

A Guide to the Purchase of Property



EMAIL

info@lynchsolicitors.ie



WEBSITE

www.lynchsolicitors.ie



TEL

052 6124344

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AN OVERVIEW OF THE TRANSACTION

Step 1: Finding a House

Many factors have to be taken into account when choosing a home:

- Are all services nearby such as shops, schools, transport, sports facilities?
- Are there road-widening proposals in the pipeline? You certainly don't want a busy dual carriageway sprouting up outside your front door with huge juggernauts trundling past day and night.
- Are other developments planned for the locality?
- Has your next door neighbour a long standing ambition to set up a pig farm?
- Check with the local Gardai on the crime rate. Is it increasing? Drive through the area at night. Is that idyllic laneway at the rear of your house transformed into a den of iniquity once darkness falls?
- Have you plans to extend your family? If so, is the house large enough? Is there scope for an extension?

Remember "the day you buy is the day you sell".

You can buy a house through Auctioneers either by public auction or by private treaty. It is more common when buying through Auctioneers that private treaty is the method. Another option is to agree terms with a seller without reference to an Auctioneer but this is less common. The Seller is liable for the Auctioneers fees.

The Auctioneer will usually look for a booking deposit. The booking deposit should be kept as low as possible and you should ensure that the booking deposit is refundable in the event that you do not proceed with the purchase of the house.

The full deposit is paid later when you sign the Contract. The deposit is 10% of the purchase price. If you have paid a booking deposit you will be given credit for this i.e. a total deposit of 10% is payable. On completion, the balance of 90% is paid.

Warning:- On no account should you sign any document before taking our advice. If you sign a document before consulting us you may find that you are legally committed to buy the property even though, for example:-

- we may find that the title is less than perfect
- you may not obtain loan approval
- the structural survey may reveal a problem

You should clarify with the Auctioneer or the Seller what, if any, contents (e.g. carpets and curtains) are included in the purchase price and obtain written confirmation which should be passed on to your Solicitor. This will prevent unnecessary disputes arising later in the transaction.

STEP 2: LOAN APPROVAL

As soon as you decide to buy a house you should make initial enquiries as to the amount for which you are likely to be approved. Your Bank or Building Society will issue "Approval In Principle" which will give you an indication of the amount of money which they are willing to loan to you for the purposes of buying your house.

After you have agreed to purchase a particular house and paid a booking deposit you will need to liase with your bank or mortgage broker to make a formal mortgage application. , it is important that you select the loan that best suits you. A loan application will involve some or all of the following:-

- loan application forms,
- valuation fee,
- fire insurance,
- life insurance,
- standing order to Lender,
- valuation.

You will need to decide whether to avail of variable, tracker or fixed interest rates and you should, of course, look for the best interest rate available. We recommend that you consult an independent mortgage broker who will investigate all of the options available to you.

You will require a salary certificate from your employer. If you are self-employed you will have to provide accounts for your business.

The Bank/Building Society will arrange a survey/valuation. This valuation is for the Lending Agency's own purposes. It is not a detailed survey. Although you are entitled to a copy of the survey report you cannot legally rely on it and you should still arrange your

own independent structural survey. Therefore it is vital that you have the house professionally and independently surveyed.

If your loan application is successful you will receive a formal "Loan Offer" from the Bank/Building Society. The Offer of Loan will detail the loan amount, interest rate, term of the loan and the initial repayment. The Bank/ Building Society will forward a copy of the Loan Offer to your Solicitor and your Solicitor will review the documents with you.

STEP 3: SURVEY

The basic legal rule which applies is "caveat emptor" i.e. let the buyer beware. As a buyer you take the property as it stands and the Seller is not under any duty to disclose any physical defects in the property. It is essential that you arrange a survey of the property by a suitably qualified professional before the Contract is signed.

At this stage you should also make enquiries to ascertain whether or not there are plans to develop adjoining properties or improve local infrastructure e.g. road widening or construction of new roads.

STEP 4: INITIAL APPOINTMENT

You should contact us as soon as you have decided to buy a particular house. We will contact the Auctioneers and obtain the name of the Sellers Solicitor. We will then make contact the Sellers Solicitors confirming that we act on your behalf and request them to forward us the Contract for Sale and copy title documents.

We will also ask you to complete a "Purchase Query Sheet". This is a questionnaire and the answers to the questions will enable us to process the transaction on your behalf.

We will supply you with an estimate of our fees and outlays.

STEP 5: SIGNING THE CONTRACT

We must wait for the Sellers Solicitors to send us the Contracts and Title Documents.

The Contract is the written agreement between you and the Seller. It contains the names and addresses of the Seller and the Buyer, description of the property, the purchase price, deposit payable on signing the contract, the closing date and the terms and conditions upon which you are acquiring the property.

On receipt Contract and the Title documents we will carry out an investigation of title, which, once completed, we will discuss with you.

It is this stage of the transaction that is hard to put a fixed time scale on. There are a number of factors which may delay the signing of the Contract e.g. we may have to seek additional information from the Seller's Solicitor in relation to the Title, or you may be selling another house and be anxious that both transactions run in tandem.

