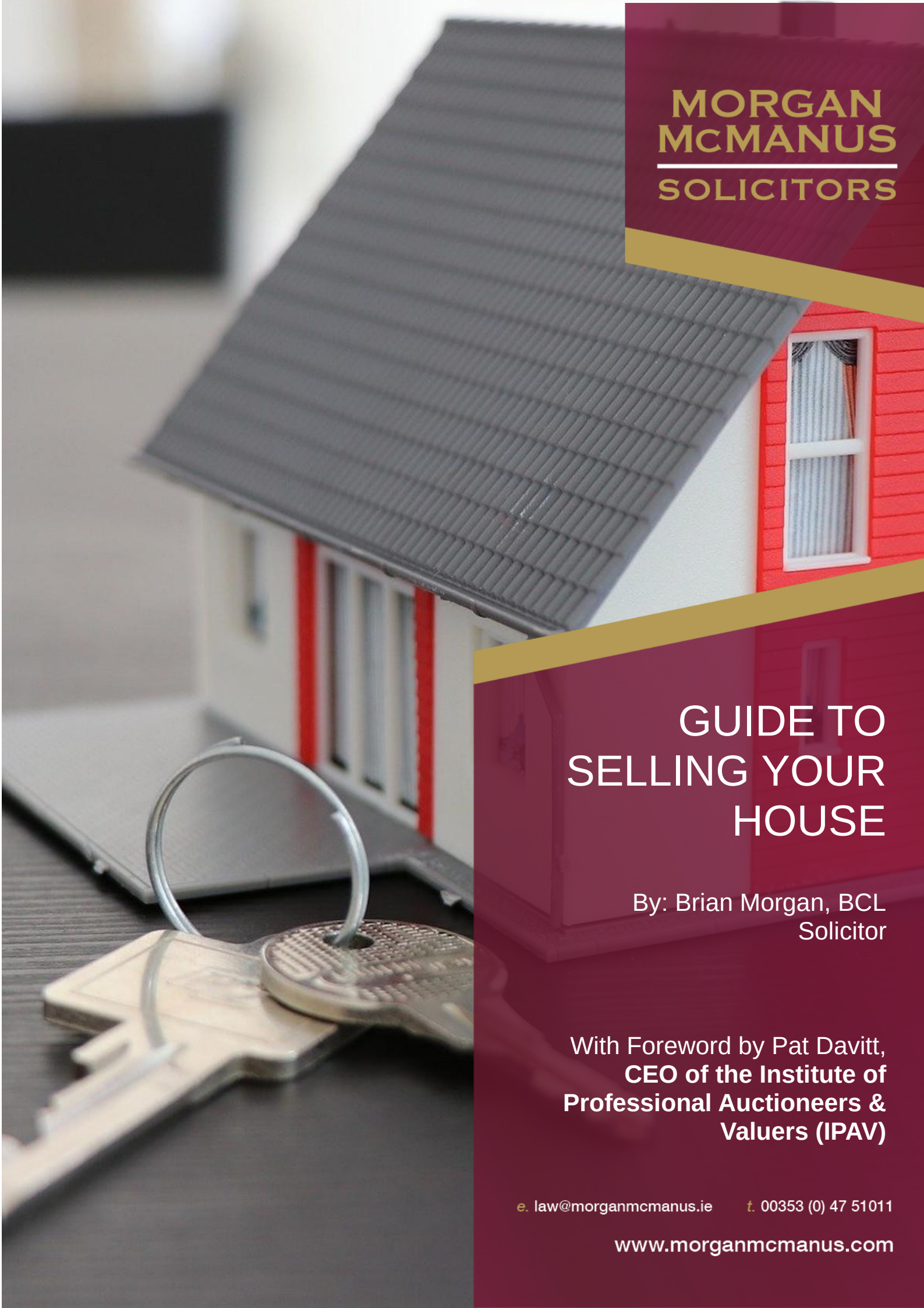

MORGAN McMANUS
SOLICITORS

GUIDE TO SELLING YOUR HOUSE

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With Foreword by Pat Davitt,
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PREFACE

Whether you are selling your first home or an investment property, this will be one of the most important decisions you make in your life. The whole process, from signing Contracts to giving up possession, can be very stressful, particularly where you are not properly prepared or have not sought correct advice.

What could go wrong in the sale process? My solicitor tells me that there is a lot of work involved in my sale but never explains to me what is involved? I`m selling, but I also seem to be paying bills? At what stage will I have a legally binding Contract? My title was investigated when I purchased this house; why is it necessary for it to be investigated again? What could possibly go wrong? When will I get my money?

This is why it is so important that you have a solicitor in your corner in whom you can place your full trust; who will take you through the transaction with the minimum fuss. When you instruct Morgan McManus to act for you in your property sale you can be assured of a friendly and efficient service.

The purpose of this Guide is to give you some introduction to the process involved; to demonstrate to you that we understand that all of this is new to you and that it is up to us to explain the process involved.

We look forward to providing service to you.

Brian Morgan

Morgan McManus Solicitors

November 2020

Foreword from Pat Davitt CEO of IPAV

I want to warmly congratulate Brian Morgan of Morgan McManus Solicitors for producing this very valuable and helpful publication, *Guide to Selling Your House*, which sets out, in a very clear and comprehensive manner, the steps involved in selling a property. Designed to alleviate the apprehension around selling a property, this Guide will undoubtedly prove to be very popular and will, I am sure, become a first point of reference for all house owners contemplating selling their property.

There is no doubt that we are witnessing an evolving property sector amid the Coronavirus pandemic. Despite the challenges that exist, demand remains high for residential property as reflected by the traffic on the MyHome website, up 40-60% in Q3 2020 compared with 2019 on various metrics. It is important, however, that this demand for new housing is met. To that end I welcome, for example, that the *Help-to-Buy* scheme for First Time Buyers has been extended to the end of 2021 following the recent Budget. More generally, supports of this nature are crucial, so that when the pandemic ends, the property economy can recover its robustness.

This period is also a good time for reflection and reform and, to that end, the IPAV has been busy promoting a new initiative, the Seller's Legal Pack (SLP), which has been covered comprehensively by the author in this book. The Seller's Legal Pack is a collection of documents a Vendor must present to a property sales professional before a property is placed on the market for sale. This is a progressive proposal which front-loads the current conveyancing

process and aligns it to the procedure used for public auctions and online sales. If implemented by Government, the Seller's Legal Pack will help increase the speed of transactions, give certainty to the parties to a sale and ensure the practices of gazumping and gazundering are no more.

We believe the Seller's Legal Pack is a great step in the right direction. As the representative body for the property sales industry, IPAV is committed to bringing forward proposals of this nature which helps all professionals across the industry.

The Morgan McManus *Guide to Selling Your House* will be essential reading for those wanting to have a better understanding of the house sale process.

Pat Davitt
CEO of IPAV

CHAPTER 1 – DEALING WITH AUCTIONEERS / ESTATE AGENTS, but why you should also instruct your Solicitor at the same time

The Auctioneer or Estate Agent is retained and paid by you the seller of the property. The Auctioneer's obligation is to secure for the best possible price for the property for you. As such the Auctioneer owes a Purchaser no direct legal obligation. Therefore, any representation he makes to the Purchaser about the property is based on what you have told the Auctioneer/Estate Agent. The Auctioneer is under no duty to independently verify or confirm what he has been told by you is accurate. For this reason practically all Auctioneer's Brochures (website Online Properties for Sale) will contain a Disclaimer to say that the Purchaser is not entitled to place any legal reliance whatsoever on anything contained within the Brochure.

It is very important that you do not misrepresent anything to the Auctioneer. For instance, if you inform the Auctioneer that there is a right-of-way to the property, the Auctioneer is entitled to rely on that representation when advertising the property for sale. What if you tell the Auctioneer that the property is not subject to a right-of-way, when in fact it is?

In our experience, all Auctioneers/Estate Agents act honestly and to the best of their ability when they do make representations to potential purchasers, but they do not owe any obligation to independently confirm the accuracy of what they are saying. Let`s revisit the example of the Auctioneer representing on the Sales Brochure that there is a right of way serving a property. You may have told the Auctioneer that such a right of way exists but only subsequent investigation of title by your solicitor may confirm that there is actually no legal basis for saying there is a right of way. If it transpired there was no such right of way, then the Auctioneer cannot be held liable, but your sale could fall through because you were deemed to have misrepresented the position; albeit that your misrepresentation was innocent!

Let`s look at another example.

You are selling an investment property which you purchased in the early 2000`s. The solicitor who acted for you in the purchase of the property initially did everything correctly at the time and naturally you assume that the transaction will be “plain-sailing” once your Auctioneer gets the correct price. Sure it`s only a matter of your solicitor turning around the Contract once he gets the Sales Advice Note from your Auctioneer!

However, there have been a lot of new regulations since the early 2000`s which have changed the game. For instance, we have had a raft of new Property Taxes over the years; such as the Household Charge, NPPR and LPT. Maybe you are a non-resident and you were not aware of these Taxes? Sure you were just collecting rent on the property over the years.

And speaking of non-residents, whereas you were not obliged to have an Irish PPS (tax) number when you purchased in the early 2000`s, you cannot now sell a property in Ireland unless you have an Irish PPS number. What`s more, it can take months to get this PPS number.

Did your Auctioneer tell you that you require a BER (Energy Rating) Certificate to sell a house? In fact, did he tell you that it is a Criminal Offence to advertise a house for sale in Ireland without having a BER Certificate in place?

What if your Deeds are with your Bank and it takes weeks to get your Deeds from you Bank and the Contract of Sale can only be drawn after the Dees are received?

We deal with all these issues later in this Guide.

Can you see now why it is so important to instruct your Solicitor at the same as you instruct your Auctioneer? While your Auctioneer is planning your Brochure we can be checking your Title, so that there will be no delay in issuing Contracts to the Purchaser`s Solicitor once the Sales Advice Note issues.

So, if you are considering selling your property; don`t delay: instruct us today.

CHAPTER 2 – PRIVATE TREATY OR AUCTION?

SALE BY PRIVATE TREATY

Most dwelling houses in Ireland are sold by Private Treaty. This means that the Auctioneer or Estate Agent will advertise the property and accept offers for it on behalf of you the seller. When the highest bid has been received, the Auctioneer/Estate Agent will then revert to you to ascertain whether you will sell the property for the highest bid. It should be noted that there is no obligation on the seller to sell for the highest bid. There may be reason why it is wiser to accept a lower bid; for instance where the higher bid is subject to Loan Approval, but where the lower bidder may be a Cash Purchaser and indicates that he can close the deal immediately. Your Auctioneer will advise you further on this as the transaction proceeds.

Once you have authorized the Auctioneer to sell for an agreed price the Auctioneer will require the purchaser to immediately pay a "Booking Deposit" in order to secure the property. The Booking Deposit is usually about 5% of the value of the property. It should be noted that the payment of a Booking Deposit creates no legally binding obligation between you and the purchaser. In effect, the payment of a Booking Deposit is a goodwill gesture by the Purchaser to show that they are willing to move to the next stage of the procedure. Despite the fact that the Purchaser has paid a Booking Deposit, the seller is still free to turn around and withdraw the property from the market or indeed sell it to some other party,

although you should avoid this. This is known as “gazumping” and there is no law that prevents a seller from acting in such a way. That is, the Booking Deposit does nothing more than exert moral pressure on you the seller to confirm the sale of the property to the purchaser at the price agreed. The Auctioneer/Estate Agent would ordinarily encourage the seller to stick by the original “deal”.

