

IRISH/UK PROPERTY BULLETIN



MORGAN MCMANUS



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MORGAN MCMANUS SOLICITORS

01. EDITORIAL

Welcome to the 6th 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.morganmcmamus.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. We have included Articles which will be of interest to Property Developers in the Republic of Ireland and some contemporary Articles which will be of interest to both Irish Resident and UK Buy-to-Let residential property in the UK. The UK Pension changes next year are going to provide benefits to Investors on both sides of the Channel.

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@morganmcmamus.ie)

and of our Northern Ireland / UK services from Seymour Major of our Enniskillen office

(e-mail smajor@morganmcmamus.co.uk)

(See telephone contact details at end of this Bulletin).

**BRIAN
MORGAN
EDITOR**

STAMP DUTY AVOIDANCE

02. STAMP DUTY AVOIDANCE MECHANISMS FOR PROPERTY DEVELOPERS



**FERGAL
MCMANUS**

In this article Fergal McManus discusses some of the means for Property Developers in Ireland to avoid or reduce their stamp duty liability when acquiring development land.

With stamp duty rates of 9% applying to any reasonable sized development plot, stamp duty tax planning has become extremely important. It tends to be the case that avoiding or reducing the stamp duty liability gives rise to extra risks for the Property Developer and, as such, these extra risks must be balanced against the likely tax saving. Specific legal advice should always be taken in respect of these extra risks. Furthermore, stamp duty legislation contains general anti-avoidance provisions that seek to prohibit mechanisms whose sole intention is to reduce or avoid liability to stamp duty. Therefore detailed tax and legal advice must always be taken as well as ensuring that the Lending Institution is amenable to the proposed tax saving mechanism as their security is often affected. It is almost always the case that the cooperation of the Vendor will be required to facilitate the tax saving strategy.

If the land is already owned by a company then buying that company is the cleanest option provided the Company is a special purpose vehicle that hasn't traded and in effect has no skeletons in the cupboard in terms of hidden tax liabilities etc. The stamp duty payable on acquiring the shares in the Company will be 1% of the market value of the Company. This mechanism can also

be useful if a speculator is buying residential investment land for onward sale. The Speculator can set up a Special Purpose Company to acquire the land and when the Speculator is selling onwards he can sell the company which means that the stamp duty liability for the subsequent purchaser will be 1% instead of the usual 9%.

LICENSE AGREEMENTS

One needs to bear in mind that stamp duty is a tax on Deeds not transactions. Under a traditional license arrangement, the Landowner and the Developer effectively built a housing scheme as a joint venture. The Land owner allowed the Developer onto the site to construct the houses under the Licence Agreement and when the development was sold off, the land owner got paid X amount for each site from each homebuyer. The Landowner would have a direct contractual relationship with the homebuyer under a Site Sale Agreement and when the house was completed by the Developer, the Landowner closed the sale with the homebuyer and got paid for the land. The Developer's profit came from building the house the payment for which was received under a Building Agreement that had been entered into directly between the Developer and the homebuyer. As such the homebuyer is the only one that would have a stamp duty liability as the only Deed created is between the Landowner and the homebuyer. The Developer has no stamp duty liability because he never acquired the land under a Deed. As such the Landowner gets a good price for each site on his land but he has to wait for his money until each individual house is sold off. The Developer pays no stamp duty but is restricted to making his profit on the construction of the house as opposed to the sale of the site.

In recent times, Hybrid License Agreements have become increasingly common. Under this arrangement the Developer pays the Landowner a large license fee sometimes equating to the value of the site but the site is not actually vested by a Deed in the name of the Developer. Instead, the Landowner agrees under the License to transfer the site into the name of any nominee of the Developer i.e. the ultimate homebuyer. As there is no Deed between the Developer and the Landowner, there is no stamp duty payable by the Developer. The only stamp duty that arises will be on the Deed between the Landowner and the homebuyer which will be payable by the homebuyer. This type of arrangement carries significant extra risks for the Developer and its Lenders so detailed legal advice must be taken.