It is often the case that it is necessary to amend the Contracts e.g.:

- if you are not yet in receipt of loan approval it will be necessary to include "a subject to loan approval" clause. This means that if you do not get written loan approval within a specified period after signing the Contract (or such further period as agreed) the Contract is at an end and you are entitled to get your deposit back but without any interest, cost or compensation.
- It may be necessary to include an extra condition confirming that certain items are included in the purchase price e.g. carpets and curtains.

As soon as the terms of the Contract have been finally agreed we will arrange for you to sign both copies of the Contract. At this stage the deposit of 10% of the purchase price is payable by you. Both copies of the Contract signed by you are returned to the Sellers Solicitors

together with the deposit. The Sellers Solicitor must hold the deposit as stakeholder for both parties. This means that if the transaction is successfully completed the Sellers Solicitor must pass on the deposit to the Seller as part of the proceeds of the sale.

However, if the transaction does not proceed and if under the terms of the Contract you are entitled to the return of the deposit (i.e. if you do not get loan approval within the period stated in the Contract) the Sellers Solicitor must return the deposit (without interest, costs or compensation) to us for transmission to you.

The Sellers sign both copies of the Contract and one copy is returned to us. Exchange of Contracts is then completed.

STEP 6: INVESTIGATION OF TITLE

We will carry out an investigation of the title to the property before the Contracts are signed. It is our job to ensure that you purchase a property with good marketable title and if we identify any problems we will advise you. In the majority of cases any difficulties which arise can be surmounted but from time to time we encounter cases where this may not be possible and if this should happen in your case we would have to advise you not to proceed with the purchase of the property.

After the Contract is signed we will raise "Requisitions on Title" on your behalf. These are a detailed list of questions about the property, which completes the investigation of title. This stage, which is between contract and closing, does not involve you to any great degree.

At this stage, we also establish contact with your Lender. We have the responsibility to deal with the requirements of your Lender to make sure that they have adequate security. They will ask us to sign a Certificate of Title which is a personal guarantee by us that the title is in order.

All the requirements of the Lender must be attended to before they will release the loan. We will arrange to meet with you to ensure that all legal documents required by your Bank/ Building Society are signed and returned to them to facilitate the issue of the loan cheque in good time for the completion of the purchase. At the same time you will need to liaise with your Lender to ensure that all non-legal requirements have been dealt with to the satisfaction of the bank. The most common items which delay the release of funds are:

- Fire Insurance
- Life Insurance
- Standing Orders

STEP 7: CLOSING THE SALE

The Contract will specify the closing date. This may be a specific date e.g. 1st August or on the occurrence of a specified event e.g. the issue of your loan cheque. The closing date is the day the Seller hopes to move out and get the money and you hope to move in and pay over the money. The closing date may be changed even in the best-planned transactions. It is important that the parties cooperate in this respect. For example, there may be a few days delay in the issue of your loan cheque or the Seller may want a few extra days to arrange alternative accommodation.

The average sale takes six to eight weeks to process from the time you agree to buy. The following factors are crucial in determining how long the process takes:

- How long it takes you to get loan approval
- You may be selling another property and progress on this transaction may affect your purchase

The sale is closed in the Sellers Solicitors office. However, if the other Solicitor is not based in Clonmel or Cashel the sale may be closed by post.

On the closing day the procedure is that we give a bank draft for the balance purchase monies to the Sellers Solicitors and in return we get the title documents and the keys.

We will carry out Searches on the closing day to confirm that the Seller has not e.g. attempted to sell the property to someone else, remortgage the property or gone bankrupt.

The Seller will almost certainly have an existing loan on the property and we ensure that this is paid off and the Sellers Lending agency releases the property from the existing mortgage.

We will arrange for you to sign the Purchase Deed and deliver the keys to you.

Our work is not yet completed! We will present your title documents to the Revenue Commissioners for stamping and pay over any stamp duty due. After stamping your title has to be registered in the Land Registry or Registry of Deeds. If you have obtained a loan we will lodge the title documents with your Lending Agency on completion of registration.

LIST OF ITEMS TO BE ATTENDED TO BY YOU

1. *Please furnish* a copy of your **LOAN SANCTION/APPROVAL** as soon as you receive same.
2. Arrange a structural survey of the property. This should be done before the Contract is signed
3. Ensure that you deal with all matters required by your lending agency e.g. insurance and life cover.
4. If married, we will require your **Civil Marriage Certificate** which is obtainable from the Registrar of Births, Deaths and Marriages. If you have separated or divorced a copy of your separation agreement, judicial separation order or divorce decree will also be required.
5. We will require a 10% deposit which is payable by you on signing the **CONTRACT FOR SALE**.
6. We will require details of your **PPS Number** and tax type for the purposes of stamping your title documents with the Revenue Commissioners.

FREQUENTLY ASKED QUESTIONS

SHOULD I PAY MONIES DIRECTLY TO THE SELLER?

