

PROPERTY

Buying/Selling Property

What is the service we offer?

Buying a new home is one of the most important, stressful and expensive purchases you are ever likely to make. To ensure your transaction runs as smoothly and simply as possible, HD Keane offers you a complete legal service. We aim to complete your transaction quickly, efficiently, in a friendly manner and have you settled in your new home as soon as possible.

We want to ensure that you:

- Obtain legal ownership of the property, together with all the fixtures and fittings that you are expecting to be included in the deal
- Are made aware of all the rights, covenants and any other restrictions affecting the property, so that you do not experience any surprises in the future.
- Move on the agreed date.
- Are kept fully informed, with progress reports at the key stages.
- Ensure there are no legal difficulties if and when you re-sell.

At H. D. Keane & Co., our experienced staff understands how stressful moving home can be, so you can rely on them to provide you with the best possible support.

Who is it for?

For anyone planning to move house and needing advice, on any other aspect involved in a house purchase or sale.

How the service works

Once we have received your instructions, we will carry out all legal requirements and keep you updated on the key stages of your purchase or sale. This includes

- Preparing/examining contracts
- Liaising with your lender, i.e. Bank or Building Society, who is providing the finance for the purchase, to ensure that all their requirements are met and that their funds are made available for the moving day.
- Carrying out the appropriate searches.
- Requesting and checking all required legal and property documents.
- Completing the legal side of the transaction for you/payment of any stamp duty due and having your ownership registered.

What you should do next

If you are interested in our services, please contact one of our solicitors by telephone, fax or email.

Step by Step guide to house purchasing

1. **Pay deposit:** When you have chosen your property, you normally pay a booking deposit to the estate agent or builder. Booking deposits can be as low as €3,000.00 but may be more in certain cases. The deposit is refundable up to the point where contracts are signed. The estate agent will issue a “sales advice note” containing the price, conditions of sale and estimated completion date for the transaction.
 2. **Loan Offer:** You should contact your lender as early as possible in the home buying process. When you have chosen your house you should then contact your lender again. Your lender will issue a formal loan pack. This loan pack will then be sent to your solicitor. You should also arrange Mortgage Protection Insurance and Home Insurance at this stage.
 3. **Contracts received:** The builders/sellers solicitors will send Contracts to your solicitor. Your solicitor will study the Contracts and check the title documents. Once your solicitor is satisfied that everything is in order, you will sign contracts with your solicitor and they will be sent to the builder/seller. A 10% deposit is usually paid at this stage (less the booking deposit).
 4. **Contracts exchanged:** Before contracts are signed your solicitor may advise you to take certain steps e.g. arranging a structural survey or other matters. The seller/builder will then sign the contracts and return one copy to your solicitor. At this stage a binding agreement is in place between all parties. Up until this point, either party can change their mind and withdraw from the transaction without penalty.
 5. **Loan Accepted:** On exchange of contracts, your solicitor will return loan acceptance and other loan documents to your bank / building society.
 6. **Completion (New houses only):** When your new house is complete, the builder will notify your solicitor. At this point, you should carry out a snag list. The purpose of the snag list is to make a list of any unfinished work left in the house and request the site foreman to complete the work.
 7. **Close sale:** The closing date is the date on which your solicitor will pay the purchase money of the house on your behalf. In return, your solicitor will receive title deeds to the property and keys. You become the legal owner of the property on the closing day.
 8. **Stamping / registration:** After the closing date, your solicitor will send Deeds to the Revenue Commissioners for stamping and then to the Property Registration Authority/Registry of Deeds to register you as owner. Once this is done, your solicitor will send your Deeds to your lender.
- the above is intended as a guide only should not be relied upon as definite legal advice. Each person and situation varies and therefore advice may vary depending on your individual circumstances. You should contact us for further advice on all of these issues. This is a brief guide answering some of the most common questions which first-time buyers have.

