

# A Guide to the Sale of Property



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*This pack is for information purposes only and does not constitute a legal document. It represents the position as and from the date of first publication.*

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## LIST OF ITEMS TO BE PROVIDED BY YOU

The sooner we have these items the faster we can process the transaction.

- Your **Photo ID and Proof of Address** – driving licence or passport and current utility bill.
- Your (Personal Public Service Number) **PPS Number and tax type;**
- A **NPPR Certificate of Discharge or Certificate of Exemption.** Please note that a receipt for payment of the charge is **not** sufficient. This is an annual charge payable by owners for a Non Principal Private Residence. The certificate issues from the Local authority – if Tipperary County Council e-mail address is [nppr@tipperaryccco.ie](mailto:nppr@tipperaryccco.ie)

1. A **Household Charge Certificate of Discharge or Certificate of Exemption.** Please note that a receipt for payment of the charge is **not** sufficient. Household Charge is an annual charge payable by owners of residential property. If paid after 1<sup>st</sup> July 2013 then the Household Charge is collected by Revenue. To request it e-mail [support@householdcharge.ie](mailto:support@householdcharge.ie) (you will need your PPS number).
2. **Evidence of payment of the Local Property Tax.** This is an annual charge on all residential properties in the State. Revenue will not issue Certificates for individual properties. You will need to login to your online LPT account and print off property history which will show if the charges for the relevant years have been paid.
3. **If the property has a septic tank,** you will need proof that it is registered, i.e. the Certificate of Registration. You can register and pay online @ [www.protectourwater.ie](http://www.protectourwater.ie)
4. A **Building Energy Rating (BER) Certificate** and Advisory Report which sets out the energy performance of your property. This should have been given to the auctioneer. If you do not have these documents they can be obtained on [www.seai.ie/Your Building/BER/BER Contact Info/](http://www.seai.ie/Your_Building/BER/BER_Contact_Info/).

5. **If the Local Authority is responsible for the roads** and utilities servicing the property, a letter from local authority confirming the roads and services are within their charge. We will get this for you on receipt of a fee of €60 payable to the local authority;
6. **If you are married**, a Copy Marriage Certificate. If you do not have a copy of this you can obtain one from there is a €20 fee plus postage for a full standard certificate which is obtainable from the Registrar of Births, Deaths and Marriages. You can apply for same online at <http://www.hse.ie/eng/services/list/1/bdm/Certificates/>.
7. **If divorced or separated**, a Copy of **all** Divorce/Separation Orders. If we did not deal with your divorce or separation, you can ask the solicitor who did to provide you with a copy. Otherwise you could obtain one from the Circuit Court office;
8. **Receipts** for: Ground Rent; Service Charges which you have paid to a management company if you live in a block of apartments or a private residential estate; Local Authority Charges such as commercial rates or refuse charges;
9. Copy of all **Planning Permissions** for the property and Certificates of Compliance dealing with the planning from an Engineer or Architect. We can obtain these for you by employing an Engineer who charges a set fee of €123 for same;
10. **If contents are included** in the sale , a List of such contents ;
11. Details of **alarm or other access codes**;
12. **If the owner of the property is deceased**, a Grant of Probate or Letters of Administration (this is the legal document that gives authority for Seller to sell) which can be obtained from your previous solicitor or from the Probate Office which is attached to the Circuit Court office. They charge a set fee of €10; and the Original Death Certificate which can be obtained from your previous solicitors or otherwise you can apply for online at

<http://www.hse.ie/eng/services/list/1/bdm/Certificates/> . The price of a standard certificate is €20 plus postage.

13. **If the property is owned by a company** , a Certified copy Certificate of Incorporation of the Company; and a Certified Copy Memorandum and Articles of Association of the Company. This can be obtained by accessing <https://www.cro.ie/en-ie/Services/Duplicate-Certificate>. Due to the New Companies Act 2014 there will be big changes to the current system and companies will need to re-register and there will be a consolidated Memorandum and Articles of Association document which is obtainable when you re-register your company under the Act.