On no account should you pay monies directly to the Seller. The Seller may not be the legal owner. Also you may not get loan approval and it may prove impossible to recover monies paid directly to the Seller.

SHOULD I PAY ANY MONIES TO THE AUCTIONEER?

Normally you pay the deposit to your Solicitor who will forward it to the Sellers Solicitor who is required to hold it as stakeholder. This means that the Sellers Solicitor cannot release the monies to his client and must hold the monies on behalf of both parties. An Auctioneer may seek a booking deposit. If so, keep the booking deposit as small as possible and make sure that the Auctioneer is bonded (i.e. insured) and that he will hold the deposit as stakeholder.

WHEN DO I PAY THE DEPOSIT?

The deposit is normally payable when you sign the Contract. The deposit is usually 10% of the purchase price. You will be entitled to credit any booking deposit that you have paid to the Auctioneer against the 10% payable when signing the Contract.

WHO PREPARES THE CONTRACT?

The Sellers Solicitor prepares two copies of the Contract and sends them to the buyers Solicitor. He will have to get the Seller's Title documents before he can send out the Contracts and this may take some time.

WHEN DO I SIGN THE CONTRACT?

We will advise you to sign the Contracts after we approve the title and obtain satisfactory replies to pre Contract Enquiries from the Sellers Solicitor. You may sign the Contract subject to getting loan approval within a specified period.

WHAT SHOULD I BRING TO MY SOLICITOR ON MY INITIAL APPOINTMENT?

You should bring a copy of your Marriage Certificate if you are married. If you have separated or divorced a copy of your separation agreement, judicial separation order or divorce decree will also be required. In order to comply with our obligations under the Money Laundering legislation we will also require photographic id and a utility bill. We will make a copy of the documents and return the originals to you.

WHAT IS MEANT BY "EXCHANGE OF CONTRACTS"?

Both copies of the Contract signed by you are returned to the Sellers Solicitor. The Sellers sign both copies and one copy is returned to us. Exchange of Contracts is then complete.

IF MY BANK/BUILDING SOCIETY CARRY OUT A SURVEY SURELY THERE IS NO NEED FOR ME TO HAVE A SEPARATE SURVEY?

The Bank or Building Society carries out a valuation for their own benefit. This will not be a detailed survey. You may not be able to sue the Bank/Building Society's Surveyor for negligence if it later turns out that the valuation was carried out negligently.

We would strongly advise that you arrange for an independent structural inspection by an Engineer or Architect. If you are buying a second hand house you should have the survey carried out before signing the Contract. You should accompany the Engineer or Architect at the Inspection. If you are buying a new house you should arrange for an Engineer or Architect to inspect the property during the course of construction and also once the house is finished to prepare a snag list of items for the builder.

Often, problems exist unknown even to the present owner of the home. An independent survey reduces the risks in home ownership by discovering any of the obvious problems or defects before you purchase the house. You may avoid costly and unwarranted problems in the future.

ARE CARPETS AND CURTAINS AND FITTINGS AUTOMATICALLY INCLUDED IN THE SALE PRICE?

No. It is important that any fittings included in the sale price are stated in the contract to be so included. Otherwise there may be difficulty on the closing date.

WHEN SHOULD I ARRANGE INSURANCE?

If you are getting a loan the lending Agency will insist that the house is insured from the date of issue of the loan cheque. If you are not obtaining a loan you should make sure that insurance is arranged before the sale is closed.

WHAT HAPPENS IF THE HOUSE BURNS DOWN AFTER I SIGN THE CONTRACT BUT BEFORE THE SALE IS CLOSED?

The Standard Law Society Contract provides that the Seller carries the risk between Contract and the closing date. If the house burns down you cannot be compelled to complete the purchase and you will be entitled to the return of your deposit.

SHOULD I ARRANGE SEPARATE CONTENTS INSURANCE?

The insurance cover arranged by your Lender will normally only cover the cost of rebuilding the house. Therefore you should have your contents insurance in place before you place any of your belongings in the house.

WHAT INFORMATION WILL I NEED TO FURNISH WHEN I APPLY FOR A LOAN?

You will be required to complete a detailed application form. You will usually need to furnish evidence of your income (P60) and a Certificate from your Employer confirming your employment and your present salary. If you are self-employed you will usually have to provide business accounts.

WHAT DOES "SUBJECT TO LOAN APPROVAL" MEAN?

Sometimes a buyer will sign the Contract before getting written loan approval. If so it is important that "a subject to loan approval" condition is inserted in the Contract. This means that if you do not get written loan approval within a specified period (or such further period

as agreed) the contract is at an end and you are entitled to get your deposit back.

WHEN DO I GET POSSESSION?

On the closing date the balance purchase monies are paid over by Bank Draft to the Sellers Solicitors and in return the keys and title documents are handed over and you are entitled to vacant possession.

IS THE CLOSING DATE "SACRED"?

