments
- The number of instalments
- A warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the borrower

Mortgage approval

You should check with potential lenders to get a statement of how much they are prepared to lend you. This is called *approval in principle*. You can get mortgage approval in principle before you start to look for a property. However, when you find a property you like, you must get formal mortgage approval before you sign the contract for sale. If you sign a contract for sale (see page 5) and are then unable to get formal mortgage approval, you may lose your contract deposit and there may be other penalties.

The most common type of mortgage used by lenders is the "mortgage for present and future advances" also known as an annuity mortgage. This mortgage requires the borrower to repay the entire amount of the principal together with interest during the term of the mortgage. The clause "for present and future advances" also known as "all sums due" means the borrower pledges their property to the lender not only for the loan itself but also for any other debts the borrower may have with the lender, for example, car loan or credit card bill. Many people will therefore have their mortgage with one lender and their day-to-day borrowings with another lender.

Lending limits and deposits

The Central Bank sets limits on the size of housing loans made by the commercial lenders that it regulates. There are two types of limit. One is based on the ratio of the loan to the income(s) of the borrower(s) – known as loan-to-income or LTI limit. The other is based on the ratio of the loan to the price of the house – known as loan-to-value or LTV limit. In general, both of these limits will have to be met. However, lenders have some (very limited) scope for flexibility and you may wish to discuss this with your lender.

Loan-to-income limits
There is a general LTI limit of three and a half times the borrower's gross income for all new mortgage lending for principal dwelling homes. This includes lending to people in negative equity who are applying for a mortgage for another home. For this limit, there is no distinction between first-time and non-first-time buyers.

Loan-to-value limits
For first-time buyers, mortgage lenders can lend up to 90% of the purchase price of a principal dwelling home where the property has a value of €220,000 or less. This means that if a property is priced at €200,000 and you are a first-time buyer, you will need a deposit of €20,000, which is 10% of the price.

However, for houses over €220,000 the first-time buyer must have 10% of the purchase price up to €220,000 and 20% of the balance above €220,000. So, if a property costs €300,000, a first-time buyer will need to save a deposit of €38,000, made up of 10% of €220,000 and 20% of the remaining €80,000 balance.

Non-first-time buyers can borrow up to a maximum of 80% of the purchase price of a principal dwelling house, meaning that these borrowers will need a deposit of 20% of the purchase price. This LTV limit does not apply to borrowers in negative equity applying for a new mortgage for another home. However, lenders may still opt to apply stricter lending standards, based on their assessment of each case.

Valuation

All lenders regulated by the Central Bank must carry out a valuation of the property within two months of the date the mortgage will be drawn down. You, as the buyer, will have to pay for this valuation.

The role of a solicitor

Conveyancing is the legal work involved in buying or selling property. On average the conveyancing process will take about two months to complete, but it can sometimes take much longer.

The role of your solicitor is to protect your interests when you are purchasing a property. You do not need to hire a solicitor in the area where the property is located. However, a solicitor who has bought and sold houses before in an area you are looking at may have certain local knowledge about matters such as the likelihood of problems with title or any planning issues. The Law Society of Ireland publishes its register of practising solicitors at **lawsociety.ie/Find-a-Solicitor**.

The same solicitor cannot act for both the seller and the purchaser in the same property transaction. This is seen as a conflict of interest.

Your solicitor's functions include inspecting the title documents (see page 4) to check whether:

- The seller owns the property and has the authority to sell it
- There are any planning issues with the property
- The estate is managed by a management company
- The public roads and services joining the property are being maintained by the local authority, the developer or the owners' management company (if relevant)

Your solicitor's role also includes ensuring that you understand your obligations under the mortgage agreement and the consequences of not meeting those obligations; negotiating the terms of the contract for sale (see page 5); and giving an *undertaking* to the lender in order to draw down the actual mortgage money required before the house is purchased. An undertaking is a legal promise from the solicitor that they will use the money to buy the property with good title and will register the mortgage on the property after the sale is complete.

Your solicitor should also carry out judgment and bankruptcy searches of all parties on the day of closing.