SUB-SALE MECHANISM

This tax planning strategy may suit land Speculators better than Developers although Developers can avail of this strategy to eliminate their stamp duty liability when employed on a basis similar to the Hybrid License Agreement described above. Use of this strategy by Developers is too complicated to discuss within the confines of this article and as such I will focus on its use by Land Speculators which is simpler to explain. Once again this tax avoidance mechanism is based on the fact that stamp duty is a tax on Deeds not transactions.

Effectively the Speculator signs a contract to buy the land and he pays a deposit. After the contracts become legally binding he can then enter into a contract to sell the land onwards to a new Purchaser despite that fact that he has not yet completed the purchase of it. Unless the contract between the Speculator and the original vendor prohibits subsales, the original vendor is legally obliged to facilitate you with cooperating with the subsale mechanism - as such, the Speculator doesn't need to advise the original vendor of his plans when he signs the contract with him (of course the subsale cannot be allowed to delay the payment to the original vendor for the land, and as such the original contract and the subsale contract should have the same completion date). On completion there is one Deed with the Original Vendor and the Speculator joining together to sell the land to the new Purchaser. In effect, the new Purchaser pays the total price and the money is split with the Speculator getting his profit and the Original Vendor getting paid the price they originally agreed with the Speculator. While there is, in effect two transactions, there is only one Deed and as such one charge to stamp duty which is paid by the new Purchaser.

CONCLUSION

As you can see from the above strategies careful stamp duty planning can yield massive tax savings to Developers and Speculators. Sophisticated legal and tax advice may cost extra at the outset but such cost more than justifies itself in the long run.

Fergal McManus, Solicitor and
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03. CHANGES IN UK PENSION INVESTMENT RULES – RESIDENTIAL PROPERTY



**BRIAN
MORGAN**

Brian Morgan Solicitor explains the anticipated changes in UK Pension Rules relating to investment in residential property which will come into effect on the 6th April 2006.

In the United Kingdom (and this also includes Northern Ireland), individuals will be able to invest in residential property through their own property pension funds. This means that the individual will be able to, because of tax allowances, effectively buy property at a 40% discount and also, because the property will be purchased for the purpose of a pension, never pay Capital Gains Tax or Income Tax on the property profits again. From the 6th April 2006 (known as A-Day in the pensions industry in the UK), the following major changes will be made to the rules for pension investing:

1. RESIDENTIAL PROPERTY WILL BE ALLOWED

At present, you can only put commercial property into a self-invested personal pension (known as a SIPP). After A-Day individuals will be entitled to put residential property into a SIPP.

2. CONTRIBUTION LIMITS

At present, you can only make contributions to a pension plan within certain prescribed limits, based primarily on your age. From the 6th April 2006, these contribution limits will be eroded and replaced by a much simpler and much more generous rule. It is anticipated that from thereon an individual will be entitled to invest the lower of either his entire annual earnings or £215,000. For example, if an individual earns a salary of £60,000 and has made a profit of £60,000 from selling an investment property, he will be entitled to invest all that cash in a pension plan and in the process wipe out his entire income tax bill on his salary for that year.

3. MULTIPLE PENSION PLANS

At present, it is not possible in most instances for those who belong to their employers pension scheme to make personal pension contributions as well. This means that most salary earners cannot contribute to a commercial property SIPP. From the 6th April 2006, all this will change and the individual will be entitled to belong to both his employers pension fund and invest in his own pension fund.

4. PENSION INCOME

In the UK, one of the biggest drawbacks of the current pension regime is that, when an individual retires, he is eventually forced to buy an annuity, i.e.

a regular pension income. When he dies, none of his pension savings can then be passed onto his heirs. From April 2006, there will be much more flexibility. He will not be obliged to buy an annuity and he will be entitled to keep his pension invested and withdraw income as and when he pleases, subject to certain restrictions. Subsequently, on death, it will be possible to pass the individual's pension savings to his heirs by creating a family pension plan to which all his family belong.

CONSEQUENCES FOR UK RESIDENTIAL PROPERTY MARKET?

