



LAW SOCIETY  
OF IRELAND

# SELLER'S LEGAL PACK FOR PROPERTY BUYERS BILL 2023

Department of Justice

8 September 2023

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# Executive Summary

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The Law Society is grateful for the opportunity to make a submission on the *Seller's Legal Pack for Property Buyers Bill 2023* ('the **2023 Bill**'). We have drafted a document that reflects the Law Society's perspective on this key area of legal practice.

Over the last number of years, the Law Society has made several submissions and recommendations to highlight our concerns about the significant and longstanding delays in the Irish conveyancing process. While, according to the Institute of Professional Auctioneers and Valuers (**IPAV**), the average time for completion of a property sale may be 10.4 weeks, that number masks the fact that many sales take far longer and in the most serious cases the problems that Law Society's conveyancing Committee of experts estimates can delay the completion of the process for up to 5 years (or 260 weeks).

Many factors can cause delays, for example, delays by banks or financial institutions in releasing the title deeds or providing clarity on the redemptions value due on any residual mortgage on the property. In cases of unregistered or Registry of Deeds title, complex first registration applications may not complete in the Land Registry for many years, adding risk and costs to the conveyancing process. In another example, it can take up to eight weeks to obtain a letter from some local authorities confirming roads and services are 'in charge' of that local authority.

The Society believes that delays in the conveyancing system are leading to a failure to complete transactions and is concerned about the adverse effects on the current residential housing crisis in Ireland. We welcome the commitments by government in *Housing for All - a New Housing Plan for Ireland* to achieve a steady supply of housing with economic, social, and environmental sustainability built into the system.

The Society unequivocally supports reforms in the conveyancing process to reduce delays. Yet much needed reforms must be pursued with broader policy goals in mind, including the overall movement towards eConveyancing, and systemic reforms to promote efficiency in all transactions.

The Society recognises that the current conveyancing system is long overdue systemic reform. A system that involves many interdependent parties, means that a delay by any one of those parties has a significant knock-on impact on all parties. These parties include (but are not limited to):

- the Seller;
- the Buyer;
- an Auctioneer or Estate Agent;
- a Mortgage Broker;
- the Buyer's Bank or other Financial Institution;
- the Buyer's Solicitor;
- the Seller's Bank or other Financial Institution;
- the Seller's Solicitor;
- Local Authorities;
- Tailte Éireann;

- The Revenue Commissioners;
- the Surveyor;
- the Valuer.

The Law Society has identified significant inefficiencies in the conveyancing system which need to be addressed. Reform in these areas will have a significant and positive impact on that system to the benefit of Sellers, Buyers, the housing market, and Irish society as a whole. With this goal in mind, the Law Society makes this submission under the following headings:

1. Law Society's observations on the 2023 Bill.
2. Recommendations from the Law Society to improve the conveyancing process:
  - Utilise an "All-of-Government" approach to conveyancing reforms (including the "Six Necessary Actions" found in section 4.1 of this document);
  - Fully embrace the global trend towards eConveyancing;
  - Make specific suggested reforms to conveyancing law;
  - Increase the use of digital technology to reduce conveyancing delays.

As a part of those recommendations, the Law Society outlined six necessary actions to consider in order to enhance efficiencies and reduce delays in the conveyancing process:

1. Adherence to the Certificate of Title system's agreed terms and timelines by all banks and financial institutions operating in the Republic of Ireland;
2. Adoption by all Local Authorities of digitalised and standardised forms of request/reply and reasonable fees and turnaround times for 'in charge' letters;
3. Roll-out of a central document management system at the PRA;
4. Introduction of a planning amnesty;
5. Modernisation and digitalisation of Statutory Declarations and Statements of Truth;
6. Review of the additional layer arising from property taxes.

The Law Society is dedicated to ensuring that conveyancing becomes a cost-efficient and timely process. Towards this goal, the Law Society is actively engaged with the Department of Justice to seek law reform on issues that are causing delays in the conveyancing process. The Law Society is also engaged with lenders and other stakeholders to improve their contribution to, and their engagement with, the conveyancing process and the property transaction timeline.

The following note provides more detail regarding the Society's perspective on how to realise meaningful and durable reforms to the Irish conveyancing system.

## Background

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Delays in the conveyancing process often lead to noncompletion of real property conveyances. According to the IPAV, it takes average of 10.4 weeks from a property sale being agreed to a contract being signed, with another five weeks until the deed was signed. Indeed, the experience of legal practitioners is that delays may last significantly longer and in the worst cases sometimes last for up to 5 years (or 260 weeks).

The property transaction timeline begins at the time of the decision by a Seller to sell a property and ends when the title to a property becomes registered in the Land Registry, or, in the event of a mortgage to purchase the property, when the Documents of Title are returned with a Certificate of Title by the Buyer's Solicitor to its bank or lender. It can take several weeks or indeed months from the Seller's decision to sell the property to the time the property goes 'Sale Agreed', if indeed the property sells.

According to legal practitioners, the Law Society's introduction of the Pre-Contract Investigation of Title (**PCIT**) system in 2019 (e.g. the timeline from the date of Contract of Sale to the date of completion of the sale) has reduced delays. However, delays during the pre-contract period continue to be experienced by Buyers, Sellers, solicitors and other stakeholders in the conveyancing process in the time between date of 'Sale Agreed' and the date when the Contract is formed between the Buyer and Seller.

