



The Legal 500 & The In-House Lawyer  
Comparative Legal Guide  
Ireland: Real Estate

This country-specific Q&A provides an overview to real estate laws and regulations that may occur in [Ireland](#).

It will cover the most pertinent issues including ownership structures, restrictions, transfers, taxes and environmental contamination.

This Q&A is part of the global guide to Real Estate. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/real-estate>

WILLIAM FRY

**Country Author: William Fry**

The Legal 500



**Andrew Muckian, Partner**

[andrew.muckian@williamfry.com](mailto:andrew.muckian@williamfry.com)

**The Legal 500**



**Tara Rush, Associate**

[tara.rush@williamfry.com](mailto:tara.rush@williamfry.com)

## 1. Overview

The Irish property market continues to perform very strongly with strong international investor demand allied to Irish REIT and institutional demand underpinning performance. Office, retail and hotel investments have been the most active sectors. There has also been an upsurge in development. Office development and student accommodation development has surged in the last 2 years and office rents in prime Dublin are now approaching €60 psf. An acute housing shortage remains. The successful recent IPOs of housebuilders Cairn Homes and Glenveagh Properties is testament to international investor confidence in the returns likely to be generated from this sector over the medium term.

## 2. **How is ownership of real estate proved?**

There are two mutually exclusive systems for the registration of land – Land Registry and Registry of Deeds. Both the Land Registry and the Registry of Deeds are managed and controlled by the Property Registration Authority, a State organisation.

**Land Registry:** Property registered in the Land Registry is said to be "registered". When title is registered in the Land Registry, all relevant particulars pertaining to the property and its ownership are entered on folios which form the register maintained in the Land Registry. The title shown on the folios is guaranteed by the State. Registration in the Land Registry is definitive proof of ownership. However, mapping is not definitive as the Land Registry operate a non-conclusive boundary system.

**Registry of Deeds:** Property registered in the Registry of Deeds is said to be "unregistered". The Registry of Deeds deals with the registration of documents only and their priority against third parties. Registration in the Registry of Deeds alone is not definitive proof of ownership. Title must be fully investigated to determine ownership.

Since 1 June 2011, the sale of property in all counties in Ireland triggers compulsory registration in the Land Registry. Almost 90% of the legal titles in Ireland are now registered in the Land Registry.

## 3. **Are there any restrictions on who can own real estate?**

No.

## 4. **What types of proprietary interests in real estate can be created?**

There are two broad categories of proprietary interest that can be created: freehold and leasehold estates.

- The owner of a freehold estate is generally free to use and enjoy the land as it chooses subject to any restrictions the parties to the transaction may impose on each other. The estate is for an infinite period of time. The State is ultimate intestate successor and is successor to the property of a dissolved corporation.

- The owner of a leasehold estate holds the property for the duration specified in the lease subject to payment of a rent and performance of covenants. The estate is for a finite period of time. Long leases e.g. 999 year leases are generally referred to as ownership leases while shorter leases e.g. 25 year leases are generally referred to as occupational leases.

In Ireland, there are 2 types of freehold estate – fee simple and fee farm grant (a freehold estate with characteristics of a leasehold estate such as the payment of a rent and compliance with covenants). Legislation in Ireland prohibits the creation of new fee farm grants from 1 December 2009 but does not affect fee farm grants already in existence.

## **5. Is ownership of real estate and the buildings on it separate?**

No. However, it is possible to create separate ownerships of the surface, sub-stratum and airspace (including buildings) of land by a combination of freehold and leasehold estates.

## **6. What are common ownership structures for ownership of commercial real estate?**

The most common structures are individuals, corporate entities, co-ownerships and limited partnerships.

The most popular structure for international investors in recent years is an Irish Collective Asset-management Vehicle (ICAV) – a corporate structure specifically designed for investment funds and attractive to investment managers seeking to market their funds in the U.S. Non-Irish tax resident investors are subject to 20% tax on income and gains earned from the ICAV with the ICAV itself not paying tax on its income or gains.

Real Estate Investment Trusts (REITS) were introduced in 2013 as a new vehicle for investment. Subject to meeting certain criteria, a REIT will not be liable to either Corporation/ Income Tax on its property rental income or property profits, or Capital Gains Tax on disposals of assets of its property rental business.

