Everything You Need To Know About Buying A House

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Everything You Need to Know

About Buying A House

By Joseph McCarthy

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Introduction

This guide on the legal aspects of buying a house is based on the questions clients just like you have asked me over the years when buying properties for them. If you have a question which is not dealt with in this guide, or if there is any aspect of it that you find unclear, please let me know so that I can improve the guide for you.

However, please understand that while this guide is provided to give you a feel for the issues involved, this is general information only and it is not legal advice. If you have any individual concerns about your own transaction please ask me about them specifically and don't rely on what's written here.

Finally, you should bear in mind that the guide was last updated by me in May 2013, meaning that any legal developments or changes in taxation which came into effect after that date won't be included.

I hope you find it useful,

All the best,

Joseph
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28th May 2013
How does a conveyancing transaction work?

Your typical property purchase can be broken down into four stages as follows:

1. You find a property you like, agree a price with the seller and then put down a booking deposit with the selling agent (in Ireland often referred to as the auctioneer). At this point the selling agent will instruct the seller’s solicitor to send contracts to us.

2. You make sure the property is structurally sound by instructing an engineer while at the same time we check out the contract for you and make sure that the title and the planning documents are in order. While all this is happening you will be working on getting the go-ahead from the bank to take out a mortgage, if you are borrowing to fund the purchase.

3. If your engineer is happy with the physical condition of the property, we’re happy with the title to the property, you’ve received a formal loan offer from the bank, and you still want to proceed with the purchase, you sign the contract and pay over the balance of the 10% deposit. Once contracts are signed by both you and the seller, you are legally committed to the deal.

4. Between the contract signing date and the closing date you will busy yourself with complying with the bank’s requirements (such as taking out house insurance and a mortgage protection policy) so that we can get the loan cheque. Once the loan cheque issues and the seller has done everything that has been agreed in the contract you hand over the balance of 90% at which point you will be given the keys and will be entitled to possession of the property.

What’s the story with booking deposits?

Once you have found the property you want to buy and the purchase price has been agreed the auctioneer will ask you to put down a booking deposit. There is no set amount but generally auctioneers seek 5% of the purchase price. Having regard to the fact that properties are valued in hundreds of thousands of euros this can amount to a significant sum of money. If you feel that the amount being looked for is too much, or that it will mean that you will have to borrow to make it up, don’t be afraid to attempt to renegotiate a smaller deposit.
The booking deposit is fully refundable. You can look for it back at any time before you sign the contract without having to give any reason. The fact that putting down a booking deposit doesn't create a legally binding agreement to buy the house is a bit of double-edged sword. On the one hand it's great to know that you can pull out of the transaction if some problem with the title or with the physical condition of the property emerges; on the other, there is the risk that, if the property market is strong, the seller might get a higher offer after accepting your booking deposit and could decide to “gazump” you, giving you the heave-ho by handing back your deposit and selling the property to the higher bidder.

While the booking deposit is entirely refundable before contracts are signed it is important to ensure that the auctioneer you are dealing is reputable. The Property Services (Regulation) Act 2011 was passed to protect consumers in the property market in their dealings with auctioneers and estate agents and the like (now known as Property Service Providers or PSPs). Auctioneers are required to be registered with the new Property Services Regulatory Authority (PSR) and will have professional indemnity insurance in place and should be happy to show you evidence of both. Auctioneers are also required to contribute to a fund that is set up to compensate clients who lose money due to dishonest practices.

Purchasers in Ireland have never been more protected in their dealings with auctioneers. However, if you happen across a bad one it will still result in major headaches so it is wise to do a bit of homework on who you are dealing with before handing over your money.

You can visit the PSR homepage to view a list of registered auctioneers together with more useful information at www.psr.ie.

**Who pays the auctioneer’s fees?**

The auctioneer is retained by the seller and is acting exclusively for them, having only their interests in mind. You have no professional relationship with the auctioneer and, accordingly, the seller is obliged to pay their fees in full.

