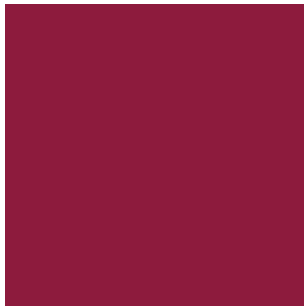
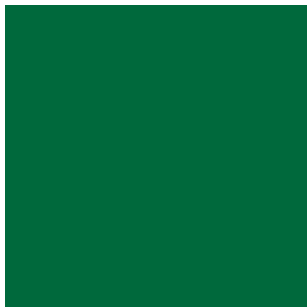


# Property Litigation Seminar

19 April 2018



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London

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# Welcome

Jamie Fitzmaurice, Partner, Mason Hayes & Curran



# Property Litigation

Defective Developments - Where is the Recourse?  
Susan Bryson, Partner, Mason Hayes & Curran



Dublin

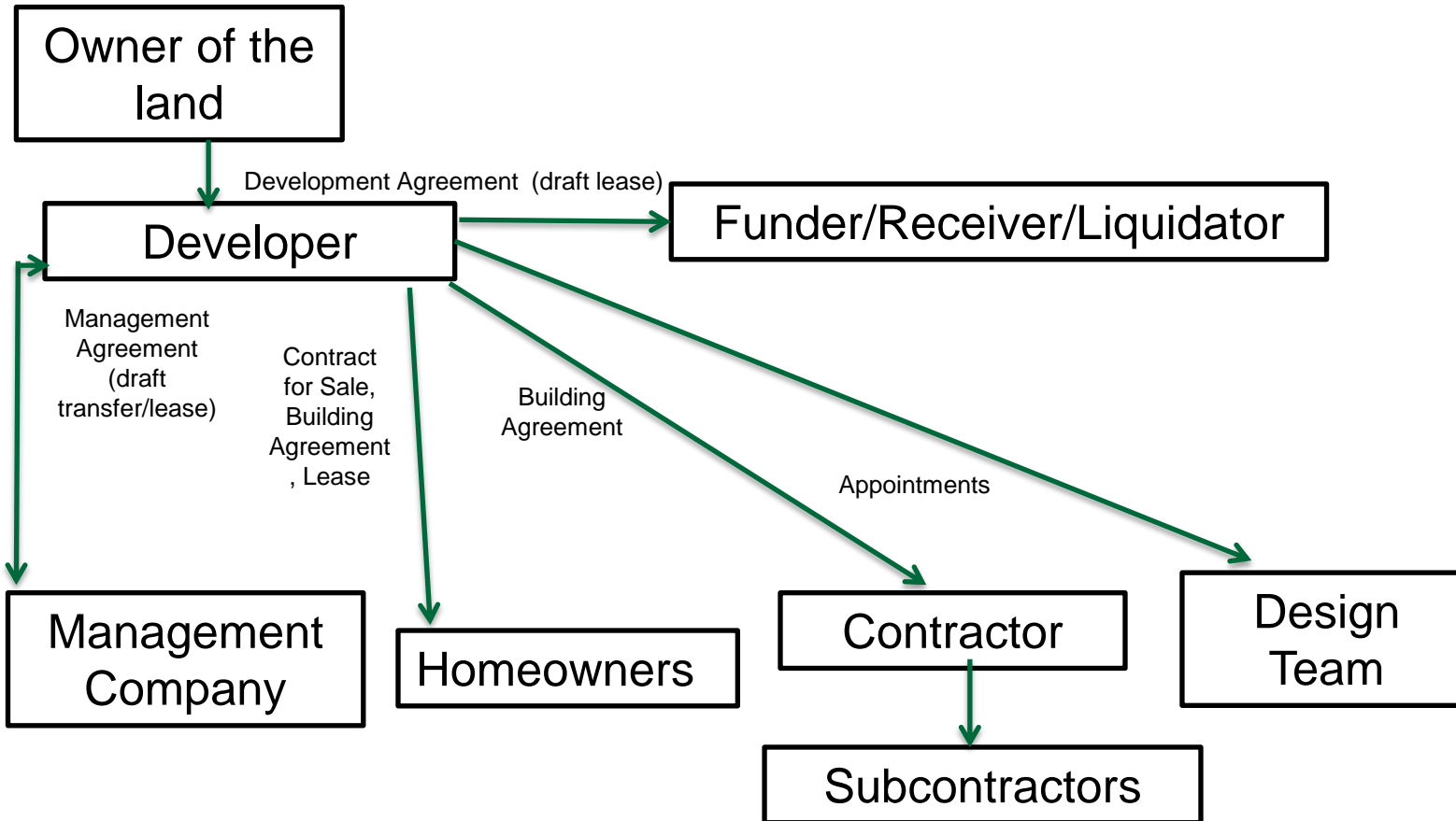
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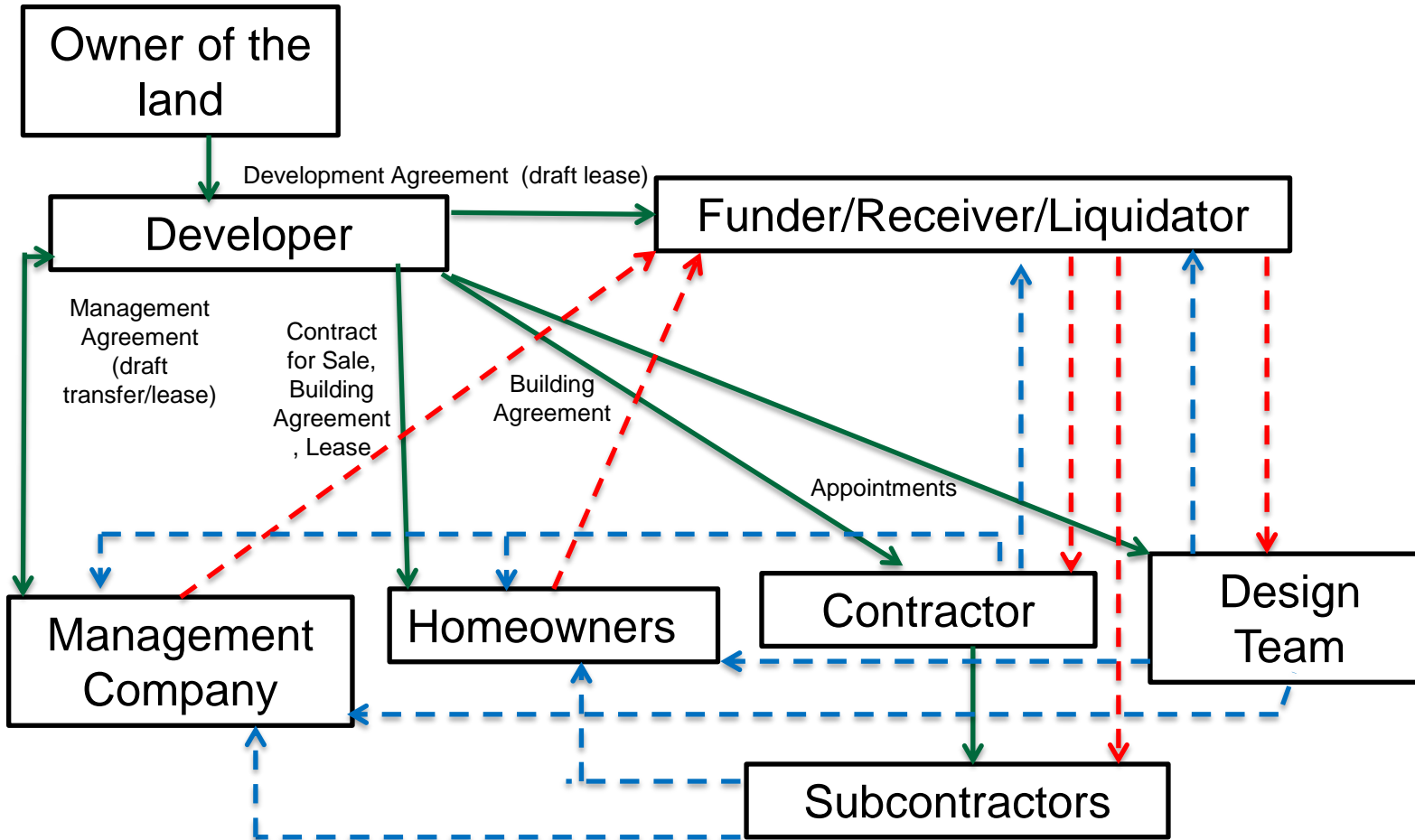
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# Contractual Structure