After the payment of a Booking Deposit, the Estate Agent will notify your Solicitors of the deal by sending a Sales Advice Note to them, advising them of the Sale price and related details. A copy is generally sent also at that time to the purchaser`s solicitor. The seller’s Solicitors will then issue Contracts for Sale and Title documents to the purchaser`s Solicitors and provided those Contracts and related documents are in order, the purchaser, will then sign those Contracts and pay a balance deposit to bring the entire Deposit paid up to 10%.

It is important that at this stage there is not a delay and this is why it is important that you will already have instructed your solicitor. Again, more about that later!

As, ordinarily the Purchaser would have paid a 5% Booking Deposit to the Auctioneer, he will ultimately pay another 5% to your solicitors on the signing of the Contract. It should be noted that the 5% Booking Deposit and the 5% balance Deposit are in the normal course held by the Auctioneer and the Solicitor respectively as “Stakeholders” i.e. these amounts will not be released to you the seller until such time as the sale is completed.

Always bear in mind that legally binding Contracts do not come into existence until the following has happened:

1. The Purchaser has attended with his solicitor to sign the Contracts in duplicate and paid a balance Deposit, to bring the total to 10%,
2. The signed Contracts have been returned to the Seller's Solicitors with the balance Deposit, and
3. The Contracts have been signed by the Seller and one part Contract returned to the Purchaser`s Solicitors. **That is, there is no legally bounding Contract in existence until it is signed by the Seller and returned to the Purchaser's solicitors.**

However, even when irrevocable legally binding Contracts have come into existence there are no absolute guarantees, for reasons that will be explained later, that the transaction will complete as the Contract will provide for certain circumstances to allow each party to walk away from the deal. More about this later!

SALE BY PUBLIC AUCTION

When a dwelling is put up for sale by Public Auction, this means that on the appointed day, an invitation is issued to members of the public to attend and bid for the property in order to buy it. When the property is advertised, it will normally have, what is known as, a Guide Price. This is an indicative price the Auctioneer will give, so that the Purchaser has some idea whether or not they are likely to be able to afford the property. There has always been a concern regarding the fact that the Guide Price can sometimes be significantly lower than the ultimate selling price. This can however

often happen at Public Auctions, particularly where 2 very anxious Purchasers get into a public “bidding war”.

Just because a property is put up for Public Auction and the Auction commences does not mean that the property will be sold to the highest bidder. The bidding on the property must reach the “Reserve Price”. It is normal practice not to disclose to the bidders what the Reserve Price is, but usually when the Reserve Price has been reached, the Auctioneer will announce to the bidders that the property is now “on the market”. Thereafter, it will then be sold to the highest bidder. In the event that the bidding for the property does not reach the Reserve Price, then it is common practice for your Auctioneer to enter into private negotiations with the highest bidder to see if a deal can be reached but this is only done after the Auction has ended. This is common practice but the highest bidder at an Auction, where the property fails to meet the Reserve, has no legal right to enter into exclusive negotiations with the seller.

If the property reaches its reserve and ends up being sold to the highest bidder, the highest bidder will be expected to sign a legally binding Contract immediately after the Auction and pay a 10% Deposit. The Contract is also signed at that point by the Seller. Once the contract has been signed by both Seller and Purchaser, the Purchaser has entered into irrevocable legally binding Contracts to purchase the property.

Again in this situation, for reasons explained in Chapter 1 and later explained in this Guide in subsequent Chapters, **please ensure to**

instruct your Solicitor in good time prior to the Auction, so that he has sufficient time to prepare your Contracts.

Finally, all Auctioneers/Estate Agents should be “bonded” but it is not unknown for certain persons to hold themselves out as Auctioneers/Estate Agents even though they do not carry appropriate insurance protection for monies held by them. If however the Auctioneer holds a Licence from the *Property Services Regulatory Authority* (PSRA), and most do, then the Auctioneer will be appropriately bonded. Check however that the PSRA Licence exhibited in the Auctioneer`s premises is up-to-date. For more information on the PSRA, you can visit their website at www.psr.ie .

You should also check to see if your Auctioneer is a Member of the Institute of Professional Auctioneers and Valuers (IPAV).

CHAPTER 3 – THE LAW SOCIETY CONTRACT OF SALE 2019

The Contract of Sale is the document which binds both Seller and Purchaser to the deal once the document has been signed by both the Seller and the Purchaser.

Before the 2019 version of the Contract for Sale, the recommended practice of the Law Society was that the only documents that should be produced with the Contract were relevant Title Deeds and all issues with regard to Planning Permissions and related matters were deferred for investigation until after the Contract for Sale had been signed by both the Purchaser and the Seller.

Now, since the issue of the current (2019) version of the Contract for Sale, the recommended practice is that Title should be investigated by the Purchaser's solicitor prior to the Purchaser being required to sign the Contract for Sale. This means that all of the work with regard to the investigation of Title by the Seller`s Solicitor must be undertaken prior to delivery of the Contracts for Sale to the Purchaser's solicitor. Accordingly, it is now necessary to send out, not only the Contract for Sale and relevant Title, but it is also necessary to send out all Planning documentation, all ancillary Declarations and documents relating to Property Taxes and Roads and Services, together with Requisitions on Title with Replies and documentation vouching those Replies.

This inevitably slows down the issue of Contracts in the first instance and it is very important, therefore, that once you receive a letter from your Solicitor and noted the documentation required by them to prepare your Contract of sale, that you arrange an appointment to attend with your Solicitor as soon as possible with a view to ensuring that they have all required documents in place without delay, so that they can finalise your Contract for Sale for delivery to the Purchaser's solicitor as soon as possible.

In fact, it would be preferable that, at the time you place the property on the market for sale with your Auctioneer, you would also **at that time** make contact with your Solicitor to notify him of the impending sale, so that he can start at that time to gather the necessary documents together and have your Contracts ready once the property is sold, rather than only starting this process on receipt of the Sales Advice Note from the Auctioneer, as occurs on most occasions.

The process of getting the necessary documents together can often take a number of weeks and consequently it can be a number of weeks before your Solicitor can send out Contracts to the Purchaser`s Solicitor. This should be avoided.

In the following Chapters we`ll tell you what documents you need to get together in order to speed up the process.

CHAPTER 4 – THE DOCUMENTS REQUIRED BEFORE THE CONTRACT OF SALE CAN BE PREPARED

With a view to ensuring the efficient conduct of the sale of your property, your Solicitor will require you to deliver the following documents:

The Anti Money Laundering Regulations

1. Despite the fact that you may be well known to your Solicitor, due to *Anti Money Laundering Regulations*, Solicitors are obliged to have up-to-date proof of your identity by way of the following forms of identification:

   a. a copy of your passport or driver's licence; and
   b. a copy of a recent utility bill.

State Marriage Certificate

2. If married, a copy of your State Marriage Certificate is required. If separated or divorced, likewise evidencing documents will be required.

PPS Number

3. Any copy official documentation containing details of your PPS Number, such as correspondence from the Revenue Commissioners, Public Services Card, Medical Card etc. The Solicitor cannot accept this information by phone or by written note.

If you do not have a PPS Number, please contact us **immediately** as we will need to apply for one on your behalf. Even non-resident Sellers need an Irish PPS Number (we deal with this in a later Chapter).

Mortgage Account Number/s

4. Your mortgage account number/s (if any) and name and address of your lending institution will be required.

Where your Mortgage exceeds the net proceeds of sale

5. If your mortgage exceeds the net proceeds of sale, please ensure to deliver copies of any correspondence you have had with your lender about this to your Solicitor. Do not assume that your Bank will consent to the Sale. There may be some negotiation required with the Bank. They may require a detailed Proposal from your Accountant. This can take weeks.

Title Deed Authority

6. You will be required to sign a **Title Deed Authority*** to enable your Solicitor take up your Title Deeds from your Bank. Again, it can take some weeks for the Bank to deliver your Title Deeds. All of this should be done as soon as possible and should not be left until after the Sales Advice Note is sent by the Auctioneer to your Solicitor.

Communication with your Bank

7. You will also be required to sign a **Communication Authority*** to enable your Solicitor to communicate with your Bank in respect of the redemption of your mortgage from the proceeds of sale. Your Bank will not communicate with your Solicitor without such written authority.

Requirement of New Map – Registry of Deeds property

8. Where the title to your property is registered in the Registry of Deeds (as opposed to the Property Registration Authority / the Land Registry, where there is a Folio number for your property) new laws were introduced in 2011 requiring such properties to be registered in the Land Registry (which is a more modern registration system that allocates a Folio Number for your property). The burden to do this falls on the Purchaser, but under the Contract of Sale, the Seller is obliged to furnish a Land Registry Compliant Map to facilitate the purchaser in this regard. Such a map must be marked by an Architect or Engineer and it is important to retain someone who is familiar with Land Registry mapping rules. Again, this process should not be delayed until after the issue of the Sales Advice Note. What if it is only discovered that your Title is Registry of Deeds Title after your

Deeds are received from the Bank and it took some weeks to get the Deeds from the Bank and the letter was only written to the Bank after the Sales Advice Note issued to the Solicitor? Can you see now how delays can occur in the issuing of Contracts where late instructions are given to the Solicitor?

Housing Estate or Apartment Block – where Services have not been taken in charge of the Local Authority

9. If your property is in a housing estate or apartment block, which has not been taken in charge by the Local Authority (Council), ensure to furnish the most recent receipt / statement in respect of any Service Charge that may applied by the Management Company. This will enable your Solicitor to write immediately to the Management Company as the Seller`s Solicitor is required to send with the Contract of Sale a set of Replies to Requisitions (Questions) from the Management Company on issues relating to the management of the housing estate or apartment block.

List of Contents / furniture included in the sale price

10. A list of contents / furniture, if any, which are included in the sale price will be required as this information must be included in the Contract of Sale. In the normal course, unless expressly excluded under the Contract, fixtures form part of the property in sale e.g. fireplaces, integrated appliances, stoves etc.

Value of the contents

11. You will also need to furnish to your Solicitor an estimate of the value of the contents included in the sale as that must be separately set out in the Contract.

Septic tank

12. If you have a septic tank on your property, you must furnish the Certificate of Registration to your Solicitor. If you have not registered your septic tank, you will need to do so now at www.protectourwater.ie. Again, do not leave this to the last minute!

BER Certificate and Advisory Report

13. Typically your Auctioneer will have been required to produce this in the course of marketing the property. Please note that there are very substantial fines for failure to furnish a purchaser with a BER Certificate. Remarkably, some Auctioneers advertise houses for sale without first having secured a BER Certificate. In some instances there are exemptions from the necessity to obtain a BER Certificate. For more information on this process, visit the *Building Energy Rating* page of the website of the Sustainable Energy Authority of Ireland at www.seai.ie .