**To note:** Do not be alarmed by the length of this list. You will not be required to provide each document on this list. We have prepared this list to cover every eventuality which we could possibly encounter in order to progress your sale in the quickest and most thorough way possible. Your solicitor will tell you at your initial consultation which documents on this list are applicable to you and your sale.

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## WHAT DOES IT TAKE TO GET UP AND RUNNING? - PRE-CONTRACT STEPS.

- Gather information for the transaction and input it onto our system. We have a standard information sheet that we need you to complete. (Called a Sales Query Sheet).
- You will need to sign the Authority to take up title documents unless we already have them.
- The solicitor will explain and have you sign our Terms of Business.
- The solicitor will give you a fixed fee quote of the cost of the transaction.

We will give you a "Sales Query Sheet". The Query Sheet is a questionnaire about you and your property. The answers to the questions will enable us to process the transaction more efficiently.

We will also arrange for you to sign letters authorising us to take up your Title Deeds from your Bank/Building Society and to prepare and issue the Contracts. This letter of Authority will also authorise us to pay off any loans charged on your property and to deduct fees and outlays from the proceeds of sale.

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## AN OVERVIEW OF THE TRANSACTION

### STEP 1: FINDING A BUYER

You can sell the house yourself or place the house with an Auctioneer. You should agree the Auctioneers fees beforehand. If the Auctioneer finds a buyer you will be responsible for paying a commission fee, VAT and advertising costs. Once instructed, we will liaise with your auctioneer to ensure any potential issues have been addressed early on to prevent delays in issuing the paperwork when you find a buyer.

Make an appointment to see us as soon as possible, preferably as soon as you decide to sell the property. This will give us the opportunity of getting your Title Deeds from your Bank/Building Society and checking for any problems that might delay the sale of the property. If we can deal with the transaction before you find a buyer we will be able to issue a contract immediately a Buyer is found. There can be delays in the banks issuing your documents and so early contact with us is recommended.

Getting all the information at an early stage is the key to getting the buyer to sign a contract. The Contract is the key document – this need to be signed by the Buyer to get their legal commitment to buy.

**Warning:** The sooner you sign the authority to take up your title documents the better. In practice there is a long delay in receiving these from the bank after our application. We have experienced delays of up to 6 weeks which unfortunately are out of our control.

### STEP 2: PREPARING THE CONTRACT

Once a Buyer is found we get the transaction moving by preparing the Contract for Sale. To do this we need your Title Documents (if we do not already have them) and all the additional information that will help us to respond to the Buyer's solicitor's queries.



*The contract is the key document – without it you have no binding legal agreement from the Buyer. It is critical that it is signed by the Buyer to get his/her legal commitment to buy.*

When we get the documents and the property information we prepare the Contract. This is the written agreement between the Seller and Buyer. It contains the names and addresses of the Seller and 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 selling and the Buyer is acquiring the property.

We send two copies of the Contract together with copies of your Title Documents to the Buyers Solicitors. We also, where we have all the necessary information, include in advance replies to any queries that the Buyer's solicitors might have about the property or the title to the property. The document that we complete is a pre-agreed list of questions – called Requisitions on Title.

It is at this stage that it is difficult to be specific about time scales.

It can take anything up to 6 weeks to get past this stage. There are a number of ways that you can help us make this happen within that time frame or earlier:

- Come to us when you put the property on the market;
- Give us the information at the start;
- Sign all authorities as soon as you can – especially the authority to take up title documents;
- Get all your documents at the beginning
- Highlight any problems such as negative equity (mortgage arrears), planning, road and services or Management Company or common areas.

In order to avoid delays at this critical stage try to make sure that you (or your Auctioneer) agree the detail of the Sale with the Buyer before we send out Contracts, for example,

- agree contents to be included e.g. carpets, curtains or furniture
- ask Buyer to arrange survey
- ask Buyer to arrange loan
- agree a closing date
- agree deposit

**Warning:** If this is not done, there will be unnecessary delays that might mean that the sale will not happen.

As soon as the terms of the Contract have been finally agreed the Buyer's Solicitor will arrange for their client to sign the Contracts. At this stage the deposit is paid by the Buyer to their Solicitor who will send it to us with the Contracts. Usually a 10% deposit is paid by the Buyer. They may already have paid a booking deposit to the Auctioneer and this will be taken into account i.e. a 10% deposit in total is the norm.