When the contract for sale is signed, the solicitor for the seller holds the contract deposit (usually 10% of the purchase price less the booking deposit retained by the auctioneer) "as stakeholder" until the sale closes. This means the money is held on behalf of both parties to the sale with an obligation to pay to either, depending on whether the sale closes or not.

Finally, once the sale is closed, your solicitor will pay stamp duty for the transaction on your behalf and will register you as the owner of the property with the Land Registry (and with the Registry of Deeds if necessary). The registration process can take months or years to complete. Even if it does take a long time, you are still the owner of the property and, if you wish, you can sell the property before registration is complete if you can show good marketable title (see page 4).

Legal fees

The professional fee a solicitor charges for a conveyance can vary. Some solicitors charge a percentage of the sale price of the property, while others charge a flat fee. You may also be charged additional fees, for example, for phone calls, postage and registering deeds. Therefore it is important to shop around and find out the fees and additional costs of conveyancing from a number of solicitors in order to get an idea of the average price before you engage a solicitor. In general, you pay your solicitor's fees when you give them the money to pay for stamp duty and Land Registry fees, which they need to have before drawing down the mortgage loan.

Title

Title is the legal term used to describe both a person's ownership of a property right and the documents which prove that right. Each time property ownership changes, a new title deed is drawn up to reflect this change.

A person who wants to sell their property must have *good marketable title*. This means that the seller must be able to prove through their title documents that they own the title to the property they propose to sell. In this way the buyer can be satisfied to pay the agreed price for the title in question. After you pay the booking deposit to the estate agent, your solicitor will inspect the title documents and raise pre-contract queries about them with the seller's solicitor in order to be satisfied that you, as the buyer, are getting the title that you are paying for.

There may be some conditions on the seller's title which the seller had to obey during their ownership. These conditions will be identified to you (the buyer) by your solicitor as you will be subject to these conditions once you buy the seller's title. Such conditions can include restrictions on the use of the land, for example, for residential purposes only, or the conditions associated with a management company if the property is part of a managed estate.

Planning issues

You should ensure that the property you are purchasing has the necessary planning permission. You also need to know if there are any proposed planning applications or permissions granted nearby which may affect the value or your enjoyment of the property in sale, for example, a proposed new apartment block, incinerator, or road-widening scheme. The contract for sale will contain planning conditions for the property and the existing planning permissions for the property are part of the title documents.

The role of a surveyor

A surveyor or engineer needs to confirm that the planning is in order. They will assess whether the actual building matches the planning permission granted before the property was built and will also assess whether there have been any unauthorised additions to the building since the original planning was granted, for example, a garage or an extension.

If a defect in planning is found, it can mean the seller does not have good title and the seller may have to address the issue before the buyer can purchase the property. If a buyer is purchasing the property out of their own funds and there is no mortgage involved, the buyer can exercise their discretion as to whether the planning issue is significant enough to stop the sale. If the buyer is purchasing the property with a mortgage, the mortgage lender will not accept any issue with planning as this may affect the lender's ability to sell the property later on if they need to. If requested, the surveyor or engineer will also carry out planning searches for the local area and identify any proposed new builds which may affect the property in sale.

Managed estates

Managed estates or "multi-unit developments" are housing estates or apartment blocks where the common areas are owned by an owners' management company instead of the local authority. These developments consist of at least five residential units that share facilities, amenities and services. In practice, the majority of multi-unit developments are apartment blocks. The common areas of a managed estate include the roads, street lighting, lifts, stairwells, and landscaped areas.

The Multi-Unit Developments Act 2011 regulates the ownership and management of the common areas of multi-unit developments, and provides for the setting up of owners' management companies to manage such areas. The owners' management company is a limited company which owns the common areas and is responsible for them in terms of insurance, maintenance, management and repair. The board of the owners' management company is made up of some of the individual owners of the dwellings in the estate. Every individual owner of a dwelling in a managed estate is a member of the owners' management company and has a vote at the AGM.

