

SundayTribune

Straight Talking, Bill Nowlan - At long last we've swapped Norman rule for normal rule

Recent legislative changes have brought our property law, stretching back 800 years, into line with the UK. But how do these changes affect you?

Last month I wrote about the significant changes that had taken place with the passing of the new planning act, which among other major changes enables the extension of a planning permission. This has now been signed by the President. However, another very important piece of property legislation, the Land and Conveyancing Law Reform Act, which passed at the end of 2009, went under the radar of most property practitioners and totally changed and updated our property system.

Ireland has been an independent country for close on 90 years but we have been working within a property legal system based on feudal structures of property ownership brought here by the Normans nearly 800 years ago. True, it was modified by legislation passed by His or Her Majesty's parliament in London up to 1922 and we have made various technical updates since then, but fundamentally our structures remained unchanged for centuries. The list of historic legislation repealed by the new act reads like an Alice in Wonderland version of our history – for example, the Statute De Donis Conditionalibus 1285, Tenantry Act 1779, Statute of Frauds 1695, Mines (Ireland) Act 1806, and lots more of the like.

The UK abandoned this ancient system shortly after we gained independence, with its Law of Property Act 1925. This is still the foundation of all UK law governing property title and property transactions. Most other British dominion or commonwealth countries have followed suit and restructured their legal systems over the past 90 years. Ireland was one of the few former colonies that did not update its entire property legal system. All that changed at the end of last year as a result of work done by the Law Reform Commission and thanks to Michael McDowell, who initiated the Land and Conveyancing Law Reform **Bill** which was finalised in the Dáil by justice minister Dermot Ahern in 2009.

I will just set out three examples of how the whole basis of property ownership has changed and modernised, and could affect you and me on a day-to day basis, as a result of the change in legislation.

Firstly, the issue of party structure. In the past if you owned a property and shared a boundary with a neighbour you were not allowed to enter on his/her land to carry out maintenance or repair to the wall/hedge/ building which was

inaccessible from your property. Now you are entitled to enter on the land to carry out necessary works. If a simple request showing the details of your proposed works is not met with agreement, you can simply apply to the District Court for an order to carry out the works. The court will of course examine your proposal to assess its reasonableness.

A second example relates to the change in law regarding rights of way or similar rights over land known as easements. The principle of 'use it, prove it or lose it' now prevails in claims of such a nature. If you believe you have an undocumented right over your neighbour's land (unregistered in the land registry or similar) you have a three-year window from 2009 to establish your claim, or risk losing it forever.

District, circuit and high courts have been frequented by undocumented disputes between neighbours and other land owners about claims for public and private rights of way and other easement including rights to water. They are usually very acrimonious. The new law gives you three years to document and/or register any such right of way that you might claim to hold. If you don't register that right in the land registry, document that right or prove conclusively otherwise, then you may have problems sustaining a claim after 2012, particularly if you are an occasional or irregular user of the right of way. The same applies to way leaves and other rights over land owned by other parties such as rights to water.

A third change relates to the new right to freehold ownership of part of a building such as an apartment. You might have wondered why in Ireland we could not own an apartment in full freehold ownership. The reason why was because of the cock-eyed principle that positive covenants in titles, which are in effect undertakings to actually do something with your property – like carry out repairs to your part of the building, paint your windows or allow drains to pass through your section of the building – were unenforceable against a successor in title, while negative covenants were enforceable. As a result of the new legislation, positive covenants are now enforceable and you can own the freehold of part of a building. Fortunately smart lawyers partially found an artificial way around this problem when apartments were first developed for sale in the 1970s. This was done by way of a grant of a long lease of each flat while the building's freehold was held initially by the developer (which led to its own problems), but more recently by the management company of which the flat owner became a shareholder.

There are significant other changes in the structure of property dealing and ownership which are highly technical. These mainly affect solicitors and the way they do business, such as electronic conveyancing and payment of stamp duty. If you 'do property light' you need only to be aware of the changes and keep in touch with your solicitor – but if you are heavily involved in property you should at a minimum talk to your solicitor about how the changes affect you and your business. If you are a professional you should at least attend a seminar or CPD, and I would recommend you read Professor John Wylie's excellent book entitled *The Land and Conveyancing Law Reform Act 2009: Annotations and Commentary*, published by Bloomsbury Professional. Wylie was one of the key draftsmen of the new law.

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