Estate Agents Brochure

14. You should deliver the Estate Agent`s Brochure or the web link to the Online Brochure to your Solicitor, as it may contain useful information on the property which may be relevant to the Contract of Sale. You will have a pdf of this brochure or a link to the website when the property is advertised for sale.

Vendor`s Warranties on Title

15. It may not be properly understood that a Seller of property gives various warranties in respect of the property they are selling, typically relating to matters such as Planning Permission compliance and the nature and extent of the property in sale, i.e. the correctness of the boundaries. It is important that you carefully review the title maps of the property to ensure that you are satisfied with the extent of what you are selling as it may result in litigation against you afterwards if it turns out to be incorrect. It is important that you have complied with the Conditions of your Planning Permission. Where you have not complied with the Conditions of your Planning Permission this could render the Planning Permission invalid **and this could prevent you selling the property**. Again, all of this should be investigated as soon as possible. In some instances the Seller may have constructed an extension to the house without obtaining Planning Permission where the development wasn`t exempted development. In that instance it will be necessary to apply to the Local Authority for Retention Permission and that process could take some months.

Residential Property Taxes Generally

16. There are strict rules to prevent a residential property being sold without all property taxes (NPPR, Household Charge and Local Property Tax) being discharged. Any unpaid property taxes continue to affect a property, despite a change in ownership, for at least 12 years. As a consequence, purchasers require evidence that no such liability attaches to the property in sale.

NPPR ("Second Homes Tax")

17. NPPR ("Second Homes Tax")

The NPPR was introduced in 2009 as a second homes tax. While the NPPR was discontinued in 2013, evidence that it does not apply or that it has been paid will be required by the Purchaser's solicitors. Under legislative rules, this tax affects holiday homes, residential investment properties, vacant properties in your ownership and even houses held by the Personal Representatives of a deceased person. This tax also applies to people whose main residence is outside the Republic of Ireland, but who have an interest in a dwelling here. In effect, the only dwellings that are exempt are a person's principal private residence or an uninhabitable dwelling. There are very limited number of other exemptions for special circumstances; e.g, if your dwelling is located in a designated unfinished housing estate. Further information can be obtained at www.nppr.ie. While the original annual tax was €200, there are severe penalties for late or non-payment, which are outlined at www.nppr.ie.

Therefore, the NPPR will be an issue for you in the event that you owned, solely or jointly, the property in sale on any of the following "Liability Dates":

a. 31st July 2009;
b. 31st March 2010;
c. 31st March 2011;
d. 31st March 2012; and
e. 31st March 2013.

If the dwelling is your principal private residence you will be required to provide a Certificate of Exemption from the County

Council covering each Liability Date to your Solicitor. You will need to contact the relevant County Council to obtain their Application Form and ascertain their specific requirements. As an anti-avoidance measure, the County Council also require that you furnish evidence that you lived in the dwelling on each of the Liability Dates recited above. It is important that you submit this Application immediately

If the dwelling is a habitable second home / investment property you will be required to furnish proof of payment of the NPPR by means of a Certificate of Discharge issued from the County Council for each of the Liability Dates.

If the dwelling is an uninhabitable second home…

If you consider that the residential property in sale is not liable because it is derelict / uninhabitable or was derelict at any time from 2009 until now, you are required to obtain a Certificate of Exemption from the County Council covering each Liability Date. You are required to swear a Declaration Form to the Local Authority so that the Local Authority may be satisfied that the property is derelict / uninhabitable or was derelict at any time from 2009 until now.

The Household Charge

18. The Household Charge tax was introduced for 2012 only, but for the reasons stated above, a Purchaser will always require proof of payment or that it does not apply. Please note it applies to all types of habitable dwellings, regardless of whether they are principal private residences or second homes. There are very limited number of exemptions available, e.g. your dwelling is in a designated unfinished housing estate. Full details can be obtained at https://www.householdcharge.ie/Faq.aspx.

If the dwelling is habitable…

Assuming you are liable to the Household Charge, proof of payment is available via the LPT online system. Payment of arrears can also be made under this system. You will need to furnish a printout of your Property History Details screen to your

Solicitor proving payment. Please refer to the LPT section below on how to do this.

If the dwelling is uninhabitable…

Unlike the NPPR, one cannot obtain a Certificate of Exemption for an uninhabitable dwelling. In those circumstances, you must contact the Household Charge / LPT Section of the Revenue Commissioners on 1890 200 255 to advise them that the property is uninhabitable. Revenue will probably seek some form of written evidence from you as to why it is uninhabitable. Thereafter, typically Revenue will write to you confirming that on the basis of your information, the property is not liable. In turn your Solicitor will be obliged to furnish this letter, together with a Statutory Declaration from you confirming the reasons why the property is uninhabitable, to the purchaser's solicitors on completion of the sale.

Local Property Tax ("LPT")

19. The LPT was introduced in 2013 and applies to all residential property, save for uninhabitable property and a number of limited exceptions, details of which can be found at http://www.revenue.ie/en/tax/lpt/.

If the dwelling is habitable…

Assuming you are liable to the LPT, you will be required to furnish a printout of your LPT online "Property History" screen, which can be printed off by logging into your account on the LPT online system at www.revenue.ie. To log in, you will need to enter your PPS Number, your Property ID Number and your PIN – you should have correspondence from Revenue with these details. If not, you should contact the LPT Section of the Revenue Commissioners at 1890 200 255. Information about how to print off the Property History Screen and your obligations to a Purchaser can be found at https://www.revenue.ie/en/property/documents/lpt/owners-property-history.pdf What you need to send to your Solicitor is shown as

"Fig. 2" of the document at this link. The "Property History" screen will show the current payment status of the LPT and the Household Charge relating to the property in sale. All unpaid property taxes must be paid prior to completion as the Purchaser's solicitor will require proof on completion of the sale that there is no outstanding liability.

Despite the apparent unfairness, if you are the owner of a property on the 1st November in a particular year, then you are obliged to pay the LPT in full for the following year. The conditions of the Contract for Sale will oblige the purchaser to reimburse you for any prepaid period in respect of which you no longer own the property.

If the dwelling is uninhabitable…

Again, unlike the NPPR, one cannot obtain a Certificate of Exemption for an uninhabitable dwelling. In these circumstances, you must contact the LPT Section of the Revenue Commissioners on 1890 200 255, which is open from 9.00 to 17.00 (Monday to Friday), or e-mailing lpt@revenue.ie , with a two-fold purpose (1) to advise them that the property is uninhabitable and to seek written confirmation from them that they accept the position, and (2) to seek an LPT Property ID Number which will be required by the purchaser to allow them complete a stamp duty return in respect of their Deed of Purchase. While it may be counter-intuitive, a derelict house falls within the definition of "residential property" for Stamp Duty purposes and as such must be allocated an LPT Property ID Number for Stamp Duty purposes even though the property itself is not liable to LPT. When making initial contact with the LPT Branch you will need your PPS number and the address of the property being sold and please ensure to include that information in all correspondence with the Revenue Commissioners. It is very important that you also make it clear to the Revenue Commissioners when speaking to them that you urgently require an LPT Property ID Number also as there can be very significant backlogs in allocating such numbers.

The Revenue Commissioners will probably seek some form of written evidence from you as to why the premises is uninhabitable,

including photographs. Following your request and submission of evidence, typically the Revenue Commissioners will write to you confirming that on the basis of your information, the property is not liable and they will enter on the LPT online system that there is no liability attaching to your property. You will be obliged to furnish this letter from the Revenue Commissioners or in the alternative a printout of the online "Property History" screen (showing no liability due), together with a Statutory Declaration from you confirming the reasons why the property is uninhabitable, to the Purchaser's solicitors on completion of the sale.

Irish Water

20. While Water Charges were abolished with the introduction of the Water Services Act, 2017 on the 17th November 2017, you will be required to furnish evidence to your Solicitor that you have registered your property with Irish Water where you enjoy the use and benefit of a public water main or a public sewer. Where you are so connected, you should ensure you supply to your Solicitor any documentation from Irish Water that contains your WPRN number i.e. your property's unique reference point as notified to you by Irish Water.

When the property is sold you will need to contact Irish Water at 1890 448 448 or 01 7072828 and let them know that the property has changed ownership.

Management Companies

21. Significant legal changes were introduced in 2011 around the regulation of Management Companies. Where particularly your property is an Apartment, this will be an issue in respect of which you will need to prove compliance with the relevant legislation. This is dealt with by sending a standardised list of detailed questions to your Management Company who are then required to respond and furnish various supporting documentation. Management Companies typically charge a few hundred euro to provide these responses and you will be obliged to meet this cost upfront. In the circumstances, you should ensure to furnish to your Solicitor details of your Management Company or the Managing Agents for the development so that your Solicitor can open correspondence with them about the cost of their required input. Needless to say, if there are arrears of service charges, Management Companies typically do not co-operate with sellers until arrears are discharged.

Liability for Value Added Tax (VAT) on this Sale?

22. Have you a liability for VAT on this Sale? You may have a liability for VAT and may be required to charge VAT over and above the agreed sale price of your property. While this generally does not apply on the sale of second-hand residential properties, please do not automatically assume this to be the case. Where, for instance, you may own a number of investment properties (eg, apartments) and you have been running this as a business where you may have reclaimed the VAT on the purchase price of the property and / or charge VAT on the rental of the property, the likelihood is that on top of the sale price negotiated by your Auctioneer, you will be required to charge VAT to the Purchaser over and above that price at the appropriate rate. Do not be caught out by this omission. Where you do not charge VAT and should have done so the Revenue Commissioners will demand that you pay the VAT from the proceeds of sale. You will need to take immediate advice from your Accountant on this. All of this must be clarified before your Solicitor finalizes your Contract of Sale as there are details provisions about VAT in the standard Contract of Sale and the Seller`s Solicitor must confirm whether they apply.

You will appreciate therefore that there are many reasons why you should contact your Solicitor **immediately** once you decide to sell your property. Do not leave it until your Auctioneer has struck a deal!

CHAPTER 5 – THE IPAV SELLER`S LEGAL PACK

IPAV, The Institute of Professional Auctioneers and Valuers, has expressed concern with regard to the perceived delays which are arising between the issue of the Sales Advice Note and the return of signed Contracts by the Purchaser's Solicitor.

A survey undertaken by IPAV has ascertained that it can take on average up to ten weeks from when a property is "Sale Agreed" to when Contracts are signed. It can then take up to another six weeks from the signing of Sale Contracts to the date the Sale closes.

It is in those circumstances that IPAV has been consulting with its members on the instigation of a *Seller's Legal Pack*. The *Seller's Legal Pack* is a collection of documents relating to the Seller's property and provides the buyer with key information relating to the purchase.