If you are buying a property in a managed estate, your solicitor will ask for all the relevant documentation for the management company. This will include proof that the management company actually owns the common areas and a copy of the management company's "house rules". These rules include some restrictions on property owners' use of their property and the common areas in order to enhance everyone's peaceful enjoyment of the property.

The owners of dwellings in a managed estate are required to pay service charges to the management company. These service charges are used to maintain the common areas including the roads and services, pay for the administration of the management company and other common services such as rubbish collection. A portion of the service charges are also used to build up a sinking fund, which is used to address any unusual costs which may arise such as refurbishment or once-off maintenance. Before you purchase a property in a managed estate, your solicitor will advise you on all the requirements and obligations for living in a managed estate. If there are any outstanding service charges on the property, your solicitor will negotiate an agreement with the seller's solicitor about this before contracts are signed.

Buyer beware

The principle of *caveat emptor* (buyer beware) applies to all purchases of second-hand homes. When a buyer purchases a new build from the builder there will usually be a building contract and a policy detailing how defects in the property will be addressed by the builder within a certain period of time after the sale has closed. Buyers of second-hand properties should view the property themselves, often more than once, and be on the lookout for any potential issues such as cracks or leaks. It is always advisable to engage a qualified professional to carry out a structural survey of the building, the boundaries and any potential planning issues prior to signing the contract on a property. This survey will highlight any underlying issues with the property. A seller is under no obligation to disclose any physical defects in a property. An engineer or chartered surveyor can carry out a structural survey on a property.

The purchasing process

Buying by private treaty

A sale by private treaty is one in which the seller has placed the property with an estate agent who advertises the property and shows it to potential buyers, or where the seller advertises their property themselves. Once a buyer decides to purchase, they make an offer to the estate agent. The agent will take bids and inform the seller of all bids until they are instructed to accept an offer. At this point, the successful bidder will pay a booking deposit (usually 1%-3% of the purchase price) to the estate agent and the property will be marked "sale agreed". However, until the contract for sale is signed, all dealings will be subject to contract, and the booking deposit is fully refundable.

Buying at auction

Alternatively, you may buy a property at auction. Properties for sale at auction will usually be advertised for a month or more before the day of the auction. You will have time to view the property and research the area, carry out a survey and obtain loan approval up to a certain amount. Your solicitor will have obtained the title documents and raised any pre-contract enquiries, all without the need to pay a booking deposit.

At the auction, the property is sold to the highest bidder once the hammer comes down. If you buy at auction you will be required to pay the contract deposit (usually 10% of the purchase price) then. This will be based on the price the property sold for and the amount that your lender is permitted to lend. The contract for sale is also signed on the day of the auction and there is no cooling-off period. You will generally be required to pay the balance of the purchase price within one month of the auction and it is essential that you have the necessary arrangement in place with your lender before bidding on the property.

Contract for sale

A contract to buy property is a contract like any other and, as such, the laws of contract apply. This means the parties must be over eighteen years of age, there must be a valid offer and acceptance of the contract, and the terms of the contract must be certain.

The Law Society of Ireland provides a standard contract for sale, which is widely used by solicitors. The contract contains 51 general conditions, which are the terms that will reasonably apply to every property sale. These general conditions can include terms dealing with the title documents required, time limits for closing the sale and procedures where the sale does not close.

Solicitors will amend the general conditions to cover the specific property by using special conditions. Special conditions will address specific things, for example, making the sale subject to the buyer obtaining the mortgage funds, or subject to the vendor obtaining planning permission for a certain issue, or identifying any contents being transferred with the property.

Co-ownership

Most couples who are buying a home together become co-owners and have both people named on the title deed. There are generally two types of co-ownership, *joint tenants* or *tenants-in-common*.

Joint tenants

Joint tenants is the name given to people who are full co-owners of all of a property, together. They each own 100% of the property and they cannot do anything with that ownership without the consent of the other joint tenant(s). The most significant feature of joint tenancies is *survivorship*. Survivorship is the term used to describe how ownership of property is transferred on the death of a joint tenant. If there are two joint tenants of a property, when one of them dies the remaining joint tenant will own all of the property. Jointly held property is transferred outside of a person's will. This means that when a joint tenant makes a will and then dies, the property that they owned as a joint tenant never forms part of the assets of the deceased but is automatically transferred to the remaining joint tenant(s). Most spouses or partners will hold property, particularly the family home, as joint tenants.