The closing date may be changed even in the best planned transactions. It is important that the parties co-operate in this respect. For example, there may be a few days delay in the issue of your loan cheque or the seller may want a few extra days to arrange new accommodation.

WHAT ARE "SEARCHES"?

Searches are essential checks carried out by us on the day the sale closes to confirm that the seller has not, e.g. attempted to sell the property to someone else, remortgage the property or gone bankrupt.

We may also have to carry out searches before the Contract is signed e.g.:

- a licensing search on the purchase of a pub.
- in the case of a new house a Companies Office search against the Builder if stage monies are to be released.

WHAT IS A STAGE PAYMENT?

This a part payment of the purchase price that arises in the purchase of a new house.

Some Builders insist that payments are made at stages of the construction e.g. at foundation or roof level. This will cause you difficulty if your bank or building society will not release part of your loan cheque and bridging may be necessary.

WHAT IS "BRIDGING"?

A bridging loan is a short term loan that will tide you over until your home loan is available. The interest rate charged is higher than the normal mortgage rate.

We do not like bridging and as a matter of office policy we try to make sure that bridging is only used where there is no other alternative available to you.

WHAT IS "A SNAG LIST"?

A snag list is relevant when you are buying a new house. When the Builder advises you that the house is complete your Engineer or Architect should inspect the house and prepare a written list of outstanding work, commonly known as a snag list. This list should be presented to the Builder and all work detailed on the list completed before the purchase money is paid over.

Remember that buying a house is probably the biggest investment you will ever make and you should be satisfied that all is right.

A further inspection should be carried out once you have been told that the defects have been remedied.

AFTER THE PURCHASE DO I HAVE TO NOTIFY THE LOCAL AUTHORITY THAT I AM THE NEW OWNER OF THE HOUSE?

No. The Sellers Solicitor will already have given the details to the Local Authority.

WHAT ARRANGEMENTS ARE MADE ABOUT THE OUTGOINGS AS OF THE CLOSING DATE?

If the sale closes on the 1st of October the Seller is responsible to discharge all outgoings up to the date and the Buyer is responsible for the remainder of the year.

ARE THE EXPENSES IN SELLING AND BUYING A HOUSE THE SAME?

No. The expenses when buying a house are usually substantially greater. They include stamp duty, registration fees, searches, and Surveyors fees.

WHAT IS STAMP DUTY?

Stamp duty is a tax payable on the purchase of property. Stamp duty is payable by the Purchaser. Different rates apply depending on the type of property that is being purchased and the status of the Buyer.

WHERE DO MY TITLE DOCUMENTS GO?

After the sale is closed we will have to stamp your purchase deed. After stamping we register you as the owner of the house. On completion of registration the original documents are lodged with the Bank or Building Society.

If you have no mortgage, we can hold the title documents for you in our safe.

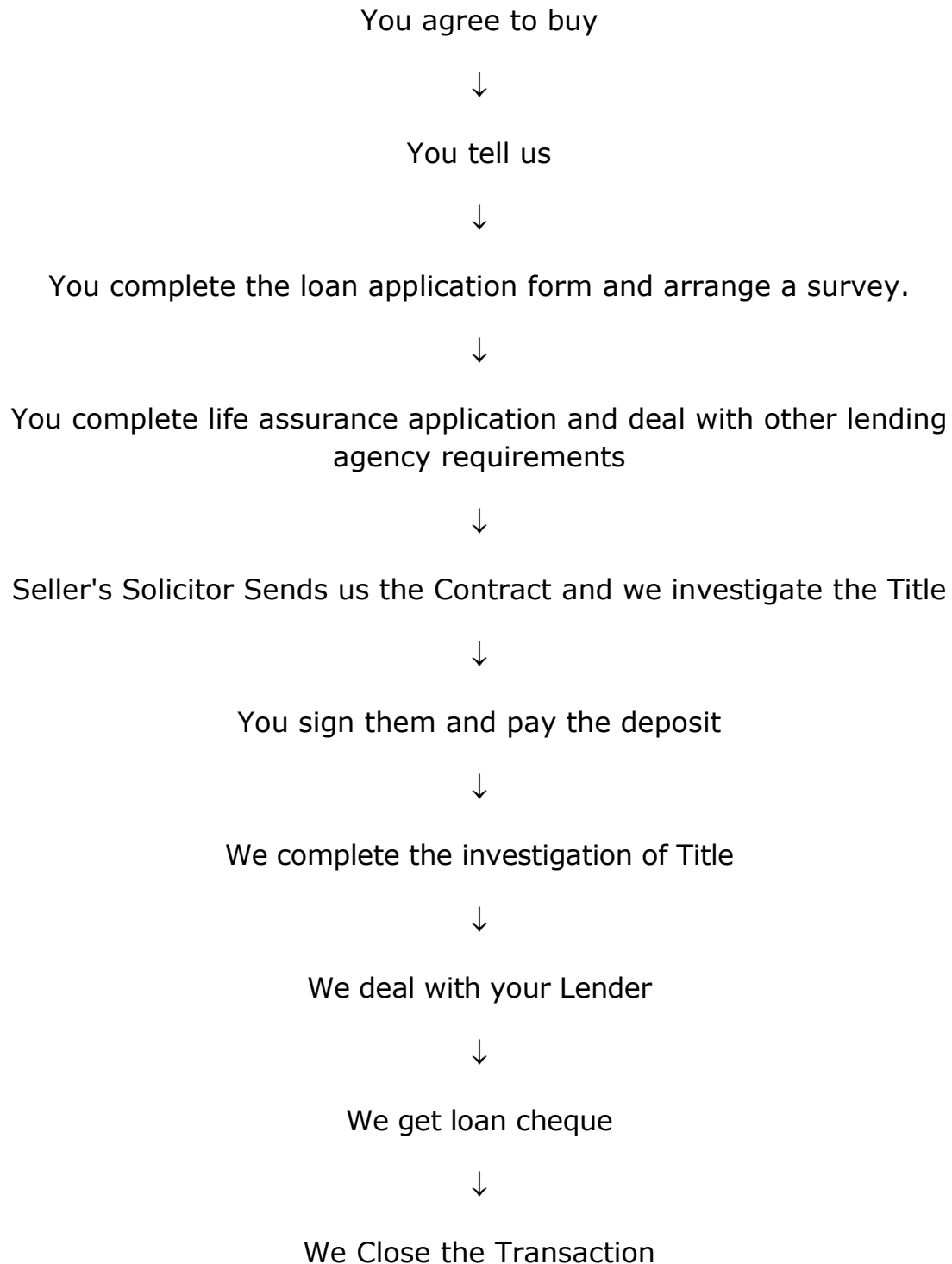
HOW LONG DOES IT TAKE TO STAMP AND REGISTER THE DOCUMENTS?