You will recall, from Chapters 1 and 4, that I had already referred to the various documents which the Seller's Solicitor is obliged to procure once they have received instructions and I had already expressed concern that normally the Solicitor was only getting the opportunity to procure these documents on the issue of the *Sale Advice Note* from the Auctioneer to the Seller's Solicitor.
What IPAV are proposing now is that before a Seller places his dwelling-house on the market for sale, he will be obliged by law to ensure that his Solicitor has prepared and makes available a *Seller's Legal Pack* comprising the following documents:

- Law Society Conditions/ Contract for Sale;
- Certified copy of the File Plan or root of unregistered title;
- Architect's Certificate of Compliance with Planning Permission;
- Architect's Certificate of Compliance with Building Regulations;
- Copy of all Planning Permissions and all Building Regulations documents;

- Receipt for Financial Conditions on Planning Permissions;
- Letter confirming roads and services are taken in charge by the Local Authority or evidence of Rights of Way and Wayleaves;
- Local Property History (LPT) details;
- A BER Certificate and Advisory Report;
- A Certificate of Discharge or Exemption from Non Principal Private Residence Charge (NPPR);
- Law Society Objections and Requisitions on Title and associated Replies.

These are the very documents which are essential to enable the Sale to proceed.

I understand that IPAV will be proposing that an Auctioneer cannot place a dwelling-house on the market for sale until he is satisfied that the *Seller's Legal Pack* has been delivered by the Seller's Solicitor to him or placed in a data room that a purchasers solicitors can easily access. I would however respectfully suggest that, while the preparation and finalization of such a Pack is desirable in every instance, there will be instances where one or two of the documents may not be available but will be available in due course. For instance, a Seller may have built an extension to his dwelling-house without the required Planning Permission. Consultations by his Architect with the Planning Authority may confirm that there should be no difficulty with obtaining Retention Permission for the unauthorized extension, but the process could take up to three months. Should the launching of the property on the market for sale be delayed until this Retention Permission is obtained? Would it not be better to put the property on the market for sale and yet highlight that the sale cannot be completed until the Retention Permission issues? After all, between the initial instructions to the Auctioneer and the completion of the Sale, it is going to take three months for this process at a minimum.

I would therefore suggest that, while the finalization and delivery of the *Seller's Legal Pack* should be a requirement in every instance, there will be situations where all documents are not available but once there is a reasonable explanation as to why a particular document is not available and all parties are satisfied that it will

become available, then there should be no inhibition to the dwelling-house being put on the market for sale.

The most important matter however is that the Auctioneer communicates to the Seller's Solicitor **at the time of initial instruction** that the client is now selling their property. On receipt of this information the Seller's Solicitor can then arrange to communicate immediately with their client with a view to getting these documents in the *Seller's Legal Pack* ready.

There is no reason why this process of communication cannot commence immediately.

CHAPTER 6 – SUMMARY OF THE CONVEYANCING PROCEDURE

Under the system of buying and selling houses, there are two fundamental stages – the binding of Contracts and Completion.

On the binding (signing) of Contracts, both the Purchaser and the Seller are legally bound under a written Contract to buy and sell the property. Under the written Contract, a date is fixed for completion. On Completion, the Seller's solicitor hands over the Deeds and keys to the Purchaser's solicitor and the Purchaser's solicitor hands over the balance purchase money. Once Completion takes place, the Purchaser can take possession of the property. Only at the point of Completion does the Purchaser become the owner of the property.

PRE-CONTRACT ENQUIRIES

Before the binding of Contracts, it is the Seller's Solicitor's duty to draft the Contract and provide whatever information he can about the property to the Purchaser's Solicitor.

THE LAW SOCIETY CONTRACT FOR SALE 2019

Before the 2019 version of the Contract for Sale, the recommended practice of the Law Society was that the only documents that should be produced with the Contract were relevant Title Deeds and all issues with regard to Planning Permissions and related matters were deferred for investigation until after the Contract for Sale had been signed by both the Purchaser and the Seller. Over the years the Law Society issued various Practice Notes leading to the issue of certain Pre-Contract Enquiries relating to Planning Permission, VAT and Rights-of-Way. Gradually, a system of pre-Contract investigation was developing.

Now, since the issue of the current (2019) version of the Contract for Sale, the required practice is that Title should be investigated by the Purchaser's solicitor prior to the Purchaser being required to sign the Contract for Sale. This means that all of the work with regard to the investigation of Title by the Seller`s Solicitor must be undertaken prior to delivery of the Contracts for Sale to the Purchaser's solicitor. Accordingly, it is now necessary to send out, not only the Contract for Sale and relevant Title, but it is also necessary to send out *Requisitions on Title* with Replies and documentation vouching those Replies.

These *Requisitions on Title* are effectively a list of detailed questions regarding the title to the property which will relate to matters such as Boundaries, Rights-of-Way, Tax Clearance Certificates, Planning Permission compliance, Building Regulations all ancillary Declarations and documents relating to Property Taxes and Roads and Services etc. In summary, it is all the documents which IPAV are now advocating in the *IPAV Seller`s Legal Pack* in Chapter 5. This means that a lot of the legal work is conducted before the binding of Contracts.

For instance, it will be necessary for us to have a detailed Questionnaire completed by you to enable us reply to these Requisitions. This can by meeting with you, or by phone.

This inevitably slows down the issue of Contracts in the first instance and Purchasers can often now be mystified as to why it takes so long for Contracts to be signed. While this element of the Conveyancing transaction does now take longer to complete, the benefit to both parties is that once Contracts are signed it is generally possible after the signing of Contracts to agree an early Completion date.

This is where some joined-up thinking between the Law Society and IPAV, as advocated by IPAV in their *Seller`s Legal Pack*, is so important. If the sale of the house was communicated earlier to the Seller`s solicitor, they could be getting these documents together much earlier and, if not ready in a Pack prior to the house being launched on the market for sale, could be ready by the time the Booking Deposit is paid by the Purchaser and the Sales Advices Note is issued by the Auctioneer to the Seller`s Solicitor!

If the Purchaser is taking out a Mortgage to enable him to buy the property, the Purchaser's solicitor looks at the Mortgage Offer to check whether or not there are any difficult Conditions with which he is obliged to comply. Sometimes, the Mortgage Offer results in the Purchaser's Solicitor being obliged to raise further enquiries. Any difficulties with the Mortgage Offer must be cleared up before the binding of Contracts unless the Contract is conditional on the buyer receiving a satisfactory Mortgage Offer before completion. Contracts conditional on a satisfactory Mortgage Offer are now however quite rare.

The seller`s Solicitor prepares the Contract for Sale and it is important that the seller understands that under this Contract for Sale, the seller gives various warranties that there are no legal defects with the title to the property and that there are no matters affecting the property that have not been disclosed. As a consequence, the terms of that Contract are extremely important and if there are any issues of concern the standard form of Contract must be amended accordingly by a Special Condition. This is why it is so important that we get very accurate instructions from you at the time of completion of the Questionnaire!

BINDING OF CONTRACTS

As stated earlier, legally binding Contracts are not entered into until such time as the Purchaser signs the Contract. Those signed Contracts are then sent to the Seller's solicitors together with the balance of the required 10% deposit in total (to include credit for any Booking Deposit the Purchaser may have already paid to the Auctioneer). The Seller signs the Contracts at their Solicitor`s office and one copy of the signed Contract is returned to the Purchaser's Solicitor's office. Up to the point where the signed Contract is sent back to the Purchaser's solicitor's office, the Seller is still free to pull out of the deal. In that event the Purchaser is entitled to be refunded any Deposit already paid, but there is no entitlement for other out of pocket expenses such as legal and surveyor`s fees accrued to that date.

POST CONTRACT ENQUIRIES

As the review of the title to the property has already been conducted by the Purchaser's solicitors prior to the Purchaser signing the Contracts, after the return of signed Contracts the Purchaser's solicitors is entitled to only raise limited enquiries.

This now means that there is less work to be done between the signing of binding Contracts and Completion. It also gives the Purchaser the benefit of being aware of all defects and problems in respect of the property prior to signing the Contracts. The downside for the Seller and Purchaser is however that should the deal fall apart just before the signing of Contracts the Parties will have incurred cost which they cannot recover (although realistically the cost is less to the Seller as this documents will be required by him on any subsequent sale of the property).

Good and Marketable Title

Prior to the new 2019 Contract procedure, under the Contract the Seller would have agreed to furnish the Purchaser with "good and marketable title" on Completion. What happened if the Seller could not subsequently give satisfactory replies to all the Requisitions on Title; e.g. he could not produce a Tax Clearance Certificate? The Seller had a contractual obligation to furnish all Tax Clearance Certificates on Completion. If the Seller was not subsequently able to comply with his contractual obligations then the Contract could be rescinded i.e. both parties were entitled to walk away from the deal.

This was not very satisfactory as both the Seller and the Purchaser had at that point in time signed what they thought was a legally binding Contract and had invested at that point in time, on the signing of the Contract, further expense and emotional energy in the property. Under the new system, this is less likely to occur. The new system does offer both parties the comfort of identifying any problems at an earlier opportunity.

COMPLIANCE WITH CONTRACT CONDITIONS

Just because a Purchaser has investigated the title and signed legally binding Contracts does not mean that problems will not arise in the period between Contract stage and Completion. It can happen that the Contract will be rescinded if you the Seller fail to comply with the Conditions of Sale, but it is less likely to happen. The rescinding of a Contract happens extremely rarely and much more rarely now since the new system.

MORTGAGE DRAWDOWN AND OTHER PRE-COMPLETION MATTERS

In advance of the completion date the Purchaser's Solicitor will prepare a Closing List of the required completion documents and send it to the Seller's Solicitor. The Seller will then attend with their Solicitor with a view to executing all of the required completion documents.

In the period between Contracts and Completion the Loan Offer and Mortgage documents will usually have been signed by the Purchaser and will be returned to the Bank in order to requisition the Loan cheque.

During this period we, as your Solicitor, will be busy on your behalf liaising with the Purchaser`s Solicitor on their Closing List requirements, drawing up formal documents (including the Deed of Transfer) for you to sign, keeping constant contact with the Purchaser`s Solicitor to ensure that their client is going to adhere to the agreed Completion date and, once the Completion date is confirmed and the Purchaser`s Loan is ready to issue, meeting with you to sign Closing documents, delivering the documents in trust to the Purchaser`s Solicitor, replying to Title Searches and all other procedures required for completion.

It should be noted that Title Searches are required by the Purchaser in order to ensure that you the Seller are not bankrupt or that no Judgements have been registered against you or the property that would prevent the Purchaser obtaining good legal title to the property

in sale. Therefore, if there are any Judgments registered against you it is very important that you inform us of this immediately, so that we can take action as soon as possible to alleviate the problem and ensure that this does not cause your Sale to fall through at the last minute.

COMPLETION

Before completion, the Solicitor acting for the Purchaser arranges for the balance purchase money to be sent to the Seller's solicitor. Whereas in the past this was done by sending a letter in the post with a Banker's Draft so that it was received by the Seller's solicitor by the Completion date, nowadays the funds are generally transferred by Credit Transfer between the Solicitors` Bank.

Once the Seller's Solicitors have received the balance purchase money, Completion usually takes place when the Purchaser's solicitor receives the Title documents that will have been forwarded by the Seller's Solicitor in advance in trust and the Purchaser's solicitor is satisfied with the Law Searches and any explanations that have been furnished by the Seller's Solicitors in respect of those Law Searches.

Once the transaction has been formally completed the Seller`s Solicitor arranges for you, or the person holding the keys (usually an Estate Agent), to release them to the Purchaser.