Tenants-in-common

Tenancy-in-common refers to people who co-own a property in defined shares. For example, three people could own a property in one-third shares; or in unequal shares depending on the amount of the purchase price each person paid; or depending on any agreement between the owners. Survivorship does not apply to tenants-in-common. When one tenant-in-common dies, their share will be transferred by their will or under the rules of intestacy if there is no will. A single tenant-in-common can also sell or mortgage their share of a property without the consent of the other tenant(s)-in-common.

You may want to consider a co-ownership agreement when entering into a property transaction with someone else, particularly if you are not married to, or cohabiting with, that person. A co-ownership agreement is a contract between the owners and will specify how the property should be dealt with if it is to be sold. You can include terms such as the right of either party to buy out the other within a certain period before the property is placed on the open market.

The family home

The *family home* is the dwelling in which a married couple or civil partners ordinarily reside, or did reside before one of them left the dwelling. Where a property is a family home but is owned by only one spouse or civil partner, the consent of the spouse or civil partner who does not own the property must be obtained in order to sell or mortgage the property. This protects the rights of the spouse or civil partner who does not own the family home.

A cohabiting couple's dwelling does not qualify for these family home protections. Cohabitants must both be legal owners of the property, either as joint tenants or tenants-in-common, for them both to have a say in the sale of the dwelling. However, under the redress scheme for qualified cohabitants, if a qualified cohabiting couple breaks up, the courts may make an order to transfer or split the sale proceeds of property owned by one or both of the parties. A cohabitant who does not own the property may also have a right to a portion of the sale proceeds of a property in which they contributed to the general running and upkeep of the property, for example, by sharing mortgage repayments or utility bills.

Closing delays and practical considerations

The closing date for the sale of a property will usually be four to six weeks from the date the contract for sale is signed. This date can be re-negotiated between the parties depending on the property and title in question. You should inform your lender of the closing date as soon as possible so they can ensure you have completed all the mortgage requirements in advance of this and that all funds are ready to be drawn down by that date.

If the closing date is delayed, your solicitor will not draw down the money from the lender until nearer the re-scheduled closing date, to prevent you incurring interest on the loan before you need to. Solicitors cannot release purchase monies until they have received funds from the buyer for stamp duty and Land Registry fees. This is to ensure that the solicitor will be able to register the sale and the lender's mortgage on the property with the Land Registry once the sale closes.

If a sale is delayed and does not close by the closing date specified in the contract due to some fault on the purchaser's side, the sale contract will usually contain a term stating that interest on the purchase price will begin to accrue from the specified date and is owed to the seller until the sale is actually completed.

After the sale closes

After closing

On the day of closing your solicitor will transfer the balance of the purchase price to the seller's solicitor. Once the money is transferred, the keys and the title deeds to your property will be given to your solicitor. Your solicitor must then pay the stamp duty on the deed. Stamp duty is calculated as 1% of the purchase price for properties bought for up to €1 million and 2% of the purchase price for properties over €1 million.

Once the deed is stamped by Revenue, which is proof that stamp duty has been paid, your solicitor must register you as the new owner of the property in the Land Registry records and register your mortgage on the property. Once this is completed, you are the official owner of the property and the lender has secured their mortgage loan to you by registering the mortgage on the title of the property in the Land Registry official records. The solicitor will then post all title documents to the lender until the house is to be sold again or until the mortgage is fully paid.

Mortgage obligations

If you got a mortgage loan to buy your property, you have certain obligations to that lender throughout the lifetime of the mortgage. The most obvious obligation is that you must meet the monthly repayment requirements until the mortgage is fully paid. If you do not keep up your mortgage repayments, you may lose the property. You should contact your lender immediately if you are having difficulty paying your mortgage instalments as you may be able to agree an alternative repayment arrangement that suits your circumstances. A lender cannot take possession of your home without a court order or your written consent to do so.