There is no doubt that the English property market dampened at the end of last year as a result of four increases of interest rates by the UK Chancellor. This was a calculated move by the UK Chancellor to ensure that the property market did not become overheated. There has not been another increase in interest rates and it is not anticipated that there will be a further increase in the short term. If anything, there may be a decrease in interest rates. There was never a better time to invest in the English property market. The fact that there is already a well recognised shortage of residential constructions in the UK (apparently a shortfall of 60,000 homes per annum) means that there is already a supply/demand issue. The fact that there will be even more interest in residential after the 6th April 2006 means that there will be more private individuals on the market looking to buy residential property in the coming months in anticipation of the pension rule changes. This is good news also for Irish investors who want now to buy into the UK property market in anticipation of short term capital appreciation.

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04. LIVE / WORK DEVELOPMENTS IN THE UK



**ULTAN
MCMANUS**

Ultan McManus of 3d Property & Financial Services advises on the advantages of Live/Work developments, which have now become more common in UK urban areas.

While Live/Work developments are not a brand new concept, they are, once again, beginning to become more and more popular.

A Live/Work unit is where a property is used as both a dwelling and as a work-space, where the work-space occupies a certain proportion of the unit's total floor area. The local planning authority

will normally specify what percentage this will be, and also stipulate that the living area shall contain a kitchen area and sanitary facilities.

An advantage to the developer in constructing Live/Work units, is that they are less likely to come up against objection from the local planning authority due to the fact the development will have a "mixed-use". In areas where the Government would prefer to see offices and commercial units, developers are gaining residential consent into an employment area through this concept. It is seen as a compromise between the two.

WHY IS THE LIVE/WORK PHENOMENON GATHERING PACE?

The main answer is simple: it is cheaper to run one property rather than two. At a time of high house prices and office/premises costs, Live/Work property has an inevitable appeal. Another factor is convenience. As commuting has become more and more stressful and a waste of valuable resources, not having to travel to work can save both time and money.

The third major factor driving Live/Work is technology. Advances in IT and broadband telecommunications have made the need for a separate office or studio less important.

OVERALL

Live/Work is not just working from home. The reality is that working and living in one property

is becoming very common. Live/Work is a niche market for people who need more than a house or flat but also can't afford or find decent separate premises. It can help grow relatively fragile businesses by cutting their costs and reducing their time wastage.

At its best, it can also mean linking people to a wider community or network of businesses, to enable them to share skills, knowledge, contacts and contracts.

* A more detailed presentation has been prepared on this subject by Ultan McManus and can be e-mailed to interested parties if they simply forward an e-mail request to law@morganmcmanus.ie

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03. SOCIAL HOUSING – TERMS EXPLAINED



**BRIAN
MORGAN**

Brian Morgan Solicitor explains various "social housing" terms and why there should be no reason for Investors to be alarmed.

Many major residential apartment developments constructed in England now carry a requirement for the Developer to devote a certain element of the development towards "social housing". Investors will often read about this requirement on websites and on Sale brochures and may have some concern

that this requirement of social housing could affect the ultimate value of the overall development. Social Housing Schemes are operated on a regional basis, so the conditions may vary from area to area but generally they are a means to assist individuals on low incomes to purchase their first residential home. Broadly, the following types of help are available to these individuals:

SHARED OWNERSHIP

With conventional shared ownership, you buy a home that a housing association has either built or renovated. You buy a share of the property, normally between 25% and 75% depending on what you can afford, and pay a subsidised rent on the remaining share. Gradually you may buy further shares and eventually own your home outright.

HOME BUY

The Homebuy scheme provides you with an interest free loan of around 25% to buy a property either on the open market or one developed by a housing association. You buy the remainder yourself with a mortgage. Then when you sell, return 25% of the then market value to the association or buy out the association if you can afford to do so.

FLEXIBLE HOME OWNERSHIP

This is similar to Shared Ownership where you buy an initial share of your new home but you

can also sell part of the share back to the housing association to reduce your monthly repayments. This means that if your circumstances change, you don't have to give up the property completely.

It should be remembered that people who avail of social housing assistance who buy into a development will become the community within that development as they will buy as owner/occupiers. They will therefore contribute in the long term to the overall capital appreciation in value of that development.

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