

**Submission of the Conveyancing Committee of the Law Society of Ireland to the
Law Reform Commission on the Consultation Paper on Multi-Unit Developments
(LRC CP 42-2006)**

The Conveyancing Committee of the Law Society commends the Law Reform Commission on its decision to examine the whole area of multi-unit developments and on its production of the above consultation paper. As a committee that regularly sees the difficulties that arise when management company structures in such developments do not function as they are intended to, it believes it is well placed to offer observations and suggestions on how best to address the underlying lack of a legislative framework for such management schemes, and on the available alternatives for the regulation of the common ownership of property.

In examining the issues highlighted in the Consultation Paper, the committee looked at the different situations pertaining in other jurisdictions for the regulation of managed properties, including the statutory model as employed by the common law jurisdiction of New South Wales in Australia, and the German federal system as an example of a model from a civil law jurisdiction. The committee sets out details of the New South Wales and German schemes in Parts 2 and 3, and, in case its recommendation as set out in Part 1 is not accepted, lists its comments on the provisional recommendations in the Consultation Paper in Part 4.

Part 1: Submission and Recommendation on the Consultation Paper

Part 2: The New South Wales Strata Titles Legislation

Part 3: The German Federal Law on Apartment Buildings

Part 4: Comments on the Commission's Provisional Recommendations

Part 1

1. Introduction

The Conveyancing Committee of the Law Society of Ireland (“the committee”) is concerned that the provisional recommendations of the Commission are only likely to lead to a continuance of the existing complex non-statutory regime. The significant difficulties presented to the lawyers acting in early schemes, where apartments were to be sold rather than rented, continue to exist. While it is pleasing for those lawyers who have drafted schemes here,

most of which have worked reasonably well, to be told that their work has been skilled, it is those very same lawyers who in 2003, through this committee, urged the Commission to revive its study of the need for condominium legislation, being conscious that there was a substantial number of schemes which were either ill-drafted or unfairly drafted and were likely to give rise to difficulties in the future. The clamour which has greeted the publication of the consultation paper and the other studies which were published about the same time has confirmed the committee's fears.

2. Statutory Model

The Commission appears to be very averse to a statutory model. It states (p.144) that the fact that schemes have had to operate in Ireland without statutory regulation for many years has created a "particular context" to which developers, consumers and professional advisers have become accustomed. While they have become accustomed to this context, this has not been in terms of acceptance but rather, in the absence of statutory provisions, a growing dissatisfaction with the bulk and complexity of legal documentation and the difficulties which arise with schemes. In truth many of the schemes which had been used in this jurisdiction have a touch of the Heath Robinson about them. A statutory scheme need not be too tight, as the Commission fears (p.148) – the current models may be too rigid in many respects.

At present, in this jurisdiction, no two schemes will necessarily have the same legal structure. The documentation setting up a scheme cannot foresee changes which may not take place for decades into the future. This creates a significant burden for consumers, investors, their professional advisers and, ultimately, the courts, alike. The introduction of a statutory scheme was suggested by Mr. Justice Peart in his judgment of 31st May 2005 in the case of *A O'Gorman & Co. Ltd v JES Holdings Ltd*, (2005) IEHC 168, when commenting on remarks of O'Flaherty J, dealing with the issue of "flying freeholds" in the case of *Metropolitan Properties Ltd v O'Brien*, (1995) 1 IR 467. He stated, "In fact it is a matter perhaps more properly the subject of regulation by statute, as appears to have happened in some other jurisdictions, such as Australia".

While civil law countries were to the fore in establishing systems whereby individual apartments in larger blocks could be purchased and enjoyed, with some common areas being shared with the owners of other apartments, it is now almost 50 years since the common law state of New South Wales introduced its Strata Titles Act, an Act which has been the model for many other common law jurisdictions. It seems as if the Republic of Ireland is almost unique in

the common law world in not having legislation establishing a statutory system for multi-unit developments, Northern Ireland being the only other jurisdiction still awaiting legislation. It is noted that the Northern Ireland Working Group recommended the compulsory application of a statutory model to residential developments. This would appear to be desirable, as to permit the current regimes to continue in parallel could only cause more confusion, especially from a consumer perspective – not least as to why the statutory model was not employed.

3. The Law in Other Jurisdictions

One of the most interesting jurisdictions for comparison purposes is New South Wales, the source of the first common law “condominium” legislation being its Strata Titles Act of 1961. The Strata Management Act of 1996 sets out a comprehensive code for the establishment of owners’ corporations, their administration and the resolution of disputes. More recent legislation in that jurisdiction has imposed strict rules for the conduct of owners’ corporations and for the manner in which they are to be managed on a day-to-day basis and by whom. Further comment on this will follow in Part 2 of this submission, but there must be a strong case for looking at the New South Wales legislation, since not only was it a pioneer common law jurisdiction, but is one which has reviewed the operation of its legislation regularly.

The committee had given consideration to the New Zealand scheme, itself a graft on the New South Wales one, given the similarities in size and population with Ireland, but the New Zealand Unit Titles legislation of 1972 has not been up-dated. A review is currently being carried out, but unfortunately the results of a consultation process are far from definitive and, accordingly, the New South Wales precedent seemed a more appropriate choice.

In England and Wales, recent legislation has introduced the concept of commonhold to deal with multi-unit developments. It had a long gestation period beginning with the Aldridge Report published by the Law Commission in 1987, and finally came into force in 2004. One of the difficulties about using the Aldridge Report and the subsequent legislation as a model is that one of the principal reasons for the study was the difficulties which had arisen in relation to blocks of apartments let on long leases where the reversions were owned not by the apartment owners but by commercial landlords whose major concern appeared to be the maximisation of income, through rents and service charges. The commonhold legislation has not had a “good press” from academic and practising lawyers in England and Wales. It also has a downside in that it appears that it will be difficult for buildings held on long leases to convert to commonhold (“Commonhold Development Rights – A Comparative Assessment”, C. G. van

der Merwe and P. F. Smith, (2005) 69 Conv., p 53). Since all existing schemes (and future ones pending the enactment of legislation making freehold covenants enforceable) in this jurisdiction are leasehold this would seem to render the commonhold concept an unattractive one.

The German federal law on apartment buildings of 1951, which will be considered in Part 3 of this submission, was substantially amended in 2007. It has a very simple structure which, following the recent amendments, has moved closer to the New South Wales model. Apart from being the law of an EU member-state, the German law is of particular interest for comparison purposes because of its provisions in relation to the common areas and financial and management rules, including the strengthened position of the manager, the equivalent of the Irish managing agent.

4. Management Companies

The type of company chosen to act as the management company in Irish schemes was in many cases dictated by the number of apartments in the development since there was a limit of 50 on the number of shareholders in a private limited company with a share capital. Companies limited by guarantee and not having a share capital provided a vehicle which could accommodate more than 50 owners but avoided the regulatory obligations imposed on public limited companies. It is not at all clear that such companies were originally intended, nor indeed that they are ideal, for such purposes.

The present structures which have been designed by lawyers in the absence of a proper statutory scheme are open to what many have described as abuses, including manipulation of the companies by the original developers who, effectively, in what has been a sellers' market for a number of years, dictate the terms. Generally speaking, the documentation establishing the scheme, the leases, the registration of the management companies, the arrangements for the transfer of the reversions to the management company after completion is, in relation to residential developments, reasonably satisfactory, but the very complexity of the documentation and in particular the use of a limited company, leaves opportunities for manipulation. There is nothing to prevent a developer from retaining permanent control of the management company by inserting weighted voting structures, even though it can be cogently argued that such structures should have no place in a company limited by guarantee. Currently there need be no provisions regulating the holding of general meetings, other than those prescribed by company law. There may be unfavourable provisions relating to the appointment

and functions of managing agents, or none. A small minority of members may, through the lack of commitment of other owners, be able to dominate the management of the building, or worse still, not comply with statutory obligations and permit the company to be struck off the register.

There is a common perception that management companies are not “trading companies” but in fact those which exist in major apartment or mixed developments are likely to have a significant annual cash flow and, if the recommendation that sinking funds should be established for such developments is adopted, would have substantial financial capital. One of the perceived advantages of having a limited company interposed between the owners and those trading with the management company, which has been confirmed by legislation or case law in other jurisdictions, is that the owners who are members of the company have no personal liability for its debts. It is not at all obvious why this advantage should be available to a group of apartment owners who really are the company. If it was desired to ensure that the members of the management company had a greater liability to creditors than their nominal €1 guarantee, consideration could be given to requiring such companies to be unlimited companies.

Various interest groups, including the Commission, have called for amendments to company law to enable such companies, or indeed different corporate entities subject to different statutory controls, to operate more satisfactorily as management companies for multi-units developments. The Business Law Committee of the Law Society believes that there should not be a unique form of corporate entity for management companies. The Conveyancing Committee agrees with this view if it refers to corporate entities governed by company legislation and that there should not be a special form of limited company established for management companies, but believes that, if a statutory scheme along the New South Wales lines is to be adopted, it should include a management corporation which would not be governed by company law. The existence of a management association composed only of the apartment owners is recognised by civil and common law jurisdictions alike. In most cases it would appear that they are not treated as being the equivalent of limited liability companies in this jurisdiction. In this regard, there may be much to be said for having a unique form of corporate entity, as there is in New South Wales, which can only be used as a management company for multi-user development. We understand that in a large number of jurisdictions which have followed the New South Wales pattern an exclusive code has been set up to regulate the management companies.

