

Management Companies

The Law Reform Commission recently published a consultation paper on multi-unit developments. It appears that there is a lot of confusion with regard to the rights of purchasers of apartments and their responsibilities. When you purchase an apartment you become a member of the management company that owns the development. You, together with the other members of the management company, are responsible for the upkeep of the common parts including car park and gardens. All companies have Memorandum and Articles of Association and the rules in these have to be carried out. These include having an annual general meeting and furnishing the accounts to the Companies Office.

If these are not carried out and a company is struck off by the Companies Office, it can cost approx. €20,000 to have it put back on the register which will have to be funded by the management company. If a management company is struck off individual members may be unable to sell or mortgage their apartments. The management company is responsible to ensure the upkeep of the apartments and the filing of the accounts with the companies office.

Normally, the Management Company will employ a managing agent to look after the day to day running of the apartment block including on-going maintenance, insurance, collection of service charge, refuse disposal, cleaning of the common parts and putting into place a sinking fund. A sinking fund is a fund designed to build up over a period of time so that when major refurbishments are required for the apartment block the money is available to carry out the works. A sinking fund should never be used for day to day works and should be held in an interest bearing account. It should only be used for major refurbishments when they are required and this should be agreed by the management company. There should be a yearly AGM and this is your opportunity to have your say after all you are responsible as a member of the management company and should be involved in its operation.

A number of problems have occurred in recent times where developers have not handed over control of the management companies to the owners of the apartments. They have retained part of the property and effectively have not released ownership, and may control the voting at the AGM. This means that the owners of the apartments may be unable to pick their own managing agent. This is a very unsatisfactory situation and causes numerous problems, particularly if the managing agents do not comply with the regulations in the Memorandum and Articles of Association. It is worth noting that these people are in a minority that there are some excellent managing agents handling management company affairs.

The legislation with regard to this needs to be updated. The Law Reform Commission has drawn up a consultation paper on multi-unit developments. This is a very complex issue and with so many of our members owning apartments it is an area that greatly interests the IPOA. A suggestion coming from the Law Reform Commission is that tenants should have rights in the running of apartment blocks, this is an area which would be of concern to property owners and it needs to be fully investigated. **The IPOA will be submitting a comprehensive report outlining points that we consider need to be addressed in the legislation. Should members wish to contribute to this submission please do not hesitate to write to us outlining the relevant points.**

RAS UPDATE

Up to the end of December 2006 almost 3000 properties have become participants in the RAS Scheme. This positive response reflects the pro active approach adopted by the various housing authorities in bringing more stability and security to those in need of long term quality housing. An on-going objective of RAS is to further advance the progress already achieved by the procurement of more properties and to focus on the acquisition of multiple units in larger developments.

As in any market there are many different segments and the rental property market is no different. The segment into which the RAS Scheme best fits is one that can appeal to, and meets the needs of many members of the IPOA. Of particular interest to landlords is the security provided in the maintenance of a steady income stream, with no breaks due to a vacant property as this is covered in the agreement.

In offering a property to RAS, landlords need to negotiate the best deal for themselves and this means not just the monthly rental but also rental review periods, security deposit all of which should reflect current market conditions. All properties let should comply with the 1993 Housing (Standards for Rented Housing) Regulations and some of the properties requested to be used in the scheme failed to comply. There is no excuse for for substandard lettings and it is good practice to inspect your property on a regular basis to ensure that it continues to comply with the regulations.

This newsletter was compiled by the staff and members of the IPOA together with PR company Ion Entertainment Ltd sponsored by S. A. Faughnan Group. The views expressed by writers and contributors are not necessarily those of the IPOA nor the publishers and neither accept any responsibility for them. E&OE.



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IPOA *News*

VOLUME 12 ISSUE 5: MARCH 2007

OFFICIAL NEWSLETTER OF THE
IRISH PROPERTY OWNERS ASSOCIATION

Editorial

As usual we have been very busy on behalf of our members. Recently, meetings have been held with Senior Civil Servants including members of the Private Residential Tenancies Board to address problems that are disrupting the registration process with a view to initiating change. We are interested in establishing more user-friendly and efficient methods of complying with this complex legislation. Our continual association with the UIPI and other national organisations throughout Europe including our recent meeting with the National Landlords Association in London is creating better understanding of property legislation and issues.

