



Issue 2 Oct. 2004

## IRISH/UK PROPERTY BULLETIN



**MorganMcManus Solicitors**

*With offices in*

*Northern Ireland, Republic of Ireland and also practising in England/Wales*

[www.morganmcmanus.com](http://www.morganmcmanus.com)

### Contents.....



- 1. Editorial**
- 2. Buying UK Property With A Euro Loan**
- 3. Buying Residential Investment Property in Republic of Ireland**
- 4. Gazumping -Why it happens and what can be done about it.**
- 5. Recommended Websites.**

### **1. EDITORIAL**

Welcome to the second issue of the Morgan McManus Irish/UK Property Bulletin. Those of you unfamiliar with our service can learn more about us by visiting our Website at [www.morganmcmanus.com](http://www.morganmcmanus.com). We have offices in Northern Ireland and the Republic of Ireland and also provide legal services in England/Wales. This publication is being delivered to Accountants and Financial Advisors, Banks, Mortgage Advisors, Property Investment Companies and Private Investors. We hope to give you an insight into the information you will need to ensure that you have adequate legal protection when investing in property, whether that property is in Northern Ireland, the Republic of Ireland or in England/Wales. As we practice in all three jurisdictions we are ideally placed to provide a comprehensive comparative analysis – and that is important, particularly where it is your first venture into international property investment.

We know that you will find the Articles in this issue of interest. Killian Cawley Senior Business Manager with the Bank of Ireland Business Banking, covers the issue of buying UK property with a Euro Loan. While he does suggest that you may need the security of an ROI property, we suspect that this would not be a precondition in all cases - as every loan application is different. If you need further information on the subject and have received this Bulletin by email you can email Killian Cawley directly by connecting to his email address at the end of his article. Fergal McManus of our Clones office advises non-residents on the purchase of investment property in ROI. Seymour Major of our Enniskillen office covers one of the most worrying aspects of private property purchases in the UK – “gazumping”. Read his analysis on how to get around this.

In our next issue we will cover the subject of “Syndicate” purchases – giving you an insight into how you may be able in the future to become part of a larger group buying into a major investment property.

We have also added another section into our Bulletin – “Recommended Websites”. Here we hope to help the private investor undertake his own initiative in sourcing properties and loans. We will be happy to consider any websites which investment companies wish to furnish to us for inclusion in future issues. Simply email details to [bmorgan@morganmcmanus.ie](mailto:bmorgan@morganmcmanus.ie).

As well as providing legal advice to the Private Investor, we also act for Investment Companies and can provide very competitive terms, particularly where we are acting for a number of purchasers in a common property, e.g. a number of apartments in the one block. Further details of our ROI service are available from Fergal McManus at our Clones office (e-mail [fmcmanus@morganmcmanus.ie](mailto:fmcmanus@morganmcmanus.ie)) and of our Northern Ireland/UK services from Seymour Major of our Enniskillen office (e-mail [smajor@morganmcmanus.co.uk](mailto:smajor@morganmcmanus.co.uk)). (See telephone contact details at end of this Bulletin).

**Brian Morgan**  
Editor

## **2. BUYING UK PROPERTY WITH A EURO LOAN**

**Kilian Cawley, Senior Business Manager with Bank of Ireland Business Banking, advises on the alternative loans available to finance a UK property purchase.**

### **Investing in the UK Property Market**

At present it would appear that the old saying “the far away hills are greener” is true when one looks at the number of Irish investors purchasing property in the UK. For many years Irish people went to the UK to find employment and after a period working away from home, would return to Ireland with enough money earned to buy a suitable property. A couple of decades on this has substantially changed. The Irish are bringing their money to the UK to buy investment property. Why so? Well, many feel that the Irish market has become too expensive. Few ‘good value’ properties remain. Rentals are softening and capital appreciation is slowing. In the UK over the past two and a half years property value has increased by a reported 65% compared to less than half of this in Ireland (source : The Sunday Business Post). There is a feeling among economists that UK property is starting to slowdown and that such high levels of appreciation may not be forthcoming in the future. However, many investors believe that good opportunities still exist for capital appreciation and strong rental yields continue to exist in the UK market. As with any property investment, it is not without risks. So, you must do your research well.

### ***Financing your UK property investment***

With regard to buying and financing a UK property, it is possible to obtain a ‘buy to let’ loan from certain financial institutions in the UK. They will provide a particular percentage of finance, usually 80% of the purchase price. In rare cases, it may be difficult to obtain finance, as UK lenders may be reluctant to lend to non-residents.

A popular method to finance a UK property is to release equity built up in an Irish property, and use this to facilitate the outright purchase of a UK property. The loan would be secured on an Irish property in Euro or Sterling, depending on an individual's personal circumstances.

Another option is to obtain a Sterling loan in Ireland, secured on the UK property. The bank will arrange to take the UK property as security through a UK solicitor. The loan is raised in Sterling and repaid in Sterling from the rental income.