5. Freehold Tenure

The old common law rule that positive freehold covenants could not be enforced was the single factor which propelled the drafters of the first schemes in Ireland down the road to the existing arrangement of apartments held under long leases at nominal rents, premiums equal to the market value of the properties having been paid by the purchasers, with covenants for the payment of service charges to a management company which, at the conclusion of the development, is owned by the apartment owners, and in which the reversions to the apartment leases are vested, thus enabling the owners, through their control of the management company, to enforce the covenants in the leases.

One of the provisions of the Land and Conveyancing Law Reform Bill 2006, which is likely to be enacted in late 2007, will introduce the concept of the enforceability of freehold covenants. This will remove the need to use long leases as the vehicles for the sale of apartments in multi-unit developments, and there seems no reason why leases should continue to be used. Instead of the developer retaining, in the short term, the reversions to the apartments coupled with the freehold of the common areas, the developer will be able, and should be required, to convey the apartments to the purchasers in fee simple. What then should be done in respect of the common areas? Is there any need for them to be vested in a separate corporate body? In some civil law countries, for example Germany, the freehold of the common areas is conveyed to the apartment owners as tenants in common, who then are required to manage the development. In theory this could be done by conveying the common areas to the apartment owners, each purchaser getting a tranche of the ownership on purchase, so that at the conclusion of the developments the apartment owners would own all the common areas as tenants in common and the developer would no longer own any share. Concerns about the operation of partition laws have led to this theory not being followed, and it appears to be more usual in common law countries to vest the common areas in a management association, which may or may not be a corporate body.

Recommendation

The committee believes that it is time to abandon the extra-statutory schemes which have been used and to proceed to adopt a statutory scheme which can be amended, including amendments which would apply to existing developments. We recommend that the German system and the New South Wales system should be examined with a view to adopting a scheme similar to one of those in this jurisdiction. The Committee is

concerned that the complexities involved in multi-unit developments where there is mixed residential and non-residential user may not have been fully addressed in the Consultation Paper, but believes that the Commission should concentrate on the area of most urgent need, namely the reform of multi-unit residential developments.

Part 2

The New South Wales Strata Titles Legislation

1. Overview

The New South Wales strata schemes legislation is a most sophisticated one having evolved since 1961 when the first strata title legislation was passed. The New South Wales scheme has been seen as a pioneer and has been used as a model for many more recent schemes in the common law world. One of the most impressive aspects of the legislation is the way in which it has been kept under regular review and has been regularly amended. The principal Act was last amended in 2006, as was the Schemes Management Act, while the Scheme Management Regulations were amended in July 2007.

The principal feature of NSW strata schemes is the tight statutory control which is imposed from the inception of the development and continues through the lifetime of the scheme. Central to the day-to-day operation of schemes is the owners' corporation, a dedicated form of corporate body, which owns the common areas in multi-unit developments.

Developments cannot commence until, having first received planning and local authority approval, a fully integrated scheme, including the establishment of the owners' corporation, is lodged for registration in the Land Registry. Schemes can only be amended with the approval of the Land Registry. The legislation prescribes the covenants and easements which will apply to each scheme, so that the instrument by which the title to the individual units is conveyed is a simple conveyance. The legislation also provides for the inclusion of a set of bye-laws in each scheme at the registration stage. These bye-laws govern the day-to-day relationship between the units owners and with the owners' corporation, in a simpler form than the lessees' covenants or regulations that would be found in Irish schemes. There are six model forms of bye-laws covering residential, retirement villages, industrial, hotel/resort and mixed use developments, commercial and mixed use schemes. Some provisions in the bye-laws cannot be

amended during the initial period, that being the period from the registration of the scheme to the day on which the voting powers of the owners reaches one-third of the total voting power in the owners' corporation. The relationships between the developers, the unit owners and the management companies are, therefore, statutory and do not depend on the provisions of the individual leases of units, the arrangements for the control and operation of the management companies, and the ultimate control of the development, as they do in Ireland.

There are elaborate provisions covering developments which are to be carried out in stages. Such developments must be the subject of a strata management contract, which must be registered in the Land Registry and must be scheduled to be carried out in not less than 10 years. The development can only be carried out within the terms of the management contract. Any variation in the scheme, or any extension of the scheme, can only be made with the consent of the owners' corporation, or in the absence of such consent by an order of the court.

2. Owners' Corporations

Control of strata schemes is extremely tight not only in relation to their legal structures but also covering the operation and management of schemes, and would appear to render the possibility of the sort of problems which have beset Irish schemes highly unlikely. At the centre of the management structure is the owners' corporation, which is not subject to normal company law. Its structures and operation are governed by precise provisions in the Schemes Management Act and the Schemes Management Regulations. The relevant regulation extends as far as prescribing the forms of receipts to be issued by the treasurer of the corporation. An owners' corporation must have an executive committee – there are strict procedures laid down as to the membership and mode of election of this committee – which must have a chairman, secretary and treasurer, all of whose duties are spelled out in detail. Each of these officers may be paid for their services if the owners' corporation so decides.

The first annual general meeting (AGM) of the owners' corporation must be held within two months of the number of units sold, calculated on a market value basis, reaching 1/3 of the total in the development. Successive AGMs must be held within tight time limits and the procedures for notification of members of meetings, the election of the executive committee and the conduct of the meetings are laid down in precise detail. The developer is required to hand over certain specified documentation at the first AGM.

The executive committee has power to make most decisions on behalf of the owners' corporation, the exceptions being ones which have been reserved, either by statute or where the general meeting of the corporation resolves that they should be reserved to the corporation. The executive committee is entitled to appoint a strata managing agent, who must have a licence under legislation governing property, stock and business agents. The executive committee may delegate some or all of its functions to the managing agent, subject to revocation by a general meeting of the corporation. There are provisions requiring the managing agent to supply full details of the operations and activities of the managing agent. The owners' corporation is also entitled to appoint a caretaker who may manage, maintain and repair the common property.

The Management Regulations spell out in great detail the records that must be kept by the treasurer, how valuations for insurance purposes are to be obtained, and for the dissemination of information to the owners on a regular and prompt basis. Both the Management Act and the Management Regulations are written in plain English and are readily understandable by lay people. The Regulations also provide that all owners are to be entitled to inspect any records and other documentation which the owners' corporation or the managing agent are obliged to keep. If a unit is let, the owner is obliged to furnish the tenant with copies of the bye-laws and details of the management scheme for the development.

3. Financial Provisions

Owners' corporations must operate two separate funds, an administrative fund, which is used for the payment of ordinary annual running expenses, and a sinking fund which is to provide for capital expenses. The owners' corporation is required, within 14 days of its establishment, to prepare an estimate of how much money it will need to credit to its administrative fund to meet the cost of maintenance of the common areas, insurance premiums on those areas and other recurrent expenses. The owners' corporation is also obliged to draw up a 10-year sinking fund plan by the time of its second annual meeting, to review it five years later and, subsequently, to keep a rolling 10-year sinking fund plan in place. There are strict limitations on the use of monies in the sinking fund for administrative expenses.

The owners' corporation has the obligation and the authority to collect contributions from the unit owners to the administrative and sinking funds. Any contribution not paid may be recovered as a debt one month after the date on which it fell due, together with interest and costs.

The owners' corporation, as owner of the common areas, has the obligation to maintain them, and to insure them. As the units are effectively "cubes of air" the common areas include the structures of the buildings, as in this jurisdiction.

4. Dispute Resolution

Disputes about the operation or the management of schemes come within the jurisdiction of the Director of Fair Trading, who is head of the Consumer, Trader and Tenancy Tribunal, whose jurisdiction also covers consumer claims, consumer credit, residential tenancies and retirement villages. Mediation is required before the tribunal will become involved, which will be by appointing an adjudicator to investigate and decide on the complaint. An appeal lies from the adjudicator's decision to the court. It is interesting to note that New South Wales has moved away from having a dedicated regulator, the strata commissioner, to placing strata management disputes within the jurisdiction of a general consumer protection regime.

5. Transitional and “Rescue” Arrangements

Because the 1973 Act was making significant changes to the structures laid down in the 1961 Act, it contains a large number of transitional arrangements under which schemes which had operated under the 1961 Act were to be converted into 1973 Act schemes. These provisions might be of considerable assistance as precedents for the “rescue” arrangements which are clearly needed in this jurisdiction.

Part 3

The German Federal Law on Apartment Buildings

1. Summary of Characteristics Relevant to the Introduction of an Irish Statutory Model

The committee is of the view that the following attributes, in particular, of the German statutory model of law on apartment buildings merit consideration in the context of the introduction of an Irish statutory model.

(a) The simplicity of the model. Each apartment owner is a co-owner of a share in the common property which is administered by the manager. In contrast, many Irish apartment owners have an “understanding deficit” with the distinction between the management company and the managing agent and indeed with the involvement at all of a limited liability management company in the ownership of an apartment.

(b) The mandatory application of the model to all developments, including mixed developments, regardless of the number of apartment units.

(c) The possibility for the application of the model to developments created prior to the enactment of the legislation.

(d) The model is Land Register based. A standard freehold folio can be employed. The aims of registration of all lands in the state and the introduction of e-conveyancing are thus facilitated.

