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1. EDITORIAL

Welcome to the 8th 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. 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. In this issue we provide a summary of the Presentations given recently at a Seminar sponsored by Morgan McManus - *THE PENSION PROPERTY INVESTMENT OPPORTUNITY SEMINAR* – at the Clinton Centre, Enniskillen. There is an Article by Fergal McManus Solicitor on Management Companies. This will be of interest to investors and owner/occupiers who have bought apartments. The principles advised will apply regardless as to where your apartment is located. Seymour Major Solicitor has written Articles on buying property at Auctions, in particular concentrating on commercial investment. While Seymour`s Articles are written with the English property market in mind, many of the principles also apply to the Republic of Ireland and Northern Ireland markets. He also provides some useful Websites on Commercial Auctions.

As well as providing legal advice to the Private Investor, we also act for Developers and Investment Syndicates 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 (e-mail fmcmannus@morganmcmanus.ie) and Brian Morgan (e-mail bmorgan@morganmcmanus.ie) at our Clones office. Details of our Northern Ireland/UK services are available from Seymour Major of our Enniskillen office (e-mail smajor@morganmcmanus.co.uk). (See telephone contact details at end of this Bulletin).



Brian Morgan
Editor

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2. WHAT IS A MANAGEMENT COMPANY?



Fergal McManus,
Solicitor and Professional Tax Advisor, Partner in Morgan McManus Clones, advises why Apartment owners should ensure to keep a close eye on the management of their Apartment Block.

A Management Company is usually a company limited by guarantee and registered in the Companies Office, established by a property developer to own and be responsible for the management of the common areas surrounding a housing estate or apartment block - such as access roads, car parks, internal common areas, gardens and communal stores. The Management Company will also be responsible for insuring the common areas, making sure that they are well lit, that the refuse is collected and the apartment block/estate is kept clean and well maintained. From a practical perspective the importance of the Management Company is that it is responsible for ongoing maintenance and it is the legal person to whom you pay your service charge.

From a legal perspective its importance lies in the fact that it will become the freehold owner of the apartment block and common areas after the developer finishes his development. The Management Company will become the freehold owner subject to all the 999 year apartment leases. In short the Management Company becomes the Landlord.

This mechanism works very well provided all of the Apartment owners take an interest in making sure that the Management Company performs its duties i.e. maintain proper insurance, retain maintenance men and cleaners in respect of common areas, common internal lighting and common areas etc.

Who owns the Management Company?

The Developer establishes the Management Company at the very start of the Development, before the sale of any of the apartments. As each apartment is sold, each buyer is obliged to become a member of the

Management Company. For example, if there are 100 apartments then when all the apartments are sold, there will be 100 members of the Management Company. The result is that all of the apartments owners own the Management Company, which is the freehold owner of the Development. In effect, the Management Company is the Landlord of each 999 year apartment lease. So each apartment owner is a tenant under a 999 year lease, but they are also a part owner of the Landlord through membership of the Management Company.

What is the difference between a Management Company and a Managing Agent?

A Management Company is effectively a legal entity (a Company) owned by the apartment owners for the purpose of owning the freehold interest in the Development and being legally responsible for its management. The Directors of the Management Company will be a number of apartment owners who are voted in by their neighbours to be responsible, making sure the Management Company performs all its legal duties. These Directors are a voluntary committee and ordinarily would not have the time or expertise to manage the Development on a day to day basis.

Therefore the Directors of the Management Company require professional assistance to co-ordinate the legal and accounting obligations, to demand and account for the service charge, to set budgets, to employ cleaners and maintenance people on the behalf of the Management Company, to monitor standards, to provide assistance in case of emergency e.g flooding, to insure the building at a competitive price - the list goes on and on. This type of professional assistance is provided by "Managing Agents" who will charge an annual fee for their services.

Why am I obliged to pay a "Service Charge"?

It should be noted that each Apartment owner is obliged under their Lease to contribute a service charge to pay the Management Company for discharging its functions such as insuring the building, arranging for the collection of refuse, employment of cleaners and grounds men to maintain the building, repairing the hall, stairs, landings, replacing carpets, paint, redecorating the common areas of the buildings, paying for the electricity and other

service charges relating to common lighting, payment of legal and Accountants fees in respect of compliance with Company Law requirements and the preparation of accounts and the filing of Annual Returns in the Companies Registration Office.

What protection do I have if the Service Charge is too high?

The first piece of advice that we give is that you should never rely upon a telephone complaint to the Management Company or the Managing Agent as the sole means of airing your grievance. You must always put your complaint in writing and keep a written record of your complaint. We also advise that you should never hold back on paying the service charge without taking full legal advice. If you do this, you may run the risk of forfeiture proceedings and that could cause you considerable expense.