We hold the deposit as Stakeholder for both parties. This means that if the transaction is successfully completed we pass on the deposit to you as part of the proceeds of sale. However if the transaction does not proceed and if under the terms of the Contract the Buyer is entitled to the return of the deposit (e.g. if they do not get loan approval within the period stated in the Contract) we send the deposit back to the Buyer's Solicitor.

We will then advise you to sign the Contracts. One copy of the Contract is returned to the Buyer's Solicitor and we retain the other copy on our file.

It is quite usual for the Buyer to have signed the Contract subject to certain conditions e.g. getting loan approval within a specified period or getting a satisfactory survey report within a specified period.

If these conditions are not met the Buyer will usually be entitled to pull out of the transaction and have their deposit returned. For instance, if there is a "subject to survey" condition in the Contract and it transpires that there is a structural defect in the property this may entitle the Buyer to withdraw from the purchase.

There are certain matters that can cause problems or delays in the transaction and can lead to a delay in preparing the contract or a delay in the buyer signing the contract.

The sooner they are identified and addressed the better.

If there is a delay in dealing with them or they are identified too late in the transaction then can result in the loss of a sale.

It is usual that there are issues to be agreed and enquiries to be answered between ourselves and the Buyer's Solicitor before the Contracts are signed by the Buyer and returned to us.

**Warning:** The Buyer's Solicitor will invariably try to amend some of the Contract terms on their client's behalf e.g. they may attempt to extend the time the Buyer has to get loan approval; postpone the closing (or indeed make it an earlier closing date); they may require clarification on the title or Planning Permission documents.

**Warning:** After we send the contracts to the Buyers solicitors there may be a delay. This does not necessarily mean that there is something wrong with the contracts or that they will take issue with any of the contents. We wish to reassure you that this is perfectly normal and not a cause for alarm. We are aware of the time sensitivity of your sale and will endeavor to limit such delays.

### **STEP 3: AFTER CONTRACT AND BEFORE CLOSING**

You now have a signed contract which legally obliges the Buyer to complete the transaction unless there are conditions in the contract that have to be fulfilled. – e.g. the buyer might have made the contract subject to getting planning permission or to getting a loan..

It there are such conditions then there will be no binding contract until those conditions are fulfilled. However, the Buyer cannot use another reason to refuse to complete the purchase and must take all reasonable steps to fulfil such conditions.

We usually deal with all potential queries by sending, what are called, Replies to Requisitions on Title when we send out the contract. Sometimes, however, we cannot do this because we don't have all the required information or documents.

Where we don't deal with queries in advance, the Buyer's solicitors will send us such queries on the property and the title to the property called, 'Requisitions on Title'.

When we have satisfied the buyer's solicitors' queries we are then ready to complete the transaction.

## **STEP 4: CLOSING THE SALE**

The contract will specify a closing date. This may be a specific date e.g. 1st of August or on the occurrence of a specified event, for example; 14 days after the issue of the Buyers loan approval. The closing date is the day the Seller moves out and gets the money or the Buyer moves in and pays over the money.

The sale does not often close on the date selected. It may be changed even in the best-planned transaction. It is important that the parties cooperate in this respect. For example, there may be a few days delay in the issue of the Buyers loan cheque or you may want a few extra days to arrange alternative accommodation.

Suggestion:

- Ensure to keep in contact with us near the proposed date.
- Have a "contingency" plan, in case the sale doesn't close on schedule.

**Warning:** For your own peace of mind, have a “Plan B” for the closing date. Unfortunately, despite our best efforts not every sale is completed on the proposed or agreed date. Give yourself some breathing space and prepare a contingency plan for closing day.

The average sale takes six to eight weeks to process from the time you agree to sell.