## Observations on the 2023 Bill

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The Law Society agrees with the objectives of the 2023 Bill. We also believe that however well-intentioned the Bill may be, there seems to be unintended consequences that could promote inefficacy at the individual transaction level and increase costs for already overburdened Sellers. It is likely that these unintended consequences, instead of ameliorating delays in the conveyancing process, may increase those delays. To address those concerns, we have highlighted relevant actions and reforms which we believe will, if implemented, will have the intended outcome of speeding up and simplifying the conveyancing process.

### ***1. Additional costs for the Seller***

In producing the Sellers Legal Pack, according to the provisions of the Bill, Sellers would incur significant advance costs in speculation of a proposed sale of their property, while that sale may never then be realised. To produce the Seller's Legal Pack, a property owner who wishes to sell their property must first incur significant costs which, depending on the circumstances, may be a high risk for the Seller to bear. Such additional costs could be enough to deter the Seller from putting their property on the market. The net effect of this could reduce housing market supply.

It is not uncommon for sales to fall through, or Sellers to temporally or permanently remove the property from the market for personal or other reasons or for the property simply not to sell. In these circumstances the Seller would be exposed to 'sunk costs'

or punitive cost in preparing the Seller's Legal Pack, thereby overall increasing costs to the consumer.

Currently, as part of the process of selling a property, there is no established practice or obligation on Sellers to generate public registry searches, so this requirement would considerably add to a Seller's costs. The Buyer would have to run a full set of updated searches at the point of contract and/or completion of the sale of the property.

### ***1.1 Inability of Sellers to Meet Costs***

Moreover, not every Seller has funds available to pay the significant costs associated with putting the property for sale. This is significant for Sellers under financial pressure and also in situations where Legal Personal Representatives of Estates are charged with disposing of a deceased's property without funds available to them to pay the costs needed to prepare the Seller's Legal Pack. In these situations it may mean that Sellers would need to take out a loan, or seek some other form of financial assistance, to be in a position to put the property for sale. This would create an undue burden on Sellers and may lead to extra costs and delay in bringing the property to market, thus potentially inhibiting or reducing the housing market supply.

### ***1.2 Extra costs for documentation updates***

The Bill envisages a time gap between the production of the Seller's Legal Pack and the property going 'Sale Agreed'. Much of the information and documentation gathered at or just before the point of the property going 'Sale Agreed' is time sensitive and needs to be completely up to date for sale. Preparing documentation too soon in advance will create additional work and create additional costs for the Seller since the much of the information and documentation will need to be updated again prior to the formation of the contract.

Under the current system gathering the documentation and information on or about the date of 'Sale Agreed' delivers greater cost certainty and a lower cost solution, as there is a much lower risk of a 'Redo' or need to update of information. In the experience of the Society, much of the information gathered in the period preceding the issue of the draft Contracts for Sale is of limited use (e.g. service charge statements/receipts), unless it is up to date and current at the time of the Contract. Three items listed in Section 3(1) are time sensitive: BER Certificates, searches and LPT history of the property.

## ***2. Additional conveyancing delays***

As currently drafted, the Bill has a tight time-frame on the pre-sale production of title information and, unless there is an obligation and consequence on all parties to supply documentation within a specified time period to the Seller's solicitor, it may take weeks or indeed months before all the documentation is prepared and gathered and the property ready to go to market. If the property cannot be marketed before the Seller's Legal Pack is produced, this would impede and have an adverse impact on the ability to speedily bring properties to the market.

### ***2.1 Increased transactional inefficiency of a two-phased process***

Section 3(3) of the Bill states that the Seller's Legal Pack shall not include any other documents other than those set out in the preceding sub-section. This could have the effect of forcing Sellers to undertake preparations for sale in two phases (one for the prescribed documents and the other for the non-prescribed documents). This runs counter to the new efficiencies created by the pre-contract investigation of title (PCIT) system which front-loads the work for Buyers and Sellers to a largely single workflow at the correct and most efficient point in time in the conveyancing transaction timeline.

### ***2.2 Limited title documents required in the Seller's Legal Pack***

Adhering to the Bill as drafted would limit a Seller's disclosure about the property, through the proposed compulsory list of requirements, and by stating that only those listed shall be given to a Buyer. From the experience of legal practitioners, this 'One Size Fits All' approach does not match what Buyers require to be satisfied in respect of the property being sold, nor does it meet the obligations placed by lenders on solicitors in order to prepare ahead of Certifying the Title of the property to the Buyer's bank or lender.

Therefore, should the Bill pass as currently framed, the Committee envisages that in many sales there will be a need to do a supplementary disclosure of matters of the title to the property after it goes 'Sale Agreed' to compensate for the shortfall in the title to the property initially presented in the Sellers Legal Pack.

### ***2.3 Seller's solicitor dealing with queries on title from buyers***

The idea of as presenting a pack of title documentation and a draft Contract for Sale is well-intentioned. Yet providing a pack of documents to every person who views a property, or who expresses an interest in buying the property, instead of to one successful Buyer, as has been the case up to now, would create additional questions on behalf of prospective Buyers.