Solicitor's Role in House Purchase/Sale

Buying a house is a big decision financially. It is essential that it is done properly and professionally. A solicitor will deal with the following:-

- Explain the sale process to you to ensure that you understand what is happening at all times;
- Check the title to the property. This involves checking many issues including that all planning permissions are in order, that no Court Orders are registered against the property, that no mortgages are registered against the property and in general check that there are no unusual legal features. If your solicitor does not carefully check that all these matters are in order, it may cause difficulties for you when you sell the property;
- Ensure that the contracts which you sign do not contain any unfair terms;
- Assist in dealing with your bank/building society to ensure that there are no legal obstacles to your loan cheque being issued on time.

Must I pay Stamp Duty?

If you have not owned property previously, you may qualify for first-time buyer relief. A first-time buyer generally will not pay stamp duty. A non first time buyer will have to pay stamp duty for the majority of houses and your solicitor will advise on the rate. However, each situation is different and you need to check the position carefully with your solicitor and he will advise you of any periodic changes made by the Government.

In order to qualify as a first-time buyer, you must live in the property for five years from the date of purchase. If you move out during this time, stamp duty may become payable on the date you move out.

What if I am a First Time Buyer and my partner is not?

In order to avail of First-Time Buyer relief, both purchasers must be First Time Buyers. You cannot obtain First-Time Buyer Stamp Duty Relief if only one of you is a First Time Buyer.

What will my solicitor charge?

A solicitors' charge will be made up of two items. Firstly, the solicitor will charge fees for his/her work. Secondly, a solicitor will charge you for outlay which your solicitor will have to pay in order to have you registered as owner. This outlay will include such items as payments to the Property Registration Authority to have you registered as owner of the property.

A solicitor will advise you of all fees and outlay at your first meeting.

When should I contact my solicitor?

It is advisable to contact your solicitor as early as possible in the purchase process. If you contact your solicitor at an early stage, your solicitor will be able to give you helpful advice on the purchasing process.

When should I contact my Bank/Building Society?

If you need to borrow to fund your purchase you should contact your bank/building society as early as possible. This will help you to budget for the purchase as your bank will be able to let you know how much you can borrow.

Should I have a survey carried out?

If you are buying a second hand property, you are strongly advised to have an architect/engineer carry out a structural survey of the property. Your architect/engineer will check that the house is structurally sound and does not have any physical defects.

Even where you are buying a new house, you are still advised to have a structural survey carried out.

What is a Planning Search?

If you purchased a house in a quiet rural location, how would you feel if you then discovered that a developer had obtained planning permission to build a factory beside you? A planning search is a search in the City Council/County Council Planning Office to find out whether any development is planned for the area surrounding your new home. It is advisable to have your architect/engineer carry out such a planning search on your behalf.

Must I pay a deposit?

Whether you are buying a new house direct from a builder or a second hand house through an auctioneer, you will usually be expected to pay a booking deposit. This can vary between €3,000.00 and €10,000.00. At a later stage, when you sign contracts, you will then be expected to pay a deposit of 10% of the purchase price (less your booking deposit). In certain circumstances, your solicitor may be able to negotiate a reduction in this deposit, for example if you are obtaining a mortgage of 95% of the purchase price.

Do I get any Tax Relief?

Most first-time buyers are entitled to tax relief on mortgage repayments. Your lender will give you the Claim Form and you then submit it to the Revenue Commissioners.

What is a Co-Ownership Agreement?

Where a couple purchases a property and they are not married, it is recommended that you sign a Co-Ownership Agreement. The purpose of the Co-Ownership Agreement is to decide the basis on which you own the property. For example, the agreement will set out whether you own the property equally or whether one of you should have a larger share in the property. It will set out whether each of you should be equally responsible for monthly mortgage repayments or whether one partner would pay more than 50% of the mortgage repayments. The agreement will also set out what would happen if you were to split up.