Over the past number of months the Bank of England has raised interest rates (the Sterling base rate is currently 4.75%) while the European Central Bank base rate is at a historical low of 2%. As can be seen the differential between the interest rates is significant. A 2.75% increase in interest rates equates to approximately an additional repayment of £230 Stg. per month on a loan of £100,000. Stg.

In recent times, Bank of Ireland has received requests from customers to convert Sterling loan facilities to Euro due to the interest rate differential. The Bank in certain circumstances has agreed to provide a Euro loan for a UK based property. It should be noted that if rental income is in Sterling, a Sterling loan may reduce exchange rate risk. At present, exchange rates are relatively stable but they are volatile by nature and any adverse rate movement could affect the individual's repayment ability.

### **Exchange Rate Risk Management**

Bank of Ireland Global Markets are aware of the issues individuals face when purchasing a foreign property and have developed a number of products to assist individuals to make a shrewd business investment. As mentioned, exchange rate fluctuations can have a considerable effect on the repayments of a Euro loan facility if the rental income is in Sterling. Changing rates may also have a considerable impact on the purchase price as many buyers leave the currency exchange to the last minute sometimes missing out on favourable rates.

One option an investor can consider is a Foreign Exchange Forward (FX Forward). This is an agreement to purchase a foreign currency at a specified price at an agreed future date. This can work in your favour, but as with the money markets it can also work against you. An investor should always try to manage risk, as uncertainty can create profitable opportunities but it can also create losses. There are a number of options available if choosing an FX Forward solution.

### **Property Syndicates**

Property Syndicates are popular among investors wishing to invest in large properties such as office blocks or retail parks in prestigious areas of European capitals. Essentially a property and a number of investors are identified, the syndicate gears up (borrows) on the property and rents it out to chosen tenants. The rental income repays the interest on the loan and the property is retained for approximately six to seven years depending on the market conditions. When the property is sold the market appreciation is shared among the syndicate members. The advantage of such an investment is that investors can access properties which they would have been unable to afford on their own. By gearing up, the return is maximised and the risk is lower due to the quality of tenant, the location and the spreading of the risk among syndicate members.

## Spreading your Risk

As with any investment portfolio diversity of investments is important. By investing in property in Ireland and the UK an investor is spreading his risk. By mixing residential, commercial and retail property the risk is spread even further.

Individuals investing abroad should always obtain independent professional advice on all aspects of their property purchase from the legal, financing and taxation aspects of such a transaction. Any individual who is interested in obtaining further information with regard to financing a property purchase in the UK should contact his local branch of Bank of Ireland who will be happy to arrange a consultation with a Business Manager. Each property investment is different and each investor is different - hence Bank of Ireland will look at each proposition individually to seek the most suitable financing option.

**Kilian Cawley, B.A., Post.Dip.B.S., A.I.M.**  
**Senior Business Manager with Bank of Ireland Business Banking,**  
**Monaghan/Cavan Region,**  
**Dawson Street,**  
**Monaghan**  
**Email : [Killian.Cawley@boimail.com](mailto:Killian.Cawley@boimail.com)**  
**From ROI : 047 30243**  
**From NI : 0035347 30243**

### **3. BUYING RESIDENTIAL INVESTMENT PROPERTY IN REPUBLIC OF IRELAND**

**By Fergal McManus, Solicitor and Professional Tax Advisor.**

This article written by Fergal McManus in October 2003 can be accessed on the articles section of the website [www.morganmcmanus.com](http://www.morganmcmanus.com)

at

<http://www.morganmcmanus.com/html/pdf/Residential%20Property%20Investment%20in%20S.%20Ireland.pdf>

**By Fergal McManus, LL.B, LL.M(Comm), AITI, QFA**  
**Solicitor and Professional Tax Advisor [fmcmanus@morganmcmanus.ie](mailto:fmcmanus@morganmcmanus.ie)**

### **4. GAZUMPING -WHY IT HAPPENS AND WHAT CAN BE DONE ABOUT IT AND “LOCK OUT AGREEMENTS”.**

**Seymour Major, Solicitor, discusses gazumping and the over heating property market.**

When a person (the buyer) agrees verbally to buy a house at a particular price, it is reasonable for him to expect that once his solicitor has got the contract ready for him to sign, things will remain that way and the sale will eventually close on the terms agreed. Unfortunately, that is not always the case. Before a formal legal contract is entered into, the seller can pull out of the deal. If the seller then demands more money or sells to somebody else at a higher price, the buyer is said to be “gazumped”.

Gazumping is more likely to occur when property prices are rising strongly. In a weak property market where prices are falling buyers have been known to re-negotiate a price downward just before offering a written contract. This phenomenon is known as “gazundering”.

To most people, gazumping or gazundering is morally reprehensible. Victims are often left having expended money on services such as surveys, legal and mortgage advice with nothing to show for it. This is not to mention the considerable emotional cost to people, particularly those that have set their heart on their dream future home.

Most right-minded people agree that the law should protect people against gazumping or gazundering. So why does the law allow this to happen? The answer lies partly in the present law of contract and the present system of conveyancing.

