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Conveyancing Considerations During the COVID-19 Crisis

by Elaine O'Connor

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As a result of the COVID-19 crisis, parties involved in the buying and selling of properties will need to adapt and be flexible in respect of their usual processes.

If you have not put your property on the market yet you may be understandably concerned that you should delay in doing so for the duration of the present crisis. That said it would be a good use of your time to start gathering the information you will need to provide to potential purchasers.

If your property already is on the market you can continue to advertise the property for sale. Whilst viewings may not be possible at this time some agents conduct virtual viewings and it would be worth contacting your agent to explore that option with them.

Whilst the buying and selling process can continue during the COVID-19 crisis, it will be impacted by present restrictions. Consequently, it is likely to take longer than normal. A number of practical factors will have implications and your solicitor may need to include specific provisions in the Contract for Sale including the following:

1. **Identity:** If the identity and extent of the property and its boundaries are not ascertainable from the title documents, an Architect may not be in a position to attend at the property and prepare a Declaration of Identity.
2. **Condition of the Property:** Intending purchasers will most probably require a survey report. However, in current circumstances surveyors may not be able to carry out inspections of properties, particularly where people are currently in residence. The Society of Chartered Surveyors Ireland have confirmed that building surveyors and quantity surveyors are currently restricted in accessing sites in order to carry out their inspection services. If the requirement for such a survey is now waived by the purchaser, consideration could be given to issuing the contracts subject to a satisfactory survey report being carried out within a defined period.
3. **Title and Planning Searches:** A purchaser is deemed to be on notice of any acts capable of appearing on searches at the date of the Contract for Sale. This creates a difficulty where the usual suite of searches is not currently obtainable. Registry of Deeds searches are presently only searchable up to 27 March 2020. The Companies Registration Office is not currently accepting filings submitted as and from 28 March 2020. An inspection of the Planning Register may also not be possible as the offices of a number of local authorities are closed.
4. **Vacant possession:** Purchasers are entitled to vacant possession of a property on completion of the sale. If the property being acquired is currently occupied and the stay at home measures implemented by the Government are still in place, regard will need to be had to this and explicit provisions included in the Contract for Sale. In addition, removal firms may not be in a position to attend at a property on completion of the sale.
5. **Completion and Interest:** The mode of closing the sale of the property should be agreed in advance and set out in the Contract for Sale. Regard should be had to the interest provisions in the Contract for Sale in circumstances where the delay in completing is attributable to the COVID-19 crisis and not

to the vendor or the purchaser.

6. **Loan offer:** Purchasers will need to be aware of the expiry of their loan offer and engage with their lender in respect of same. Where an updated valuation is required by a lender, the Society of Chartered Surveyors Ireland have confirmed that valuation services should only be provided where the property has been previously inspected or the valuer has explicit agreement in writing from their client that they are willing to proceed on the basis of a desk-top valuation. Provisions should be inserted into the contract for sale to deal with this. Consideration should be given to establishing whether such a report is likely to conclude that there has been a decrease in value, so that there will be the opportunity to engage with the lender concerned to minimise the risk that the loan offer will be withdrawn or varied.

It is clear from the above that in order to complete a conveyancing transaction, practitioners are dependent on a number of third parties. As the current crisis is continuously evolving the position in relation to the services provided by these third parties may change daily.

It is important to advise clients of these limitations but also to consider the context of each transaction to ascertain whether a transaction can be finalised by making specific provisions in the Contract for Sale to deal with these limitations.

Should you require further information in relation to any of the matters raised in this article please contact Elaine O'Connor at eoconnor@lkshields.ie.

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