POST COMPLETION

After Completion, the Purchaser's Solicitor attends to the stamping of the Deed of Transfer by the Revenue Commissioners and subsequent registration of the Deed at the Land Registry or the Registry of Deeds.

Sometimes it can arise that the Purchaser`s Solicitor runs into difficulty registering their client`s Deed in the Land Registry because of some query raised by the Land Registry. When we are preparing your Completion documents one of the documents you are required to sign is an Undertaking to assist with such queries. Where we receive a copy Land Registry Query from the Purchaser`s Solicitor we will make contact with you requesting your co-operation in dealing with

that query. The Purchaser`s registration of ownership of the property cannot be completed until the Land Registry receives a satisfactory response to this Query. Often this will require you to sign a supplemental Deed. In fairness to the Purchaser, it is important that you co-operate immediately.

Remember, particularly where you are selling and buying an alternative dwelling, you as a Purchaser could run into a similar problem and could be relying on the co-operation of another Seller!

CHAPTER 7 – THE SYSTEM OF OWNERSHIP OF LAND

This is another issue which mystifies property sellers and purchasers and is worth a Chapter of its own! I don`t intend to get too technical, but it will answer questions which do arise during the sale process.

TWO SYSTEMS OF LAND OWNERSHIP

There are two systems of land ownership registration in existence in Ireland. The older system requires that Deeds are registered in the Registry of Deeds. If the title to a property is registered in the Registry of Deeds, it means that the determination of title to the property is made by establishing a continuous unbroken chain of ownership in the Deeds and documents held by the owner. Property subject to this type of registration would normally have a large bundle of title documents stretching back many decades and, in some cases, hundreds of years. This Registry of Deeds system is also called, quite confusingly, **"unregistered land".**

The Land Registry (now known as the *Property Registration Authority* of Ireland (PRAI)) was established in 1892 with the intention of providing a central, simplified and state guaranteed title registration system. In effect, a record is maintained in the Land Registry of the owner of the land and, if the ownership is to be changed, then the appropriate documents are sent into the Land Registry who will then instigate the appropriate changes. Property registered in the Land Registry is commonly known as **"registered land".**

Registry of Deeds fees tend to be less expensive than the Land Registry as the Registry of Deeds does not provide any title guarantees and effectively you must rely on the professional skill and judgment of your solicitor to confirm to you that the title is all present and correct. In respect of Land Registry title, the fees are more expensive but the Purchaser has the comfort of knowing that the title does carry what is, in effect, a state guarantee once they become the registered owner.

There are a number of agencies outside the owner's deeds and documents which have a bearing on the quality of the title. It is part of

the solicitor's job to investigate information held by those agencies. Of particular importance, for instance, is that the property in question complies with Planning Permission and Building Regulations (we deal with this in a later Chapter) and certain other statutory framework requirements such as stamping by the Revenue Commissioners.

THE LAND REGISTRY

If property is registered land, ownership of that property depends upon what is stated on the Land Register (often referred to as "the folio") and the folio map. Each title to a property has a separate folio number. For each folio number, the Land Register will show names of the owners, a description of the property, details of rights which the property has the benefit of over neighbouring land (in most cases) and third party rights to which the property is subject (often described as "encumbrances"). Third party rights include rights which the neighbouring property has over the property, restrictions on the use of the property and Mortgages. The Land Registry also keeps a central map showing all land in Ireland which is registered. Each folio number is represented on that map. A copy of the Land Registry map (also known as the "File Plan") can be obtained from the Land Registry for any particular folio. Examination of the folio map is an essential part of the Conveyancing Solicitor's job.

It is worth mentioning here that the Land Registry is often confused with the Registry of Deeds. The latter organisation concerns only unregistered land and is not the deeming agency of ownership.

THE REGISTRY OF DEEDS

The Registry of Deeds is the oldest currently operating land ownership registration system in the world. It is unique to Ireland and was created by Act of Parliament in 1707. Under the system, a new owner of unregistered land sends to the Registry full particulars of the deed which enable him to become the owner. Whereas previously those particulars were sent in a document called a "Memorial" which was kept permanently by the Registry, this is no longer the case. Not all changes of ownership are recordable. At one time, a Will could be registered in the Registry of Deeds but this is no longer the case. However, all Mortgages are also recordable. Unlike the Land Registry, ownership is not determined by registration. However, failure to send particulars of the transaction to the Registry of Deeds

promptly after the deed is signed can result in losing priority of rights and in some cases losing ownership. For example, in a case of fraud, a former owner might sell property he has already sold taking advantage of the fact that the first buyer failed to register the transaction.

THE PROPERTY REGISTRATION AUTHORITYOF IRELAND (PRAI)

Both the Land Registy and Registry of Deeds systems are administered now by the PRAI. Further information on their services is available on their website at www.prai.ie .

COMPULSORY REGISTRATION OF TITLE

Effectively since January 2010 all Conveyances on Sale (ie, where you are selling a property, as opposed to gifting it) are now subject to Compulsory Registration of Title. This is a long-term plan by the Government to ensure that ultimately all title in Ireland will be registered in the Land Registry and therefore more easily ascertainable. This plan has been progressed further by the creation of an Integrated Title Management System and digital mapping in the Land Registry. It will be assisted further in coming years by the introduction of *eConveyancing* (an electronic system of Conveyancing in planning stage by the Law Society).

In practice, what now occurs is that, where a property which is registered in the Registry of Deeds, is sold there is an obligation on both Seller and Purchaser to ensure that the property transaction (the Deed of Transfer) is registered in the Land Registry on Completion (ensuring of course to register the transaction for a final time in the Registry of Deeds). This does add to the legal cost of the transaction in that particular instance. The Seller`s Solicitor is obliged to have a Land Registry Compliant Map of the property sold marked by a professional mapper (Surveyor, Architect or Engineer) and in turn the Purchaser`s Solicitor is obliged to ensure that after Completion of the Purchase the Deed is registered, by way of First Registration Application, in the Land Registry.

Again, this adds to the bottom line in the Solicitor`s Bill of Costs at the end of the transaction, but please read the Bill carefully and you will see that it is not all going in profit cost to the Solicitor!

TYPES OF OWNERSHIP

There are many different ways of owning land or part of land. That is very much the product of Feudalism from the Middle Ages and Trust law which has evolved since then. Much of the modern law relating to those matters is outside the scope of this Guide. For the modern homeowner, however, there are only two kinds of ownership which are important - freehold and leasehold (indeed they are now the only legal forms of title under the *Land and Conveyancing Law Reform Act 2009*). They are easily distinguishable. Freehold ownership is forever. Leasehold ownership is for a limited time (although that could be a very long time) and subject to a Ground Rent (usually a very nominal rent). For the homebuyer, the Lease (which usually relates to apartments) can have a considerable influence on the owner's use and enjoyment of property.

CO-OWNERSHIP

Co-Ownership of a property can provide one of the most fertile grounds for a legal dispute. Unfortunately, at the time of buying a property, this is hardly ever obvious to the Co-Owner, and consequently it can lead to problems when you decide to sell a house of which you are a part-owner only. There is no legal way of stopping a relationship from breaking down but we believe that the more people are aware of their legal responsibilities, the more likely it will be that the parties will be able to sustain co-operation when the breakdown occurs.

This area of law can be quite complex as it involves Trusts. However, we will stick to the assumption that all of the Co-Owners are registered owners. In other words, they have their name on the Deeds or Land Register.

A registered owner has all of the responsibilities which go with owning the property. That includes responsibility for paying the Mortgage. If two people are legal owners, they are jointly and severally responsible for the payment of the Mortgage even if they have agreed between themselves that only one of them is responsible for paying it.

WHAT HAPPENS IF ONE OF THE CO-OWNERS LEAVES THE PROPERTY AND REFUSES TO PAY THE MORTGAGE?

Unfortunately, this is becoming more common. The Co-Owner who is left at the property "carrying the baby" is more than likely not financially able to maintain the Mortgage payments. Doing nothing leads to Repossession by the bank. The property therefore must to be sold. But what if the party who has left refuses to co-operate in a sale?

In that situation, the Co-Owner who wants a sale can get an Order for Sale in the civil courts. Unfortunately, that may prove to be so expensive that it makes bad matters worse. The party who refuses to sell may be liable for Court Costs but that party may be difficult to track down and his share of the sale proceeds (after payment of the outstanding Mortgage and legal costs) may not be large enough to compensate the owner who was required to take the Court action in the first instance.

If the Co-Owners are husband and wife, the law has a different dimension because Family Law Statutes apply. The Court has the power to "chop up" assets - including shares in a property - in any way it decides. We cannot say any more about that branch of the law as it is outside the scope of this document. We do advise however that if any dispute arises about Co-Ownership, legal advice should be taken immediately.

If the Co-owners are not husband and wife, it is advisable that a legal document is drawn up to evidence whatever arrangement has already been made about shares and outgoings. Such a legal document is known as a *Co-ownership Agreement*. This may not solve the problems which we have illustrated above. However, having such a legal document is less likely to result in irresponsible action by a co-owner when a relationship breaks down.

JOINT TENANCY AND TENANCY-IN-COMMON

These are two different types of Co-Ownership. A Joint Tenancy means that the Co-Owners have equal undivided shares in the property which pass automatically on the death of one Joint Tenant to the surviving Joint Tenant(s). A Joint Tenancy cannot be passed under a person's Will. This may have particularly important

implications for Co-Owners who are not married. A lot of people do not appreciate this.

A Tenancy-in-Common is a holding of a divided share. Such a share can pass on a Tenant In-Common's death under his Will or under his Intestacy (without a Will). Unlike a Joint Tenancy, the shares in a Tenancy In-Common do not have to be equal.

Creating a Joint Tenancy or a Tenancy-in-Common is a simple task for the Conveyancing Solicitor; although remarkably many Solicitors fail to record in the Deed whether the property is transferred to their clients as Joint Tenants or a Tenants-in-Common!

Should we have a Joint Tenancy or a Tenancy-In-Common?

There are three levels of consideration here. Firstly, if the shares of the Co-Owners are unequal, they must have a Tenancy-In-Common. We advise that this should be evidenced by a Declaration of Trust.

Secondly, if the shares of the Co-Owners are equal, then a Tenancy-In-Common will still be desirable if any of the Co-Owners do not want their share to pass to the other Co-Owners on their death. Remember that a share in a Joint Tenancy cannot pass under a person's Will on their death if there are one or more surviving Joint Tenants.

Under the previously mentioned *Land and Conveyancing Law Reform Act 2009* a Joint Tenancy can only now be severed and converted into a Tenancy-in-Common by written consent of all the joint owners or, in default, by Court Order. This can be problematic where the parties purchased previously as Joint Tenants under a misunderstanding and now need to reconsider their respective positions.

CHAPTER 8 – MANAGEMENT COMPANIES

It is important to note that this Chapter applies only to relatively new housing estates, generally known as “managed estates” and Apartments, but it is an area which can cause delays in the issue of Contracts.

Let`s take the example of an Apartment Owner; although it can apply equally to a house in a developed Housing Estate where the roads and services within the estate have not been taken-in-charge by the Local Authority but are under the “charge” of a Management Company.

Over the years you, the Seller, have been getting an Annual Invoice for services from a Management Company. You resent paying the Invoice but you realize that you have to pay the bill or otherwise the services will stop. You also get Notices of Annual Meetings of the Management Company, but you don`t have time to partake in this.