### **Contract law and the present conveyancing system**

In law, for a contract to be binding, there must be

- (1) An offer by one party which is accepted by the other
- (2) Consideration
- (3) An intention by the parties to be bound by the contract
- (4) Where the contract is for the sale of land, it must be signed or evidenced in writing containing the essential particulars of the contract and signed by the party to be charged or his duly authorised agent.

Normally, when parties agree an original deal through an estate agent to buy and sell a property, items (1) and (2) above are present, but (3) and (4) are missing. That is because the parties, particularly the buyer, will not want to become legally bound to a contract until he is ready. He will need to arrange a survey. If he is borrowing, he will need a mortgage offer. He will also need his solicitor to check the title and find out as much as he can about the property through enquiries and searches. It is only when those matters are in order that the buyer can safely offer an unconditional contract to the seller. Unfortunately, it is precisely because the buyer needs that time that gazumping occurs.

### **How can gazumping and gazundering be prevented?**

The problem has exercised the minds of UK Parliamentarians over many years. Other jurisdictions such as Scotland, where the conveyancing system is very different and where gazumping is less likely, have been scrutinised carefully. Unfortunately, without going into detail, those other systems have been found to have other problems, which outweigh the justification to adopt an entirely different system. Reform in this area, when it comes, will centre on ways to speed up the existing system. In November 2002, a Bill was introduced in the UK Parliament which would compel the seller to make available a home information pack containing all the searches and a survey report. The new Bill applies to England and Wales only. According to the Government's timetable, it is unlikely that buyers will benefit from the new system until 2006. For people living in Northern Ireland, the reforms are not likely to be available for some years after that.

### **Are there any existing ways of minimizing the risk of gazumping?**

One legal device, which has been used to prevent gazumping, is the lock out agreement. A lock out agreement is a contract ("the side contract") whereby the seller agrees with the buyer that as long as the buyer offers a contract ("the main contract") to the seller within a set period of time and pays a non-refundable deposit, the seller is legally bound to sell the property under the main contract. Lockout agreements had been used frequently in England as early as the mid-1980s. In the case of *Walford -v- Miles* [1992] 2 AC 128 the House of Lords finally recognised that a lock out agreement was enforceable.

A lock out agreement has limits to its usefulness. A seller will not wish to be waiting too long for the buyer to commit himself whilst there are limits to how much the buyer is prepared to risk losing as a non-returnable deposit. Experience in England suggests that some developers are prepared to give lock out agreements for periods of up to 28 days for a non-returnable deposit of about £1,500.

There is no reason why lock out agreements should not be used in Northern Ireland, particularly when the buyer is buying a property from a seller with no dependant purchase, such as a developer. Finally, in order for them to work in practice, it would be necessary for Estate Agents and those negotiating sales of property to be willing to work lock-out agreement and actively encourage the parties to make use of them, where appropriate.

**Seymour Major, Solicitor, Morgan McManus Solicitors, 12 Paget Lane, Enniskillen, BT74 7HT, tel: 02866320102. [email@smajor@morganmcmanus.co.uk](mailto:email@smajor@morganmcmanus.co.uk).**

This “Gazumping” Article has already been featured on Issue 3 (July 04) of the Morgan McManus Quarterly Newsletter. For further information Morgan McManus visit our website on: [www.morganmcmanus.com](http://www.morganmcmanus.com). To subscribe to this free **Newsletter** or our monthly **Employment Law Bulletin**, please visit the Morgan McManus website at [www.morganmcmanus.com](http://www.morganmcmanus.com).

## **5. RECOMMENDED WEBSITES**

**In this section, Morgan McManus features websites which will assist the private investor in seeking properties and loans.**

- New website [www.ukmortgagemarket.com](http://www.ukmortgagemarket.com) has considered the way we shop for mortgages and gives access to 3000 mortgage products from over 100 lenders in the UK allowing users to produce a whole range of mortgage calculations to help find the right one for them. There is also a jargon buster for those baffled by the many terms in the mortgage market.
- For those looking to buy brand new properties, the website [www.smartnewhomes.com](http://www.smartnewhomes.com) is a new homes investor service. This Smart Investor Club offers discounts of up to 15% on new home schemes across the country, in notification of investment opportunities ahead of other buyers and insight into the potential growth of the new homes market in a certain area. Members pay a monthly fee of £25 and 1% of the property value sourced through the club. For further information, visit the website. We don't necessarily recommend that you sign up to the service but you can visit the website simply to see what properties are being marketed.



### *Clones and Enniskillen*

**Clones Ph. No. : from ROI : 047-51011  
: from NI : 00 353 47 51011**

**[email:law@morganmcmanus.ie](mailto:email:law@morganmcmanus.ie)**

**Enniskillen Ph. No. : from NI : 028 66 320102  
: from ROI : 048 66 320102**

**[email:law@morganmcmanus.co.uk](mailto:email:law@morganmcmanus.co.uk)**