As previously outlined in our June 2006 newsletter, we have consulted a Legal Expert in relation to the future structure of the organisation and a lot of work has been carried out to develop on this advice. Prior to issuing a draft constitution to all members, we have been advised by our Legal Expert that the new company law is imminent and that we should delay the procedure of the proposed change until the legislation becomes more definite. We look forward to seeing you at the general meeting on the 21st March.

*Stephen A. Faughnan
Chairman*

GENERAL MEETING

21st March 2007

7.30p.m.

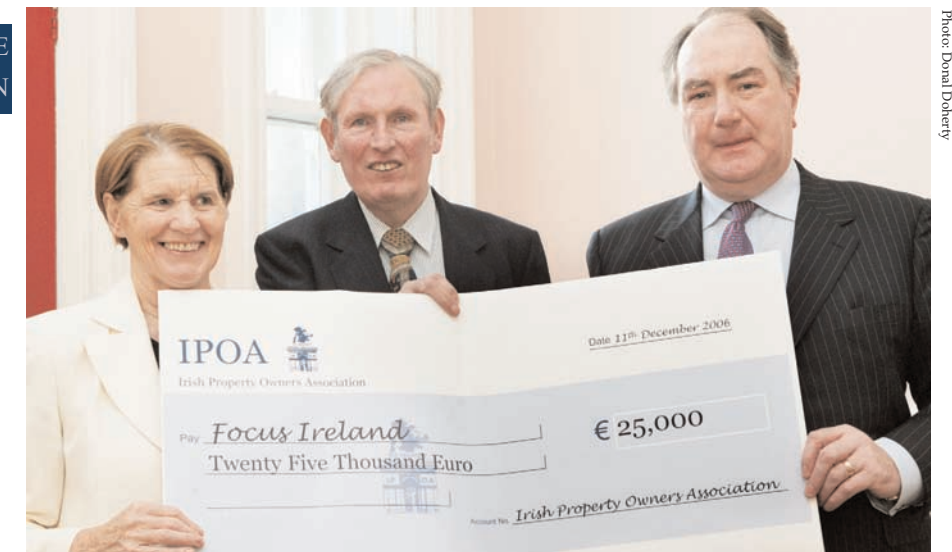
The next IPOA General Meeting will take place on Wednesday, 21st March at The Red Cow Moran's Hotel commencing at 7.30pm.

The Financial Statement will be discussed along with other issues including the Company Structure, Dispute Resolution Process, Registration, RAS etc.

IPOA INSURANCE SCHEME

This scheme is gaining popularity amongst members and is now being extended to cover the private family homes of members at very attractive premiums, showing savings of up to 25%.

**For quotation without obligation
contact David or Emmet on
01-8245555**



Sr Stanislaus Kennedy of Focus Ireland with James Lavin and Stephen Faughnan of the IPOA

Charity Event

On the 13th December 2006 the IPOA had its Christmas Reception for members at which we launched the 2007 IPOA Diary & Yearbook and ran the Home For Christmas Draw in aid of Focus Ireland. Guest speakers at the reception included Brian Lenihan T.D. Minister for State and Children and Mark Mellet, Director of Fundraising & Marketing, Focus Ireland.

Minister Lenihan picked out the winning tickets of the Draw: Bernard McCaffrey won first prize, a 32" Flat Plasma Screen TV; second prize, a weekend in London or €500, was won by James Leonard and third prize, a voucher for a meal for two and accommodation in The Clarence Hotel was won by J & J Kelly. We would like to thank prize sponsors S. A. Faughnan Brokers and The Clarence Hotel for their generous contributions.

IPOA Chairman, Stephen Faughnan gave a brief presentation to the members on a number of items including The Green House Conference and the PRTB. He provided an outline on what the Revenue Commissioners will receive from property owners purchasing property in 2007 - over €4 billion, and called on the government to allocate a minimum of €50 million of this amount to seriously tackle the crisis of homelessness. He went on to recommend that these funds be issued to relevant charities such as Focus Ireland who understand without bureaucracy how to manage money to help homelessness.

The IPOA is extremely grateful to members for their generous support of the Home For Christmas fund 2006 and looks forward to continuing this important venture in 2007.

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PRIVATE RESIDENTIAL TENANCIES BOARD

The IPOA was very concerned when the Private Residential Tenancies Board was initially established that it would be adequately funded to carry out its functions. It is obvious now that it is severely under-funded and under-staffed. The staff in the Board are under intense pressure and unable to deal with the volume of work that is arriving on a daily basis. This is unfair both to staff and to the rental market as a whole. It currently takes around 5 months from application for a dispute resolution to get a date for mediation/adjudication. It can take months to get a copy of the determination order.