If the Bill is passed, it is reasonably foreseeable that the Seller's solicitor will have to deal with title enquiries from multiple potential Buyers, rather than the actual Buyer when the property goes 'Sale Agreed'. This will result in increased costs to the Seller. While this is often the case for properties sold currently by auction, auction sales are rarer and often the cost of transacting in this way for Sellers is higher than in private treaty sales due to the multiple queries from potential buyers that must be dealt with and answered.

## ***3. Punitive deadline on Sellers***

Section 5 of the Bill inserts a punitive deadline on all title documents as they must be "dated no earlier than the date that falls one year before the first point of placing the property on the market for sale". If the sale does not proceed within that period, further costs will be incurred to refresh and update the title information.

#### **4. *Extraneous contents of the Seller's Legal Pack***

Some of the documents listed in section 3 of the Bill are currently not required to convey property or indeed do not exist in current Conveyancing Practice. For example, an Architect's Certificate of Compliance in respect of Building Regulations is not required where a Certificate of Compliance on Completion is issued by the Building Control authority. The Society also notes that there is no such document as a report summary in relation to public registry searches – the requirement to produce same under the Bill would add additional costs and would create further potential liability and reliance issues for the issuer of that report.

#### **5. *Contradicts the trend towards eConveyancing***

The Bill as drafted envisages the exchange, at the individual transaction level, of a pack of documents, either in hard copy or digital format. Such a requirement contradicts the trend towards increased digitalisation and modernisation of real property conveyancing processes. Instead, in an ideal world, the information required to be exchanged should be readily available and accessible, online to all parties involved in the transaction. Reform efforts should be addressed at realising an all-of-government approach to conveyancing, rather than introducing additional requirements to an already cumbersome and outdated process.

#### **6. *Dilution of the 'Caveat Emptor' principle***

The Bill provides that the Seller may provide a property surveyor's (physical condition) report as part of the Seller's Pack. This action could have the effect of contradicting the current law and doctrine of Caveat Emptor (the 'buyer beware' principle) which has been a key legal principle for centuries, most significantly with regard to the physical condition of the property. If this were provided for in the proposed legislation, even where the provision of the report is discretionary, the wider implications of this conflict with the current law will have to be considered. The Committee would expect this will have to be reviewed by the Law Reform Commission before a Bill of the Oireachtas would seek to introduce this measure.

# Recommendations

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## Recommendation 1: Utilise “All-of-Government” approach to reforms

The Law Society has been working for many years to improve efficiencies in the conveyancing process. The Society’s work has been particularly focused on the often-substantial delay between a property becoming sale agreed and draft contracts/title being issued to the purchaser, a period when a variety of issues which cause delays could arise. For example, in 2019, the conveyancing process moved to a system of pre-contractual investigation of title which front-loaded much of the work and led to a reduction in the period between post-contract and completion.

**Six Necessary Actions to improve & speed up the conveyancing process**

1. Adherence to the Certificate of Title system’s agreed terms and timelines by all banks and financial institutions operating in the Republic of Ireland
2. Adoption by all Local Authorities of digitalised and standardised forms of request/reply and reasonable fees and turnaround times for ‘in charge’ letters.
3. Roll-out of a central document management system at the PRA.
4. Introduction of a planning amnesty.
5. Modernisation and digitalisation of Statutory Declarations and Statements of Truth.
6. Review of the additional layer arising from property taxes.

In the Law Society’s submission to the Department of Finance of November 2022, the Law Society outlined a number of all-of-government reforms that could be undertaken to help reduce delays in the conveyancing process. As a part of those recommendations the Law Society outlined six necessary actions to consider in order to enhance efficiencies and reduce delays in the conveyancing process:

Further detail on these “Six Necessary Actions” can be found in the Law Society’s submission *Conveyancing – Timeline and Delay* to the Department of Finance of November 2022 [Appendix A].

## Recommendation 2: Fully embrace the trend towards eConveyancing

According to researchers at the University of Oxford

*[t]he establishment of a single system connecting all the agencies that supply information involved in property transfers can ease the conveyancing burden for firms or individuals. This single portal system is what is generally known as ‘e-conveyancing’, where all documents needed for a transaction are accessible to parties in a transaction through a single online platform.<sup>1</sup>*

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<sup>1</sup> University of Oxford Research, *The Future of Real Estate Transactions*, March 2019, available at [https://www.sbs.ox.ac.uk/sites/default/files/2019-03/FoRET-ReportFull\\_1.pdf](https://www.sbs.ox.ac.uk/sites/default/files/2019-03/FoRET-ReportFull_1.pdf).

For example, in 2010, the Australia National E-Conveyancing Development Limited (now known as PEXA) was established to implement a single, national e-conveyancing solution for the Australian real property market. The Australian government has imposed limits for mandatory compliance as of February 2023, leading to time and cost savings for parties to real property transactions.

Because of the importance of free alienation of real property for the Irish economy, an all-of-government approach to reform of the conveyancing system is necessary. All documents should be readily available online from the relevant authority, and documentation should be accessible through a single portal. Increased transparency and accessibility of government authorities responsible for providing the necessary documentation for real property conveyances would promote a frictionless property market, represent a net gain for the Irish economy, and could potentially help alleviate the current residential housing crisis.