**Can I rely on things the auctioneer and the seller tell me?**

The long answer is: yes in certain circumstances but it’s a very risky thing to do and you could end up in court arguing the point; the short answer is: no. If the auctioneer or the seller tell you anything which you believe to be significant and which will have the effect of
persuading you to go with the property tell us so that we can formally seek clarification from the solicitor for the seller.

**OK, I’ve paid my booking deposit. What’s next?**

Once the auctioneer receives the deposit he’ll write to both the solicitors for the seller and to us with short details of the names and addresses of the parties, a description of the property, the purchase price, and any other details that have been agreed at that stage, such as what contents are included in the sale price and when the intended closing date is.

Once the solicitor for the seller has received this notification he will send us the contract and the title documents to look at. We will then go through the terms of the contract to make sure that there are no conditions that were not agreed by you when negotiating the purchase and to ensure generally that there are no terms which would not be in your interests to agree.

We will then investigate the title to the property to satisfy ourselves that the person selling it has the legal authority to do so and that you will be the undisputed owner once you have handed over the purchase monies. We will also check whether the property is compliant with planning permission and building regulations. It goes without saying that you’ll want to see that all title and planning matters are in order in relation to the property you are purchasing. Remember the old wisdom: the day you buy is the day you sell. You will only be able to recoup your investment in your property later if you can sell it back on the market. If you think you’ve found your dream house and have your heart set on it, don’t commit to it until you’ve got confirmation from us that the title and the planning are all OK together with and assurance from the engineer that everything is structurally sound. Even if you are willing to overlook what you might consider to be acceptable non-compliant issues remember that, if you’re borrowing, your lender will seek certification from us that all title and planning matters are in order. If there are any blemishes that you are willing to live with these will need to be notified to the bank and agreed to by them before you will be able to raise the money to complete the purchase.

Once we’re satisfied with the title and the planning, the engineer is satisfied with the physical state of the property, you’ve received formal loan approval, and presuming you still want to go ahead with the purchase, then and only then should the contract be signed.

At that stage you will pay over the balance of the deposit (typically a further payment is made, bringing the total monies paid up to 10% of the purchase price) through us to the seller’s solicitors. They will then hold this second payment on trust until the sale completes.
The auctioneer will continue to hold on to the booking deposit until the transaction is concluded.

**When should I go about arranging finance?**

It’s always a good idea to get an indication from one or more banks as to how much they will be willing to lend you before you go looking at properties, if only to ensure that you’re not sending yourself on a wild goose chase to find out that once you’ve found your dream home the bank has no intention of giving you anything near what you need to buy it.

Having said that, approvals in principle should be viewed with caution. Even if the bank gives you the general thumbs up they may decide not to advance the money you’re looking for on the specific property you want to buy.

The best advice is therefore to do a bit of groundwork to establish roughly what you’re likely to be lent before you begin house hunting in earnest, but keep the heavy lifting for when you have found the property you want to buy. At that stage the bank will send out its own valuer to look at the property and will make a decision as to whether it is going to do you the honour of allowing you to pay it eye-watering amounts of interest for the best part of the remainder of your natural life!

**What’s the most common cause of delay in the loan cheque issuing?**

Without a doubt this is the mortgage protection policy. The bank won’t release the cheque until it has received the original policy. The original policy won’t be available until you’ve satisfactorily addressed the mortgage protection company’s medical queries.

Depending on your age and the amount you’re borrowing this could include having to be medically examined by a doctor of the mortgage protection company’s choosing. By the time you’ve made this appointment and the results are sent back to the mortgage protection company weeks can have been lost.

The moral of the story is: as soon as you’ve put down the booking deposit immediately set about getting the mortgage protection policy sorted and complying with any other non-legal conditions of the loan approval.