The apartment owner's Lease will ordinarily provide for proper accountability of the Management Company such as a requirement to provide service accounts or, in the case of large expenditure, to supply copies of estimates to tenants before arranging a building repair contract. Apartment owners must appreciate that the annual service charge must by necessity exceed the annual running costs in order to build up a "Sinking Fund". A Sinking Fund consists of surplus monies held by the Management Company for the purpose of meeting inevitable once off expenditure. For example, periodically the interior of the apartment building common areas will require redecoration - painting/new floor covering, the lifts may need to be overhauled or replaced, in time the roof may need to be repaired/replaced, the grounds may require to be re-landscaped. Failure to update and modernise the common areas leads to devalued property in the long run.

In conclusion, a well run Management Company enhances the value of your property and you should keep a close eye on how it is run.

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3. THE PENSION PROPERTY INVESTMENT OPPORTUNITY SEMINAR, ENNISKILLEN 28TH SEPTEMBER 2005

Morgan McManus Solicitors sponsored their first Property Pension Seminar on Wednesday 28th September last at the Clinton Centre, Enniskillen, Co. Fermanagh in conjunction with Bank of Ireland Finance Northern Ireland, The Independent Trustee Company (ITC), Dublin and 3d Property and Financial Services, Clones. In anticipation of the Seminar Brian Morgan had spoken on Q107.2FM Radio Omagh on Friday 23rd September when he was interviewed by Bernie Keane in relation to the content of the Seminar and the property market in general (Transcript of interview can be downloaded from the website of Morgan McManus - www.morganmcmmanus.com).

A wide range of property investors, both institutional and private, attended the Seminar where they heard Alan Bridle, Economist and Head of Research with Bank of Ireland Northern Ireland, speak on the property investment market, both in Northern Ireland and England. This was followed by a Presentation by Brian Topping, Employee Benefits Consultant with Bank of Ireland Financial Services, on Pension Schemes and in particular on the anticipated changes on the 6th April 2006 in the UK in *Self-Invested Personal Pensions (SIPP's)*. Brian advised on what measures should be taken now by investors in order to maximise any benefits which will be available after the 6th April and in particular what measures should be taken to ensure that Investors are not overly restricted by the limits on borrowing which will be brought into effect. As our readers will be aware, there are many advantages which will come into existence after the 6th April, such as the ability to put residential property into a Pension Scheme. However, investors will be restricted to borrowing 50% of their existing Pension Fund. This will severely restrict the ability of investors to leverage in the purchase of property should they wish to put that property into their Pension Fund. Brian also pointed out the generous tax reliefs which are available to Pension Schemes but warned that people should be flexible about the manner in which they invest in property and not put all their eggs in the one basket! David Matthews, Manager of the Bank of Ireland Enniskillen, advised on loans which were available to borrowers should they wish to obtain Pension Linked Property Loans and pointed out that it was important to go to a Bank which had experience in Pension Linked Lending.

Later in the morning Kevin Coughlin of ITC spoke on property Pension investment in the Republic of Ireland and also presented a comparative analysis of SIPP's and *Small Self-Administered Pension Schemes (SSAPs)* in the Republic of Ireland. He also dealt with recent developments in the law and also welcomed the announcement on the previous day by the Minister for Social Welfare of two key exemptions for Small Self-Administered Schemes which would allow trustees of *One Member Pension Schemes* to borrow money for purchase of property and also exempted the one member arrangement from the restrictive investment rules under the *JORPs Directive*. Just as in the UK, generous tax reliefs are available to Pension Schemes but there are also disadvantages, such as borrowing limitations and accessibility to the tax-free cash and income.

The "grave-yard" slot was reserved to Ultan McManus of 3d Property and Financial Services who gave a Presentation on the services provided by that company and properties currently being marketed by the company both in the Republic of Ireland and the UK.

Generally the reaction from those who attended the seminar was that the Presentations were both impressive and informative and many of the people who attended expressed interest following up further advice sessions with the Panel members.

Subsequent to the Seminar some people did contact Elizabeth Treacy in Morgan McManus Solicitors expressing regret that they had not got an opportunity to attend and requested whether further Seminars would be held. While some "Breakfast Seminars" will be held in Monaghan and Cavan in conjunction with ITC in November, it is not proposed to hold a similar seminar in Northern Ireland until the New Year, when the necessity to take appropriate measures in anticipation of "A-Day" will become even more urgent. Any persons who are interested in attending this seminar should contact Elizabeth Treacy at our Enniskillen office by email (etreacy@morganmcmmanus.co.uk) or by telephone (see contact details at end of this Bulletin).