## **7. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?**

Investigation of title is a matter for counsel acting for the buyer and/ or the lender. There is no market standard form of reporting used. The principle of caveat emptor (let the buyer beware) applies in Irish law.

Enquiries are raised of the seller pre-contract. Pre-contract enquiries are not standardised (except those relating to VAT). Once a contract is in place, standard form enquiries are raised. In practice, these are often raised pre-contract and there is a move toward making this standard conveyancing practice in Ireland.

Searches are undertaken by counsel acting for the buyer and/or lender. They are carried out in government and local government offices to check the ownership of a property, what liabilities, charges or burdens might affect it, the status of the seller and to obtain details relating to planning. Generally the results of searches can be obtained within 24 hours save in the case of planning searches. The results of a planning search can take from between 1/2 days and 2/3 weeks to obtain depending upon the location of the property. The costs vary depending upon the property location and the title.

Sellers do not generally provide any warranties cover in relation to legal title other than on planning matters/chattels/statutory notices but they may be liable for material misrepresentation or non-disclosure. Where the transaction involves limited or no investigation of title being carried out on behalf of the buyer/ lender, it may be agreed that a suite of warranties be provided by the seller including as to the legal title of the seller to the property.

## **8. What legal issues (if any) cannot be covered by usual legal due diligence?**

Matters arising as a result of a physical inspection of the property including environmental issues. For example, a physical inspection of the property might reveal issues with access, occupants, condition etc. Litigation affecting the property other than in the High Court. Planning law and building regulations compliance other than the fact no enforcement action has been taken by a local authority. Best practice is for the buyer to arrange for a professional survey and valuation of the property to be carried out.

## 9. What is the usual process for transfer of commercial real estate?

Heads of Terms are agreed between buyer and seller, usually represented by property agents. These are non-binding.

There is a standard form Contract for Sale for use in property transactions in Ireland containing market standard terms and conditions. It is designed to give a fair balance of rights between the parties. The conditions make a number of assumptions about the property and place certain disclosure obligations on a seller. The conditions include matters as to title, registration, identity, rights and liabilities, enquiries, searches, planning, deposit etc. However, it is common for many of these terms and conditions to be dis-applied or varied to suit particular circumstances.

Normally, there is a four week period between exchange of contracts and completion of the sale but these can happen simultaneously or in whatever time period the parties agree. There is no universal prescribed form of transfer document. However, there are a number of prescribed forms for use in transfers of property in the Land Registry.

Unless required as part of the execution requirements of a foreign entity under its own laws, it is not necessary for a notary or other official to ratify a transfer.

<b>Transaction Steps</b>	<b>Seller</b>	<b>Buyer</b>	<b>Comments</b>
	Draft contract for sale	Investigate title	
	Negotiate contract for sale	Carry out searches	The parties may enter into a confidentiality or exclusivity agreement but this is uncommon.
<b>Pre-agreement</b>	Respond to pre-contract enquiries	Make enquiries	Pre-contract searches may be limited to planning.
	Explain acts appearing on searches.	Negotiate contract for sale	

<b>Signing to closing</b>	Respond to post contract enquiries	Raise post contract enquiries	There is a standard set of enquiries raised post contract.
	Satisfaction of any conditions to closing e.g. consents, clearance forms, declarations etc.	Draft deed of transfer	It is a matter for the buyer to draft the deed of transfer but it is not uncommon for an agreed form to be attached to the contract for sale.
<b>Closing</b>	Execution of deed of transfer and signing of agreed declarations	Carry out searches	
	Discharge of security	Review closing documents	
<b>Post-closing</b>	Explain acts appearing on searches	Payment of purchase price	
	Deal with queries arising on registration which may have been the subject of an undertaking to the buyer.	Stamping Registration of title	Unless, the deed of transfer is a lease, it is a matter for the buyer's solicitor to stamp.