There are certain factors are crucial in how long the process takes:

- how long it takes for the Buyer to get loan approval
- You may be buying another property and progress on this transaction may affect your sale.

It is important that you keep your house insurance in place between the date of signing the Contract and the completion of the sale. If anything happens to the house, e.g. the house burns down, the Buyer cannot be forced to complete the purchase and he will be entitled to the return of the deposit.

The sale is usually closed in the Sellers Solicitors Office (i.e. our office). However if the other Solicitor is not based in Clonmel or Cashel, the sale may be closed by us sending them the documents by post and they sending us the money.

On the closing day the procedure is that the Buyer's Solicitor gives us a bank draft or transfers the funds into our Bank for the balance purchase monies owed. When we get the funds we send them the Title Deeds and when they confirm that these are in order the keys are released.

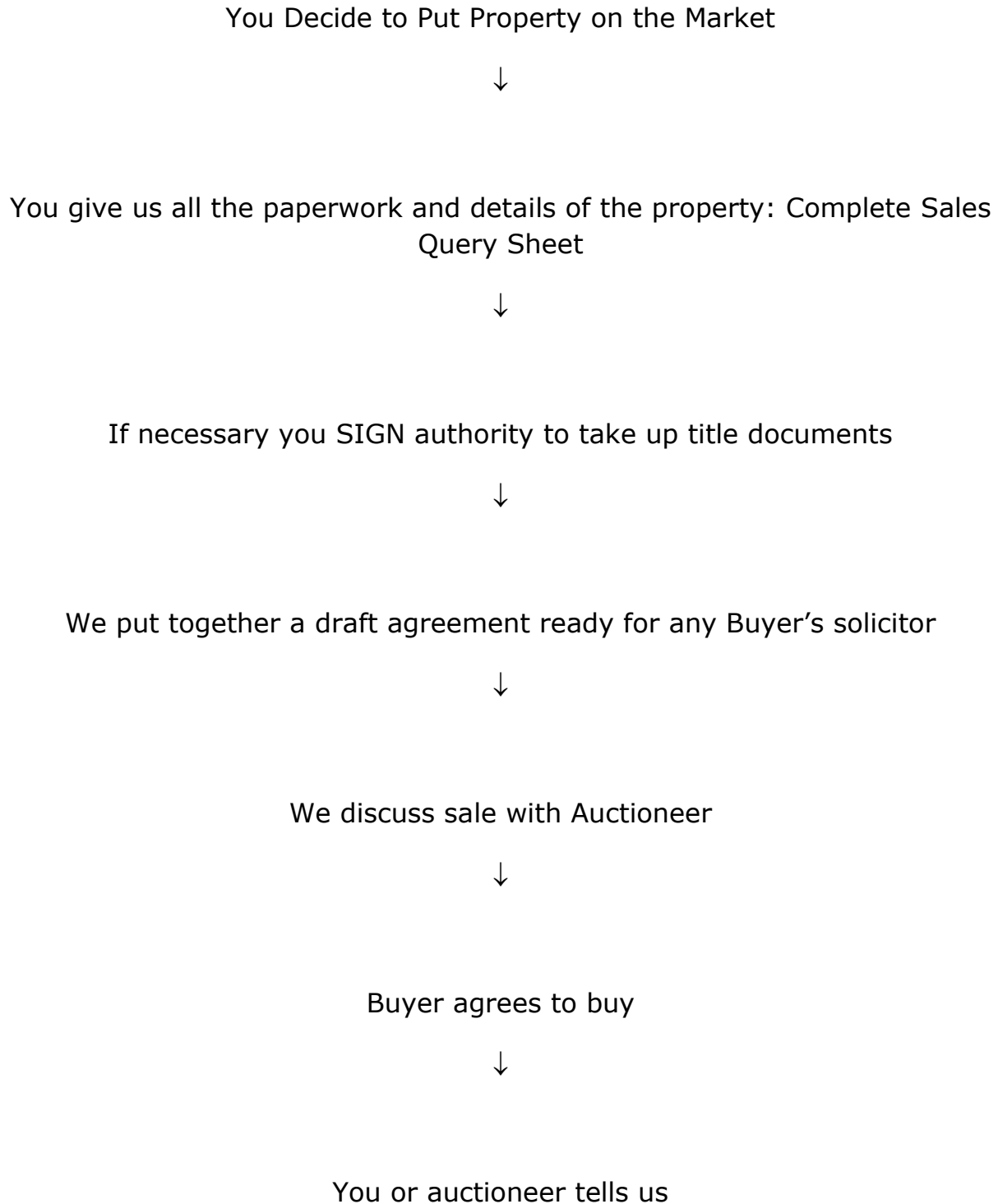
We then pay off your Bank or Building Society if there is a mortgage on the property and we deduct our agreed fees and outlays.

