



Common Areas of Apartment Developments

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

COMMON AREAS OF APARTMENT DEVELOPMENTS

Introduction

When purchasing an apartment within a development, the usual title furnished is long leasehold. This may be either Land Registry long leasehold or Registry of Deeds long leasehold. Each development has communal areas, which are used by all apartment owners to access their respective apartments. Accordingly, the freehold title to the development is not transferred to any one apartment owner and is retained by the landowner. This includes all of the common areas. The common areas can include, but are not limited to, the entrance to the apartment block, elevators, stairways, open spaces and parking spaces.

Role of the Management Company

In the normal course of events, a management company is incorporated for the purpose of accepting a transfer of the common areas from the freehold owner and to maintain and upkeep the common areas within the development.

Once the agreement for sale of the common areas to the management company is executed, the management company has a beneficial interest in the development. Accordingly, the management company joins with the freehold owner of the property as a party to the lease for the purposes of effecting the transfer of the property to a purchaser of an apartment in the development. The freehold owner of the property may be either a company or an individual. The lease is the document which gives the purchaser title to the property, and is usually for a period of 999 years or 500 years, subject to an annual nominal rent in the sum of €1.00 or thereabouts. The lease contains covenants and conditions which bind the purchaser, the vendor and the management company.

The developer maintains responsibility for the common areas within the development until the transfer of the common areas to the management company has been effected. The exception to this is where some of the common areas, such as the roads and services within the development are taken in charge by the local authority.

Role of the Apartment Owners

Each apartment owner is obliged to become a member of the management company on completion of the purchase of an apartment in the development and to pay an annual service charge towards the upkeep of the common areas. When purchasing an apartment within a development, the contract for sale will usually contain a special condition which provides as follows:

“The purchaser hereby applies for membership of and agrees to become a member of the management company. The purchaser shall be furnished with a membership certificate in the management company on the closing day.”

In theory, the transfer of the common areas within a development to the management company should be effected once the last apartment within the development is sold. In practice, the transfer of the common areas within a development may be outstanding in excess of 10 years. The contract for sale usually provides that the vendor’s solicitor undertakes to procure the transfer of the common areas within the development to the management company on the sale of the last unit in the development. A solicitor’s undertaking to this effect is furnished on completion of the purchase of the property.

If the owner of an apartment within a development sells his or her apartment prior to the transfer of the common areas to the management company being effected, the apartment owner, as vendor, may assign the benefit of the undertaking furnished to him or her on closing to the new purchaser of the property. The new purchaser may continue to rely on the benefit of the vendor solicitors’ undertaking to procure the transfer of the common areas to the management company.

Date: February, 2008
Author: Linda Lynch

 CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay,
Dublin 2,
Ireland.
Tel: +353 1 667 0022
Fax.: +353 1 667 0042

Cork

8 Webworks Cork,
Eglinton Street,
Cork, Ireland.
Tel: +353 21 425 0630
Fax: +353 21 425 0632

Boston

26th Floor,
225 Franklin Street,
Boston, MA 02110,
United States of America.
Tel: +1 617 217 2866
Fax: +1 617 217 2566

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

e-mail: enquiries@dilloneustace.ie
website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.

Paul Eustace

e-mail: paul.eustace@dilloneustace.ie
Tel : +353 1 667 0022
Fax: + 353 1 667 0042

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2009 Dillon Eustace. All rights reserved.
This article was first published on www.internationallawoffice.com - the Official Online Media Partner to the International Bar Association, an International Online Media Partner to the Association of Corporate Counsel and European Online Media Partner to the European Company Lawyers Association. Register for a free subscription at www.internationallawoffice.com/subscribe.cfm

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

33 Sir John Rogerson's Quay, Dublin 2, Ireland.
www.dilloneustace.ie

In alliance with Arendt & Medernach