In 2019, the Society made recommendations to modernise the conveyancing system to enhance efficiencies in the process. The Government has signalled a commitment to support the introduction of an efficient system of eConveyancing in the State. In order to continue to advance the eConveyancing Project, a number of legislative amendments (to the 1938 and 1964 Acts) and the making of court rules under the 2020 Act will be necessary to enable:

- Statements of truth to be used in conveyancing transactions; and
- Statutory declarations and affidavits to be made remotely and then signed and transmitted digitally.

The Law Society's submission to the Department of *Justice Statutory Declarations and Statements of Truth in Conveyancing* of January 2022 provides full detail on the recommendation [Appendix B].

### **Recommendation 3: Reforms to Conveyancing Law**

#### *Reform the Statutory Declarations Act of 1938*

This Act requires confirmation of various matters by way of statutory declaration in order to convey land and property. Statutory declarations cannot be made by electronic signature or via videoconferencing as section 2 requires that they "shall be signed by the person making the same in the presence of the person before whom it is made". In the absence of suitable amendment, this Act will continue to hinder digitisation of the conveyancing process in this jurisdiction.

#### *Reform the Registration of Title Act 1964*

This Act requires that various applications which form part of the conveyancing process are made with the support of an affidavit to be signed with wet ink, in the physical presence of a Commissioner for Oaths/practising solicitor, and physically delivered to the Land Registry. Again, these requirements present significant obstacles to expediting the conveyancing process.

## Recommendation 4: Increase reliance on digital technology

While technological advances in the conveyancing process may represent long-term efforts, such efforts should be considered when attempting to make systemic reforms. Given the growth of the technology sector as a part of the Irish economy, the government should seek public-private partnerships to help enhance the conveyancing processes. Reducing conveyancing delays would be a benefit for both technology companies and the wider economy.

For example, blockchain technology offers many benefits over current systems of land registration.<sup>2</sup> In 2016, Lantmäteriet (the Swedish Mapping, Cadastre and Land Registration Authority) in partnership with the private sector launched a project to study the possibilities of using blockchains as a technical solution for real estate transactions.<sup>3</sup> The project identified several IT solutions for using blockchain technology for real estate transaction that warrant further study.

Within commercial conveyancing, data room technology has been increasingly used internationally to speed real estate conveyancing.<sup>4</sup> Indeed data room technology is already being used for real estate auctions in Ireland.

## Conclusion

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Over the last number of years, the Law Society has made several submissions and recommendations to highlight our concerns about the significant and longstanding delays in the Irish conveyancing process. While, according to the IPAV, the average time for completion of a property sale may be 10.4 weeks, that number masks the more serious problems that the Law Society estimates can delay conveyancing for much longer and in extreme cases up to 5 years (or 260 weeks).

The Law Society recognises that the current conveyancing system is long overdue systemic reform, and unequivocally supports reforms in the conveyancing process to reduce delays. Yet much needed reforms must be pursued with broader policy goals in mind, including the overall movement towards eConveyancing, and systemic reforms to promote efficiency in all transactions.

The Law Society has identified significant inefficiencies in the conveyancing system which need to be addressed. Reform in these areas will have a important and positive impact on that system to the benefit of Sellers, Buyers, the housing market, and Irish society as a whole.

The Law Society is dedicated to ensuring that conveyancing becomes a cost-efficient and timely process. Towards this goal, the Law Society is actively engaged with the Department of Justice to seek law reform on issues that are causing delays in the conveyancing process. The Law Society is also engaged with lenders and other

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<sup>2</sup> *Ibid.*

<sup>3</sup> The Land Registry in the blockchain, A development project with Lantmäteriet (The Swedish Mapping, cadastre and land registration authority), Telia Company, ChromaWay and Kairos Future, July 2016, available at [https://ica-it.org/pdf/Blockchain\\_Landregistry\\_Report.pdf](https://ica-it.org/pdf/Blockchain_Landregistry_Report.pdf).

<sup>4</sup> *Ibid* (n 1).

stakeholders to reform their contribution to and their engagement with the conveyancing process and the property transaction timeline.

The Law Society is available to answer any queries you may have on the content of this submission and will be happy to engage with the Department on any proposed amending legislation.

# Appendix

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## **Appendix A**

Law Society Submission: Conveyancing – Timeline and Delay, Department of Finance, November 2022 [Attached]

## **Appendix B**

Law Society Submission: Statutory Declarations and Statements of Truth in Conveyancing, Department of Justice, January 2022 [Attached]



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# LAW SOCIETY SUBMISSION

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## CONVEYANCING – TIMELINE AND DELAY

DEPARTMENT OF FINANCE

NOVEMBER 2022

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## ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

## Introduction

The estimated average time lapse between the decision to sell and completion of the sale of property in this jurisdiction is seven months.

In its work to improve efficiencies in the process, the Law Society's Conveyancing Committee ('the **Committee**') aims to reduce the *Conveyancing Timeline Estimate* ('the **Timeline**') which is provided at page 7 of this document.

In 2019, the conveyancing process moved to a system of pre-contractual investigation of title which front-loaded much of the work and led to a reduction in the period between post-contract and completion. In turn, it allows borrowers' funds to issue in a more timely manner.

The Committee's work is particularly focused on the often substantial delay between a property becoming sale agreed and draft contracts/title being issued to the purchaser, a period when a variety of issues which can cause delay arise.