# Possible Contractual Links



# The owner management company

Claire Lord, Partner, Mason Hayes & Curran



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# The Owner Management Company

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- Purpose of owner management companies (OMCs) is to own and manage the common areas of multi-unit developments for the benefit of the owners of the units within the development
- Most OMCs form themselves as companies limited by guarantee (guarantee companies)
- Guarantee companies:
  - can have an unlimited number of members
  - element of profit is eliminated
- Principle is that each owner of a unit becomes a member of the OMC
- Developers of pre-MUD multi-unit developments tended to seek to retain control of the OMCs until the common areas were transferred to the OMC
- Where a developer has gone into liquidation or receivership before common areas have been transferred potential control issues in respect of the OMC can arise

# Application of the MUD Act

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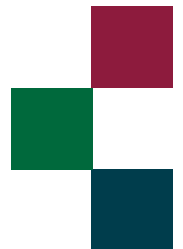
- MUD = Multi-Unit Developments Act 2011
- Applies (in the main) to every multi-unit development, including mixed use multi-unit developments
- Multi-unit developments:
  - (mostly) contain not less than 5 residential units
  - units share amenities and facilities
- Mixed use multi-unit developments include commercial unit/s (other than a childcare facility)
- The voting rights of members of OMCs where no contract entered into prior to MUD must be structured such that:
  - one vote attaches to each residential unit
  - votes are apportioned to commercial units in a manner which is fair and equitable
  - no other person has voting rights



# Control issues

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- Control of the board
- Control of the membership
  - Amendment of constitution
  - Removal of directors
  - Approval of service charges
  - Establishment of sinking fund



# Establishment of sinking fund

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- For the purpose of discharging expenditure reasonably incurred on:
  - the refurbishment
  - improvement
  - maintenance of a non-recurring nature, or
  - advice from a suitably qualified person relating to the above
- Expenditure on maintenance of a non-recurring nature:
  - relates to a matter in respect of which expenditure not generally incurred in each year
  - certified by directors as being such expenditure, and
  - approved by a meeting of the members as being such expenditure
- Contributions to sinking fund cannot be expended on other type of expenditure

# Dispute Resolution

Peter Johnston, Partner, Mason Hayes & Curran



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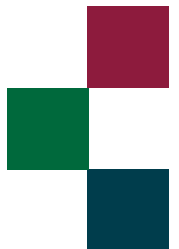
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# Dilapidations

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- Repairs vs Improvements
- Value of the Reversion
- Multi-let premises



# Residential Tenancies

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## Substantial Change

- a **substantial change** in the *nature of the accommodation provided* .....

and

- the rent under the tenancy.....would by *virtue of the change be different* .....

# Residential Tenancies

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- Improvement vs. change
- Minimum Standard for rented accommodation
- On-going repairs and maintenance
- Evidence of a change in the letting value

# Takeaways

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# Thank you

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Questions?



**Susan Bryson**

t: +353 1 614 5241

e: sbryson@mhc.ie



**Claire Lord**

t: +353 1 614 5204

e: clord@mhc.ie



**Peter Johnston**

t: +353 1 614 5282

e: sbryson@mhc.ie