We will be responsible for dealing with the legal end of things when it comes to the mortgage, the title and planning issue and the mortgage documentation itself. You will be Everything You Need To Know About Buying A House  www.mccarthy.ie
responsible for dealing with the non-legal stuff: things like life cover, home insurance, and income or financial details that the bank may seek from you prior to releasing the loan money. You should go through the mortgage conditions very carefully as soon as you get your approval and be very clear in your mind on which conditions are your responsibility and which are ours so that delays are avoided later on in the process. We will of course go through this with you when we meet you to review the loan offer but it’s very important to be clear on this from the very start to ensure that nothing falls through the cracks causing last minute hold ups.

Do I need a mortgage protection policy?

If the property you are buying is to be your home, the Consumer Credit Act 1995 obliges you to take out mortgage protection cover. If, however, the rate being quoted to you for this cover is excessively high (due, for example, to a serious illness you may suffer from) you will usually not be forced to take out a policy.

If the property you are buying is for investment or holiday purposes mortgage protection cover is optional.

What type of mortgage protection policy should I take out?

We’re not financial advisers and aren’t qualified to give you expert guidance in this area. That said, there are two main types of mortgage protection policy on the market, which are as follows:

1. Decreasing term assurance – this is a standard mortgage protection policy which is designed to pay off your mortgage balance in the event of death. The amount insured will reduce with the amount outstanding on the mortgage over the term, meaning that there won’t be any excess funds available to your estate once the mortgage is paid off.

2. Term mortgage protection – this is a policy which insures a set figure equal to or exceeding the amount of your mortgage at the start of the mortgage term. If you die towards the end of your mortgage term there will be significant surplus funds available after the mortgage is paid off.
Not surprisingly, the monthly premiums payable for term mortgage protection policy are greater than those payable for decreasing term policy. You will have to decide based on your own circumstances which product makes more sense.

Can I sign the contract before I have loan approval?

If you’re lucky enough to be a cash buyer then obviously you can sign the contract once we have confirmed to you that everything’s in order on the legal side and the engineer has given you the green light on the structural side.

If, however, you’re a member of that exclusive club who has the pleasure of subsidising the banks on the double by way of paying your hard-earned tax euros towards the bailout and then topping this up with your own personal contribution in the form of a mortgage repayment, you would want to have rocks in your head to sign the contract before you have formal loan approval. This is because the consequences which could flow from the bank pulling the rug on you are potentially ruinous. For example, if you signed the contract but couldn’t complete the purchase because the bank wouldn’t give you the mortgage, the sellers could decide to put the property back on the market and if they sold it for less than what you had agreed they could take the difference together with any costs incurred in the process out of the deposit which you had paid. Alternatively, if the sellers thought that you could complete the purchase by raising funds by some other extreme measure (like selling any other property you own) they could sue you to complete the purchase.

And remember, while you may have a letter of loan offer from a bank, if that loan offer is subject to conditions (and they always are) you only have full loan approval if you are able to satisfy those conditions. For example, if loan approval is subject to mortgage protection insurance being in place, you need to have the original policy document issued and received and approved by the bank before you can be sure that you will be able to get money when you need it.

If you do wish to proceed to sign contracts before you have formal loan approval in place, the only basis on which you should do so is with a “loan approval clause” in the contract. This will state that the contract is subject to loan approval and if this doesn’t issue for any reason, or if it issues on terms that you cannot reasonably satisfy, you will be entitled to withdraw with a full refund of your deposit.

To summarise: it’s highly inadvisable to sign the contract until you have received written loan approval from the bank and you have formally accepted this loan offer in writing.
However, if you do wish to proceed without loan approval you should only ever do so with a suitable loan approval clause in the contract.

**Will I get the contents with the house?**

Unless there is a condition contained in the contract confirming that some or all of the contents in the property are included in the sale, you will not be deemed to have purchased them and the seller will be entitled to remove them from the property before the sale completes.