**10. Is it common for commercial real estate transfers to be effected by way of share transfer as well as asset transfer?**

Historically yes, but not in the last six years when there was only a small difference in respective stamp duty rates on asset and share transfers. It is likely to become more commonplace again in light of the increase in rate of stamp duty on asset transfers from 2% to 6% in 2017 unless the Government increases duty on transfers of shares deriving their value from real estate. Also, as many large commercial properties are now held in ICAVs with no stamp duty payable on ICAV share transfers, we expect that disposal of ICAV owned properties will frequently be by way of share transfer.

**11. On the sale of interests in land does the benefit of any occupational leases and income automatically transfer?**

Yes unless there are express restrictions in the leases which would be unusual. The terms of the lease should always be fully investigated to ensure that the benefit of covenants are not personal e.g. a right of first refusal.

## 12. **What common rights, interests and burdens can be created or attach over real estate and how are these protected?**

Common rights, interests and burdens which can be created over real estate in Ireland include:

- Charges
- Options/pre-emptions
- Leases
- Easements (such as rights of way, light, support and water)
- Positive Covenants (such as repair and maintenance obligations)
- Restrictive Covenants (such as restricting use/ development)
- Sporting Rights and Fishing Rights
- Rights of Residence

Most rights, interests and burdens are capable of protection by registration. Others are deemed to affect without registration and specific enquiries must be made about these e.g. leases not exceeding 21 years.

## 13. **Are split of legal and beneficial ownership of real estate (ie Trust structures) recognised?**

Yes and are common. However, only legal interests are capable of registration. The beneficial ownership of land cannot be registered. However, equitable interests which affect the interest of a registered owner can be protected by registration of an appropriate inhibition or caution in the case of registered land and by registration of the document creating the beneficial interest in the case of unregistered land.

As part of the standard form enquiries made of sellers, purchasers make enquiries as to beneficial ownership. In addition, searches carried out may reveal the existence of a split between the legal and beneficial owner.

## **What are the main taxes associated with commercial real estate ownership and transfer of commercial real estate?**

- Stamp Duty

The buyer of property is accountable for stamp duty within 30 days of the date of transfer. The stamp duty rate for commercial property increased in 2017 from 2% to 6%.

- Capital Gains Tax

The seller of property is accountable for tax on any gain arising on the disposal of property (other than a principal private residence) irrespective of tax domicile. The standard rate of tax is currently 33%. Purchasers can be held liable for unpaid CGT

- VAT

As a general rule most disposals of land developed or re-developed within the last 10 years will attract VAT at a current rate of 13.5% and short term leases (less than 35 years) of such land will be liable to VAT at a current rate of 23% on the rents. Detailed analysis is required to determine the correct VAT treatment and reliefs on the disposal of property.

- Rates

Rates levied by local authorities are payable in respect of commercial premises. The level of rates is set by local authorities annually.

- Vacant Site levy

This is a levy on sites zoned as residential land or regeneration land which are vacant or idle and which have been placed on registers maintained by local authorities. The levy is 3% per annum of the market value in 2018 rising to 7% per annum of market value in 2019 and in subsequent years.

### **15. What are common terms of commercial leases and are there regulatory controls on the terms of leases?**

14.



There is no prescribed form of commercial property lease.

- Rent – The most common basis for rent is fixed. Increases in rent are usually determined on a market rental basis rather than by fixed increases. These reviews usually occur every 5 years. Since 28 February 2010, upward only rent reviews are unlawful in new leases.
- Transfers and Sub-Letting – Tenants are commonly allowed to transfer or sub-let their interests subject to landlord's prior consent. By law, consent cannot be unreasonably withheld whether or not the lease states that.
- Repairs– Most leases oblige the tenant to keep the premises in good repair and to pay for repair of common areas in buildings or schemes through a service charge.
- Planning and Building Regulations – Most leases require tenants to be in compliance with planning and building regulations.
- Renewal and Termination Rights – There is a legislative right to a new tenancy for business tenants in occupation for a period of at least 5 years. Tenants may renounce this right and landlords often insist upon this.

Landlords may generally terminate in the event of non-payment of rent/ breach of covenant not remedied within a specified time frame and insolvency of the tenant and/or guarantor. Tenants do not usually have any termination rights unless a specific break option is agreed. However, in the event of damage/ destruction of the premises which have not been reinstated by the landlord within a specified period, tenants often have a termination right.