Pictured are the Panel Speakers at the Pension Seminar (l to r): Alan Bridle, Brian Topping and David Matthews of Bank of Ireland, Kevin Coughlin of ITC, Brian Morgan of Morgan McManus and Ultan McManus of 3d Property & Financial Services.

4. BUYING PROPERTY AT AN AUCTION

Seymour Major, Partner in Morgan McManus Enniskillen, advises on what precautionary steps should be taken in advance of attending a Public Auction in England.

Most bargains for buyers of property are obtained at auctions.

Established auction houses run most of the auctions that take place in Great Britain on their chosen fixed auction days during the year. On an auction day, many properties will become available for purchase. Before the auction day, the auction houses produce a catalogue, which they send free on application. The catalogue usually contains the following

- Particulars of the lots to be sold;
- Rules of the auction;
- Contractual Conditions of sale relating to all properties;
- Special conditions of sale relating to individual lots, and
- A memorandum of contract.

The particulars of the lot to be sold will usually contain the following information:

- (1) A description of the premises, comprising a photograph of the outside front of the property, the floor area of the premises and the address;
- (2) The tenure of the property (i.e. freehold or leasehold and if leasehold, the term of the lease and the ground rent);
- (3) What portion of the property is sold with vacant possession;
- (4) If the property is subject to a lease or leases, the term of that lease or leases, the rent currently being paid and the next rent review date;
- (5) The name of the tenant, and
- (6) Sometimes it will show a map indicating the location of the premises.

Once you have targeted a property, you need to carry out as much due diligence as possible. Unless you have conveyancing skills, you will need a solicitor to carry out the legal aspects of due diligence (see below). You should be able to find out most of the remaining relevant information yourself. If you are an investor, consider targeting more than one property. This will increase the odds of a successful bid at the auction and will cut down on your rate of expense per property. It will also enable you to compare the properties with each other.

The due diligence process carried out by you should include a visit to the premises. My article '*Buying Commercial Investment Property*' in this Bulletin discusses the information that ought to be gathered about commercial property investment. If the property is residential, you will need to check the condition of the property and the likely going rent in the locality. With a view to minimising expense, most bidders prefer to rely upon their own observations instead of using a surveyor before an auction. Where the premises is commercial, the surveyor's brief is usually wider (see my other article) and the decision whether or not to employ one is likely to be more a finely balanced decision.

As soon as you have decided to bid, your first ports of call should be your bank manager and your solicitor. This will enable your lender to complete as much preparation as possible before the auction starts. It is unwise to bid at the auction unless the proposed lender guarantees that you will be granted a certain loan or a certain percentage of the price and that mortgage instructions to a solicitor will be made available within 2 weeks of your notifying them that you have made a successful bid.

When a solicitor is instructed to advise a client prior to an auction, he will do the following:

- (a) Check the title to the property;
- (b) Make necessary searches;
- (c) Check the conditions of sale under the contract (this is in the catalogue);
- (d) Check that the property complies with statutory requirements, including planning permission, building regulations etc., and
- (e) Raising enquiries.

This may sound like an expensive conveyancing process. In fact, when auctions are set up, there is usually a solicitor's *Information Pack* available at a small fee from the seller's solicitor acting on the sale of a particular lot. The seller's solicitors should have already anticipated this investigation and provide all of the documentation necessary to satisfy it. The solicitor's *Information Pack* will usually contain all of the title information, copies of recent searches, copies of planning consents and replies to standard enquiries. If there is anything in the title or the contract that is adverse to your interests or where vital questions are unanswered, the solicitor should pick this up and you should be advised about it.

After you have made your visit to the property, you should pay another visit to your solicitor as soon as he has completed his investigation and take on board what has been found out.

Before you attend the auction, you should set yourself a "bottom line" for the bid. You will need to take account of how much you can put down immediately as a deposit because you will be obliged to write out a cheque for 10% of the bid price. If the property is commercial, VAT is payable on the price. Always be aware of the stamp duty land tax threshold and note they are, in practice, lower for commercial property (see my other article).

When the bidding is completed, the successful bidder signs the Memorandum of Sale. He signs his copy and the agent signs the other copy on behalf of the seller. At that point, you will be obliged to hand over your deposit. The contract will be binding on both sides. The completion date will almost always be 28 days after the date of the auction.

Having secured the bid, you must immediately instruct your lender and your solicitor. If the property is commercial, you must ensure you are registered for VAT before completion. You will also need to have insurance in place. You will need to have insurance arranged. Commercial insurance takes longer to set up and you may need information from the tenant before it is put in place.