(e) The strengthened position of the manager (who will be subject to statutory regulation in Irish law) reduces the impact of apathy or deadlock amongst the owners.

(f) The right of an owner to a reasonable management of the development curbs the potential for a tyranny of a majority of co-owners or the manager.

(g) The obligation on the manager to enforce the payment of financial contributions by the co-owners ensures the solvency of the co-ownership. This is of fundamental importance.

(h) The obligation to furnish an annual account in addition to an annual budget ensures that current expenditure is dealt with in the current year and prevents the Irish practice of raiding the sinking fund to meet unforeseen additional current expenditure, e.g. unpaid service charges.

(i) The protection of the common property from insolvency might be a more realistic approach than the ownership of the common property under the current Irish non-statutory model by a limited liability management company with an unrealistic impasse reached if the management company becomes insolvent: probably the only asset available to creditors is the common property which is worthless on its own; the co-owners' apartments are worthless without it.

(j) The joint (but not several) liability of the co-owners for the debts of the co-ownership might be fairer to creditors who, instead of taking the risk of dealing with a limited liability management company which has no valuable assets, can ultimately enforce debts against a defaulting co-owner's apartment. A normal continuing existence of the co-ownership apartment development is thus ensured.

(k) The absence of several liability means that each co-owner is only liable for its share of the debts. A limited statutory first charge on apartments to secure the payment of financial obligations to the co-ownership affords it the opportunity (if it proceeds without delay) to effectively enforce such debts against a defaulting co-owner's apartment.

2. Historical Background

As early as the twelfth century there are records of the separate ownership¹ of floors and rooms of houses in German cities. The lack of clear rules covering the maintenance and repair of the building were the cause of many disputes. The German Civil Code (BGB)² under the influence of Roman law prohibited the creation of such stratified interests in property. After the Second World War there was an extreme housing crisis in Germany which could only be met by apartment living. To address this need a federal law on apartment buildings, the Wohnungseigentumsgesetz³ (WEG) of 15 March 1951 was adopted. By 2002 there were an estimated 4.1 million apartments, approximately half of which were rented, comprised in developments of an average size of 25 units (approximately 170,000 communal developments), amounting to approximately 10.6% of all residential property.⁴ Currently there are an estimated

¹ *Stockwerkseigentum*.

² *Bürgerliches Gesetzbuch*.

³ Full title: "Gesetz ueber das Wohnungseigentum und das Dauerwohnrecht".

⁴ Sauren, "Wohnungseigentumsgesetz (WEG)", 4th ed., C. H. Beck, Munich, 2002.

5 million apartments⁵ with the majority of new apartments being created by the conversion of existing rental accommodation.⁶ Whereas ownership of apartments was possible in the former German Democratic Republic, this was not on a basis similar to the WEG, involving instead a civil association.⁷ The WEG was introduced in the former Eastern Germany by the reunification treaty.⁸

In contrast to the current Irish model, the German model has a very simple structure with neither company law nor the law of landlord and tenant being employed in addition to property law. Recent amendments⁹ to the WEG which took effect on 1st July 2007 (hereinafter called the “2007 amendments”) were introduced to address a significant judicial decision¹⁰ and to modernise the law in general. The legal model employed in Germany, an EU country, thus merits consideration.

3. The Statutory Model

Under the WEG, the right of ownership¹¹ in a self-contained¹² apartment is conceived as a combination of two separate, but closely connected rights created by a “declaration of subdivision”¹³ of the apartment building¹⁴: the right of ownership of the apartment together with the separate right to a fractional “co-ownership” share¹⁵ (based usually on the proportion of the net floor area of the apartment to the net floor area of all¹⁶ apartments in the building) in the undivided “common property”¹⁷ of the building (the land on which it is built, the roof, stairs, landings, etc.¹⁸). These rights cannot be severed.¹⁹ Ownership of the apartment cannot be

⁵ Bundesministerium der Justiz, Press Release, 16 February 2007.

⁶ Regierungsbegründung, Deutscher Bundestag, Drucksache 16/887, s. 17.

⁷ The equivalent today is the Gesellschaft des bürgerlichen Rechts (GBR): BGB, § 705.

⁸ Gesetz zu dem Vertrag vom 31. August 1990 zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands (Einigungsvertragsgesetz) und der Vereinbarung vom 18. September 1990, Artikel 8.

⁹ Gesetz zur Änderung des Wohnungseigentumsgesetzes und anderer Gesetze, 26 March 2007 (hereinafter referred to as the “2007 Law”). Reference is made to the amended text of the WEG which is available at <http://www.gesetze-im-internet.de/woeigg/index.html>.

¹⁰ On the legal personality of the community of apartment owners: BGH, 02 June 2005, V ZB 32/05.

¹¹ WEG, § 1(1) and (2).

¹² WEG, § 3(2) - A 2007 Amendment proposed by the *Bundesrat* (Senate) permit’s the inclusion of a car-parking space if it is clearly and permanently marked (painting would not appear to suffice) in accordance with the building plans - and § 5(1).

¹³ *Teilungserklärung*.

¹⁴ Constructed or to be constructed: WEG, § 3(1).

¹⁵ To which the right of ownership in the apartment belongs: WEG, § 1(2), 6(2).

¹⁶ Only two apartments or one apartment and one non-residential unit are required for the WEG to apply.

¹⁷ *Gemeinschaftseigentum*. The common property must be comprised in the same land unit: WEG, § 1(4).

¹⁸ Which are not owned by a third party: WEG, § 1(5). These include structural, service and safety features of the building and features which serve communal service provision, even where they are located within the apartment.

¹⁹ Or created conditionally or only for a limited period of time: WEG, § 4(2).

disposed of or encumbered separately from the co-ownership share in the common property.²⁰ The law applies to both buildings comprising residential units only and to buildings comprising also in part non-residential units.²¹ Oversight of the common property is vested in all of the apartment owners (the “co-owners”) in common,²² the manager and the “supervisory committee of co-owners”, if one is appointed.

4. The Co-Ownership

Save as otherwise expressly provided, the rights and duties under the WEG belong to the co-owners.²³ The relationship between them is governed by the terms of the WEG, and where no provision is made by the WEG, the BGB.²⁴ Unless expressly otherwise provided, the co-owners may agree to depart from the terms of the WEG.²⁵ Every co-owner is entitled to such an agreement or the modification of an existing agreement if the continuance of a current rule would in all the circumstances of the case, in particular the rights and interests of the other co-owners, for serious grounds be unreasonable.²⁶ Such agreements are only binding on successors in title if they are registered in the Land Register.²⁷

Decisions adopted by majority vote under the WEG or an agreement between the co-owners providing for the adoption of resolutions by majority vote are also binding on co-owners who vote against the resolution or abstain from participating in the vote.²⁸

The co-ownership can acquire rights and incur obligations to the co-owners and third parties in relation to the management of the common property; it can sue and be sued; the co-ownership

²⁰ WEG, § 6(1).

²¹ WEG, § 1(1), (3) & (6). § 1(6) provides that the provisions relating to apartments apply correspondingly to non-apartment units. For convenience reference is made to apartments only.

²² WEG, § 20(1). The BGH decision (op. cit. 7., supra) held that the co-owners have limited legal personality. The German Government accepted this in principle and was of the opinion that it should be reflected in the law, however if the co-owners were merely members of a legally separate association, their apartment ownership could hardly be characterised as proprietary: Response of the Federal Government to the Observations of the Senate (*Gegenäußerung der Bundesregierung zu der Stellungnahme des Bundesrates*), Deutscher Bundestag, Drucksache 16/887, s. 57). This criticism would appear to apply equally to the presence of a limited liability management company in the current Irish model of apartment ownership. The relationship between the co-owners is however more than a tenancy in common (*Bruchteilgemeinschaft*).

²³ WEG, § 10(1).

²⁴ WEG, § 10(2).

²⁵ WEG, § 10(2).

²⁶ WEG, § 10(2). The German Government rejected calls for the co-ownership shares to be made subject to this provision: Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 19.

²⁷ WEG, § 10(3) This does not apply to resolutions of the meeting of co-owners or Court decisions which are instead recorded in the statutory register to be maintained by the co-ownership (see 10. below): WEG, § 10(4).

²⁸ WEG, § 10(5).

must bear the name “Apartment Co-Ownership” followed by a description of the co-ownership lands.²⁹

The assets and liabilities of the co-ownership belong to the co-owners; if all of the apartments become owned by one person, they vest in that person.³⁰ Every owner is liable for the debts of the co-ownership incurred or payable during the period of their ownership and after ceasing to be an owner in accordance with Commercial Code.³¹ In this regard reliance can be placed on defences or rights of set-off open to the co-ownership against the creditor but not on such rights open to the co-owner against the co-ownership. The co-owners can be liable for the mismanagement of the co-ownership.³²

Neither a co-owner nor a creditor can demand the dissolution of the co-ownership³³ which can only be achieved by a unanimous decision of the co-owners who would then co-own the property as a single unit. In the event of dissolution, co-owners participate to the extent of their shares, modified to the extent of alterations to the common property to which they did not contribute.³⁴

The management of the co-ownership is divided between the co-owners, the manager and the supervisory committee, if one is appointed.³⁵

5. The Declaration of Sub-Division

The regulation of the rights and duties of the co-owners and the co-ownership of the common property is, subject to the mandatory provisions of the WEG, provided for in the declaration of sub-division.³⁶ The declaration is made by the owner(s) of the property prior to the first disposal of an apartment and registered in the Land Register. It contains a detailed description

²⁹ WEG, § 10(6).