Those issues are outlined below under the following headings:

1. Lending Institutions
2. Local Authorities – Roads/Services In Charge
3. Property Registration Authority
4. Planning
5. Statutory Declarations and Statements of Truth
6. Property Taxes

### 1. Lending Institutions

A Certificate of Title (**COT**) system for residential mortgages has been agreed between the Law Society and a number of participating lenders. It replaces the old system of three way closing and requires that the solicitor for the buyer/borrower undertakes to register a first legal charge in favour of the lender and provide them with a COT (as confirmation that the property has good marketable title, subject to any agreed qualifications).

While the COT system has the potential to reduce the Timeline - provided that the terms of the system, including agreed timelines are complied with - in reality, delays are constant.

For example:

- a. **The COT system requires the lender to release title deeds to the solicitor no later than 10 working days following receipt of a request to do so.**

In practice, delays of eight weeks are not uncommon. This impacts significantly on commencement of process of investigation of title and drafting the Contract for Sale.

- b. **Solicitors require unqualified redemption figures from lenders in order to furnish an undertaking to redeem an existing mortgage and provide clear title. The COT system requires that such figures are provided as soon as practicable and not later than 10 working days following receipt of a request to do so.**

It is often the case that redemption figures are out of date by the time they are provided to solicitors by lenders. This means an additional request for up to date figures must be made which causes further, unnecessary delay.

In addition, qualified redemption figures are often provided instead of the unqualified figures which are needed to progress matters.

## **2. Local Authorities – Roads/Services<sup>1</sup> In Charge**

Prior to issuing contracts/furnishing undertakings, solicitors must establish whether roads/services adjoining a property are 'in charge' of the Local Authority.

This is fundamental, not only to the use and enjoyment of the property but also, to the conveyancing transaction itself as the definition of 'Good Marketable Title' (agreed with lenders) requires that the be position be established.

Where roads/services are not in charge, further investigations are required to establish how the property will be accessed/serviced and whether easements are required.

Local Authorities issue letters to confirm the position however, in recent years, the cost and speed of delivery of these letters has contributed to unnecessary delays in the Timeline.

The problem is compounded by an inconsistency of approach across Local Authorities in respect of these letters where varying factors include the format of requests/replies, cost (varies from €31.75 to €125 per letter) and turnaround time (varies from 1 to 8 weeks).

The Conveyancing Committee has written to the Local Government Management Agency to recommend adoption by all 31 Local Authorities of a:

- a. standardised form of request;
- b. standardised form of reply;
- c. reasonable fee; and
- d. reasonable turnaround time.

An online facility to request and provide these letters, in a legally reliable format, would also alleviate delay.

While it is welcome that some Local Authorities publish lists of estates which are in charge in their areas, it cannot be relied on in the conveyancing process as it includes disclaimers.

## **3. Property Registration Authority (PRA)**

### **a. Registration of Deeds**

Following the purchase/transfer of property, a deed is lodged with the PRA for registration.

Solicitors experience delays of months, sometimes years, in securing some registrations e.g. those involving maps or first registrations of title (which move the property from the Registry of Deeds to the Land Registry).

These delays directly impact a vendor's ability to sell and a borrower's ability to re-mortgage as title is not complete until registered.

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<sup>1</sup> Services include footpaths, lighting, surface drainage, waste water and water supply.

## **b. Burdens**

Solicitors must establish whether any burdens registered on a property adversely affect that property prior to issuing contracts/providing undertakings to lenders.

If certified copies of such burdens are not provided with the deeds, solicitors must request copies from the PRA.

While the PRA has introduced a fast-track procedure for use in some instances, solicitors can wait weeks, sometimes months, to receive the necessary documentation.

## **c. Document Management System**

Even though the [PRA's Annual Report 2020](#) confirmed fees of almost €60 million, as against total expenditure (including apportioned costs) of c.€30.5 million, it does not provide a central document management system which could substantially reduce delays in the system.

## **4. Planning**

When investigating title, the planning history of a property must be traced back to 1964 when relevant planning legislation was enacted.

Difficulties arise where a number of Local Authorities have no pre-2000 documents available for public searches and/or old planning files cannot be located.

This means that part of these titles cannot be fully investigated and solicitors may have to qualify the title to the lender, which may/may not accept same, which creates further delay.

Some Local Authorities retain old files on microfiche and Architects are often engaged to personally inspect those files before furnishing Certificates of Compliance (or exemption from planning control where works are more than 30 years old). Not only do these issues delay progress, the additional expense can deter property holders from re-mortgaging.

As part of any reform, a planning amnesty which excluded development works prior to a specific date (from investigation in order to evidence good marketable title) would reduce the Timeline and the costs involved in conveyancing.

## **5. Statutory Declarations and Statements of Truth**

In our 21 October 2022 letter to the Department (attached), we highlighted various issues in relation to the above and would reiterate that the modernisation and digitalisation of these processes would reduce the Timeline and the costs involved in conveyancing.

## **6. Property Taxes**

As a number of these taxes which have been introduced in recent years (e.g. Non-Principal Private Residence and Local Property Tax) are charged on the property, solicitors are now required to address these issues in every sale/re-mortgage transaction.

This additional layer in the Timeline has created further delay.