The stamping or registration process takes approximately six to twelve months from the closing date.

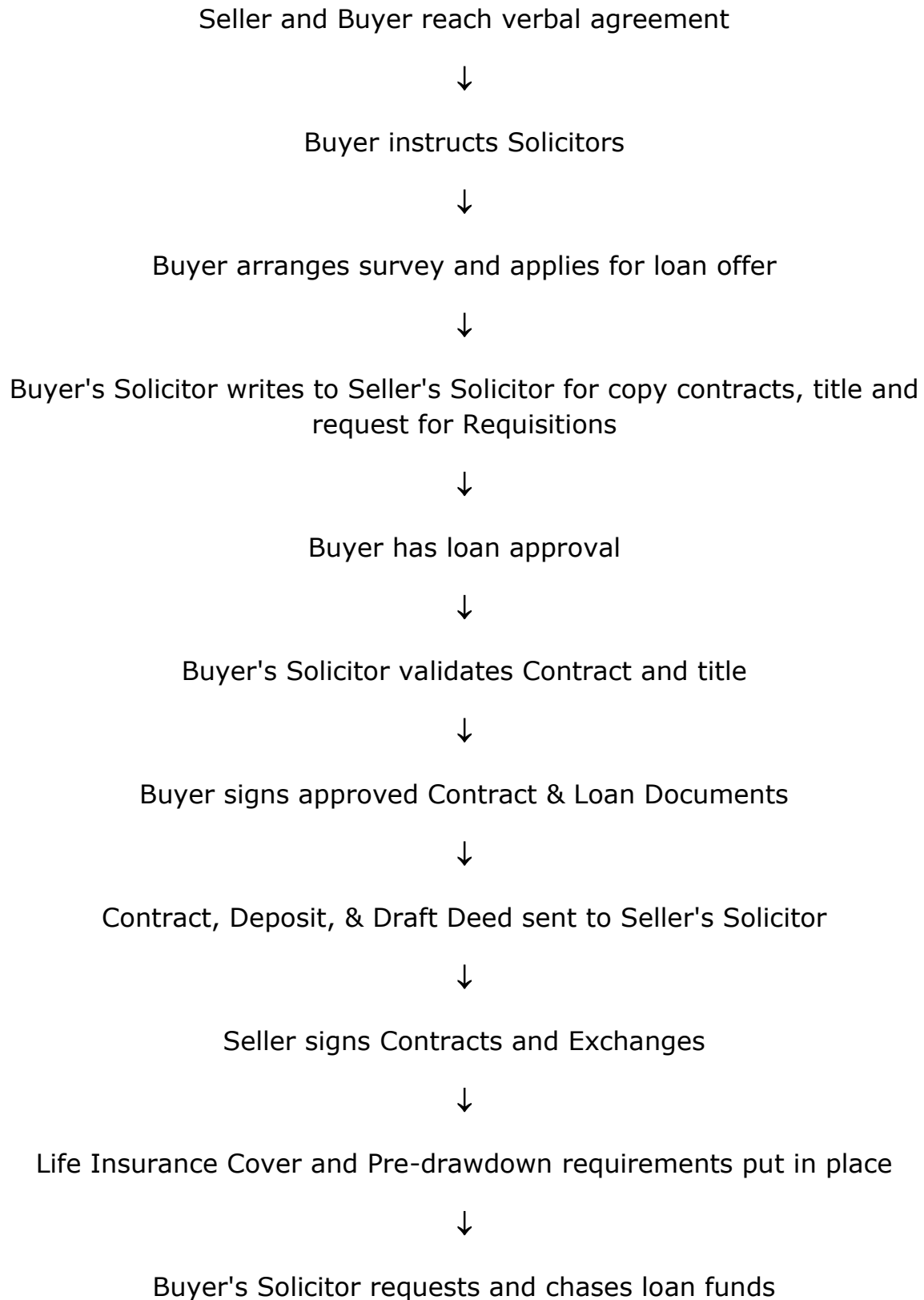
SHOULD I GET AN INDEPENDENT VALUATION OF THE PROPERTY?