The IPOA has been informed by members that it is taking over 3 months to receive confirmation of the registration of their tenancies and in some cases tenants have already left. It is obviously unfair that if a property owner does not register within a month a penalty is imposed but to receive a registration confirmation from the Board can take over 3 months.

The Board is not meeting often enough, although adjudicators and mediators are sending in reports relatively quickly, determination orders are not issued until they are sanctioned by the Board. This has led to substantial delays with regard to the issuing of determination orders. It is clear at this stage that the legislation is not working and requires amendments and the IPOA are very concerned that these amendments be put into place as quickly as possible.

The IPOA always informs property owners on the correct method of dealing with rent arrears but sees at first hand the devastation and problems that can arise when mortgages cannot be serviced once rent is not paid for long periods of time. We are monitoring a number of cases that have been put forward by members to the Board and outlined below is an example. This case details a landlord that has had a tenant in his property whose last rent payment was 18th March 2005 and who taunts the landlord with the fact he will still be there in two years time and there is nothing he can do about it. The landlord in this case has complied with the Residential Tenancies Act 2004 and nearly two years on has not received a satisfactory outcome. As Minister Cullen outlined at the launch of the Residential Tenancies Act 2004, this is a tenant's charter.

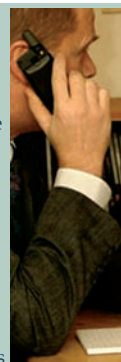


Photo: freefoto.com

REF TR24DR272/2006

The tenant on being served a notice of termination in June 2005 for non-payment of rent applied for the dispute resolution services of the Board on the 20th June 2005.

The landlord after issuing a 14 day letter to bring the rent arrears up to date and a 28 day notice of termination, when the tenant refused to leave and refused to pay any rent at all, applied for the dispute resolution services of the Board on the 6th July 2005.

An adjudication hearing was held for both cases jointly on the 7th November 2005.

The adjudicator sent in his report on the 16th November 2005.

On the 9th January 2006 the adjudicator's determination -was sent to both parties allowing 21 days to appeal the decision.

On the 18th January 2006 the same adjudicator's determination was again issued allowing 21 days to appeal the decision.

The tenant appealed the decision on the 10th February which was outside the 21 day period allowed from the second letter.

This was considered a valid appeal by the Board on the 19th April 2006. (The Residential Tenancies Act states that an appeal can be made within 21 days so it was not within the Private Residential Tenancies Board's jurisdiction to accept this appeal).

A tribunal hearing was held on the 19th July 2006 where both sides of the case were heard and the barrister informed the tribunal that it should not have accepted the appeal.

A determination order was issued on the 11th October 2006 twelve weeks later, stating that the tenant should vacate the property within 21 days and pay the rent owing, ignoring the late notification of appeal. The tenant did not pay any rent and has not vacated the premises.

The Board sanctioned the taking of a civil case against the tenant on 17th January and informed the landlord by telephone on the 26th but they are not enforcing their determination order.

No rent has been paid by the tenant since the 18th March 2005 and the tenant is still living in the property.

This case is tremendously worrying because it demonstrates that a tenant can live in a property for two years without paying any rent and a landlord can do nothing about it. A property owner could lose their own home because of this and it does not inspire confidence in the law. It demonstrates that the Residential Tenancies Act 2004 is ineffective and slower than the courts were previously.

Is there now a case for direct access to the courts?

Dispute Resolution Tips

Ensure that you have carried out all required procedures correctly. Check with the IPOA if unsure.

Get the name of the person dealing with your case and address all correspondence directly to that person.

Keep a copy of all documents sent to the tenant or the PRTB.

Inform the Board in writing if you are bringing in witnesses within the specified time.

Ask for confirmation that the information has been received.

Be prepared on the day. Arrive early and have your complete file with you in case the Board is missing any paperwork.

Misuse of Properties

It has been brought to our notice that there are a number of let properties being used by criminals, including drug pushers, and as bases for prostitution. Be careful that you monitor the use of your premises. Ensure that you inspect frequently and that you are in contact with neighbours so that if there are any problems you are informed immediately and can take appropriate action as quickly as the Residential Tenancies Act allows. If misuse comes to your attention and criminal behaviour is suspected inform the Gardai as quickly as possible and let them investigate.