### **Six Necessary Actions**

The Law Society asks that the Department would consider supporting the following actions in order to enhance efficiencies and reduce delays in the conveyancing process:

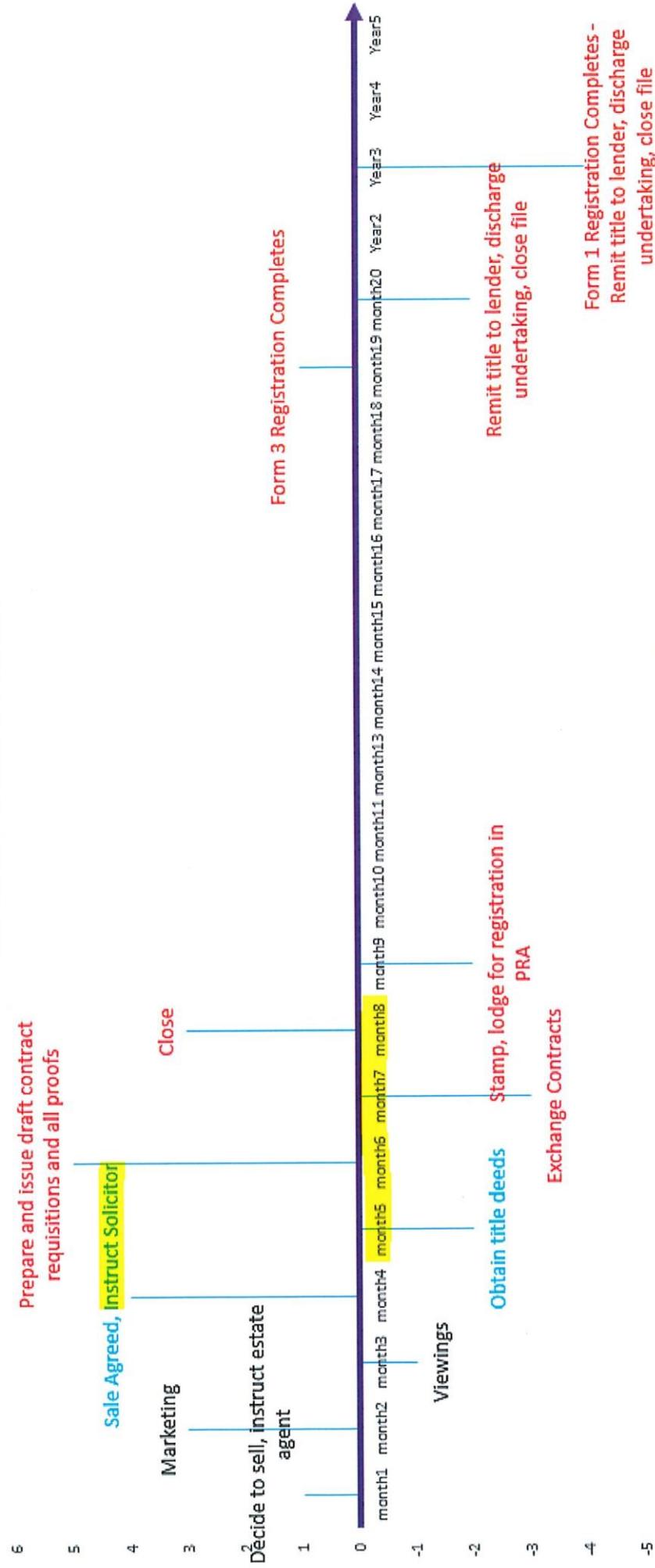
1. Adherence to the COT system's agreed terms and timelines.
2. Adoption by all Local Authorities of digitalised and standardised forms of request/reply and reasonable fees and turnaround times for 'in charge' letters.
3. Roll-out of a central document management system at the PRA.
4. Introduction of a planning amnesty.
5. Modernisation and digitalisation of Statutory Declarations and Statements of Truth.
6. Review of the additional layer arising from property taxes.

### **Conclusion**

If a further meeting to discuss the above recommended actions would be helpful, we will be glad to engage further to assist in your work.

# Property Transaction and Conveyancing Timelines

## Conveyancing Timeline Estimate



# LAW SOCIETY SUBMISSION

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## **Statutory Declarations and Statements of Truth in Conveyancing**

Department of Justice

7 January 2022

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#### ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

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## 1. INTRODUCTION

- 1.1 Since March 2020, periods of lockdown and restrictions on travel, imposed by Government to prevent or delay the spread of COVID-19, have caused considerable difficulties for completion of conveyancing transactions and dealings with the Land Registry. The legal sector responded with creative solutions, including utilising video-conferencing and electronic signature platforms, to enable essential legal transactions to proceed.
- 1.2 The necessity to develop technological solutions to facilitate transactions during remote working has provided an impetus for digitisation of legal processes, and accelerated the move towards the Government's long-standing objective of eConveyancing.
- 1.3 One of the stumbling blocks to eConveyancing, highlighted during the lockdowns and periods of restrictions, is the requirement for statutory declarations to be signed in the physical presence of an independent solicitor or commissioner for oaths.
- 1.4 Legislation has been enacted to enable the use of technology to facilitate businesses, legal transactions and proceedings during the period of COVID-19 restrictions and beyond.
- 1.5 The legal profession welcomed the introduction of a statutory framework for statements of truth (which may be made in electronic form), as an alternative to affidavits and statutory declarations, in civil proceedings. Under the current legislation, statements of truth are not available for use in conveyancing transactions.
- 1.6 The State is already taking steps in other areas to modernise and digitise its processes. An example of this is where the Revenue affidavit has been replaced by an online [Statement of Affairs SA.2](#) for probate returns.
- 1.7 This submission outlines the case for enabling statements of truth to be used, as an alternative to statutory declarations and affidavits, in conveyancing transactions.