- Costs – Tenants are commonly responsible for all costs of the leased property.

It is a legislative requirement for tenants to submit details of their letting to a specified regulatory authority within 30 days of stamping their letting regardless of the content of any confidentiality agreement. There are also ongoing obligations to provide further details on rent review and when a tenant ceases to have an interest in the lease.

## 16. **How are use, planning and zoning restrictions on real estate regulated?**

Regulation is on a statutory footing with local authorities responsible for making decisions on individual applications for planning permission, making development plans

and enforcement to ensure compliance.

Development plans set out an overall strategy for the property planning and sustainable development of the area of the development plan including zoning.

Generally speaking development (which includes a change of use) requires planning permission. The local authority must make its decision not more than eight weeks from the date of receipt of the application. However this period may be extended by the planning authority requesting further information. Third parties may make objections or submissions within a period of five weeks of the date of receipt of the application by the local authority. Local authorities have the power to impose conditions. They can include requiring roads, open spaces, car parks etc. beyond the immediate needs of the proposed development and the payment of financial contributions. A decision of the local authority may be appealed to An Bord Pleanála (Planning Appeals Board) within four weeks of the date of the decision.

**17. Who can be liable for environmental contamination on real estate?**

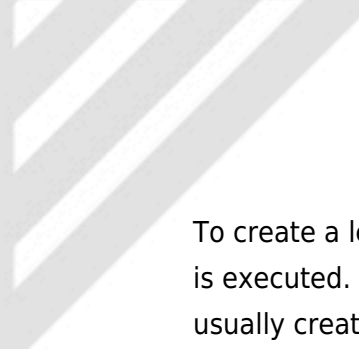
Liability is not limited to the polluter although the polluter is likely to be pursued in the first instance. It can extend to the owner of the property affected. It is standard for buyers to make enquiries of sellers and depending upon the nature of the property to commission a full environmental report.

**18. Is expropriation of real estate possible?**

Yes. Local authorities have the statutory power for the purpose of performing any of its functions to acquire land or rights over land, permanently or temporarily, by agreement or compulsorily. Compensation is payable. Other statutory authorities such as transport authorities and the National Asset Management Agency (NAMA) also have similar rights.

**19. Is it possible to create mortgages over real estate and how are these protected and enforced?**

Yes.



To create a legal charge, a charge (in the prescribed form in the case of registered land) is executed. An equitable charge may be created over unregistered land only. It is usually created formally by execution of a deed but this is not essential. For example, the deposit of title deeds may create an equitable mortgage. Appropriate registration in Land Registry or Registry of Deeds and (in the case of companies giving charges) in the Companies Registration Office is necessary to protect mortgages over real estate.

Enforcement remedies available to a mortgagee can include sale of the property with or without intervention by the court, going into possession and taking the rents/ profits or the appointment of a receiver.

20. **Are there material costs associated with the creation of mortgages over real estate?**

No, only registration/ filing fees. They are €50/€175 in the Property Registration Authority and €40 in the Companies Registration Office.

21. **Is it possible to create a trust structure for mortgage security over real estate?**

Yes.

22. **What is the main legislation relating to commercial real estate ownership?**

**General Conveyancing Matters**

Land and Conveyancing Law Reform Act 2009: Consolidated conveyancing legislation, also dealing with security over real estate and prohibition on upward only rent reviews.

Registration of Deeds and Title Acts 1964 and 2006: Governs the registration of deeds and title.

National Asset Management Agency Act 2009: Facilitates the acquisition and disposal by the National Asset Management Agency of certain assets.



### **Planning/ Building Control**

Planning and Development Acts 2000 to 2017: Provides for proper planning and sustainable development by controlling development.

Building Control Acts 1990 to 2014: Deals with matters relating to requirements for the construction of buildings.

### **Landlord and Tenant**

Landlord and Tenant Acts 1967 to 1984: Deals with matters relating to statutory renewal rights, statutory compensation for improvements/ disturbance, renouncing renewal rights, consents to alienation and statutory rights to buy out superior interests.