³⁰ WEG, § 10(7).

³¹ *Handelsgesetzbuch*, § 160, applied by WEG, § 10(8). The Constitution might provide that the purchaser is liable for outstanding financial contributions of the disposing co-owner to the co-ownership and that any apportionment of running costs of the co-ownership in the year of disposal is a matter between the vendor and the purchaser.

³² WEG, § 10(8).

³³ WEG, §§ 11(1) and (2), respectively. The co-owners can agree to dissolution if the building is destroyed in whole or in part and there is no obligation to rebuild: WEG, § 11(1).

³⁴ WEG, § 17.

³⁵ WEG, § 20(1).

³⁶ The declaration and any agreements between the co-owners which cannot be adopted by simple majority voting are commonly referred to as the “constitution” (*Gemeinschaftsordnung*) of the co-ownership.

of the self-contained apartments, the common property, and any “special use rights”³⁷ over the common property, taking account of the individual features of the building.³⁸

6. The Apartment

The co-owner is obliged to keep their apartment in good repair and to use it and the common property in a manner which will not cause excessive inconvenience to the other co-owners;³⁹ to suffer the like usage by the other co-owners of their respective Units;⁴⁰ to ensure that these obligations are complied with by the co-owner’s household and by persons using the apartment with their permission, e.g. tenants, business staff and customers;⁴¹ and to permit access to the apartment to the extent necessary for the maintenance and repair of the common property, subject to the making good of any damage caused.⁴²

The co-owner is, unless otherwise prohibited by law or the rights of third parties, entitled to full enjoyment of the apartment without interference from others, in particular, to occupy it and to rent or lease it out.⁴³ The co-owners can agree on the use of the apartments.⁴⁴

The disposal of the ownership of an apartment⁴⁵ can be made subject to the consent of the other co-owners or a third party with the objective of preventing undesirable persons gaining ownership.⁴⁶ This has often been used by developers to make disposals subject to the consent of the manager they have appointed.⁴⁷ Consent can only be refused for an important reason.⁴⁸ The intended benefit of this provision can rarely be obtained in medium and large developments where it is unlikely that the character and financial status of a purchaser will be known. Thus unnecessary legal costs, land registration fees and fees of the manager are incurred. However, in small developments and in rural areas the provision can prove useful. Accordingly, it was decided to accommodate both situations by allowing for the removal of the

³⁷ e.g. balconies, car-parking, laundry rooms.

³⁸ Provision can be made by a developer to reserve development rights in relation to the common property during the course of a phased construction development.

³⁹ WEG, § 14(1).

⁴⁰ WEG, § 14(3).

⁴¹ WEG, § 14(2).

⁴² WEG, § 14(4).

⁴³ WEG, § 13(1).

⁴⁴ and the Common Property: WEG, § 15(1). See at 7. below.

⁴⁵ Even by way of a forced sale on foot of a judgment mortgage or an insolvency: WEG, § 12(3).

⁴⁶ WEG, § 12(1).

⁴⁷ Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 21.

⁴⁸ WEG, § 12(2). The Constitution might indicate circumstances in which the consent will be forthcoming, e.g. disposal to the spouse or a lineal relative of the owner.

requirement by majority vote of the co-owners and its deletion from the Land Register folio.⁴⁹ This right of removal cannot be limited or excluded by agreement of the co-owners.⁵⁰

If a co-owner is in serious breach of the obligations towards the other co-owners to the extent that the latter can no longer be expected to continue the co-ownership, they can demand⁵¹ the sale of that co-owner's interest.⁵² The ouster of a co-owner is particularly justified where, despite warning, they have repeatedly breached their obligations, or are in arrears of obligations to make financial contributions in excess of three per cent of the value of their interest in the property.⁵³ Ouster is decided by a majority vote of more than half of the owners and executed by a forced sale.⁵⁴ The right of ouster cannot be limited or excluded by agreement.⁵⁵ It is understood that this right (the equivalent of the Irish right to forfeit the apartment lease for breach of covenant) is rarely used, however, this might be explained to some extent by the very fact that the right exists.

7. The Common Property

The co-owners can agree on the use of the apartments and the common property.⁵⁶ Absent such an agreement, the co-owners can determine by majority vote the orderly use of the common property and the orderly use of the apartments, appropriate to their structure.⁵⁷ To the extent not otherwise governed by the law or such an agreement or resolution, every co-owner is entitled to a reasonable use in the interests of all co-owners.⁵⁸ Every co-owner is entitled to the use of the common property in proportion to their co-ownership share.⁵⁹ Every co-owner may act without the consent of the other co-owners to prevent damage posing an immediate threat to the common property.⁶⁰

⁴⁹ WEG, § 12(4). See Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 21.

⁵⁰ WEG, § 12(4).

⁵¹ WEG, § 18(1). Specific grounds might be specified in the Constitution, e.g. conviction for a criminal offence against another Co-Owner.

⁵² Apartment and share in the common property.

⁵³ WEG, § 18(2).

⁵⁴ WEG, § 19. If there are only two apartments this right can be enforced by the other co-owner as it would not be possible to obtain a majority decision: WEG, § 19(1). A forced sale would also appear to be available if a judgment was obtained for failure to pay financial contributions. The 2007 amendment (see 7. below) which affords the co-ownership a first charge on the apartment for outstanding contributions might make a forced sale more attractive.

⁵⁵ WEG, § 18(4).

⁵⁶ WEG, § 15(1).

⁵⁷ WEG, § 15(2).

⁵⁸ WEG, § 15(3).

⁵⁹ WEG, § 16(1).

⁶⁰ WEG, § 21(2).

If co-owners are not prejudiced by non-modernisation alterations or other additional expenditure on the common property over and above normal maintenance and repair, their consent thereto is not required⁶¹ and if they do not vote in favour of the resolution authorising them they are not entitled to make use of the alterations but neither must they contribute to their cost.⁶²

Some of the most significant 2007 amendments relate to the common property.

It had proven impossible, especially in medium and large co-ownerships, to achieve unanimity over modernisation measures⁶³ although this had resulted in the devaluation of the common property and the apartments alike. A 2007 amendment⁶⁴ permits the adoption of such measures by the co-owners by a 75% majority resolution representing a majority of the co-ownership shares,⁶⁵ to the extent that no co-owner is disproportionately prejudiced.⁶⁶ This provision cannot be limited or excluded by agreement of the co-owners.⁶⁷ Modernisation extends to established currently employed technology but not those which have merely been demonstrated scientifically. It does not extend to luxurious works disproportionate to the existing character of the development, e.g. demolition, the building of extensions, extra floors, or the asphaltting of gardens to make a car park.⁶⁸ Modernisation measures which arise in the course of the maintenance and repair of the common property can be implemented by simple majority resolution of the co-owners.⁶⁹

The common property cannot be the subject of insolvency proceedings.⁷⁰ The several liability of the co-owners in respect thereof has been removed and they are thus only liable for debts relating to the common property to the extent of their co-ownership share.⁷¹

⁶¹ WEG, § 22(1). For example, the installation of a wheelchair ramp which the tenant of an apartment can demand from the owner under the law of landlord and tenant.

⁶² WEG, § 16(6).

⁶³ e.g. external insulation of the façade for energy efficiency.

⁶⁴ WEG, § 22(2).

⁶⁵ A qualified majority, a concept employed in Irish company law. A majority of all shares is required, not just those at the meeting: Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 25.

⁶⁶ If proper reserve funds are maintained over time, cost should not be an issue: Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 31. Some Constitutions provide for their amendment on a qualified majority basis.

⁶⁷ WEG, § 22(2). A significant number of apartments developments had been prevented from modernising.

⁶⁸ See generally, the discussion in the Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 28-32.

⁶⁹ WEG, § 21(3-5). applied by WEG, § 22(2).

⁷⁰ WEG, § 11(3).

⁷¹ WEG, § 10(8).

A statutory first charge on each unit secures sums due by the co-owner to the co-ownership in respect of the most recent three years (including the current year) up to 5% of the value of the apartment.⁷² This is seen as being in the interests of a mortgagee of the apartment because where unit-owners don't pay financial contributions, the apartment building becomes run down, devaluing the apartments themselves. Those who do pay are unfairly punished when they wish to sell. Lenders are in a better position to judge the solvency of borrowers and the limits on the charge allow lenders to assess their risk. Similar provisions were introduced in Austria without adverse effects on mortgage lending.⁷³ Significantly, a creditor of the co-ownership can enforce a co-owner's share of the debt against that co-owner's unit⁷⁴ and thus the continued existence of the co-ownership is not threatened.

If more than 50% of the apartment building is destroyed and the damage is not insured or otherwise covered, reconstruction cannot be demanded by a co-owner nor can the co-owners proceed with it by way of resolution.⁷⁵

8. Costs and liabilities

Unless otherwise provided in the constitution, the co-owners are liable to the co-ownership for the liabilities and costs of the maintenance, repair and management of the common property in proportion to their co-ownership share.⁷⁶ The co-owners can instead by resolution apportion these costs, costs relating to the apartments which are not charged to the co-owners directly by a third party, e.g. electricity, and the costs of management, reasonably on the basis of use or how the costs are incurred.⁷⁷ This provision cannot be limited or excluded by agreement of the co-owners.⁷⁸

The co-owners can *in individual cases* resolve by a 75% majority representing a majority of the co-ownership shares⁷⁹ that the costs of maintenance or repair, or alterations to the common

⁷² Gesetz über die Zwangsversteigerung und die Zwangsverwaltung, § 10, amended by the 2007 Law, Art. 2, 1.