A solicitor will usually charge an extra fee for completing a Co-Ownership Agreement. However, a Co-Ownership Agreement may save a lot of hassle and expense in the future.

Should I Make A Will?

Yes. It is always recommended that you have a Will in place, particularly when you own property. The cost of making a will is very little but the consequences of not doing so can be very severe as your property may not go to the people you would like to benefit when you die.

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Commercial Property

Commercial Property

What is the service we offer?

H.D. Keane & Co. handles the whole range of commercial property issues, dealing with matters for:

- The acquisition and disposal of all types of commercial properties: offices, shops, factories, licensed premises and farmland - both freehold and leasehold
- Land for development and re-development

Our experience, quality of service and speed of delivery, have helped the firm to develop an excellent reputation in this area.

How the service works

For most businesses, premises are a key element in the structure of the business operation. H.D Keane & Co. will ensure that a client's interests are properly protected. Our approach is to ensure the matter is handled smoothly and efficiently and that we help you achieve your objectives on time, however tight your deadlines

How much will it cost?

From the outset, we will discuss with you the fees we expect to charge, which will depend on the type of transaction. We offer a competitive service and will give you details of our rate and all expected legal costs, including search fees and stamp duties.

What you should do next

If you are interested in our services, please contact us by telephone, fax or email.

Sale and Purchase of Office, Shops and Factories

Sale and Purchase of Office, Shops and Factories

Buying and selling business premises is often complex and is likely to involve consideration of many of the following issues on which we advise:-

The negotiation of the purchase price

We will assist you to obtain advice from surveyors and structural or environmental engineers, so that the real value of the property can be ascertained at an early stage, which will avoid the Buyer incurring unnecessary expense.

Completing a purchase or sale transaction within the required timescale and at a competitive cost

We will discuss both the timing and the cost with you at the very beginning of the transaction so that you will know exactly where you stand. Additionally we will keep you regularly informed on both issues as the matter progresses.

Searches and pre-contract enquiries

This will, for example, include advice on planning matters so as to ensure that your proposed use of the premises is the authorised planning use, and that any planning conditions are acceptable to you. We will also ascertain whether there are any adverse major early title issues affecting the property, which might cause you to reconsider proceeding with the purchase.

The negotiation of the form of the Contract

The contract should properly record all aspects of the agreement between the parties. In particular there is a need for careful drafting if a sale and purchase contract is expressed to be subject to the Buyer obtaining planning permission, or finance.

Seller's title to the premises

The Buyer should be aware of all rights, reservations, covenants and conditions to which a property is subject. In particular, it is most important that development land or premises, which a Buyer proposes to develop or change the use of, are not subject to restrictive covenants precluding the relevant development or the change of use in question. Frequently land is affected by old restrictive covenants and we are well experienced in dealing with these issues.

Value Added Tax

It is equally important for the Seller and the Buyer to understand the relevance of Value Added Tax to a commercial property transaction, and we are able to advise, (in conjunction with your Accountants) in respect of premises and other related VAT issues.

Funding

It is most important that a Borrower has a full understanding of the many conditions attached to any loan before committing himself to the loan. We are able to deal with the paperwork required by a Bank, Building Society or other Lender.

Leases

H.D. Keane & Co. has particular expertise in acting for either Landlord or Tenant in dealing with Leases of all types of commercial property. Please be wary of granting or accepting a Lease without having obtained the proper legal advice. Leases are usually far more complex than transfers of freehold property, and the repercussions of not fully understanding one's obligations can be very costly.

We have highlighted below a few of the key issues which parties to a Lease should understand when negotiating terms:

The length of the term

We will advise both Landlord and Tenant of the desirability of long or short terms, and also on the circumstances in which the Tenant, by virtue of the renewal provisions of the Landlord and Tenant Act legislation, can insist on his Landlord granting him a renewal Lease at the end of the current term, and likewise the grounds on which a Landlord is entitled to decline to grant such a Renewal Lease.