Insurance

In most cases, the lender is legally required to make sure that you have *mortgage protection insurance* before giving you a mortgage for a principal private dwelling. This is a type of life assurance taken out for the term of the mortgage and designed to pay it off on the death of the borrower or joint borrower. You can shop around for this insurance – you do not have to buy it from your lender.

This legal requirement for mortgage protection insurance does not apply if you are aged over 50, or if you cannot get the insurance (or can only get it at a much higher premium than normal) or if you already have enough life insurance to pay off the mortgage if you die. However, some lenders may insist that you take out mortgage protection insurance as a condition of giving you a mortgage, even if there is no legal requirement in your case.

You may also opt to take out *mortgage repayment protection insurance*. This is designed to repay your mortgage for a certain period if your income is reduced because you have an accident or are made redundant, or for any other reason covered by the policy.

As the mortgage loan is secured on the property, the mortgage agreement will generally oblige you to take out *home insurance* on the property, in order to protect the lender's interest if it is damaged or destroyed.

Local Property Tax

As the owner of a residential property you will now be liable for Local Property Tax (LPT) which is an annual residential property tax collected by Revenue. The person liable for the LPT for 2016 on a property is the person who owned it on 1 November 2015 (the liability date). So, if you buy a property in 2016 you are not liable to pay the LPT on that property for 2016. The LPT amount due for a year can be apportioned during the sale process by agreement between the parties.

The base LPT rates are set by Revenue, although each local authority can adjust these rates by up to 15%. The amount of LPT you pay depends on the declared value of the property on 1 May 2013 and the LPT rates that apply to the property for a given year. The valuation on 1 May 2013 will remain in place until the current valuation period ends on 31 October 2019.

Revenue has an online LPT calculator which will tell you how much LPT is due on a property in a given year. If you fail to pay your LPT, Revenue may obtain this tax directly from your employer or your bank account or treat it as a debt or withhold the amount owed from any tax refund which may be due to you in the future.

Exemptions

Some properties are exempt from LPT if they meet the qualifying conditions. You can find a full list of exempt properties and the qualifying conditions on **revenue.ie**. In most cases a residential property that was exempt from LPT on 1 May 2013 continues to be exempt until the end of the current valuation period (31 October 2019), even where the

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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property is sold or ownership is transferred by way of gift or an inheritance.

The exception to this rule is properties that were purchased in 2013. These properties are exempt until the end of 2019 if they continue to be used as the original purchaser's sole or main residence. However if the property is subsequently sold or ceases to be a main residence between 2013 and 2019, the exemption no longer applies. This means that if you buy a property in this category you are liable for LPT in the normal way. Note that all new and previously unused properties purchased from a builder or developer between 1 January 2013 and 31 October 2019 are exempt until the end of 2019 (even if sold again in that period).

Valuation

When you buy a house, in most cases you do not need to provide a valuation for LPT. The valuation declared by the vendor (previous owner) in May 2013 will apply up to 31 October 2019. However, before adopting the vendor's valuation you are required to decide whether the valuation declared by the vendor was reasonably and honestly made. If you have any concerns about the original valuation these should be addressed, if possible, before the sale is completed. If you decide that the valuation declared by the vendor was too low, you will be required to submit a revised valuation before the next liability date. You can get detailed information on this process from Revenue. Your solicitor will also make all necessary enquiries to establish that previous taxes on the property have been paid and are up to date.

Wills and succession

If this is the first time you have purchased a property, you may want to make a will. Generally, if you die without making a will, the law on intestacy dictates what happens to your property. A will can ensure that proper arrangements are made for your dependants and that your property is distributed in the way you wish after you die. Wills are subject to the rights of spouses, civil partners or qualified cohabitants and, in certain cases, children. If you co-own the property as a joint tenant, your interest in the property will pass automatically by survivorship to the other joint tenant(s), (see page 6).

The information in *Relate* is intended as a general guide only and is not a legal interpretation

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