If you are unsure the price you are paying for the property is reasonable you should arrange for another Auctioneer to value the property.

GENERAL PURCHASE DIAGRAM



DETAILED PURCHASE DIAGRAM





Loan cheque issues to Buyer's Solicitor



Buyer gives any balance and fees and outlays to Solicitor



C O M P L E T I O N



Buyer's Solicitor electronically transfers balance purchase monies



Buyer's Solicitor Law Searcher sends searches which are sent to
Seller's Solicitor



Seller's Solicitor forwards original title documents & endorsed searches



Seller's Solicitor authorises the release of keys & Buyer's Solicitor
authorises release of funds



Buyer's Solicitor stamps and registers the documents



On completion of stamping and registration documents and certificate
of title are lodged with lending agency

GLOSSARY OF CONVEYANCING TERMS

ASSIGNMENT: A name given to a Deed that transfers ownership of **LEASEHOLD** property.

BANK DRAFT: A guaranteed cheque that must be cashed by a Bank.

BOOKING DEPOSIT: A deposit paid to an Auctioneer to "book" a property before signing the Contract.

BUILDING AGREEMENT: The Agreement between the Builder and the Buyer of a new house.

CARETAKERS AGREEMENT: A written Agreement by which someone is allowed into possession of a property without getting any title or lease. The person must leave immediately if asked.

The Caretakers Agreement is sometimes used if a Buyer is anxious to get immediate possession. The Buyer comes up with the purchase monies which are placed in the joint names of the Sellers and Buyers Solicitors with the interest on the monies to go to the Seller. The Buyer is allowed into possession and the Seller gets the purchase monies on the formal closing of the sale.

CAVEAT EMPTOR: Let the Buyer beware. You take the property as is. The Buyer should have the property surveyed by an Architect or Engineer for any possible defects.

CERTIFICATE OF TITLE: A Document signed by the Buyers Solicitors guaranteeing to the Buyers Bank/Building Society that everything is in order.

CLOSING DATE: The day the Seller hopes to move out and get the money or the buyer hopes to move in and pay over the money. The Closing date is not "sacred" and there is usually some leeway given unless one party makes **TIME OF THE ESSENCE**.

COMPLETION: The date the transaction is finished. The Seller gets their money and you get possession.

COMPLETION NOTICE: Served on one party by the other through their Solicitors if there is a delay in completing the transaction on the closing date. It gives the other party 28 days to complete. A Seller can take the deposit; a Buyer can look for his deposit back and sue for damages.

CONSIDERATION: The Purchase Price.

CONTRACT: The Agreement in writing between the Seller and the Buyer.

It contains the names and addresses of the parties, a description of the property, the purchase price, deposit payable on signing the Contract and the closing date.

It also contains the conditions or terms under which the premises are sold - General and Special Conditions.

The Contract is prepared by the Sellers Solicitors on receipt of the title documents from the Sellers lending agency. Two copies are each signed by both the Seller and the Buyer. One copy is retained by the Sellers Solicitor and the other by the Buyers Solicitor.

CONVEYANCE: A Deed that conveys ownership of property.

CONVEYANCING: The law involved in the transfer of ownership of property.

COVENANT: A promise binding in law.

Sometimes found in a Deed. A promise by someone e.g. to erect and maintain a fence around their property or to use the property only as a private house.

DECLARATION: A sworn statement made before a Commissioner for Oaths or a Peace Commissioner.

E.g. The Seller will sign a Declaration for the closing of the transaction confirming whether or not the property is a **FAMILY HOME**.

DEPOSIT: A part payment of 10% of the purchase price paid by the Buyer on signing the Contract.

The **DEPOSIT** is passed on by the Buyers Solicitor to the Sellers Solicitors who holds it as **STAKEHOLDER** until the transaction is completed.

DEVELOPMENT: Any change in property for which planning permission is necessary. **E.G.** Extensions, alterations, or changes of use of a property may require planning permission. (e.g. a change of use from shop to office).

DEVELOPMENT PLAN: A local Authority's five year Plan.

Must be published by each local Authority. Sets out the objectives of the Authority and the zoning for the different areas within its area of control.

EASEMENT: A right over someone else's property.

E.g. a right of way or a right to lay a pipe on another person's property.