What constitutes “a content” can sometimes be a source of controversy. The general rule of thumb is that if something is integrated into the structure of the building or is held down by more than its own weight it will not be considered a content. For example, a boiler for a heating system would never be considered to be a content and would always be assumed to be part of, and pass with, the house. On the other hand a dishwasher which is not integrated into a kitchen unit would generally be considered to be a content meaning that if the contract doesn’t specifically state that it’s included in the sale the seller will be perfectly entitled to remove it before completion.

If you have any doubt whatsoever about whether any particular item will be left for you once the sale closes, the obvious thing to do is to bring it to our attention. We can then insert a condition in the contract which will make the situation crystal clear.

The other thing to bear in mind about contents is that there are some contents that you definitely don’t want the pleasure of owning, to wit rubbish. You should therefore arrange with the auctioneer to inspect the property shortly before the sale is due to close to satisfy yourself that you don’t end up providing a free garbage-disposal service for the seller.

On this point, carpets aren’t generally considered to be contents and will be left behind. Accordingly, if you don’t want to be the one loading that grotty orange paisley carpet into a skip, ensure sure that you make us aware of this before contracts are signed so that we can insert a condition in the contract to cover the situation.

**Do I really need an engineer?**

While there is no legal obligation on you to retain an engineer, our clear advice is that it would be extremely unwise not to do so. This is because if you are buying a second-hand property the seller has no duty to disclose any physical defects in the property to you and you...
will therefore be deemed to purchase the property as it stands. Accordingly, in order to protect yourself by ensuring that there are no defects of which you are not aware (whether latent or manifest) you should have the property fully surveyed by a suitably qualified engineer before the contract is signed.

The situation is slightly different where you are purchasing a newly built house, in which case there is an implied warranty that it has been built in a good and workmanlike fashion. However, even though you enjoy this legal right, in such a case you have to ask yourself the question: are you going to rely on a warranty which may be difficult or impossible to enforce against the builder (which is probably a limited liability company) or would you rather ensure that the property is up to scratch before committing to buying it?

Irrespective of whether the property is new or second-hand, it would also be wise to perform a search in the relevant planning department to establish not only the planning history of the property which you are purchasing but also to determine whether any planning permission has been applied for or granted in respect of any adjoining or nearby property which, in your opinion, would have an undesirable effect on the property which you are purchasing.

**The bank is getting a surveyor to value the property? Won’t this report do me too?**

No, unfortunately – the surveyor or valuer retained by the bank will probably do a very superficial “drive-by” valuation of the property for the sole purpose of giving a guesstimate of its value to satisfy the bank that it’s worth in the region of what you’re paying for it. This surveyor or valuer may not be an engineer and may not do an inspection of the physical structure of the property. Most importantly, the valuer engaged by the bank is just that, engaged by the bank, i.e. not by you. If the bank’s surveyor misses something the only person they have any liability to will be the bank and not to you. You need your own engineer or surveyor who is looking out for your interests and will be accountable to you if anything untoward were to happen.

**When should the engineer be retained?**

While it is essential that the engineer performs his survey before you become legally bound to proceed with the purchase by signing the contract, we generally recommend that the
survey should be carried out after we have received the contracts from the solicitor for the seller. This is because the contracts will usually be accompanied by maps and planning documentation which will be of assistance to the engineer when carrying out the survey. If you wait until we have all of these together you may save time and money as otherwise your engineer may have to go to the property twice, once to survey the structure and again to check that the boundaries correspond with the title maps, etc.

**Whose job is it to instruct the engineer?**

You retain and pay the engineer directly so make sure that you have agreed on fees before giving them the go ahead. It's entirely up to you who you instruct. If you don’t know of anyone to perform this role we can recommend someone based on our prior experience of practitioners working in the area. While any such recommendations will obviously be made in good faith, you'll appreciate that we can’t take any responsibility if you are not happy with the manner in which the engineer carries out their duty.

**How much stamp duty will I have to pay?**

We've created a handy stamp duty calculator on our website, it's here: [http://www.mccarthy.ie/stamp-duty-calculator](http://www.mccarthy.ie/stamp-duty-calculator).