We will then transfer the balance of the funds into your Bank Account.

We have set out a Diagram for you which outline the process step by step:

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## DIAGRAM OF STAGES OF SALE





We send Contracts & Legal Paperwork to Buyer's Solicitor



We get contracts back signed with Deposit & Draft Deed



We draft closing documents



You sign contracts & closing documents



We Return One Part of the Contract to Buyer's Solicitor



We Give the Seller's Solicitor the Paperwork & Get the Money



We pay off your mortgage and any other loans on property



We take our fees and give you the balance purchase monies

## INFORMATION THAT MIGHT HELP IDENTIFY PROBLEMS IN ADVANCE.

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### IS IT USUAL TO HAVE A PROPERTY SURVEYED?

A Buyer will almost always arrange for a survey when buying a house. It is standard practice for a buyer's solicitor to advise their clients to have the property surveyed.

If the Buyer indicates that they wish to have the property surveyed we would always insist that this be done as soon as possible so that there are no extra conditions in a contract to sell the property.

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### IS IT IMPORTANT TO KNOW THE PLANNING HISTORY OF YOUR PROPERTY?

If your house was built after 1st of October 1964 we will have to give copies of the Planning Permission to the Buyers Solicitor. It is also necessary to produce evidence that the Conditions in the Planning Permission have been complied with. This is done by Declaration from an Engineer or Architect who declares that he has inspected the house and the plans on foot of which the Planning Permission was granted and that the permission was complied with and the house was built in substantial compliance with the Planning Permission.

You may have built an extension, garage or shed after you first built or purchased your house. If so, evidence will have to be produced in the form of an Engineer's Declaration that the extension was either exempt from the requirement to obtain planning permission or, if permission was required, a



declaration that the conditions of the planning permission have been complied with.

Building Regulations came in to force on the 1st of June 1992 imposing rigorous standards for construction, extension and renovation works. From this date there is a legal obligation to comply with the Building Regulations for all new buildings, alterations, extensions or changes of use. If you have carried out any work since this date an architect's declaration of compliance or exemption for the building regulations is required.

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## DO I HAVE TO DO ANYTHING EXTRA IF I HAVE A SEPTIC TANK?

If your house is serviced by a septic tank it will be necessary to arrange for an Architect or Engineer to inspect the property and sign a Certificate that the septic tank and the percolation area are located within the boundaries of your property.

It is now the law that you will also have to register the septic tank, if not already done so with [www.protectourwater.ie](http://www.protectourwater.ie).

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## WHAT IS MUD ACT OR MULTI UNIT DEVELOPMENT ACT COMPLIANCE AND WHERE DOES A MANAGEMENT COMPANY COME INTO IT?

If your property is part of a Block of Apartments or an estate of houses, we will need to decide if, what is known as, the MUD Act applies to the property. It is essentially a legal obligation by a developer of a block of apartments or estates of houses to properly deal with what are called "common areas" such as roads, services, green areas, stairways etc. The MUD Act is there to make sure that all these common areas are looked after by a management company.

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## WHEN DOES THE MUD ACT APPLY?

It applies:

- If there are more than five residential units;
- If none of the properties in the development were sold prior to 1<sup>st</sup> April 2011;

then a management company must be in place;

- If the management company has been set up or was supposed to be set up under the terms of a planning permission, then the common areas must have been transferred to the management company by 1<sup>st</sup> October 2011

**COMMENT:** Non-compliance with these legal requirements under the MUD Act does not always make the property unsellable.