EXECUTION: The signing of a Document.

EXEMPT DEVELOPMENT: This means that although a development has been carried out planning Permission is not necessary.

FAMILY HOME: Any property where a married couple reside, e.g. house, caravan.

If the property is in the sole name of either the husband or wife the other party must sign a written consent prior to a sale or mortgage.

Under the Family Home Protection Act 1976, in any sale or mortgage of the property it is necessary for the person selling or mortgaging to confirm whether or not the property is a Family Home. If the property is in the sole name of a husband or wife the other spouse must join in the Declaration.

FILE PLAN: The file plan is a map of the property attached to the Folio but the Land Registry do not guarantee that it accurately reflects the precise boundaries.

FITTINGS: Something which is attached to the property, but can be removed without causing damage.

E.g. carpets and curtains. Can be removed from the property by the Seller before closing unless included in the Contract. See **FIXTURES**.

FIXTURES: Fixtures are part of the property and are therefore included in the sale price. Unless items can be removed without causing substantial damage to the property they become part of the property and therefore pass to any subsequent owners. See **FITTINGS**.

FLOOR AREA CERTIFICATE: A certificate issued by the Department of the Environment to the Builder of a new house stating that it is not less than 35 sq. metres and not more than 125 sq. metres.

FOLIO: A folio is a document issued by the Land Registry showing the current registered owner of the property and any mortgages or rights of way registered.

FREEHOLD: FULL TITLE. The opposite to Leasehold. No rent is payable if you hold a freehold title. This is "Top of the Range".

GROUND RENT: A nominal rent paid by a Tenant to a Landlord. Usually, you can "buy out" ground rents thereby making your ownership freehold.

HOME BOND SCHEME: A Scheme introduced in 1978 by the Construction Industry giving certain protection to the Buyer of a new house. Buyers of houses from Builders who have registered under the scheme may be compensated for major structural defects occurring in a house within a period of 10 years.

INCUMBRANCE:

Anything which affects property adversely such as a mortgage or a right of way.

INDENTURE: Another word for Deed.

JOINT DEPOSIT: If a Buyer is allowed into possession of a property on a Caretakers Agreement the purchase monies are placed on joint deposit in the joint names of the Sellers and Buyers Solicitors with the interest to accrue to the Seller pending the closing of the transaction.

(See **CARETAKERS AGREEMENT**). Monies held in the joint names of two parties.

LAND REGISTRY: The Land Registry maintains registers of the ownership of land and of burdens affecting ownership.

If your property is registered in the Land Registry you may get one original title document called a Land Certificate. If however the property is registered in the **REGISTRY OF DEEDS** you will get a bundle of documents reflecting the change of ownership over the years.

A state organisation dealing with the registration of Title to property. This is the more modern system for recording ownership of land in Ireland.

LEASEHOLD: A form of **TITLE** where a rent is payable to the owner (the landlord).

A lease can be for a very short period or for very long periods e.g. 999 or even 10,000 years. In the latter cases the title is virtually as good as to a **FREEHOLD** title

The Lease sets out the terms of the Agreement e.g. who is responsible for repairs, who is responsible for insurance.

LETTER OF AUTHORITY: The document signed by the Seller authorising his/her Solicitor to do something e.g. take up the title deeds from the Bank or Building Society so that the Solicitor can prepare the **CONTRACT**.

LOAN SANCTION/ APPROVAL: The written letter of offer of a loan to the Borrower from a lending agency.

The offer is usually subject to conditions e.g. satisfactory valuation/survey, adequate insurance, mortgage protection cover. The letter of offer must be signed by the borrowers and returned to the lending agency within a specified period.

MEMORIAL: A summary of the Deed. This is required to register a Deed in the **REGISTRY OF DEEDS**.

MORTGAGE: A legal document where the property is effectively transferred to the Bank or Building Society as security until the loan is repaid. If the terms of the mortgage are breached the Bank or Building Society have certain powers e.g. to sell the property to repay their loan.

PLANNING SEARCH: A list of questions from the Buyers Solicitor to the Local Authority.

E.g. are there any Planning Permissions affecting the property? Has the Local Authority made any proposals to acquire the property compulsorily, or to widen the road in front of the property?

POWER OF ATTORNEY: A written authority allowing another party to do certain acts on one's behalf e.g. sign **CONTRACTS**.

REGISTRY OF DEEDS: One of the two systems of registration of Title in Ireland. This is the older system and most town properties are registered in the Registry of Deeds.

If you buy a property registered in the Registry of Deeds you will get a bundle of title documents - one documents for each change of ownership over at least a 20 year period. If however the property is registered in the Land Registry you will get one document called a Land Certificate.

See **LAND REGISTRY**.

RELEASE/DISCHARGE: Where a Seller has an existing mortgage on the premises and has to arrange for the Formal Release of the Mortgage.

The Release/Discharge has to be signed by the Lending Agency and given to the Purchasers Solicitors.

REQUISITIONS ON TITLE: A list of questions sent by the Buyers Solicitors to the Sellers Solicitors.