## 2. STATUTORY DECLARATIONS IN CONVEYANCING TRANSACTIONS

- 2.1 The conveyancing process in Ireland requires confirmation of various matters of fact, by way of statutory declarations made pursuant to the Statutory Declarations Act 1938 (as amended) (the "**1938 Act**"). The 1938 Act has not been amended so as to have any application to conveyancing transactions and clearly it requires amendment so as to be more suitable for dealings in a digital age.
- 2.2 Statutory declarations are used in relation to both registered and unregistered title and include section 72 declarations (regarding any burdens affecting registered title without registration), family law declarations and declarations on issues such as non-payment of ground rent, exemption from certain taxes and charges affecting property, adverse possession, easements etc. Statutory declarations are vital in conveyancing transactions and are used where statements are required as to facts that are both significant and material to the decision of the recipient to proceed with the transaction. They are required for the completion of the great

majority of conveyancing transactions and they are retained with the title deeds and documents and also relied upon by subsequent purchasers, lenders, lessees and others taking an interest in the property (each of such parties or the recipient, hereafter referred to as “**Beneficiary**”).

- 2.3 Under the 1938 Act, any person who knowingly makes a false statutory declaration shall be guilty of an offence and shall be liable on conviction for a penalty of a fine, a custodial sentence or both. The risk of the declarant committing an offence, together with the solemn nature of making a declaration before an independent solicitor or commissioner for oaths, ensures that the declarant carefully considers the truth of the facts declared. These penalties have provided a solid foundation for a Beneficiary to accept statutory declarations in transactions and dealings in real estate matters over many decades.
- 2.4 Statutory declarations cannot be made using video-conferencing or by electronic signature, as section 2 of the 1938 Act requires a statutory declaration to be signed by the declarant “*in the presence of the person before whom it is made*”. Having regard to the date of the 1938 Act, this has clearly been understood to mean in the ‘physical presence’ of a person, rather than the ‘digital presence’. Under current legislation, this step in the conveyancing process cannot be digitised to facilitate eConveyancing without a change in law.
- 2.5 During the periods of lockdown, solicitors used other workarounds, such as certificates and warranties combined with undertakings to provide declarations when restrictions were lifted. These were temporary and imperfect solutions, merely stop-gaps during a crisis, rather than a long-term solution in the context of conveyancing as it is currently operated or in the context of eConveyancing going forward.

### **3. AFFIDAVITS IN REGISTRATION OF TITLE**

- 3.1 The registration of title to real estate in Ireland is largely governed by the Registration of Title Act 1964 (as amended) (the “**1964 Act**”). The 1964 Act, and the rules made thereunder, requires various applications to be made with the support of an affidavit, signed with wet ink in the physical presence of a commissioner for oaths or practising solicitor, and delivered physically to the Land Registry. The 1964 Act has not yet been amended to keep pace with digital advancements.

### **4. STATEMENTS OF TRUTH**

- 4.1 Section 21 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (the “**2020 Act**”) empowers court rules committees to make rules providing for a “*statement of truth*” as an alternative to an affidavit or statutory declaration for use in civil proceedings.
- 4.2 A statement of truth does not need to be made before a solicitor or commissioner for oaths and may be in electronic form. It must include a statement of honest belief that the facts stated are true. Making a statement without such an honest belief as to truth shall be an offence, with penalties on summary conviction of a class A fine and/or imprisonment for up to 12 months and on indictment to a fine

not exceeding €250,000 and/or imprisonment for a term of up to 5 years. Similar to how the 1938 Act operates, such penalties should ensure that those making statements of truth consider them carefully.

## **5. SUBMISSION**

- 5.1 The conveyancing system is based on the principle of ‘caveat emptor’ (let the buyer beware).
- 5.2 In 2019, the Law Society modernised the conveyancing system considerably by moving the title investigation entirely to the period ahead of contract exchange. This created considerable efficiencies and was well received by consumers.
- 5.3 The Government has signalled a commitment to support moves towards eConveyancing and to improving efficiency in the conveyancing process.
- 5.4 Statutory declarations are a long-established feature of the conveyancing process in Ireland and they support the fundamental principle as described in paragraph 5.1 above. These declarations, underpinned by a statutory framework with considerable penalties for false statements, are relied upon by purchasers, lenders, lessees and others acquiring an interest in, or otherwise dealing with, real property.
- 5.5 It is considered that contractual warranties alone (i.e. without the underpinning framework referenced in paragraph 5.4 above) in relation to matters of substantial and material importance affords insufficient protection for purchasers and others acquiring an interest in land.
- 5.6 The 1938 Act predates modern technology and the continued use of statutory declarations made pursuant to this Act is an impediment to creating further efficiencies in conveyancing practice and indeed, to eConveyancing itself.
- 5.7 The Law Society submits that the concept of a “statement of truth” as provided for in section 21 of the 2020 Act would be a suitable alternative to statutory declarations which, if extended to conveyancing transactions, would facilitate progress towards a system of eConveyancing.
- 5.8 Where the completion of a transaction is delayed, it is often the case that statutory declarations and affidavits must be made again (since they are only deemed true at the time of the making and do not afford any certainty as to change in circumstances after such time). It is submitted that, in conveyancing transactions, declarations, affidavits and statements of truth should, on a statutory basis, be capable of attesting to facts for a period of time after they are made, with a statutory duty – with clear consequences in the case of breach - to notify the Beneficiary of any material change to such facts within a prescribed short period, such as one or two business days. This would obviate the need for declarations, affidavits and statements of truth to be made again, when in the vast majority of cases the facts will not have changed, thereby leading to greater efficiency without exposing the Beneficiary to material risk.
- 5.9 The Law Society calls on the Minister for Justice to introduce amending legislation, as a matter of urgency, to enable:

- 5.9.1 statements of truth to be used in conveyancing transactions, thereby facilitating the modernisation of the conveyancing process and the introduction of eConveyancing;
- 5.9.2 statutory declarations and affidavits to be made:
- (a) remotely; and
  - (b) electronically, including by electronic signature;
- 5.9.3 statutory declarations and affidavits to be rendered capable of being relied upon when transmitted to the Beneficiary or otherwise published by electronic means;
- 5.9.4 statements of truth, statutory declarations and affidavits to be rendered capable of being relied upon for a stated period of time not exceeding 14 days (**'prospective reliance'**); and
- 5.9.5 in the case of prospective reliance, a statutory duty upon the person making the statement of truth, statutory declaration or affidavit to notify the Beneficiary of any material change to such facts within two business days.
- 5.10 The measures in paragraphs 5.9.2 and 5.9.3 would be of benefit during any period of transition towards statements of truth.
- 5.11 The Minister may adjudge it suitable that statements of truth should be available in relation to commercial activity and transactions more generally. However, for the purposes of dealings in real estate, the Law Society submits that it would be suitable to describe "Conveyancing Transaction" as:
- "the transfer of or dealing with any interest in land situate in Ireland, whether by sale, lease, voluntary transfer, conveyance, licence, assignment, surrender, charge or grant of an easement or option or otherwise"*.
- 5.12 The case for a broader application of the statement of truth is compelling. For example, in making an application to the Land Registry for first registration of documentary title (using either Land Registry Form 1 Application for first registration of freehold property, Form 2 Application for first registration of leaseholds and of rights (other than incorporeal hereditaments held in gross), Form 5 Application for first registration where title is based on possession or Form 6 Application for registration where title is based on possession of registered land only) which would not involve any transaction *per se*, a statement of truth could replace an affidavit. This holds true for other applications to the Land Registry, such as an application to register a Caution which is currently supported by an affidavit (Land Registry Form 71). In all such cases, a statement of truth in place of an affidavit should enable a person who wishes to register and protect their interest to do so more quickly and at less cost. The improved efficiency would be of considerable benefit to the Land Registry and the State since it would assist in more timely registration applications. It would be particularly useful in assisting the early conclusion of first registrations, in keeping with the objective of completing title registration of all properties in Ireland as soon as possible. Amendments to

the relevant Registration of Title Act and the related Land Registry rules (and forms) would also be required.

- 5.13 The ‘conveyancing process’ cannot be said to be concluded until the purchaser’s application to become registered as owner is complete. Long delays are being experienced with the processing of Land Registry dealings. Prior to the full digitisation of the Land Registry application process, it would improve materially the efficiency of the registration process if statements of truth could be submitted to the Land Registry in lieu of affidavits.
- 5.14 Section 21 of the 2020 Act is the enabling provision, which allows court rules committees to make rules providing for a “statement of truth” as an alternative to an affidavit or statutory declaration for use in civil proceedings. As such, section 21 provides a useful framework for a similar provision (specific to conveyancing), and further detail as to the content, verification, authentication or form of a statement of truth may then be prescribed by a competent authority. The Society will be glad to discuss which entity (or entities) might properly be designated as a competent authority/authorities, if that would be helpful. If statements of truth were to be extended to matters concerning the Land Registry, then this could be deemed the relevant authority to adjudge the content and form of the relevant statement of truth to replace statutory declarations and affidavits in relation to applications made to it.
- 5.15 It is understood that statements of truth are not yet available as an option in civil proceedings, as these will be implemented when regulations are in place enabling a larger project around electronic filings in civil proceedings. While there may be some time before implementation of this change, for conveyancing transactions and Land Registry applications, the Law Society will be ready to recommend the content and form of statements of truth to replace common and precedent forms of statutory declarations and affidavits in conveyancing practice and prescribed forms for Land Registry applications. To this extent, statements of truth in lieu of statutory declarations and affidavits in conveyancing practice could be put into effect relatively quickly. Not only would this decrease cost (commissioner for oaths’ fee removed), it would increase efficiency and remove the ongoing necessity for in-person meetings to be held during a pandemic and beyond.

## **6. CONTACT**

- 6.1 The Society’s Conveyancing Committee is available to answer any queries you may have on the content of this submission and will be happy to engage with the Department on any proposed amending legislation.

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