All appears well …… until you go to sell the property!

WHAT IS A MANAGEMENT COMPANY?

A Management Company is usually a company limited by guarantee and registered in the Companies Office, established by a property developer to own and be responsible for the management of the Common Areas such as car parks, gardens and communal stores.

The Multi-Unit Developments Act 2011

Often known as the *MUD Act*, this Statute was enacted to combat a lot of the problems which had arisen where developments of Apartment blocks and Housing Estates were not being properly managed. It is not the purpose of this Guide to do a detailed analysis of the MUD Act, but it is important to be aware of its existence.

The Act provides that before a developer sells any units:

- An owners' Management Company must be set up, and

- The Common Areas of the development must be transferred to the owners' Management Company to manage

A multi-unit development is a development in which there are at least 5 residential units and the units share facilities, amenities and services. In practice, the majority of multi-unit developments are apartment blocks, but the Act also covers groups of houses that share common facilities and have an owners' Management Company. In addition, the Act provides for some rules in relation to developments with between 2 and 4 residential units and it applies to mixed commercial and residential developments to a certain extent.

The Management Company will also be responsible for ensuring that the Common Areas are insured, well lit, that the area is kept clean and well maintained. From a practical perspective the importance of the Management Company is that it is responsible for ongoing maintenance and it is the legal person to whom you pay your Service Charge.

From a legal perspective, its importance lies in the fact that it will become the freehold owner of the Estate Common Areas after the developer finishes his development.

This mechanism works very well provided all of the house owners take an interest in making sure that the Management Company performs its duties i.e. maintain proper insurance, retain maintenance men and cleaners in respect of Common Areas, lighting of Common Areas etc. The Management Company will usually retain Property Managers, known as Managing Agents, to take over these responsibilities.

In certain Developments where a significant number of the houses are purchased by investors for rental purposes, there is often very little reason for those investors to participate actively in the management of the Housing Development. In such circumstances particularly prior to the enactment of the MUD Act, very often the management of the estate left a lot to be desired and the Common Areas could generally fall into disrepair, which could negatively affect the value of your property. Indeed it was quite common for residents to neglect to ensure that the Management Company filed its Annual Returns and this can result in the Management Company being struck off the Register of Companies. Reinstatement can involve High Court Proceedings which are very expensive and effectively the cost of

which must be borne by the House owners. The MUD Act places a statutory duty on the Directors of the Management Company to ensure that Annual Returns are filed and that the Directors properly report to their members.

WHO OWNS THE MANAGEMENT COMPANY?

The Developer establishes the Management Company at the very start of the Development, before the sale of any of the houses. The Company will be incorporated using the Developers nominees. As each house is sold, each buyer is obliged under their Contract to become a member of the Management Company. For example, if there are 100 houses / apartments then when all the units are sold, there will be 100 members of the Management company in addition to the Developers nominees. At this stage, once the development is fully complete, the Developer will transfer all his ownership of the Development to the Management Company and the Developer's nominees will resign their membership. The result is that all of the house / apartment owners will own the Management Company which is the freehold owner of the Common Areas and has responsibility for them.

HOW IS THE MANAGEMENT COMPANY RUN?

The Company is obliged to hold an Annual General Meeting and at that meeting the directors will be appointed by the members from the membership of the Company i.e. the house owners. In effect a voluntary committee is appointed to make sure that the Management Company performs its designated role.

This mechanism works very well provided all of the house owners take an interest in making sure that the Management Company performs its duties i.e. maintain proper insurance, retain maintenance men and cleaners in respect of common areas, lighting of the common areas etc.

Complying with the requirements of Company Law is a significant task over and above the other responsibilities we touched upon briefly earlier on. It should also be borne in mind that a Management Company is a limited liability Company and, as such, must comply with all the requirements of Company Law, which will include the filing of Annual Returns in the Companies Office and the requirements to

maintain certain Statutory Registers such as Registers of Shareholders, Directors etc. In effect, there will be an ongoing cost in legal and accounting terms in having the Management Company. Despite the appearance of this being quite cumbersome, there is no reasonable alternative to this mechanism. For this reason the Management Company will require a Solicitor, an Accountant to produce audited accounts, a Company Secretarial advisor to ensure that all filings are made on time and correctly in the Companies Office and a "Managing Agent" to co-ordinate the various professional advisors and deal with the day to day administration and performance of the duties of the Company. The Management Company will usually retain Management Agents. The performance of the Management Company in maintaining the building will have a direct effect on the value of the houses.

What is the difference between a Management Company and a Managing Agent?

A **Management Company** is effectively a legal entity (a Company) owned by the house owners for the purpose of owning the freehold interest in the Development and being legally responsible for its management. The Directors of the Management Company will be a number of house owners who are voted in by their neighbours to be responsible making sure the Management Company performs all its legal duties. These Directors are a voluntary committee and ordinarily would not have the time or expertise to manage the Development on a day-to-day basis.

Therefore the Directors of the Management Company require professional assistance to co-ordinate the legal and accounting obligations, to demand and account for the Service Charge, to set budgets, to employ cleaners and maintenance people on the behalf of the Management Company, to monitor standards, to provide assistance in case of emergency e.g. flooding, to insure the building at a competitive price. The list goes on and on. This type of professional assistance is provided by "**Managing Agents**" who will charge an annual fee for their services.

Why do I have to pay a "Service Charge"?

It should be noted that each House owner effectively is obliged under their Lease to contribute a Service Charge to pay the Management Company for discharging its functions such as insuring the Common Areas, employment of grounds men to tend planted and green areas, repairing the service roads, paying the electricity and other service charges relating to common lighting, payment of legal and Accountants fees in respect of compliance with Company Law requirements and the preparation of Accounts and the filing of Annual Returns in the Companies Registration Office.

Difficulties can often arise when certain house owners refuse or neglect to pay their Management Charge. It may require the issuing of Legal Proceedings or a Court Order to make such House owners pay. Obviously, this can give rise to legal costs. As such, if there are a number of bad debtors in any particular Housing Development, this will lead to an increase in the Service Charge payable by the people who pay regularly as they will, in effect, be obliged to make up the shortfall from the people who are slow to pay or neglect to pay. As such, it is important for the Management Company to keep a tight rein on late payers in such circumstances.

What protection do I have if the service charge is too high?

The first piece of advice that we give is that you should never rely upon a telephone complaint to the Management Company or the Managing Agent as the sole means of airing your grievance. You must always put your complaint in writing and keep a written record of your complaint. We also advise that you should never hold back on paying the service charge or ground rent without taking full legal advice. If you do this, you may run the risk of Forfeiture proceedings being issued by the Management Company against you, and that could cause you considerable expense.

Your Deed of Purchase will ordinarily provide for proper accountability of the Management Company, such as a requirement to provide Accounts or, in the case of large expenditure, to supply copies of estimates before arranging major expenditure. House owners must appreciate that the annual Service Charge must, by necessity, exceed the annual running costs in order to build up a **"Sinking Fund".**

A Sinking Fund consists of surplus monies held by the Management Company for the purpose of meeting inevitable once off expenditure. For example, periodically the service road may need to be resurfaced or the grounds may need to be relandscaped. Failure to update and modernise the Common Areas leads to devalued property in the long run.

You can find more information on multi-unit developments, including management fees, on the website of the *Competition and Consumer Protection Commission*, ccpc.ie.

As you will note from the above summary, it is extremely important that, if you are having difficulties with your Management Company, **you inform us at the time of initial instruction**. As we will be required to obtain a separate set of Replies to Requisitions on Title (yes, separate from the set referred to in Chapter 6!) from the Management Company it is important that we are aware of any ongoing difficulties between you and the Managing Agent which may delay the issue to us of the Replies. We cannot send out Contracts to the Purchaser`s solicitor until we have these Replies. It is our experience that the delay in delivery of these Replies can often delay the issue of Contracts. Therefore, please ensure to inform us of any problem.

CHAPTER 9 – PLANNING PERMISSION

Where you are selling a property it is vital that Planning issues are in order.

Any property built since 1964 must comply with Planning laws. This arises under the Planning Act 1964. Certain smaller additions, such as domestic garages or rear extensions, may be exempt but this is not always the case. Furthermore, any property built since 1992 must comply with stringent Building Regulations as to the material used in construction and the manner of construction of the property.

The Local Authority (generally the County Council) is in charge of administering Planning law in Ireland. The Local Authority is also responsible for prosecuting persons who do not comply with the Planning laws. They do not, however, certify that a property either complies or does not comply with Planning Permission.

Prior to a property being erected, Planning Permission is sought. If successful, Planning Permission is granted. If unsuccessful, the Planning Permission is refused. It is then up to the Developer or builder to construct the property in accordance with the Conditions of the Planning Permission and/or Building Regulations. If the Developer fails to build the property in accordance with the Planning Permission and/or Building Regulations, the Local Authority can issue Enforcement Proceedings in the Courts against the property owner to seek a Court Order that the property is either demolished and re-built or that required amendments are made to the building.

Although Enforcement Proceedings are quite rare, a Planning defect on a property is a significant Title issue which can affect the value of the property and its marketability. Therefore when a Lender grants a Mortgage to be secured on a property, they will require proof that the property complies in all respects with Planning Permission and/or Building Regulations. The evidence they rely on is a Certificate from an Architect or Engineer confirming that he has inspected the property and that it substantially complies with the Planning Permission granted and/or Building Regulations.

PLANNING DEFECTS

In the event there is a Planning defect, this must be notified by us, your solicitor, to the Purchaser`s solicitor. The Purchaser`s solicitor will in turn be required to notify the Lender of the problem and the Lender will then make a decision whether they wish to proceed to lend money on the security of the property, despite the fact that it is in effect a defective security. Obviously if the breach of Planning law is significant the Bank will not proceed with lending the money. If the breach is of minor importance, the Bank may be prepared to overlook any difficulty, usually on the basis that the borrower will regularize any difficulty by making a Retention Planning Application. Very often the Lender will hold back a portion of the loan funds pending the borrower obtaining the Retention Permission and furnishing an Architect`s Certificate certifying that all Planning difficulties have been resolved.

If we learn therefore, on receipt of initial instructions from you, that for instance you constructed an extension to your house since purchase for which you had not obtained the required Planning Permission, we will need to make immediate enquiries to ascertain if this is going to cause a problem with your sale.

ARCHITECTS CERTIFICATES

We will need to consult your Architect to undertake a survey of the building and to confirm that, where such an extension was constructed, whether Planning Permission was necessary and, if necessary, whether Retention Permission for the construction can now be obtained.

RETENTION PLANNING APPLICATIONS

If a Retention Planning Application is required to remedy a planning difficulty, then this could delay the sale for at least 4 to 5 months realistically. This is why it is so important that at the time you instruct us initially you inform us of any such unauthorized developments, so that a Retention Application may be submitted without delay. Where this is necessary we will still try to bind the Purchaser to a legally binding Contract which will be subject to the Retention Permission for the development issuing within a defined period and also subject to

you being able reasonably to comply with the Conditions of the Planning Permission. For instance, the Planning Authority may issue a Retention Permission but will likely make it subject to Conditions which would have been on a Planning Permission for a similar development had you applied for the Planning Permission pre-development in the first instance.