For most residential properties (i.e. up to €1,000,000) stamp duty is chargeable at a rate of 1% of the purchase price. In the case of second-hand houses this means that the calculation is very straightforward. For example, if you are buying a house for €250,000, you will have to pay stamp duty of €2,500. If the house you are buying is newly built the purchase price may be inclusive of VAT. If it is, stamp duty will be calculated by reference to the purchase price after deducting the amount of VAT payable.

If there are contents passing with the house stamp duty won’t be payable on the amount of the purchase price which is attributed to the contents.

For properties worth over €1,000,000, stamp duty is chargeable at a rate of 1% on the first €1,000,000 and at a rate of 2% on the balance.

Where there is a non-residential element to the property (e.g. land over 1 acre) this will be liable to stamp duty at 2%. An apportionment of values between the residential and non-residential elements will be required in order to assess the amount of duty in these cases.
Will I have to pay any other recurring taxes or charges?

The answer to this question has been changing repeatedly over the past few years. At the time of writing the new Local Property Tax is being implemented to replace the Household charge. This new tax is determined by reference to the value of your home and is chargeable and applies to nearly all residential property. When you have a particular property in mind you can determine the current tax that will be payable on it based on the proposed purchase price. This will be the value that will determine the amount you will pay for the time being. Visit [www.revenue.ie](http://www.revenue.ie) for more information on this tax.

If the property isn’t your principal private residence you will have to pay an annual NPPR charge which is presently fixed at €200. This charge is due to be phased out on 1st January 2014 after the introduction of the Local Property Tax but it is still in force at the time of writing and you will need to ensure that it has been paid up to date for any property you are purchasing. You can get more details at [www.nppr.ie](http://www.nppr.ie).

If the property is serviced by a septic tank or wastewater treatment facility you will be required to register it under the Water Services (Amendment) Act 2012 for a fee of €50 and re-registration is required every 5 years. The seller may have been required to register the septic tank previously and, if so, we will obtain confirmation of this as part of the title investigations. However, you should note that under the regulations, as the purchaser you are the person obliged to notify the authorities of the change in ownership. You can find out more details at [www.protectourwater.ie](http://www.protectourwater.ie).

You should also bear in mind that in addition to traditional utility bills you will almost certainly have to pay for any refuse collection services provided by your local authority or, more commonly these days, a local private waste disposal company. Bear in mind, too, that the framework is currently being put in place to impose consumption-based domestic water charges in the next few years.

You should also factor in your home insurance and your mortgage protection policy premiums when deciding if you can afford to buy. Even if you’re silly enough to be willing to cut corners by not having your property properly insured, forget about it – your bank will insist as part of the loan agreement that you keep the property fully insured during the full term of the mortgage.

Finally, if you’re buying an apartment or a house which is in a privately-run estate you will also be liable to pay an annual management company fee. While these fees vary from year to year.
year and invariably seem to increase inexplicably, we will be able to tell you what the fee for the present year is before you decide on whether or not you want to go ahead with the purchase.

**Why all the drama about planning?**

The main reason that the planning status of the property is so important is that the bank will only be willing to lend money to you on the basis that everything is in order. If there’s anything dicey about the planning we will have to write to the bank giving them full details of whatever the problem is and asking them if they are still willing to give you the mortgage. Whether or not they agree is entirely up to them.

Even if you’re lucky enough not to have to rely on a mortgage to fund the purchase you should remember that “the day you buy is the day you sell.” In other words, if the planning is a bit ropey when you buy the property, unless you go about sorting it out during your ownership, you can be fairly certain that the solicitor for the person who buys the property off you down the line will raise the planning issue again. You can’t be sure that the buyers will take the same attitude that you did, particularly if their bank won’t let them.

**What could happen in the future if the property doesn't have full planning now?**

If there’s any “unauthorised development” (i.e. any work done for which planning permission should have been applied for but wasn't) the local authority will have seven years from the date the work is completed to bring enforcement proceedings against you.