⁷³ Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 44.

⁷⁴ The equivalent of an Irish judgment mortgage.

⁷⁵ WEG, § 22(4).

⁷⁶ WEG, § 16(2). Central heating (including hot water) costs are governed by separate regulations: *Verordnung über die Verbrauchsabhängige Abrechnung der Heiz- und Warmwasserkosten*, 26.1.1989. It might be provided in the constitution that (with a, e.g. 2/3, majority of the co-owners) the basis of apportionment of particular costs can be changed, e.g. co-ownership share/nett floor area fraction, or the number of apartments (e.g. the manager's fees). Likewise the constitution might provide that excessive use, e.g. by tenants, will result in additional contribution by the apartment owner.

⁷⁷ WEG, § 16(3).

⁷⁸ WEG, § 16(5).

⁷⁹ A qualified majority, a concept employed in Irish company law. A majority of all shares is required, not just those at the meeting: Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 25.

property, including modernisation measures should instead be borne on the basis of use or the possibility for use.⁸⁰ This provision cannot be limited or excluded by agreement of the co-owners.⁸¹ If co-owners are not prejudiced by non-modernisation alterations or other additional expenditure on the common property, their consent thereto is not required⁸² and if they do not vote in favour of the resolution authorising them they are not entitled to make use of the alterations but neither must they contribute to their cost.⁸³

The co-owners can by resolution determine the method of payment of financial contributions by the co-owners and the consequences of delay, e.g. interest charges.⁸⁴

9. Budget and Account

The manager must prepare a budget for each calendar year containing: the anticipated income and expenditure for the year, the contribution of each co-owner to costs, and the contribution of each co-owner to the reserve fund.⁸⁵ Once adopted by them, the co-owners are bound to make payments on account on the basis of the budget on demand by the manager.⁸⁶ Following the end of the calendar year, the manager must render an account in respect of that year.⁸⁷ Although there has been much complaint by Irish apartment owners in relation to the level of management costs it is surprising that there appears to have been no objective debate about how costs should be apportioned (including sinking funds). Some apartment owners are wholly unrealistic in their expectations as to their contributions to day-to-day costs –the cost of insurance and refuse charges alone for a very small house amount to a significant sum of money. The German vocabulary might assist in this regard. “Costs” would appear to be more appropriate than “service charge”, since some apartment owners appear to be of the view that if they are not satisfied with the “service”, they should not have to pay the “service charge”. In reality the costs are their costs which were incurred on their behalf – if they are not satisfied, they still have to pay but they should become involved in the management of their apartment development and ensure that their money is being wisely spent. The co-owners vote on the

⁸⁰ WEG, § 16(4).

⁸¹ WEG, § 16(5).

⁸² WEG, § 22(1).

⁸³ WEG, § 16(6).

⁸⁴ WEG, § 21(7).

⁸⁵ WEG, § 28(1).

⁸⁶ WEG, § 28(2). Payments are normally made by monthly direct debit. The Constitution might allow the manager to increase the budget, e.g. by 10%, to take account of unbudgeted expenditure which has arisen.

⁸⁷ WEG, § 28(3).

budget and the account by majority vote.⁸⁸ The co-owners can at any time by majority vote demand an account from the manager.⁸⁹

10. Representation of the Co-Owners

Unless otherwise provided by the WEG or by agreement between the co-owners, they can manage the common property in common.⁹⁰ Subject to any agreement between the co-owners they may, acting by simple majority,⁹¹ manage the common property appropriately to its characteristics. There must be a reasonable management,⁹² including house rules, the orderly maintenance and repair of the common property, insurance of the building against fire to reinstatement value, public liability insurance, an appropriate sinking fund,⁹³ and an expenditure budget.⁹⁴ Where the co-owners fail to adopt a measure required by the WEG, the court may decide on a suitable measure, if none is indicated by the WEG or an agreement or a resolution of the co-owners.⁹⁵

Matters which the WEG or an agreement of the co-owners permit to be decided by resolution are transacted at a meeting of the co-owners.⁹⁶ For a resolution to be valid the subject-matter must be indicated in the notice of the meeting.⁹⁷ A resolution is likewise valid if signed in writing by all co-owners.⁹⁸ A distinction is made between void⁹⁹ and voidable invalid resolutions.¹⁰⁰ An application to have a voidable resolution set aside must be made to the District Court¹⁰¹ within one month of the date of the resolution.¹⁰²

The manager must call a meeting of the co-owners at least once a year.¹⁰³ A meeting must also be called in circumstances agreed on by the co-owners or where more than 25% of the co-owners demand a meeting in writing, giving the purpose and reasons.¹⁰⁴ If there is no manager or if the manager refuses, in breach of duty, to call the meeting, the meeting may also be called

⁸⁸ WEG, § 28(5).

⁸⁹ WEG, § 28(4).

⁹⁰ WEG, § 21(1).

⁹¹ WEG, § 21(3).

⁹² WEG, § 21(4).

⁹³ For examples, see Sauren, "Wohnungseigentumsgesetz (WEG)", 4th ed., C. H. Beck, Munich, 2002, s. 192.

⁹⁴ WEG, § 21(5).

⁹⁵ WEG, § 21(8).

⁹⁶ WEG, § 23(1).

⁹⁷ WEG, § 23(2).

⁹⁸ WEG, § 23(3).

⁹⁹ To be addressed by the Court of its own motion: WEG, § 46(2).

¹⁰⁰ WEG, § 23(4).

¹⁰¹ The German *Amtsgericht*.

¹⁰² WEG, § 46(1).

¹⁰³ WEG, § 24(1).

¹⁰⁴ WEG, § 24(2).

by the chairperson of the supervisory committee or his/her deputy.¹⁰⁵ At least two weeks' written notice of the meeting must be given unless there is an exceptional urgency.¹⁰⁶ Unless the meeting decides otherwise, it shall be chaired by the manager.¹⁰⁷ The minutes of resolutions are to be signed by the chairperson, a co-owner, and if a supervisory committee has been appointed, by its chairperson or their deputy; every co-owner and persons authorised by them is entitled to sight of the minutes.¹⁰⁸

A 2007 amendment requires the manager to keep a chronological register¹⁰⁹ (paper or e-form) of the wording of all resolutions of the co-owners and all court orders relating to the co-ownership. Subsequent additions, amendments and deletions are to be noted without delay and items can be removed from the register when they have no further significance.

In matters which can be determined by simple majority vote, each co-owner has one vote.¹¹⁰ The quorum is such number of co-owners entitled to vote as represent at least half in value of the co-ownership shares.¹¹¹ Where a quorum is not reached, a further meeting with the same purpose shall be called by the manager with no quorum; this must be indicated in the notice calling the meeting.¹¹² A co-owner is not entitled to vote¹¹³ on a resolution concerning a contract with them relating to the common property, litigation against them by the other co-owners, and following ouster.

The co-owners may by majority vote appoint from their number a supervisory committee, consisting of a co-owner as chairperson and two associate co-owners.¹¹⁴ The supervisory committee assists the manager in the execution of their duties.¹¹⁵ The budget, annual account, other accounts of the manager and cost estimates¹¹⁶ are considered by the supervisory

¹⁰⁵ WEG, § 24(3).

¹⁰⁶ WEG, § 24(4). Increased from one week by the 2007 Law, Artikel 1, 14. a). This would appear to be inadequate for an Irish A.G.M. There should be adequate notice to facilitate and encourage the attendance of owners at the AGM which should likewise be held outside of holiday periods, in particular school holidays. In practice the Constitution might require more notice of the A.G.M., e.g. one month.

¹⁰⁷ WEG, § 24(5).

¹⁰⁸ WEG, § 24(6) and (7).

¹⁰⁹ *Beschluss-Sammlung*, WEG, § 24(7). A similar statutory obligation currently applies in Irish Law to the directors of the limited liability management company. The register relates only to resolutions and Court Orders dated subsequent to 01 July 2007.

¹¹⁰ WEG, § 25(2). Where an apartment is owned by more than one person, the vote must be exercised by them in unison.

¹¹¹ WEG, § 25(3).

¹¹² WEG, § 25(4).

¹¹³ WEG, § 25(5). The constitution might prevent the manager voting as proxy of a co-owner in relation to contracts with the manager.

¹¹⁴ WEG, § 29(1).

¹¹⁵ WEG, § 29(2).

¹¹⁶ The Constitution might require the manager to obtain the approval of the co-owners in relation to particular expenditure, e.g. re-roofing, the painting of the building, or expenditure in excess of a specified amount.

committee and reported on to the meeting of co-owners prior to the meeting voting thereon.¹¹⁷ Meetings of the supervisory committee are called by the chairperson as the need arises.¹¹⁸ The constitution might limit the liability of the members of the supervisory committee to gross negligence.