Rent and rent reviews

We advise both Landlord and Tenant to obtain professional advice to establish the fair rent for the premises (bearing in mind the repairing obligations of the parties). Normally reviews will be negotiated every five years during the term. Rent review clauses in Leases are lengthy and detailed and need very careful consideration by reason of their complexity.

Break Clauses

Whether a Lease should contain an 'option to determine' i.e. whether the Landlord or Tenant should be entitled to break the Lease at some point during the term. Break clauses are frequently negotiated on behalf of Tenants, who are now inclined to be in a stronger negotiating position than was the case three or more years ago. Additionally, it is essential for both Landlord and Tenant to consider whether a

break clause should be conditional on, for example, the payment of rent and/or the observance of the tenant's covenants. An onerous condition may result in a Tenant who has a break clause not, in practice, being able to rely on it, and the Tenant in particular needs careful advice in this regard.

Assignment or Sub-letting

In settling the terms for a commercial lease, the Landlord and Tenant should understand and consider the following matters:

- What alienation rights should be granted to the Tenant to enable him to dispose of his leasehold interest in the premises by way of an Assignment or Sub-Lease?
- What are the considerations when deciding whether a right to Assign or Sub-Let should only be in respect of the whole of the premises as opposed to part of the premises?
- Under what circumstances can a Landlord properly refuse his consent to a request by the Tenant to be able to Assign or Sub-Let?
- What conditions can a Landlord properly attach to his consent to an application for consent to Assign or Underlet?
- What is the Tenant's liability if the person to whom he assigns the Lease (the Assignee) defaults or if any subsequent Assignee defaults?

Alterations

A well advised Landlord will wish to keep absolute control over the structure of the building, and a well drawn Lease will normally provide for the benefit of the Landlord that a Tenant is not entitled to make structural alterations.

On the other hand, a Tenant must consider whether he might, either at the beginning of, or during the term, wish or need to make structural alterations, and if so he should press for the Lease to permit this, (subject to obtaining the Landlord's prior consent). It is also essential for a Tenant to have any fitting out alterations, structural or otherwise, approved before the Lease commences, so that he can be absolutely sure that the Landlord does not unexpectedly raise objections once the Lease has been completed. Often there will be a need for a formal Licence for Alterations, the drafting of which will require detailed consideration.

Improvements

A Lease should state how a Tenant's improvements are to be dealt with when the rent is reviewed, especially if the Tenant carries out extensive fitting out works. Under what circumstances is the Landlord able to in effect "rentalise" improvements, and to what extent and in what circumstances is the

Tenant able to ensure that any improvements he carries out are not taken into account when rent is reviewed.

The authorised user of the premises

The Landlord will wish to ensure that the "User" provisions in a Lease prevents a Tenant from changing its use to one which attracts a lower rental value than the use the Landlord intends. A well advised Tenant will also wish to make sure that the user provisions in the Lease allow him as much flexibility as is reasonable, so that if he has to assign the Lease, he is not unduly limited when the premises are marketed as to the type of business which the User provisions in the Lease allow to be carried on.

Formal Notices

In addition, it is of particular importance to the Commercial Landlord or Tenant to have a full understanding of the need for and the effect of the formal Notices required in connection with Leases. These Notices govern the termination and renewal of Leases, the operation of Break Clauses, the operation of Rent Review provisions in Leases, and Repair and Dilapidation Notices in particular. Failure to serve or deal with Notices within the relevant time limits can result in severe consequences.

Investment Property

We are experienced in helping clients who buy and sell both commercial and residential investment properties. Both require a thorough understanding of the Leases or Tenancy Agreements to which such properties are subject. There are traps for the unwary buyer who is not fully advised of and fully understands his obligations as Landlord or the obligations of his Tenant. A well advised Landlord can realise the full potential of an investment property, perhaps not appreciated by a previous owner.