The chance of selling can be improved where the management company is not in place if there is an Insurance Bond in place or there is an agreement by the developer/builder of the estate or apartment to complete the roads and services. The Insurance Bond is usually a requirement of planning that a Developer. /Builder takes out insurance to cover the situation, if it arises, that the roads and services are not completed.

**WARNING:** Some solicitors for buyers will not allow their clients to buy properties that do not comply with these MUD Act requirements i.e. if there is no management company or if there is no transfer of the ownership of the common areas to the management company.

**WARNING:** Some solicitors for buyers will not allow their clients to buy properties if the Management Company is not run properly – e.g. the

property owners do not take an active part in its running or do not pay the service charges or its short on funds to run the common areas.

If there is a management company, it will be necessary to get information about it and how it operates to enable us to complete the transaction.

**WARNING:** Matters that often cause problems involve the running of the management company - e.g. the failure of owners to pay the annual service charge or the absence of a sinking fund – i.e. a fund set up by the management company to provide for future refurbishment, improvements or non-recurring maintenance.

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## WHAT DO WE NEED TO KNOW ABOUT THE ROADS AND SERVICES?

A Buyer will want to know who is responsible for the roads and services – e.g. who owns the road way, who is responsible for its upkeep; where is the water source, what is the arrangements for waste. In the case of a standalone house you may know the position or, if not, it may be obvious from the paperwork. In the case of a housing estate property the situation may be less obvious.

It may be evident from the paperwork whether or not the roads and services are in charge of the Local Authority; if the position is not clear then it will be necessary to seek clarification from the Local Authority.

1. If the property is in a housing estate you can call the relevant local authority to see if the estate is in charge. They will tell you over the phone (this will enable us to issue the contract without delay). You will need confirmation in writing so it is better to submit a written request for planning search to your Local Authority.

2. If the property is a one off house the Local Authority will not be able to confirm the position over the phone. We will then request confirmation from the Local Authority who charges a fee of approximately €60.

**WARNING:** If the Local Authority has not taken responsibility for the roads and services and there is no management company then we will need to ensure that the developer retains responsibility and that he has an insurance bond in place. An insurance bond is there as a protection against the failure of a developer to complete the roads and services. If he fails to do so, the Planning authority can use the monies from the Bond to pay for the work necessary to finish the roads and services. If none of these are in place, you may have difficulty selling the house.

**WARNING:** The problem is that some solicitors for buyers will not allow their clients to buy properties if:

- Roads and services are not taken over by the Local Authority who will accept responsibility for them (this is called taking roads and services "in charge").
- or there is no insurance bond in place to ensure that there is money available to finish the roads and services or bring them to an acceptable standard;
- or if there is no other acceptable party to take responsibility for the roads and services, such as the developer or a management company.

## FREQUENTLY ASKED QUESTIONS

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### WHO PAYS THE AUCTIONEERS FEES?

If you instructed the Auctioneer and he introduces a purchaser you will be responsible for paying a commission fee, VAT and advertising costs. It is advisable to agree the Auctioneer's fees in advance.

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### AM I BOUND TO GO AHEAD WITH THE SALE AFTER I AGREE TERMS WITH THE BUYER?

The general rule is that you are not legally bound to go ahead until you sign the contract. If however, the Buyer relied on the verbal agreement and, for example, sold his existing house, got loan approval and planning permission and you stood by and allowed him to do so he may be able to enforce the verbal agreement. Furthermore, if an agent (e.g. Auctioneer or Solicitor) puts the terms in writing you may be bound.

This is a very thorny area and the unique circumstances of each case must be considered.

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### WHEN IS THE DEPOSIT PAID?

Usually 10% deposit is payable by the Buyers when they sign the Contract. The deposit is returned with the Contract to the Seller's Solicitors.