11. The Manager

The appointment¹¹⁹ (for a maximum of 5 years¹²⁰) and removal of the manager (whose role includes that of the Irish managing agent) is determined by majority vote.¹²¹ The manager may only be removed for a serious reason, in particular, the failure to maintain the register of resolutions and court orders; other restrictions on the appointment or removal of the manager are not permissible.¹²² Repeat appointments are possible by resolution passed not earlier than one year before the expiry of the existing appointment.¹²³ Unless the declaration of subdivision provides otherwise, a co-owner can be the manager; the law does not require any qualifications to act as manager.¹²⁴ The manager is an organ of the co-ownership.¹²⁵

*(a) Rights and duties of the manager in relation to the co-owners and the co-ownership*¹²⁶

The manager is authorised and obliged:¹²⁷

1. To execute resolutions of the co-owners and the house rules.
2. To take appropriate measures for the orderly maintenance and repair of the common property.
3. In cases of urgency, to take other necessary steps to protect the common property.
4. To incur and discharge credit for the purposes of the co-ownership.

¹¹⁷ WEG, § 29(3).

¹¹⁸ WEG, § 29(4).

¹¹⁹ The appointment of a manager cannot be excluded: WEG, § 20(2).

¹²⁰ A committee-stage amendment limits this to three years in the case of the first manager, in order to ensure that a developer-appointed manager will be replaced before statutory warranties in relation to the building works have expired: Recommendation and Report of the Legal Affairs Committee (*Beschlussempfehlung und Bericht des Rechtausschusses*), Deutscher Bundestag, Drucksache 16/3843, s. 26.

¹²¹ WEG, § 26(1).

¹²² WEG, § 26(1).

¹²³ WEG, § 28(2).

¹²⁴ This permits self-management by the co-owners, especially in small developments.

¹²⁵ The revised structure of § 27 in the 2007 Law was proposed by the German Government with a view to avoiding misunderstandings as to the role of the manager of representing the co-owners in relation to their co-ownership of the common property, and the role of representing the co-ownership (as an organ of it): Response of the Federal Government to the Observations of the Senate (*Gegenäußerung der Bundesregierung zu der Stellungnahme des Bundesrates*), Deutscher Bundestag, Drucksache 16/887, s. 56, 60. There was little change to the substance of § 27 which had proven itself in practice: Recommendation and Report of the Legal Affairs Committee (*Beschlussempfehlung und Bericht des Rechtausschusses*), Deutscher Bundestag, Drucksache 16/3843, s. 26.

¹²⁶ The internal relationship (*Innenverhältnis*) of the co-ownership.

¹²⁷ WEG, § 27(1).

5. To make and receive all payments relating to the day-to-day management of the common property.

6. To administer all funds received.

7. To notify the co-owners without delay of any pending legal proceedings.

In addition, a 2007 amendment requires the manager to keep a register¹²⁸ (paper or e-form) of all resolutions of the co-owners and all court judgments relating to the co-ownership.

*(b) The manager is authorised in the name of all co-owners and binding for and against them:*¹²⁹

1. To accept service of notices relating to all co-owners in this capacity.

2. To take steps to comply with administrative deadlines and avoid any adverse legal consequences, in particular, the conduct of legal proceedings against the co-owners.

3. To pursue claims, legally and extra-legally, to the extent authorised by a majority resolution of the co-owners.

4. To agree with a solicitor exceptional legal costs in relation to certain legal proceedings.

*(c) The manager is authorised in the name of the co-ownership and binding for and against it:*¹³⁰

1. To accept service of documents.

2. To take steps to comply with administrative deadlines and avoid any adverse legal consequences, in particular, the conduct of legal proceedings against the co-ownership.

3. To implement on an ongoing basis the appropriate measures for the orderly maintenance and repair of the common property referred to at (a) 2 above.

4. To implement the measures referred to at (a) 3 - 5 above.

5. To maintain bank accounts in respect of the funds received in the course of the management referred to at (a) 6 above.

6. To agree with a solicitor exceptional legal costs in relation to the legal proceedings referred to at (b) 4 above.

7. To engage in other legal acts where authorised to do so by an agreement or a majority resolution of the co-owners.

If no manager has been appointed or the manager is unauthorised, the co-ownership is represented by all of the co-owners who may authorise one or more co-owners to represent

¹²⁸ *Beschluss-Sammlung*, WEG, § 24(7). A similar statutory obligation currently applies in Irish law to the directors of the limited liability management company. The register relates only to resolutions and court orders dated subsequent to 01 July 2007.

¹²⁹ WEG, § 27(2).

them.¹³¹ None of the foregoing powers and duties of the manager can be restricted by agreement of the co-owners.¹³² The manager must keep the co-ownership monies in a separate fund, the application of which can be made subject to the agreement of a co-owner or a third party.¹³³

12. Dispute Resolution

A detailed consideration of court jurisdiction in relation to the co-ownership is beyond the scope of this paper, not least because of differences between German and Irish civil procedure. A significant 2007 amendment replaced the original WEG regime whereby disputes were investigated by the court¹³⁴ with the normal rules¹³⁵ of a contested civil litigation between the parties. There was significant criticism of this change at committee stage.¹³⁶ It is difficult to speculate on the precise reason for the change but it appears that the original regime was a cost burden on courts.¹³⁷

The local District Court, due to its physical proximity, has jurisdiction in all disputes, without the requirement for legal representation and, interestingly, without monetary limit.¹³⁸ A reduction in the number of instances of appeal is intended to reduce delay and costs, and result in a more uniform interpretation of the law.¹³⁹

13. The Land Register

Germany operates a land registry system similar to that in Ireland. A sub-folio opened in respect of each apartment¹⁴⁰ gives a description of the common property, its address and map reference; details of the series of folio numbers relating to all of the apartments in the development; whether or not there are special use rights (e.g. parking, the exclusive use of a garden) and details of such rights which benefit the apartment to which the folio relates; and

¹³⁰ WEG, § 27(3), first sentence.

¹³¹ WEG, § 27(3), second sentence. This 2007 amendment appeared to be more practical than the former provision (WEG, § 26(3) OLD) for a court application for the appointment of an emergency manager since the co-owners can appoint a manager at any time and the appointment can be compelled by injunction: Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 35.

¹³² WEG, § 27(4).

¹³³ WEG, § 27(5).

¹³⁴ *Freiwillige Gerichtsbarkeit*.

¹³⁵ Of the Code of Civil Procedure (*Zivilprozessordnung* (ZPO))

¹³⁶ Recommendation and Report of the Legal Affairs Committee (*Beschlussempfehlung und Bericht des Rechtausschusses*), Deutscher Bundestag, Drucksache 16/3843, s. 21-23.

¹³⁷ Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 12.

¹³⁸ WEG, § 43. See the Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 35.

¹³⁹ Explanatory Memorandum (*Regierungsbegründung*), Deutscher Bundestag, Drucksache 16/887, s. 13.

the requirement, if the case, for the consent of the manager to the disposal of the property and the exceptions to this requirement. The share of the apartment owner in the common property is expressed in thousands and it is indicated that this share in the common property is restricted by the shares of the other apartment owners in the common property, and any special use rights benefiting any other apartments.

The sub-folios are closed on the application of the one person who has acquired ownership of all of the units or, in the event of the total destruction of the apartment complex, on the application of all of the co-owners¹⁴¹ to be accompanied by a confirmation from the planning authority of the destruction (co-ownership of the land continues to exist).

14. General Comment

The German model has been in use for 56 years and has evolved through judicial interpretation and the 2007 amendments. Criticism in common-law legal literature¹⁴² appears to be somewhat pessimistic and fails to take account of the possibilities which the constitution of the co-ownership offers in practice. Irish legislation could take account of rules of the WEG which are not appropriate or (yet) relevant to the Irish context. Thus the share in the common property could be fixed on the basis of the relative size of the nett floor areas of the apartments. Irish apartment developments mostly comprise simple modern purpose built buildings to a greater extent than in Germany. There would appear to be less necessity for provisions enabling the basis of financial contributions to be changed by the co-owners themselves – although the nett floor area criterion for cost apportionment appears at times to be unsatisfactory. Nor does it seem necessary in Ireland to have a complex rule providing for the liability of a co-owner for the debts of the co-ownership after ceasing to be the owner of an apartment.

¹⁴⁰ Including the cellar storage space assigned to it.

¹⁴¹ WEG, § 9(1) 2. Sauren, “Wohnungseigentumsgesetz (WEG)”, 4th ed., C. H. Beck, Munich, 2002, s. 44, Rn 4.

¹⁴² Smith, “Apartment Ownership – German Style”, [2007] 71 Conv. (May/June).

Part 4

Comments on the Commission's Provisional Recommendations

Although the preference of the committee would be for a statutory scheme and, ideally, one that did not involve the use of a limited company, rather than the preservation, albeit with enhancements, of the present arrangements, it has reviewed the provisional recommendations of the Commission summarised in Chapter 12 of the Consultation Paper (numbered 12.02 to 12.46) and would make the following observations:

12.02 to 12.04

12.02 The Commission recommends a review by Planning Authorities and the Department of the Environment, Heritage and Local Government of planning and housing policy relating to multi-unit developments. [Paragraph 2.08]

12.03 The Commission provisionally recommends that a detailed study should be commissioned with a view to developing a clear and focused strategy for the multi-unit development sector as a whole, with the aim of informing government policy on the sector. [Paragraph 2.09]

12.04 The Commission provisionally recommends that the scope of the section 180 of the Planning and Development Act 2000 be clarified, and that guidelines should be issued based on that clarification. It further recommends that planning authorities should closely consider the implications of s.180 when processing planning applications and that a national policy should be produced on local authorities taking multi-unit developments in charge. [2.23]

The committee would support these recommendations.