In the event that the Planning Authority refuses the Retention Application then it is clear that a serious problem exists and specific advice would have to be taken at that stage. Indeed, it may not be possible to proceed with the Sale; or alternatively you may be required to demolish the offending development with resultant loss in value of the property. It is of course possible to appeal the Planning Authority`s Refusal to An Bord Pleanala but this would delay the Sale further and in some circumstances the Purchaser may be entitled to walk away from the Contract at that stage.

As you will appreciate therefore, it is very important that you inform us immediately if there is likely to be a Planning issue with the property.

CHAPTER 11 – WHAT COULD POSSIBLY GO WRONG?

In Chapters 4 to 6 we covered all the documentation which must be gathered in advance of preparation of Contracts and explained how, under the newly implemented Law Society 2019 Contract procedures a lot of the investigation is undertaken by the Parties before the Contract is signed, with the expectation being that once the Parties are happy with title and have signed Contracts, the Sale can close within 2 weeks once the Bank issues the Loan to the Purchaser.

All the work has been done to ensure the Parties are happy to bind themselves to the Contract. It is only a matter of waiting for the Loan funds to issue. What could possibly go wrong?

Sometimes problems can arise, despite the best efforts of both sides. Some of these problems will arise before Contracts are signed. Sometimes Contracts will be signed by the Parties in the expectation that they can resolve these problems shortly after the signing of Contracts and the Contracts are signed subject to the resolution of the problem. We examine some of those problems below:

Unregistered Rights-of-Way

1. If the property is accessed by an unregistered prescriptive Right of Way i.e. one arising by long usage over the decades but which is not registered then this can sometimes cause a problem. It is now necessary for a Purchaser to acquire the registration of Rights-of-Way benefitting the property; eg, a laneway leading from the public road to the property going over the neighbour`s land. There may be a reasonable assumption that the neighbour will not object to the registration of the Right-of-Way. Afterall, it has been used uninterrupted for the past 30 years. Why would a neighbour object to the registration of the Right-of-Way over his folio? People have different reasons for objecting. Some incorrectly believe that the registration of the Right-of-Way will affect the value of their

property. Others see it as an opportunity to extract money from the Seller. If the neighbour declines to co-operate the Seller may be obliged to go to the expense of filing an Application with the Property Registration Authority to register his Right-of-Way. This could delay the Sale by up to the year. In those circumstances the Purchaser may not be prepared to wait and the Sale could fall through.

Negative Equity Sales

2. Negative Equity Sales occur where the sale proceeds are less than the outstanding Mortgage. These types of Sale were more frequent after the 2008 property crash and are not as frequent now. Where however a Sale does occur in these circumstances this could inevitably delay the completion of the Sale as it will be necessary to seek the Lender's consent to the sale of the property and deal with arrangements regarding any residual debt. Even where the Lender may have agreed with you directly to the sale in principle, we as your Solicitor will still be required to deal with your Lender so that there is a precise understanding as to the circumstances in which they will furnish a Discharge of the Mortgage. This will in turn require us to ensure that, in complying with the Lender`s requirements, we can in turn comply with our undertaking to furnish a Discharge to the Purchaser's solicitors as soon as possible after the sale completes. For instance, your Lender may insist that the balance outstanding on your loan not covered by the proceeds of sale is covered by another Loan facility secured on other property owned by you or guaranteed by a Third Party. All of this could delay your Sale.

Housing Estates and Apartment Blocks

3. As part of the Sales process where we are instructed in the sale of Housing Estates properties or Apartment Blocks, dealing with the due diligence enquiries of the Purchaser's Solicitors under the Multi Unit Development Act ("MUD"), we are required to procure a set of documents from the Management Company for delivery to the Purchaser`s solicitors at the time of delivery of Contracts (see Chapter 8). Where the Management Company fails to provide the documents or delays unreasonably in delivering the documents this will inevitably delay the completion of your Sale. Sometimes this can arise where there have been problems with the Management Company or where you, the Seller, have been in

dispute with the Management Company over some issue or have not paid your Service Charge (maybe for some very justifiable reason). Where you may be aware of some issue which might cause delays in getting co-operation from the Management Company it is important that you inform us immediately.

Planning Compliance issues

4. We have already covered this subject in detail in Chapter 9. You may sign a Contract subject to the issue of a Retention Permission. The issue of the Retention Permission may not however be the panacea anticipated as the Planning Authority may require compliance with some Conditions which may not be within your power or compliance could be very expensive. In that event we will be required to advise you in respect of any non-compliance issues with Planning Permission and Building Regulations and liaise with your Architect/Engineer in respect of resolving any such issues and/or with the Purchaser's solicitors in respect of same. Ultimately it should be possible to reach a resolution but there may be delays.

Boundary Issues

5. When you acquired the property previously it may not have been appreciated by your previous Solicitor that there were mapping problems. That is, that the boundaries of the property on the ground are not accurately reflected by the boundaries of the property as marked on the map on your Title Deed. This may require you to seek the agreement of your neighbour in entering into a Deed of Rectification to correct the boundaries, but what if the neighbour is not willing to co-operate? Boundary issues will require us to enter into correspondence with your neighbour, with the purchaser's solicitors and/or brief Architects or Engineers to prepare revised maps and/or the preparation of a Deed of Rectification of a Boundary.

Outstanding Property Taxes

6. We have already covered the issue of Property Taxes in Chapter 4. Circumstances, can arise where a sale cannot close because you, the Seller, are not in a position to provide Certificates to confirm payment of or exemption from outstanding Property Taxes. In fairness to you, this may not be your fault. Perhaps you inherited the property and had assumed everything to be in order and then

ascertain that the Local Authority or Revenue Commissioners are insisting on payment of Penalties and Interest before they will release the Certificates. This will inevitably delay your Sale.

Non-resident Vendors and PPS Numbers

7. While we cover this subject in more detail in the next Chapter, if you are a Non-resident Vendor (Seller) and if you do not have an Irish PPS Number then you will be obliged to apply for one to the Department of Social Protection. You cannot now complete the sale of property in the Republic of Ireland without having a ROI PPS Number. This could delay your Sale where, for some personal or historical reason, the Department delays in issuing a PPS Number to you.

Third Party Notices

8. With the best will in the world and with both Parties co-operating fully, you reasonably expect your Sale to complete within the next week once the Purchaser gets his Loan Funds. Then a Notice is served on you by the National Transport Authority (NTA) that they intend to compulsorily acquire the front garden of your house (or the greater part of it) and those gardens of your neighbours for the extension of the public road in front of your house. While ultimately all house owners are compensated for this property loss this will be of little comfort to you and the Purchaser where your Sale price has been agreed on the basis of the full property and the Purchaser has obtained Loan Approval from his Bank on the basis of that same property. There are so many complications which can arise in such a situation that we cannot deal with it in detail here. Suffice to say that such a Notice can cause a Sale to fall through or inevitably result in a huge delay in the sale of the house. Needless to say, if you as a Seller have heard of plans by a Third Party, such as the NTA or the Local Authority, to serve a Notice on your property it is extremely important that you inform us immediately. We may be able to cover all of this in your Contract of Sale where the Parties will sign under no misunderstandings to the impending Notice and both Parties can complete without difficulty.

Difficulties with Purchaser`s Loan Facility

9. If the Contract is subject to the Purchaser obtaining Loan Approval then the Sale cannot be completed until the Loan Approval issues. More often than not, after the Loan Approval has issued the Sale cannot be closed immediately as the Purchaser is obliged under the terms of his Loan Approval Letter to comply with certain Special Conditions, one of which is to put Life Cover in place. Sometimes there can be difficulty surrounding this where, for instance, the Purchaser has had illness in the past and therefore experiences difficulty in securing the necessary Life Assurance. More recently, even where Loan Approval has been obtained and Life Assurance is in place the Sale is falling through because of the conditions now prevailing in Covid 19. For instance, some Banks have been reluctant to confirm that funds will be available where one of the Borrowers is in receipt of a Covid Subsidy payment. In many instances Purchaser`s solicitors are insisting in putting a Special Condition in the Contract that the Purchaser will be entitled to withdraw from the Contract even after the signing of Contracts where the Bank withdraw Loan Approval due to Covid or similar circumstances

As you will see therefore the deal is never really done until the Sale is completed and the Purchase Monies have been received in your Solicitor`s Client Account! A lot can go wrong between the signing of Contracts and the completion of the Sale.

CHAPTER 12 – CAPITAL GAINS TAX AND RELATED ISSUES

As you are selling an asset, you will need to consider whether you have Capital Gains Tax (CGT) liability. If you have a liability and depending on the date of your Contract for Sale, the due date for payment can sometimes arise immediately after your sale.

What is Capital Gains Tax?

CGT is a tax you pay on any capital gain (profit) made when you dispose of an asset. It is the chargeable gain that is taxed, not the whole amount you receive. The chargeable gain is usually the difference between the price you paid for the asset and the price you disposed of it for. CGT is payable by the person making the disposal.

CGT is payable at 33% on the gain made; that is on the net gain after computation of the Costs of acquisition (purchase) and the Costs of Sale. Such Costs can generally comprise your legal costs of purchase, your legal cost of sale, including Estate Agents fees. You can also claim relief for any costs incurred by you in enhancing the property for the purpose of your sale.

Further information about CGT can be found on the Revenue Commissioners website at https://www.revenue.ie/en/gains-gifts-and-inheritance/transfering-an-asset/index.aspx It`s principal features are:

(a) Self-Assessment applies to all Capital Gains Tax liabilities for all persons, i.e. the self-employed and others directly assessed to tax, individuals on PAYE and persons not already within the tax system.

(b) Returns of Capital Gains must be made by taxpayers without being requested to do so by Revenue.

If the property was your principal private residence for your full period of ownership, you may be entitled to a full exemption. If the property was your principal private residence for only part of the period of your ownership, then partial relief may apply. It should be noted that the exemption is restricted to dwelling-houses (including grounds of up to one acre). If there is more than an acre, then the exemption will not apply to that excess portion. The exemption is available if, throughout the individual's period of ownership, the house had been occupied by the individual as his/her only or main residence or, under certain circumstances, as the sole residence of a dependent relative. In the case of a married couple or civil partners living together, only one house can qualify as the only or main residence of both spouses or civil partners. This exemption is not affected by the granting of relief under the rent-a-room scheme (Section 216A TCA 1997).

The rules around partial exemption are complex and you are referred to the information on the Revenue Commissioners website at https://www.revenue.ie/en/gains-gifts-and-inheritance/transfering-an-asset/cgt-exemptions.aspx or we advise that you speak to your accountant or tax adviser.

As flagged earlier, the Tax can fall due for payment quick quickly. Oddly enough, the Tax must be paid before the Return must be filed.

The Tax Year is divided into a set of two periods for CGT payment purposes, as follows:

- ***'initial period***' - 1 January to 30 November, both inclusive.
- ***'later period***' - 1 December - 31 December, both inclusive.

The due dates for payment of CGT are as follows:

- Disposals in the initial period: Tax due by 15 December in the same tax year.
- Disposals in the later period: Tax due by 31 January in the following tax year.

