BY
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Multi-Unit Developments Act 2011 - The Legal Aspects

Following the recent apartment management company nightmare in Priory Hall, Donaghamede, Brian Walker reviews the Multi-Unit Developments Act 2011 from a legal perspective.

Great opportunities for accountants to help solve the mess that will shortly become an epidemic here! A great law on paper but the consensus is that it simply is unworkable and needs to be rewritten.

Priory Hall, Donaghmede

Can you just imagine today advising a director or a member of an apartment management company that has had resident firemen on the premises 24/7? This is the case in the 187 apartment complex, Priory Hall in Dublin. The case was considered a "very serious emergency" and the High Court made an evacuation order, which was sought by Dublin City Council. The residents were under strict orders to vacate their apartments under the direction of the team of security guards and they will have a resident Fire Warden on the premises most likely until the end of February 2012!

Complying with the Multi-Unit Developments (MUDs) Act 2011

I recently engaged at a seminar on the Multi-Unit Developments legislation with a great bunch of experienced conveyancing and land law solicitors and practising accountants, along with a well-known former politician who was involved with the Multi-Unit Developments legislation going back 10 years. We came to the conclusion that Priory Hall is just one of over 7,500 apartment management companies that were required by 1st October 2011 to become MUDs Compliant. For many of these companies it will be virtually impossible to fully comply with MUDs now or even in 10 years time for a whole host of reasons. This means nobody will be able to buy or sell these properties under the current rules!

What Owners Thought They "Owned"

Unfortunately, many of the 500,000 people who are investors reside in or rent accommodation in multiunit developments, will discover from Section 1 of this new legislation that what they got for their €300,000 was effectively a right to pass through the common areas, and breathe the air in their apartment. In these typical gated communities or apartment management complexes with a management company that owns the common areas, most of what the owners thought they "owned" appears to be what is known as the "common areas". They are only now finding out now that these common areas are actually owned by a management company, like Priory Hall Donaghamede Management Limited, of which the developer and his brother are the directors and all of the residents are the members.

Many of these residents will be told by their solicitors that what they thought they "own", they don't fully appear to "own". It's like in limbo! It will be okay in time if their solicitors do up all the legalities and move the "common areas" over to the Owners Management Company (OMC).

One wonders if they have started on this paperwork yet. Most builders, developers and their advisers had to have been aware of this two or three years ago and must have known that it was coming down the line. One wonders if they have seen the need to put the paperwork in order. It seems like we have all these wonderful laws - but nobody is enforcing them.

These people will be told that if the company is struck off the register, then the company will have no legal existence and the "common areas" will vest with the State in the name of the Minister for Finance, Mr Michael Noonan!

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If the residents of Priory Hall thought their situation was quite messy and complex, it now seems to be taking on a life of its own and they must be getting more confused as time goes by.

Where It All Began

This new law started life from a Law Reform Commission Report carried out nearly 10 years ago. It was passed by the Dail in December 2010 and President McAleese signed it into law on 24th January 2011. Fittingly it was actually commenced into law on April Fools' Day 2011!

These people involved are now only waking up to the realisation that they have a double whammy in that "their" apartment management company is also regulated by 15 different companies acts that are nearly 50 years old, 1963 to 2009. Ironically, the Principal Act of 1963 was also commenced into law on April Fools' Day 1964, and the previous act, the Companies Act 1908, was likewise commenced into law on April Fools' Day 1909!

Schedule 3 Documentation

If and when they read all the Schedule 3 documentation and comprehend what is known as the new Requisitions on Title from the Law Society they might well ask if this is another April Fools Joke. The Schedule 3 documentation is a long list of documents and procedures to be carried out before the typical apartment complex can be considered to be fully MUDs compliant. This new documentation will be like a logbook and will form part of the title of the premises and any purchaser will want to know that this documentation is in place.

The obligation – under Section 31 - is on the builder or developer to hand over the Schedule 3 documentation and this all makes great sense. However, problems are now arising in that the developer may be in liquidation, receivership, examinership, gone away or quite simply broke and generally not interested in instructing a firm of solicitors to ensure that the common areas are transferred over. There may not be an interest in ensuring that the development is fully MUDs compliant so that the residents can prove good title to any purchaser wishing to buy an apartment.

When it Comes to Selling

One of the solicitors at the seminar referred to above mentioned that he had 36 apartment sales pending in his practice so far this year and only one went through because the rest quite simply were not MUDs compliant. The bank was not willing to sanction the mortgage until all the outstanding issues were dealt with to the satisfaction of the bank.

Solicitors will also present a vendor with another list. This will require a number of boxes to be ticked before they can satisfy "A New Purchaser" of an apartment whenever he or she can be found. Other issues that the solicitors will be raising will be with regard to the Sinking Fund and that the management company has been collecting the service charges. Further they will need to demonstrate that they will be able to hand over all the stamped and registered counterpart leases, other deeds for each unit in the development, and, most importantly, that the management company will get the Safety File and all the professionally prepared drawings.

Other Issues

Other issues will arise in the management company as to who will become the new Company Secretary. This seems to mean that they will be somewhat responsible to guide all the other residents, members and directors through this incredible maze of legislation, rules and regulations etc. Who in their right mind would want to take on this job? However , if somebody doesn't come forward and "volunteer " then this sad saga will just continue on and on until somebody takes this completely in charge and writes out a roadmap going forward as to where they are going and when they can start ticking off these boxes.

Then about five or six of the other residents will need to go forward as directors of the management company in place of the developers. They better start reading up on the existing company law that seems way over the top for what is in reality a glorified Residents Association but are known as a company limited by guarantee. Under company law they are regarded as a public company and are similar to Irish Resolution Bank Corporation Plc, AIB plc or any one of the 1700 other public companies in that they have to file the full statutory accounts in the companies registration office.

Life is really not much fun these days reading the new apartment management company law. It seems like becoming a director of your OMC might be like a full-time job!