12.05

12.05 The Commission provisionally recommends that the bonds system should be reassessed and that national guidelines should be produced to facilitate efficient and efficacious use of bonds for both local authorities and developers. Such guidelines should be periodically reviewed by the relevant authorities to ensure that the deterrent effect remains persuasive to

developers and to meet new challenges faced by developers and local authorities over time. [Paragraph 2.34]

While the recommendation is good insofar as it goes, the committee would urge that planning authorities be more active in monitoring the progress of these developments from an early stage.

12.06

12.06 The Commission provisionally recommends that the proposed Regulatory Body should monitor the use by planning authorities of their enforcement powers in relation to multi-unit developments and advise the Department of the Environment and Local Government as to what action might be appropriate. [Paragraph 3.13]

The committee is of the view that there is little enthusiasm for the creation of a new regulatory body. If there is a proper statutory scheme, then adherence to it could be made a condition of the grant of planning permission, which would leave the developments open to supervision by the planning authority and by interested third parties.

12.07

12.07 The Commission provisionally recommends that demand by a developer of more than a year's advance on service charges should be strictly prohibited by legislation. This should be subject to review on a case-by-case basis by the Regulator where the developer claims that he or she has a legitimate purpose for demanding such advance payments. [Paragraph 3.19]

There is obviously a case for restricting the ability of a developer, or a developer-controlled management company, from extracting excessive advance payments on account of service charges. It is more important that the advance payments sought represent a fair assessment of the likely expenditure on management costs during the initial period of occupation by the first purchasers than to impose a strict time limit. It is suggested that the accounts should be required to be prepared on a calendar year basis. The committee believes that there should be a dispute resolution process available to owners in multi-unit developments, which would avoid recourse to the courts. Such a process could deal with issues such as this.

12.08

12.08 The Commission provisionally recommends that it should be legislated for that service charges should never be used to pay for ‘snagging problems’ or any other expenses incurred by the developer in completing the development. [Paragraph 3.26]

The committee believes that it is unacceptable that any part of the service charge should be used to deal with snagging items, which are a matter for the developer. There should be an obligation on the developer to complete the snagging list and this should be coupled with an indemnity from the developer in respect of the common areas, and these should be covered by HomeBond or Premier or other similar schemes. It would be useful to consider using the dispute resolution process to deal with disputes as to snagging items, which can be difficult to resolve.

12.09

The Commission provisionally recommends that developers should be under a statutory obligation to establish the management company in due time. [Paragraph 3.27]

If there is to be a management company, it is imperative that it be registered before the first contracts for sale are sent out by the developer’s solicitor. In a properly documented scheme, the contract between the developer and the management company to transfer the common areas, to which the management company should be a party, should be in existence at this stage.

12.10

12.10 The Commission provisionally recommends that developers should be statutorily prohibited, while in control of the management company, to commit the company to long-term contracts with managing agents. [Paragraph 3.29]

It is not clear what the Commission means by “long-term contracts” with managing agents. It would seem not unreasonable for such a contract to cover the period up to the completion of the development, even if this was several years. It is understood that it is already difficult to get managing agents to agree to manage small blocks of apartments. It would be a pity if a

restriction on the length of such a contract were to discourage agents from applying for the work.

12. 11 to 12.13

12.11 The Commission provisionally recommends that statutory regulations relating to the constitutions of management companies should prescribe that any directors appointed by the developer must resign on completion of the development. [Paragraph 3.30]

12.12 The Commission provisionally recommends that developers should be under a statutory obligation to transfer all relevant interests to the management company as soon as the sale of the last unit intended to be sold is completed. [Paragraph 3.34]

12.13 The Commission provisionally recommends that there be a statutory definition of the term ‘completion’ of a development. [Paragraph 3.37]

This recommendation raises the issue of what “completion of the development” means, particularly in the case of a development involving several different blocks which are built sequentially. It may be that there is only one management company for the entire of the development, in which case it would not be appropriate for the developer to cede control over common areas pending the completion of the entire development. Completion of the development should depend on the physical state of the building(s), should not be defined by reference to sales and, in the absence of agreement, should be the subject of expert determination. The committee suggests that the time for transferring the common areas and the reversions to the leases, and control of the management company, should have a fall-back date being the date of expiry of the planning permission. There should be an obligation on the developers to pay an appropriate contribution in respect of unsold units.

12.14

12.14 The Commission provisionally recommends that developers must specify in the planning permission where they intend on keeping a unit or units. [Paragraph 3.36]

Historically the decision by a developer to retain units itself has been dictated by market forces. If there is a sellers’ market and the sales of apartments are slow, a developer may decide to retain some apartments and rent them out rather than drop the selling price. The

committee does not consider that this is a matter which should be related to the planning permission. Any requirement that a developer disclose, at the beginning of the development of a scheme, an intention of keeping some units may lead to developers invariably making such a disclosure.

12.15 and 12.16

12.15 The Commission provisionally recommends that every development should be registered with the proposed Regulatory Body. [Paragraph 3.39]

12.16 The Commission recommends that breach of the statutory regulations should be a criminal offence prosecuted by the Regulatory Body. [Paragraph 3.42]

The committee, not being in favour of a regulatory body, does not support these proposals. Creation of criminal offences that may never be prosecuted or prosecutable serves little purpose.

12.17

12.17 The Commission provisionally recommends that the Companies Acts be amended allowing for specific provision requiring a company's name to adhere to the appropriate ending according to its type and with the management company's specific activity in its name. [Paragraph 4.39]

The committee has elsewhere made recommendations about the appropriate type of company to be used. It is not convinced that a company limited by guarantee and not having a share capital is an appropriate, or the only appropriate, vehicle. If there were to be a special type of company which could only be used for management companies this would obviate the need for including any words such as "management company" in the names of such companies.

12.18 and 12.19

12.18 The Commission provisionally recommends that directors' reports should include a list of the management company's assets, its insurance details, and whether the development is fully compliant with fire and safety regulations. [Paragraph 4.49]

12.19 The Commission provisionally recommends that any annual accounts should be readily available to potential unit owners or their professional advisors. [Paragraph 4.50]

The committee wonders whether, desirable though it might seem, to require directors' reports to contain this information, it could be seen as increasing the duties of directors and perhaps dissuade persons from going forward as directors. A simplified form of accounts would be desirable which would strike a balance between recognising that these are quite simple forms of trading entities, but also that they may have substantial financial assets. It is axiomatic that accounts should be available to all the members.

12.20

12.20 The Commission provisionally recommends that the sanction of striking off should be reviewed in the case of management companies who fail to file returns. [Paragraph 4.70]

The committee favours a review of the striking-off process and would recommend that warning notices should be sent to all directors of the company.

12.21

12.21 The Commission provisionally recommends that a moratorium against striking off should be introduced as an interim measure until a more appropriate sanction is decided upon for management companies who fail to file returns. [Paragraph 4.71]

It is not clear how this proposal could be implemented in view of the difficulty of identifying companies as being management companies.

12.22

12.22 The Commission provisionally recommends that the annual return should include information on the type of activity in which the company is engaging. [Paragraph 4.72]

It is not clear what purpose this will serve. This will merely be repeating information which is almost certainly contained in the principal object clause of the company.

12.23

12.23 The Commission provisionally recommends that the proposed Regulatory Body should play a role in assisting management companies to comply with the provisions of the Companies Acts. [Paragraph 4.73]

The committee has earlier indicated that it does not favour the establishment of such a regulatory authority.

12.24

12.24 The Commission provisionally recommends the Company Law Review Group's proposal that membership of a management company and ownership of an apartment should be statutorily bound together. [Paragraph 4.83]

Once a development has been completed each owner, and only owners, should be members of any management company.

Par. 4.85 expresses a belief held by the Commission, which does not appear to have been carried down to the recommendations, that voting power in the management company should be based on a one-vote per unit basis. An alternative would be that voting power should be based on the floor area of the units, which would, in many cases, be the basis on which an owner's contribution to service charge is determined. International comparisons reveal no general agreement on which of these is the most appropriate.

12.25

12.25 The Commission provisionally recommends that the proposed Regulatory Body should place under review and set regulations for the voting rights and powers of both apartment owners and short-term tenants in management companies. [Paragraph 4.95]

There are difficulties created where a significant number of units are occupied by tenants. The committee believes that, in the great majority of cases, landlords do not attempt to pass on the service charges directly to tenants, so that tenants do not have any direct involvement with the payment of such charges. If they are not so involved, it can be argued that they should not be

entitled to participate in the decisions as to what services are to be provided and what the cost of those services is, any more than they would be entitled to be consulted by a landlord of a stand-alone property about the costs of re-decoration or repair of such property. On the other hand, it can also be argued that since they are the actual residents of the complex (and their landlords may display little or no interest in the management of the complex, their investment being tax-driven) they should have some input to these decisions.

The National Consumer Agency report, entitled “Management Fees and Service Charges Levied on Owners of Property in Multi-Unit Dwellings”, published in October 2006, at page 31 makes a recommendation that tenants should have the authority to vote on normal expenditure on a day-to-day basis, but that would not extend to matters of a capital nature. The report argues that the main objective should be to create a sense of responsibility for the space the tenants occupy and a sense of community, so that all residents in the complex have a say in what is going on around them, irrespective of the tenure.