Generally you will need to retain an accountant or tax consultant if you are not in a position to deal with the matter yourself.

Capital Gains Tax – Non-Resident Vendor

Where a Seller is non-resident and is selling a property in the Republic of Ireland, it is necessary to discharge any potential Capital Gains Tax liability prior to the Completion of the Sale or alternatively the Revenue Commissioners may issue a Form CG50A on foot of an Undertaking from the Seller's solicitor that the Capital Gains Tax will be discharged after the sale from the Proceeds of Sale. One way or the other however, your Solicitor must ensure that your Capital Gains Tax liability is discharged from the proceeds of sale before releasing the proceeds to the Seller.

Capital Gains Tax Clearance Certificate

Where the Sale Proceeds exceed €1,000,000 (One Million Euro) in the case of sale of houses or apartments and €500,000 in all other cases (such as sales of land), the Purchaser's solicitor must deduct 15% of the purchase proceeds and remit this payment to the Revenue Commissioners unless the Seller`s Solicitor produces a Capital Gains Tax Clearance Certificate (Form CG50A) to the Purchaser's solicitor on Completion. It is extremely important that once Contracts have been signed the Application is submitted for the Clearance Certificate. This will generally be submitted by your Accountant as the Application is made Online to the Revenue Commissioners and generally the Seller`s Accountant is the legally recognized Agent for such purposes bearing in mind that your Accountant will in turn submit your Capital Gains Tax Return.

This is a very complex Tax and further very helpful information is available on the Revenue Commissioner`s website (see web links above) but the information which we have given you in this Chapter should set you on the correct road where you are considering selling your property.

CHAPTER 12 – REDEEMING YOUR MORTGAGE AND RELEASING THE NET PROCEEDS OF SALE TO YOU

Redemption of your Mortgage

As part of the sales process, we, as your solicitors, will be obliged to repay (redeem) your mortgage from the proceeds of sale pursuant to a Solicitor's Undertaking which we must deliver to the Purchaser's solicitors prior to completion of the sale.

The precise amount required to repay your mortgage is a moving target as interest is accumulating at a daily rate and your monthly repayments will continue until the sale closes and the mortgage is fully repaid. We will request a written mortgage redemption figure from your Bank at the outset of the transaction, which typically is valid for a month from the date the Bank send it to us. You should also note that such mortgage redemption figure furnished by a bank does not reduce by the amount of any subsequent mortgage repayment as such repayment comprises both interest and capital.

Given that it can take some time to obtain a fresh mortgage redemption figure from your bank, an up-to-date redemption figure may not be available on the date your sale closes. Waiting for an up-to-date redemption figure from your bank after the sale closes is not an option as interest continues to accrue at a daily rate and, in any event, we would be in breach of our Undertaking, which we have given to the Purchaser`s Solicitor, to immediately clear the mortgage from the proceeds of sale. As a consequence, we are obliged to rely on the most up-to-date written redemption figure made available to us by the bank and we are obliged to ignore any subsequent mortgage payment made by you. On occasion, this may mean that a larger payment will be sent to your bank than is required to redeem your mortgage. In those circumstances, the bank will refund any overpayment directly to you.

Our priority will be to redeem your mortgage as soon as possible after the Sale in order to minimize your cost.

Delivery of net proceeds of sale by Bank Transfer

We find generally that most of our clients prefer to receive the net proceeds of sale by Bank transfer, rather than by cheque. If our clients prefer, we can remit such sale proceeds to their nominated Bank Account by electronic transfer of funds.

Given the dangers however of cyber crime, we must be extremely careful when it comes to transferring your money over the internet; because that is actually what we are doing. This is more commonly known as "*e-Transfer* ". e-Transfer interception fraud occurs when money is being sent via e-Transfer from one Bank Account to another, using an email address or phone number. Fraudsters will intercept the online transaction and divert the money to a different Bank Account.

Clients and business can be victims of an increasingly prevalent scam whereby criminals hack into personal or business email accounts, intercept any messages concerning pending payments and send an email from the hacked Account changing the details in their favour. For instance, on completion of the Sale, you the Seller could send your Account details to us by email, detailing the Account to which we are to lodge the net proceeds of sale. The problem is that your email could be intercepted by a fraudster who could replace your Account details with his Account details and the Solicitor could innocently transfer the sale proceeds to the diverted Account.

The Law Society has reported many cases of e-mail fraud. For instance, in January 2019 it reported circumstances where a client received an e-mail purportedly from the solicitor. However, rather than the solicitor's usual email address ending in ".ie", the email came from a ".com" address. The client did not identify this difference and responded to the email; hence was corresponding with the fraudster. It appears that the fraudster forwarded the contents of the email to the solicitor. Again the fraudster used a slightly amended email address for the client by including an extra "i" in the address. Again, the solicitor did not notice this difference and corresponded with the fraudster.

The client was requested to forward the balance of a purchase deposit of €24,000 to a fraudulent Bank Account. Believing this to be an authentic email from the solicitor, the client transferred the money. It was not until after Christmas holiday that the fraud was discovered and the money has since been withdrawn from that Account.

What we do in Morgan McManus

We will not accept Bank Account details from clients by e-mail unless subsequently verified by telephone (and that telephone call will not be to the phone number given on your latest email!). Therefore at the start of a transaction, where we meet with the client or correspond by Post, we request the client to complete a template **Bank Account Details and Authority to Remit Funds** form and to sign it. We request the client to return it to us either by post, hand-delivery or by fax back to us. We also request the client to furnish a copy Bank Statement to allow us verify Bank Account details. We warn our client **not to email their Bank Account details to us** as those details could be hacked.

Where it is only possible for our client to email us (for instance where they are abroad and there may be urgency in transmission of funds) we will exchange Account details by email but we will ensure that the last 4 digits are excluded and those 4 digits will be verified by phone.

The security of your money is paramount to us in every circumstance in which we transfer your money to you.

CHAPTER 13 – COSTS AND ACCOUNT

Professional Charges and Expenses

At the earliest possible stage of the Conveyancing transaction, we will forward to you a written Estimate of Costs, detailing what the legal charges are likely to be if your transaction is successfully completed. A Solicitor is required, under Section 150 of the *Legal Services Regulation Act 2015* to issue a Notice of Costs to their client as soon as reasonably possible.

This Estimate is divided into two parts. First there are the fees due to the Solicitor and these will be agreed at the earliest possible stage. Secondly there are sums of money spent on your behalf. These are normally called "Outlays".

OUTLAYS

The main items of "Outlay" are as follows:-

1. **Mapping**

This is an extra cost which arises where the title to your property is registered in the Registry of Deeds. As advised in Chapter 7 ("*The system of Ownership of Land in Ireland*") new laws were introduced in 2011 requiring Registry of Deeds properties to be registered in the Land Registry. The burden to do this falls on the Purchaser, but under the standard Law Society Conditions of Sale, the Seller is obliged to furnish a Land Registry Compliant Map to facilitate the Purchaser in the process. Such a map must be prepared by an Architect or Engineer, and it is important to retain someone who is familiar with Land Registry mapping rules. We will advise you of the cost likely to arise on this requirement.

2. **Local Authority Letter on Roads & Services**

We, as your Solicitor, will be required to establish that the Roads and Services (such as Public Lighting) have been taken in charge by the Local Authority (the County Council). For instance, you may have purchased a new house in the course of construction from a Developer in a housing estate some years earlier. In obtaining Planning Permission for the Development the Local Authority would have inserted Financial Conditions in the Planning Permission, one of which was a condition requiring the Developer to lodge a Financial Bond with the Local Authority to ensure that Services are satisfactorily completed, so that the Local Authority will be happy in due course to take over responsibility ("take in charge) those services.

This enquiry can only be done by the Seller`s Solicitor requesting a Certificate from the Local Authority and, assuming that the services have been taken in charge, the Local Authority will furnish a Certificate to confirm this. The cost however of such a Certificate is generally in the order of €70, which is your responsibility to pay.

3. **Registration Fees.**

These are paid to the appropriate Registry each time a transaction is registered. For example, if you have a Mortgage on your house the Mortgage will be registered on your Title Deed. We will be required on completion of your Sale to deliver a Discharge document from your Bank to enable that Mortgage to be removed from the Title document in the Registry of Deeds / Land Registry and there will be a fee payable to the relevant Registry for that transaction. It should be noted that these fees are increased by the Land Registry from time to time.

4. **Taking up your Deeds from your Bank**

When you instruct us to represent you in your Sale we will be required to take up your Deeds from your Bank. The Bank will charge a fee before the release those Deeds to us to enable us prepare your Contract of Sale. Furthermore, some Banks will also charge a further fee before they will sign the Discharge (referred to at paragraph 3 above).

5. BER Certificate and Advisory Report

A Building Energy Rating (BER) certificate indicates your homes energy performance. It is similar to the energy label for household appliances. The certificate rates the energy performance of your home on a scale of A-G. A-rated homes are the most energy efficient and will tend to have the lowest energy bills. G-rated are the least energy efficient.

Typically your Auctioneer will have been required to produce this in the course of marketing the property. If so, you should arrange to get a colour copy from the Auctioneer, or in the alternative, an electronic version can be e-mailed to your solicitor. Please note that there are very substantial fines for failure to furnish a purchaser with a BER Certificate. In fact, the property should not be put on the market by your Auctioneer; yet in our experience many Auctioneers place the house on the market without procuring the Certificate / Report. You will need to instruct a BER Assessor who will visit your house to undertake the inspection. Further information is available on the website of *Sustainable Energy Authority of Ireland* (SEAI) www.seai.ie

6. Fee payable to Management Company

We have already dealt with this in Chapter 8 of this Guide. Where there is a Management Company concerned in the management of common areas and services for your Apartment Block or estate, you will be obliged to procure a Report from the Management Company for delivery with Contracts to the Purchaser`s solicitor. There will be a fee payable for this Report; usually something in the region of €400. The Management Company will also generally refuse to issue their Report if any part of your Service Charge is outstanding.

WHAT IF THE TRANSACTION DOES NOT PROCEED?

If the transaction does not proceed to completion a Bill is normally issued for the work done. Your solicitor will charge a fee which bears the same proportion of work done to that which would have been done if the matter completed.

When is payment made?

Generally your solicitor will require payment for these outlays to be made at the start of the transaction. While ultimately there may be sufficient funds from the Sale proceeds of your house (after your Loan is redeemed) there is no way that a solicitor could take on the payment of these substantial outlays pending completion of the Sale.

The Invoice and Accounts

In every Conveyancing transaction, all the money passes through the Solicitor, with the exception of any Booking Deposit paid to the Auctioneer.

Once we complete the Conveyancing transaction, we will prepare an Invoice (generally in accordance with our Estimate of Costs) and Statement of Account. The Invoice and Account which we draw up will contain a full breakdown of the professional fees, VAT, the sale price of the property, Land Registry fees and any other expenses and money already paid. It will show the monies paid to your Bank to redeem your Mortgage and in turn the net proceeds payable to you.

CONCLUSION

We do hope that this Guide has been of assistance to you in understanding the steps involved in the legal processes in selling your dwelling house.

We hope that you will instruct us in your house sale.

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