An Auctioneer may have obtained a booking deposit from the Buyers when the terms of the sale were agreed. The booking deposit may be small, e.g. 3% of the purchase price or may be the total 10% deposit. As a general rule a total deposit of 10% is payable by a Buyer, i.e. if the Buyer has paid a booking deposit he should be given a credit for this.

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## DO I GET THE DEPOSIT?

No, the Deposit must be retained by us as stakeholder for both parties until the sale is closed. We cannot release it to you until the transaction is completed.

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## WHO PREPARES THE CONTRACTS?

We prepare the Contracts and send them to the Buyer's Solicitors.

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## WHAT DO WE NEED TO PREPARE THE CONTRACTS?

- Your written authority to take up your title documents from your Bank/Building Society (title documents must be with us before we can draft Contracts);
- A Questionnaire called the Sales Query Sheet completed and signed by you;
- Signed Terms of Business.

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## WHO SIGNS THE CONTRACT FIRST?

The Buyers sign the Contract first and both copies of the contract are returned to us to arrange your signature.

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## HOW LONG DOES IT USUALLY TAKE FROM THE VERBAL AGREEMENT TO SELL TO THE DAY I SIGN?

The procedure is that we get your title documents from the Bank or Building Society, prepare the Contracts and send them to the Buyer's Solicitors. The Buyer's Solicitors return the contracts signed and you then sign. This can take as short as 1 week or as long as 8 weeks (or even longer).

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## HOW LONG BEFORE I HAVE TO MOVE OUT?

Again the time varies. The average sale takes about 6 – 8 weeks to process from the time you agree to sell. The following factors will be relevant:

- How long it takes the Buyers to get loan approval.
- You may be buying another property and progress on this transaction may affect your sale.

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## IS THE CLOSING DATE "SACRED"?

The closing date may have to 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 the Buyer's loan cheque or you may want a few extra days to arrange alternative accommodation or your new house may not be ready.

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## WHAT DOES "SUBJECT TO LOAN APPROVAL" MEAN?

Sometimes a Buyer will sign the Contract before getting written loan approval. In these circumstances, a condition "subject to loan approval" may be inserted in the Contract. This means that if the Buyer does not get written loan approval within a specified period (or such further period as agreed) the contract is at an end and the Buyer is entitled to get the deposit back.

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## CAN I CANCEL MY HOUSE INSURANCE AFTER THE CONTRACT IS SIGNED?

No. You continue to carry the risk between contract and the closing of the sale. If the house burns down the Buyer is not obliged to complete the

purchase and is entitled to the return of the deposit. Also, under the terms of your mortgage you have to keep the property insured until the Bank/Building Society has been paid off.

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## CAN I TAKE AWAY THE CARPETS, CURTAINS AND LIGHT FITTINGS ON THE CLOSING DATE?

The terms of the signed contract usually state what is included in the sale price.

If you have agreed with the buyer that you can keep certain items, e.g. curtains in the living room, you should draw our attention to this before the Contracts are signed. If the Contract states that carpets, curtains and light fittings are included you cannot remove them. We would suggest that you give us a list of items that are included in the sale and we will attach this list to the contract.

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

Outgoings, e.g. water charges, service charges and rent are shared between you and the Buyer as of the date of the closing of the sale. You have to pay them up to the day of vacating the property and then the buyer is responsible for them. For annual charges – such as NPPR or local authority charges, you will pay for the year and get a refund from the Buyer.

For example, if the sale closes on the 1st of October you should discharge all outgoing up to 31st of December and give us the receipt. We will obtain a cheque from the Buyers Solicitor to your credit for October, November and December for which period the Buyer is responsible.



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## WHEN DO YOU PAY FEES?

All fees and outlay are paid on the closing date. We normally deduct the agreed fees from the proceeds of sale.

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## WHEN DO I GET THE MONEY?

On the closing date the Buyer's Solicitor gives us a bank draft for the balance purchase monies and we hand over the keys and title documents.

We will pay off any loans on the property and deduct fees and outlays as soon as the Bank Draft received from the Buyer's Solicitor has been cleared by our Bank. This usually takes five working days.

## GLOSSARY OF LEGAL 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 Pleanala) 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

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## ATTENTION

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