RENT BOOKS

LEASES

PART-BUSINESS LEASES

LICENSE AGREEMENTS

NOTICE OF TERMINATIONS

REGISTRATION FORMS

Available From Office

DIARY

On the 13th December 2006, the IPOA launched the 2007 Diary /Yearbook. This is the second publication that has been produced by the IPOA for its members and once again it was gratefully received. It is very useful in documenting rental information. It is produced solely on revenue from advertising and we would like to take this opportunity to thank all the 2007 Diary sponsors; Eagle Star, S. A. Faughnan Brokers Ltd, Irish Life, O'Connor Shannon, Galco Steel, John B. O'Connor, Absolute Fitout, ICS, RAS, Meadows, PRTB and Continental Windows.

If you have not received a copy of the 2007 IPOA Diary and have renewed your membership please contact the office.

BUILDINGS ENERGY RATING (BER)

No doubt, all members are now familiar with the fact that all properties that they rent or sell from the 1st January 2009 will have to have an energy rating certificate (BER). As it will be valid for a 10 year period it is prudent to take all measures that you can to ensure that your property gets a good rating, we have outlined some examples of what you can do to upgrade your properties:-

- Service Boilers
- Dry line Walls
- Use double/treble glazing
- Use energy efficient light bulbs
- Insulate attics
- Draught proof the house
- Use heavy curtains
- Don't leave electrical items on standby
- Use timers on immersion heaters and central heating units
- Don't leave immersions on constantly

A little known fact is that electric central heating is not the most energy efficient and will bring down the energy rating of properties. If you are refurbishing a property at the moment consider using a renewable energy source and investigate the availability of grants from Sustainable Energy Ireland (www.sei.ie). The energy rating of a property will ultimately affect its value.



Image: Courtesy of Sustainable Energy Ireland

Energy Savings Devices

With the need to reduce energy consumption in properties, a product has recently come to our attention. A boiler energy management system that ensures that the boiler only fires when necessary can save around 20% of fuel costs. Total Energy Control, one of the exhibition companies at The Green House Sessions, has installed a number of these systems for members and we are receiving very positive responses from them on the energy saving. If you have a query you can contact Ken Lee directly on 086-8538518.

THE IPOA IN RECENT MEDIA

The Irish Independent (13/2/07) recently featured two articles on the business of being a landlord. Margaret McCormick of the IPOA was consulted for both articles which are summarised below.

...The low interest rate climate up to now has meant that acquiring a second mortgage has become quite affordable in recent years - especially given the high rental income available in urban areas throughout the country. Astute property buyers six or seven years ago could find that their rental income today covers, and sometimes even surpasses, the monthly mortgage. So if you have just purchased home number two, and want to rent out the first house, what are the options, and more importantly, how can you make the most, financially, of what is now your biggest asset? The Irish Property Owners Association (IPOA) has some good advice and a range of services for its €100-a-year membership. It provides standard tenancy agreements for €3.50 - a snip when you consider a solicitor will charge about €100 plus VAT to draft the same document. This is probably the most important element of the letting, as it protects both you and the tenant, and is invaluable in the event of any dispute... Margaret McCormick of the IPOA advises that landlords should not draw up initial tenancies for more than a six-month period. If a problem arises with the tenants, the landlord is entitled to ask them to leave during this period without giving a reason. "The vast majority of tenants are good and don't cause any problems, but there will always be a small percentage which are deemed 'bad tenants'," she warns.

The Irish Property Owners' Association has provided us with some tips for the first-time landlord:

** Open a bank account for your property only, to include expenses incurred and rent lodgements; * Ensure everything in the property is in order and decorated to a good standard; * Always check the references of prospective tenants; * Give the tenant a copy of the agreement and make sure they understand it, and are willing to comply with each item; * Give the tenant a receipt for their deposit; * Don't forget to register with the PRTB and get your tenant to fill out the relevant section of the registration form; * An initial lease should not be signed for a period of more than six months; * Give the tenant a contact phone number and rent book.*

Meeting National Landlord Association, London



David Salusbury, Chairman of the NLA

Recently, Stephen Faughnan

had a meeting in London with Mr David Salusbury, President of the National Landlords Association and Vice President of the UIPI to discuss issues that effect property owner members of both organisations. This very interesting meeting outlined how the NLA is run and provided details on legislation in the U.K.

There are many areas of common interest and many areas where ideas etc can be exchanged for the betterment of all and members of IPOA who have (and there are many) property let in the UK would be well advised to have dual membership. Contact our office for information