

House&amp;Home

# Could corona stop your deal?

International property | In the midst of buying overseas? Don't despair – much can be done digitally during the pandemic crisis. By *Liz Rowlinson*

**D**ubliners Chris and Patricia O'Hara have had plenty of time to contemplate the “mess” of their Italian retirement plans since Ireland's general shutdown to halt the spread of coronavirus on March 12.

So far, they have spent €42,000 on a rundown farmhouse in Puglia, southern Italy, which they hope will eventually be a yoga retreat and art school. Their offer of €190,000 was accepted in November and they have paid a 10 per cent deposit to the Milanese property owners.

“We are due to complete on July 1 but now we don't know what will happen,” says Chris, an artist.

“We don't want to bother the elderly owners in Lombardy right now, but we are not sure whether we are going to be in a position to proceed. We've had to close our businesses in Ireland for now. We are also worried whether Ryanair will survive so that we won't even be able to fly there [Brindisi] and whether Italian property prices will plummet.”

The O'Haras are far from alone in having committed to buying a property abroad and now being uncertain of their ability (or desire) to complete as scheduled in their contracts. The situation is changing daily in many areas, but agents, lawyers and notaries are finding new ways of working around an unprecedented situation.

So where do buyers stand?

**I need to buy a home but can I view properties?**

In Spain, physical property viewings are not permitted until the state of emergency ends. In France, the situation is

similar until the 15-day lockdown finishes. “However, we are still getting many inquiries so we can do virtual tours or video viewings and talk through with clients on the phone,” says Joanna Leggett of Leggett Immobilier, an agency in France.

This is happening across markets that are not completely restricted, says Hugo Thistlethwaite, head of Savills. “We are still open for business in many areas, if working under strict conditions. Even physical viewings are happening – in parts of the Caribbean and Miami – if all parties are willing.”

In Florida, none of the current restrictions are affecting a buyer's ability to purchase a home – apart from flying out to see properties, of course – says Zoe Attwood of Homes of America Realty Group. Her company is conducting viewings with a British couple looking to buy a villa in Orlando, a search made urgent since their flight home to Manchester has been cancelled.

Purchases are still proceeding, she says, as the title company (that manages the conveyancing process in the US) will work with the buyer and either mail or email the documents that they need to sign to the buyer. British buyers can then sign the documents before a UK notary (assuming they can travel to see one).

If you are in the process of agreeing the sale of your home, use a flexible completion date, says Alex Radford, an English-born Marbella-based solicitor at My Lawyer in Spain.

“There needs to be a clause inserted that states ‘completion will be by ‘x’ date or earlier by agreement or later if the parties or their legal representatives



cannot attend completion due to Covid-19 crisis,” he says. “At the moment we are suggesting a future completion date of at least two months.”

**My sale has been agreed but I am not sure we will be able to proceed**

Since sterling has plummeted and businesses have closed, many British buyers across Europe are re-evaluating purchases. But what about if deposits have already been paid?

Tim Hughes, a solicitor in Lyon, is working with British cash buyers who, since committing to buy a home, have lost money on the stock market that had been earmarked for the purchase.

They will now need to apply for a bank loan or find other sources of funding to complete, he says. But if they fail to do so and have to pull out, they will likely lose their deposit (5 per cent across France,

10 per cent in Paris), because they did not have a typical “safety-net” clause that allows buyers to pull out if they cannot secure a mortgage.

“Completion dates in France are a target, not a deadline, and there is no sanction [as there is in UK contracts] if the date is missed. But we are asking sellers to agree a significant extension to target dates,” he says.

Fearing a collapse in the value of property, some sellers are agreeing to this (rather than pocket a forfeited deposit) because they prefer to keep the contract at the current sale price, because

For buyers in Italy such as the O'Haras, what chance of getting their deposit back? For purchasers who have paid their deposit (up to 20 per cent), there is a good case for it to be returned under *force majeure* (unforeseeable circumstances) if you signed before the

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national state of emergency was declared, says Gemma Bruce of agent Casa & Country.

A Florence-based notary – who does not wish to be named – says that if buyers want to proceed but need the completion date to be extended, then a simple exchange of emails agreeing between buyers, sellers and notary will suffice. “If you decide not to proceed after having signed the preliminary contract, or wish to renegotiate the price, you would need to explain the reasons relating to *force majeure*,” he advises.

“Most lawyers believe that *force majeure* will stand up as a reason to walk away and have a deposit refunded.” However, it will be required to explain how Covid-19 has directly affected the property and sale.

For example, if your bank has withdrawn your mortgage offer, or if you





Illustration: Tim Marrs

wish to reduce your offer price because income prospects have fallen away.

#### We are due to complete — but will conveyancing be possible?

How binding a completion date may vary according to country. For many buyers of holiday properties or second homes, purchases are just postponed, says Edward de Mallet Morgan of Knight Frank. “While many viewings in Europe and the US are being put off due to travel bans, there is a little else that cannot be done electronically,” he says. His wealthy customers often give their family offices power of attorney (POA), so that a lawyer can sign on behalf of the buyer, and the buyer is rarely physically present.

“In some locations, such as Barbados, where we are currently working on a purchase, contracts can be scanned and

emailed and digital signatures can be used,” he says.

In Spain, it is not quite so simple. Notaries’ offices are still open because they are a public service but only for urgent matters, says Alex Radford. “All completions are before a notary so we can exchange contracts for clients but we cannot complete due to the state of emergency.

“Completions which we had planned for this month are being suspended so long as the *force majeure* exists, we will extend the deadline in a contract, and when the state of emergency ends we can use POA to complete the purchase.”

In France, despite the shutdown, purchases are still going through, with even new offers this week, says Leggett. Many notaries are working from home and for the first time accepting proof of ID that has not been certified by a

notary in the UK — which is normally required — but by e-sign software.

“However, if the due-diligence checks cannot be carried out, the completion date will automatically be put back, and there is a clause in the *compromis de vente* (contract) that allows this,” she says.

In Italy, such e-sign technology cannot be used. For final contract signings to proceed, the hard copy of the POA has to be in the Italian notary’s hand, so if you are planning on setting up one of these, allow extra time for getting your POA authenticated and apostilled by a UK notary, who then has to courier it to Italy, says Caroline Edwards of Personal Puglia, the O’Haras’ estate agent

#### I’m buying a new home off-plan, what if it is delayed?

Some mid-construction developments will be delayed due to the shutdown of

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building sites. Purchasers of new ski properties typically take possession of their homes at the start of the winter season, but will have to be prepared for delay until the spring, says Giles Gale of Alpine Property Finders. “In most developments there will be a *force majeure* clause that allows for a six-month delay.”

At the Algarve’s largest new residential resort, Ombria, development is proceeding despite the state of emergency declared last week, with buyers due to sign the deeds over the next few weeks able to do so without face-to-face contact.

They are not alone in reporting “record levels of inquiries” this week as many property hunters are cooped up at home browsing online — or, like the O’Haras, wondering about the fate of their investment.