RESTRICTIVE COVENANT: A promise binding in law not to do something. A covenant can either oblige you to do something (positive) or not to do something (negative).

An example of a positive covenant is an obligation to erect a fence around your property. An example of a negative (restrictive) covenant is a obligation e.g. not to build on your property, or a section of your property.

RETENTION PERMISSION: Permission from the Local Authority (or on Appeal An Bord Pleanála) to retain a building or use of premises for which planning permission was not obtained when it was first built or so used.

If Planning Permission was not applied for and obtained at the appropriate time retention permission will have to be applied for. This usually arises when a person is selling a property and it becomes known after investigation by the Buyer/Buyers Solicitor that permission had not been obtained.

It takes a minimum of three months for a retention permission to be issued.

WARNING: Retention permission is not granted automatically.

RIGHT OF WAY: A right to pass and repass over another persons property.

A right of way can be limited e.g. on foot only or at certain times of the day or general e.g. for all purposes or at any time.

SALARY CERTIFICATE: A certificate stating your income from Employer.

Required by the Bank or Building Society when you apply for a loan.

SEARCHES: Checks carried out by the Buyers Solicitor on the day the sale closes to confirm that the Seller has not, for example, attempted to sell the property to another buyer, remortgage the property or gone bankrupt.

A Buyers Solicitor will sometimes have to carry out searches before the Contract is signed e.g. (a) a licensing search in the purchase of a pub or (b) in the case of a new house a Companies Office search against the Builder if stage monies are to be released.

SERVICES: E.g. roads, water, sewerage and public lighting.

The Buyers Solicitor will enquire from the Sellers Solicitor whether the services are under the control of the Local Authority. In new housing developments the Builder is responsible for putting the services in place and looking after them until the Local Authority takes control.

STAGE PAYMENT: A part payment for the purchase price.

Certain Builders insist that payments are made at certain stages of construction of a house e.g. at foundation, roof level etc. This may cause difficulty for a buyer if his/her building society will not release part of the loan cheque to make the stage payment. Bridging may be necessary. We are against bridging and endeavour to avoid the same if at all possible.

STAKEHOLDER: Someone who holds purchase monies on behalf of both Buyer and Seller with the obligation to release to either party depending on the outcome of the transaction i.e. if the deal goes ahead he gives it to the Seller or otherwise the Buyer.

A 10% deposit paid by the Buyer on signing the Contract and is held by the Sellers Solicitor on behalf of both parties until the transaction is closed. In other words the Sellers Solicitor cannot release the Deposit to the Seller.

STAMP DUTY: A compulsory tax payable on certain documents such as Deeds of Transfer, Conveyance, Mortgage and Leases. It is payable by the purchaser.

This is a compulsory tax which if not paid when the Deed is signed will attract high penalties.

SURVEY: A structural inspection of the property by an Engineer or Architect.

It is vital for the Buyer of a second hand property to have it professionally surveyed before CONTRACT.

The Buyer of a new house should arrange for a Surveyor to inspect the property during the course of construction and also once the house is finished to prepare a snag list of items for the Builder.

TIME OF THE ESSENCE: If the **CONTRACT** states that time is to be of the essence this means that the transaction must be closed on the closing date. In other words the specified closing date is absolutely sacrosanct.

It is unusual for this to be included in the **CONTRACT** as it can backfire on the party who inserted it e.g. if the Seller has insisted on making time of the essence and if for some reason the Seller couldn't close on the closing date the Buyer could pull out of the transaction.

TITLE: The right to ownership, proved by production of the title deeds to the property.

TRANSFER: Name given to the Deed that transfers ownership of a property registered in the Land Registry.

UNDERTAKING: A promise enforceable at law.

An oral or written promise to do or refrain from doing a particular act e.g. the Sellers Solicitor will usually give an undertaking to the Buyers Solicitor to pay off any loans out of the proceeds of the sale.

VACANT POSSESSION: The Seller must leave the property on or before the closing day unless the parties agree otherwise.

The Seller must ensure also that any other occupiers such as tenants or squatters leave the premises and also that the physical state of the property itself is left vacant e.g. it should not be left cluttered up with rubbish.

VENDOR: Legal term for the Seller.

VOLUNTARY DISPOSITION: A transaction where no purchase monies or less than the market value of the property pass between the parties e.g. a transfer from a parent to a son or daughter.

Stamp duty is payable on the market value of the property not the monies passing hands. The rate is reduced for inter family transactions.

WAYLEAVE: For example, the right to lay a water pipe over another persons land and to enter the other persons land for the purposes of fixing the pipe. Any damage caused to the other persons property must be made good.

FOR MORE INFORMATION

Tel: 052- 612 43 44

Address: Jervis House,
Parnell Street,
Clonmel,
Co Tipperary

Email: info@lynchsolicitors.ie

Website: www.lynchsolicitors.ie



www.twitter.com/LynchSolicitors



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ATTENTION

The information in this pack is for guidance only and is not intended as a legal advice.