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Apartment living and the Multi-Unit Developments Bill 2009

Lorcan Sirr considers the issues unique to owning an apartment and analyses the reform measure designed to address them.

Since becoming a nation of property owners rather than tenants, it seems we have learned little about how to manage our little corners of the world. In mid-2010 there are somewhere between 300-400,000 apartments in Ireland and many of these apartments now languish deep in negative equity with many owners in arrears and fearful of losing their home. But there are other problems too.

Take the service charge: an apartment owner automatically becomes part of a management company which in turn employs a managing agent to look after the physical maintenance of the communal areas, gardens, parking and so forth, and also to prepare for any future repair and replacement, say of lifts. This is paid for each year by a service charge billed proportionally to each unit in the development.

Service charge transparency

Major concerns surround the lack of transparency of the composition of this service charge. A service charge may be low for the first year of a resident's occupation – as little maintenance is required, or to entice potential purchasers – but then may escalate rapidly much to the surprise of the new owner. Owners can also be frustrated by what they regard as cosy links between the property agents and the companies they employ to maintain the development: a property agent may own the company engaged to landscape or clean. Moreover, a large number of apartment owners never read their leases, which are frequently sitting in a safe in their solicitor's office, and are without a personal copy for their own reference. As a consequence, there is often confusion where scrutiny of the lease would offer clarity.

These issues are a source of much antagonism in apartment developments, with some residents withholding their service charge payment in protest. However, threats of suing and forfeiture of leases for non-payment are expensive and usually result in payment of the service charges owed the day before the case appears before a court, resulting in expensive and non-recoverable legal and debt collection service fees. These

fees are then passed back to the property management company, i.e. the owners, to be added to the next service charge bill.

Moreover, there are questions over how the service charge is apportioned. If the development is only half sold, does that mean that those in occupation are supporting the unsold proportion? What exactly is the service charge to be used for? Why should someone pay for maintenance of the lift when they live on the ground floor? This list is potentially endless.

The role of director in a property management company

The owners' property management company is a company bound by the same rules, regulations and obligations as a company like Dunnes Stores, and requires a minimum of two directors who must publish annual accounts. However, management company directors act in a voluntary unpaid capacity and do not have the benefit of support resources such as a company secretary. There is a marked reluctance amongst apartment owners to become directors of their own management companies because it takes up time and also a director is open to being sued, if for example a fire occurred and the management company had not acted to prevent it. Furthermore, it can lead directors into direct conflict with other apartment owners who are still their neighbours. However, the converse also occurs: some owners become directors in order to effect their preferences, which can incur extra service charges for all owners.

Multi-Unit Developments Bill 2009

Into this battleground, late but welcome, rides the Multi-Unit Developments Bill 2009, much of it based on recommendations of the Law Reform Commission. The aim of the Bill is to increase protection for apartment owners (new or existing) in blocks of five units or more, and to ensure good governance of the development. In the main it does that, ensuring for example a minimum of €200 per year sinking fund is collected from each unit, and, crucially, for a clear iteration of cost categories to be included in the calculation of the service charge. Interestingly, it allows the owners'

management company to make 'house rules'. The developer must also establish an owners' management company and transfer ownership of the common areas to it before any apartments are sold, but must still complete the development. This stops developers from holding onto units, thus preventing owners being able to manage the development.

Short-comings of the bill

Disappointment has been expressed that there has been no provision for the retention of a sum of money, say five per cent, by apartment owners that the developer doesn't receive until the development is certified fully completed by a local authority inspector. Local authority resources might not stretch that far though. The matter of what constitutes 'completion' is also contentious. There is also no recognition of the legal difference between 'completion' (of the development) and 'compliance' (e.g. with technical building regulations).

There is further dismay that dispute resolution takes place in the Circuit Court which is timely and expensive for all involved, especially if there is only one owner out of an entire development who has not paid. Parties must, however, state whether or not mediation has yet been attempted.

The Bill is also very focused on residential development, whereas recently much multi-unit development has been part of a mixed retail and residential scheme.

Conclusion

The Bill has, however, received much support from many consumer and professional bodies, but is only one part of much needed reform. The other arm is regulation of the companies employed to manage developments, which is being done through the Property Services (Regulation) Bill 2009. Between these two bills (when enacted), apartment living should become more transparent and hopefully less stressful.

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