While relatively rare, enforcement proceedings do happen and usually take the form of going to court to get an order compelling you to put the property back in the same condition it was in before you carried out the unauthorised development.

**So if the unauthorised development is over seven years old, I don’t need to worry about it anymore?**

You’d think so, wouldn’t you? But the answer is, most definitely, no. While the local authority will be out of time to bring enforcement proceedings against you after 7 years, we
presently have a ridiculous system in this country whereby an unauthorised development (carried out at any time from 1 October 1964 onwards) remains unauthorised no matter how long ago it was completed. This means that you have to look back over 45 years to see if anything unauthorised was done.

Unless you apply for and obtain retention permission for an unauthorised development the consequences will be as follows:

1. You will not be entitled to rely on any planning exemption. For example, if you want to build on an extension at the rear of the property which would not normally require permission, if there is already some unauthorised development on your property you won’t be able to rely on this exemption.

2. The local authority will be entitled to disregard any unauthorised development. This means that if the local authority is obliged to make any payment to you based on the value of your property they will be entitled to presume that any unauthorised development doesn’t exist when working out the value of the property.

3. The local authority will be entitled to refuse to connect you to any public services it is installing in your area. For example, if the local authority is upgrading the water supply or sewage disposal services for the houses in your area and there is any unauthorised development on your property, the local authority will be entitled to refuse to connect you to the upgraded service.

4. If your property is partially or completed destroyed, whether by fire or otherwise, you will not be entitled to rebuild any part of the property which did not have the benefit of planning permission before it was destroyed.

5. It will be more difficult to get any new planning permission. For example, the planners may insist that you go off and get retention permission before they even entertain any application for permission for new development.

What if I’m buying an apartment or a property in a privately managed estate?

If you are purchasing an apartment or a house in a development that is managed by a management company, you really need to do your homework on the management company before agreeing to proceed. We will raise standard queries relating to the management
company as part of the title investigations but you need to get hands on in relation to this and find out for yourself whether things are being run well.

The value of any property in a development managed by a management company is going to be affected by how well the management company is run. Sometimes a management company can have been left in the lurch by a developer who didn't want the hassle and the residents either weren't able or didn't bother to get involved. At the extreme level, if the management company is not functioning properly at all it may well have been struck off by the Companies Registration Office and will no longer be in existence. If that's the case you won't be able to sell the property until matters are sorted out. The management company will generally be responsible for maintaining insurance for the estate and other vital services. You will need to see that these are all up to date.

In less extreme cases where the management company is operating normally, you will want to see how well it is looking after things on the ground. How are the common areas maintained? What is the state of the company's accounts and its financial position? What level of investment is there on maintenance and repair? What is the position on the sinking fund for major items of expenditure? Who are the directors? Is there a managing agent? It is well worth speaking to and meeting with existing owners and people on the ground to get a feel for the overall situation yourself.

The Multi-Unit Development (MUD) Act introduced substantial changes to the law governing managed developments in 2011. These changes were generally beneficial for management companies and the owners of properties in managed estates.

If you are going to commit to investing in, and possibly living in, a development run by a management company, you may well wish to consider becoming involved in the board of the management company in order to protect your interests as a property owner and ultimately the value of your investment.

**Who gets the deeds when the purchase has been completed?**

If you're buying for cash you will be entitled to the deeds once the sale is concluded. If you wish we can store them for you and we have specially constructed fire-proof deeds safes designed for this purpose. If you're borrowing to buy the property we will have to undertake to the bank to send them all the original title deeds once we have registered you as the owner. The bank will then be entitled to hold onto the title deeds until you pay off the mortgage.
Please let me have your feedback

I hope that you found this guide useful and that it helped you in understanding some of the issues that are involved in buying a property. However, if you have a question which isn't answered in the guide, or if any of the answers which I've provided is unclear to you, I would love to hear your feedback.

Please contact me by telephone on 023 888 0088 or by email at joseph@mccarthy.ie