Any delay completing the sale will lose you money. Almost certainly, the conditions of sale will be drawn up very stringently so that, if the purchaser misses the completion date, the seller will be entitled to keep, not only the rent, but also be entitled to charge interest on the purchase price. Furthermore, the Solicitor will usually charge a fee for serving a Notice to complete. That fee will usually be built into the contract. If you fail to complete within the notice period, the seller will be entitled to rescind the contract and forfeit the deposit. In auction contracts, the period of notice is usually less than the Law Society standard conditions of sale (16 working days).

In conclusion, a property bought through an auction is likely to be a great investment but the investor must do his homework, be well prepared and be on time.

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3. BUYING COMMERCIAL INVESTMENT PROPERTY

Seymour Major, Partner in Morgan McManus Enniskillen, advises on matters to be taken into consideration when purchasing commercial investment property in England.

When discussing commercial investment property, we refer to the reversionary interest (usually the freehold), which is subject to a lease. If you intend to occupy or use the premises for some other purpose apart from letting, then there are many other usual considerations that are outside the scope of this article. Your personal tax position should also be considered but that is also outside the scope of this article. The thrust of this article relates to valuing a commercial investment property.

When a commercial property is for sale, the information prepared by the estate agent will be similar to items (1) to (6) in my article printed in this Bulletin '*Buying Property at an Auction*'

Valuing commercial property is much more involved than valuing residential property. Apart from the rental return, the following features are usually indicators of value (the list is not exhaustive):

- (1) What is the current permitted use of the premises;
- (2) What other commercial activity could it be used for;
- (3) The general commercial prosperity of the local area
- (4) The physical condition of the premises;
- (5) The quality of the tenant;
- (6) The term of the lease and whether the tenant has the benefit of a break clause in the lease;
- (7) The time of the next rent review date;
- (8) The mechanisms and criteria contained in the rent review clause in the lease, and
- (9) Whether the title is marketable to the standards set by a typical commercial lender.

You need to carry out as much due diligence as possible to find out this information. Your solicitor will gather some of the information. You may be able to gather the rest of it yourself if you do not need a surveyor.

In my article 'Buying Property at an Auction', I have listed the matters that the solicitor should find out (items (a) to (e)). Of the items listed (1) to (8) above, your solicitor should be able to find the information on all matters except (2) (3) and (4).

The due diligence process carried out by you should include a visit to the location premises. At all stages, you should make careful notes. You should try to make an appointment with the tenant (or whoever is occupying the premises) beforehand. Before you visit the premises, you should observe the general economic activity of the local area, including competitors of the tenant. This will help you to put questions together for interviewing the tenant. When you visit the premises, ask to look around the whole building. Make your own observations about the state of repairs, tidiness and cleanliness. If you have done all of this before you interview the tenant, you will be in a strong position to ask him some very perceptive questions. Asking the tenant "how's business?" may sound corny but what he says and the way he says it will give you considerable clues as to how he is thinking about the future. Do not be afraid to be brazen! Ask the tenant how he sees the future and how he gets on with the present landlord. Ask him if he thinks any work needs to be carried out to the property.

If a surveyor is instructed he will want a copy of the lease. He will check the *rent review clause* and be able to give you an idea of what rent you would get if there was a *rent review* immediately. When he checks the condition of the property, he will look to see if there has been a breach of a *repairing covenant* and he will check any records available to him.

After you have made your due diligence enquiry, you should pay another visit to your solicitor as soon as he has completed his investigation. When you "swap notes", you should go through the list (1) – (9) above, item by item. At the end of your discussion, you should feel sufficiently confident to be able to make your own mind up about the value of the property.



Remember that VAT is payable on commercial property. It will not be a problem for you if you are registered for VAT because you will be able to recover the VAT in commercial rent. You should be also aware that, in the UK, stamp duty is payable on VAT (Republic of Ireland investors may not be aware of this). Because VAT on the price is taken into account, the "real" stamp duty thresholds are effectively lower. For example, stamp duty increases from 1% to 3% if the price (plus VAT) exceeds £250,000. In practice, this means that stamp duty is 1% if the price is £212,765.95. If it is a penny more, the rate is 3% (an additional £4,255.32).

When you are armed with the above information, you will be in a position to evaluate the true potential value of the property for investment income.

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6. COMMERCIAL AUCTIONS – RECOMMENDED WEBSITES

If you are interested in purchasing commercial property through auctions may wish to note the following websites of commercial auctioneers.

Allsop & Co.	www.allsop.co.uk
Harman Healy	www.harman-healy.co.uk
Strettons	www.strettons.co.uk
Eddisons	www.eddisons.co.uk
Willmotts	www.willmotts.uk.com
F P D Savills	www.savills.co.uk
Charrison Properties	www.charrison-properties.co.uk
Bigwood Associates	www.bigwoodassociates.co.uk

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