In some jurisdictions, tenants are entitled to speak at general meetings of owners’ associations but do not have voting rights. The committee submits that this model might provide a solution to the problem created where there is a significant percentage of “absentee owners” in developments.

A difficulty which affects these proposals lies in defining who is a “tenant”. The provisions of the residential tenancies legislation only encourage landlords to offer very short-term tenancies where there will hardly be time for the tenant to begin to feel, or to be regarded as, part of a community. There may be a stronger case for giving tenants who have longer term agreements or have had their terms extended by the residential tenancies legislation a voice in the management of the complexes in which they live, but it will not be an easy issue to resolve.

The committee believes that the concerns expressed in paragraphs 4.92 and 4.93 of the Commission’s consultation paper are over-stated. Well-drawn schemes, of which there are many in existence, provide satisfactory apportionments of the costs of providing different types of services to different categories of occupiers of multi-unit developments, whether as owners or lessees.

12.26

12.26 The Commission provisionally recommends that the proposed Regulatory Body should, in consultation with other stakeholders, prescribe a standard set of provisions to be included in all management companies' constitutions. [Paragraph 4.101]

If, as the committee recommends, there is to be a statutory scheme, it would lay down such a set of provisions.

12.27

12.27 The Commission provisionally recommends the creation of statutory regulations for the regulation of service charges in consultation with any Regulatory Body and believes that the system of service charges should be kept under review including issues such as the types of charges that should be included in the service charge and information that should be provided about service charges. [Paragraph 4.114]

A statutory scheme would presumably lay down the principles on which service charges should be incurred, calculated and collected.

12.28

12.28 The Commission provisionally recommends that there should be a clear statutory obligation on management companies to establish reserve or sinking funds. [Paragraph 4.121]

The issue of whether there should be a sinking fund is one for the owners of the units. While it is obviously desirable that there should be sinking funds in sizeable developments, in the absence of a statutory scheme which would lay down criteria, it is not obvious how the effectiveness of compulsory funds is to be monitored.

12.29

12.29 The Commission provisionally recommends that reserve/sinking funds should be held in a special protected account separate from the companies' working accounts. The Commission further provisionally recommends that any new Regulatory Body should investigate the current situation of reserve funds as a matter of priority. [Paragraph 4.122]

Sinking funds should, of course, be held separate from the funds collected from ordinary service charges, and it is suggested that they should be held on trust for the current owners of the units.

12.30

12.30 The Commission provisionally recommends that the National Property Services Regulatory Authority should develop a standard form contract for use by management companies in the engagement of managing agents. [Paragraph 5.19]

The committee believes that the proposed National Property Services Regulatory Authority should be given regulatory powers over managing agents thus dealing with a number of the issues which the Commission suggested should be vested in its proposed new regulatory authority.

12.31

12.31 The Commission provisionally recommends that developers should be statutorily prohibited from committing management companies to long-term contracts with managing agents. [Paragraph 5.21]

The difficulties about this proposal have been noted earlier.

12.32

12.32 The Commission provisionally recommends that a guide for management company directors including a full scheme of their rights and responsibilities should be compiled. [Paragraph 6.16]

The Guide already published by the National Consumer Agency is admirable.

12.33

12.33 The Commission provisionally recommends that primary legislation should be enacted specifying the obligations of various groups in the multi-unit development industry in the provision of information to tenants, owners and potential owners. [Paragraph 6.24]

This proposal would be unnecessary if there were a statutory scheme.

12.34

12.34 The Commission provisionally recommends the establishment of a Regulatory Body to oversee regulation of the multi-unit development sector in Ireland. [Paragraph 7.11]

The committee sees no reason for the establishment of a regulatory authority. The difficulties which have led to the suggestions that one is necessary spring largely from the artificiality of the legal structures which have had to be used in Ireland, the inadequacy of some of the schemes and the manipulation of others. A statutory scheme should provide for a system of dispute resolution for each individual development, thus avoiding the necessity of recourse to the courts. The proposal will only perpetuate the unnecessary complexity of the area in Ireland.

12.35 to 12.38

12.35 The Commission provisionally recommends that the proposed Regulatory Body's remit should cover management companies. [Paragraph 7.14]

12.36 The Commission provisionally recommends that the Regulatory Body should advise on the drafting and content of statutory regulations designed to provide purchasers of units in multi-unit developments with consumer advice and other protection and also designed to monitor the operation of such regulations. [Paragraph 7.22]

12.37 The Commission provisionally recommends that legislation should be introduced to regulate multi-unit developments and this legislation should apply primarily to multi-unit developments involving residential units and a high degree of interdependence. Application to other residential developments involving a lesser degree of interdependence or features such as employment of managing agents or establishment of a managing company should be provided for where appropriate. [Paragraph 7.24]

12.38 The Commission invites submissions on the most suitable Regulatory Body to regulate multi-unit developments. [Paragraph 7.51]

In view of the committee's recommendation on the proposed regulatory body, it does not propose to comment on these items.

12.39

12.39 The Commission has concluded that there is no need in Ireland at this stage for a statutory scheme to facilitate freehold ownership of apartments and other units in multi-unit developments and makes no recommendation in respect of a statutory scheme. [Paragraph 10.10]

The committee disagrees fundamentally with the Commission's view that there is no need for a statutory scheme such as already exists in the vast majority of common law and civil law countries.

12.40

12.40 The Commission recommends that, if legislation on enforceability of freehold covenants is enacted, the restriction on lessees of flats to acquire the freehold should be reviewed. [Paragraph 10.13]

The committee is sceptical about the value of this recommendation. Because of the co-operative nature of apartment developments, it would be necessary to ensure that all, or virtually all, of the leasehold covenants continued to survive the acquisition of the fee simple, in order that the scheme could continue to operate.

12.41

12.41 The Commission provisionally recommends that the proposed legislation should contain provisions designed, so far as is practicable, to solve problems which arise with respect to existing multi-unit developments. [Paragraph 10.18]

The committee agrees with this suggestion.

12.42

12.42 The Commission provisionally recommends that the Law Society's Conveyancing Committee should consider urgently the issue of precedents for the legal documentation suitable for small multi-unit developments or arrangements for publication of such precedents by legal publishers. [Paragraph 10.30]

The committee is sceptical about this recommendation, suspecting that small multi-unit developments, which may not be new developments, on green-field sites may require custom tailored documentation. The Society's Conveyancing Committee decided many years ago that it could not attempt to produce standard form documentation for apartment schemes, as it has no power to require members or their clients to adhere to them.

12.43

12.43 The Commission recommends that small multi-unit developments should come within (a) the jurisdiction of the proposed new Regulatory Body and (b) the proposed "rescue" provisions for existing developments. [Paragraph 10.32]

The committee clearly cannot agree with the first recommendation under this heading since it does not believe that there should be a regulatory body. The second recommendation under this heading really belongs in 12.44 and the committee agrees that a rescue provision should be available to all developments.

12.44

12.44 The Commission provisionally recommends that the proposed legislation should contain "rescue" provisions to enable problems arising in respect of existing or future developments, of whatever kind and whenever created, to be resolved. [Paragraph 11.05]

The committee agrees that there should be a rescue procedure. If there were a statutory scheme it would provide an obvious model for the court to employ.

12.45

12.45 The Commission provisionally recommends that:-

- i) an application to the Circuit Court for a “remedial” order should be capable of being made by any person or body interested in a multi-unit development, including the proposed Regulatory Body, but not unsecured creditors;*
- ii) the basis of such an application should be to solve a problem which prevents the development from functioning effectively or denies to those interested legitimate expectations and which cannot be solved otherwise;*
- iii) notice of the application should be served on any other interested person or body;*
- iv) such other person or body should have the right to make representations at the hearing of the application;*
- v) rules of the court should require, as appropriate, applicants to furnish the Court with a proposed solution for approval. [Paragraph 11.15]*

The committee does not agree that the entitlement to apply to have an existing scheme converted into a better scheme should be limited to the situations mentioned in Par 12.45 (ii). The proposed extension of compulsory registration in the Land Registry will present problems for some schemes in that they may not meet the Land Registry’s requirements for first registration. The management companies in such developments should be able to apply to the court to have their schemes altered to permit first registration to take place.

12.46

12.46 The Commission provisionally recommends that:-

- i) the Court should have very wide discretion as to the remedial orders it can make;*
- ii) the applicant for a remedial order should be required to put forward in the application a draft order or scheme for the approval of the Court;*
- iii) in exercising its discretion, the Court should be required to take into account:*
 - o representations made to it by any interested person or body;*
 - o the interests of all interested persons or bodies, taken as a whole;*
 - o the need to compensate any person who establishes that a vested interest will be adversely affected by the order. [Paragraph 11.20]*

The committee does not favour this proposal. Even if there is not to be a statutory scheme, there should be a standard scheme, prepared by court counsel, which should form the basis of

any scheme to be approved by the court. Variation from the standard scheme should be permitted where necessary but only after court counsel's advice has been obtained.

If you require any further information, or if clarification of any matter contained in this submission is required from the Conveyancing Committee, please contact Mr. Barry MacCarthy, Committee Chairman, or Ms Catherine O'Flaherty, Committee Secretary, at the Law Society, Blackhall Place, Dublin 7, telephone No. 01-8681220, or by email at c.oflaherty@lawsociety.ie.

Conveyancing Committee

Law Society of Ireland

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