

# A Guide to Mortgaging Property

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## CONTENTS

An overview of the transaction .....	3
Step 1:Initial Appointment .....	3
Step 2: Loan Approval .....	3
Step 3: Certifying Title.....	4
Step 4: Completing The Transaction .....	5
List Of Items To Be Attended To By You .....	6
Please Furnish: .....	6
Frequently asked questions .....	7
What Documents Should I Give To My Solicitor Prior To The Completion Of The Mortgage? .....	7
When Do You Pay Fees? .....	7
When Do I Get The Money? .....	7
When Should I Arrange Insurance?.....	7
Should I Arrange Separate Contents Insurance?.....	7
What Information Will I Need To Furnish When I Apply For A Loan? ...	8
What Are "Searches"? .....	8
Where Do My Title Documents Go? .....	8
How Long Does It Take To Stamp And Register The Document? .....	8
Diagrams .....	9
Glossary terms of conveyancing .....	10
FOR MORE INFORMATION .....	22

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## AN OVERVIEW OF THE TRANSACTION

### **Step 1: Initial Appointment**

You should make an appointment to see us as soon as possible, preferably as soon as you decide to mortgage the property.

On no account should you sign any document before taking our advice.

We will ask you to complete a "Mortgage Query Sheet". This is a detailed list of questions and the answers to the questions will enable us to process the transaction more effectively.

We will also arrange for you to sign letters authorising us to take up your Title Deeds from your Bank/Building Society.

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

### **STEP 2: LOAN APPROVAL**

It is important that you select the loan that best suits you. A loan application will involve some or all of the following: -

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

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

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

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

### **Step 3: CERTIFYING TITLE**

As soon as we receive your Loan Offer from your Bank we will establish contact with them. We have the responsibility to deal with the requirements of your Lender to make sure that they have adequate security. They will ask us to sign a Certificate of Title which is a personal guarantee by us that the title is in order.

If you already have a loan on the property the documents will be held by your Bank/Building Society. We send your written letter of Authority authorising us to take up the Title Documents to the Bank/Building Society. It normally takes two to three weeks before we receive the documents from the Lending institution.

When we get the documents we investigate your title. Depending on the number of factors it can take anything up to 5weeks to get past this stage.

An area that frequently causes problems is Planning Permission.

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

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

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

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

#### **STEP 4: COMPLETING THE TRANSACTION**

Once our investigation of title is completed we will arrange for you to sign the acceptance Loan Offer. You will also be required to sign the Deed of Mortgage which will be sent to us by the Lender at this stage. The Acceptance of Loan Offer and other legal documents are returned to the Bank where they will be processed. Once the legal documents are processed and the bank are satisfied that you have complied with all of the conditions on the Loan Offer the loan cheque will be released to us.

From the day that we receive the loan cheque it will take five working days for our bank to clear the funds. If we are required to clear of existing borrowings out of the loan cheque we will request details of the outstanding borrowings from the lending institutions. In some instances banks will not release the details of personal loans to us and it will be necessary for you to obtain the redemption figures for us. We will let you know if this is the case.

We will carry out Searches as soon as the loan cheque clears in order to confirm to the Lender that you have not, e.g. attempted to sell the property to someone else, and remortgaged the property or gone bankrupt.

We then pay off your existing Bank or Building Society and any other borrowings stipulated by your Lender and deduct our agreed fees and outlays. We will then give you a cheque for the net proceeds of loan.

Our work will not yet be completed, however! We will register the new mortgage in the Land Registry or Registry of Deeds and once registration is completed lodge the title documents with your Lending Agency.

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## LIST OF ITEMS TO BE ATTENDED TO BY YOU

### PLEASE FURNISH:

1. *Please furnish* a copy of your **LOAN SANCTION/APPROVAL** as soon as you receive same.
2. Ensure that you deal with all matters required by your lending agency e.g. insurance and life cover
3. If married, we will require your **Civil Marriage Certificate** which is obtainable from the Registrar of Births, Deaths and Marriages. If you have separated or divorced a copy of your separation agreement, judicial separation order or divorce decree will also be required.
4. Copy of all Planning Permissions and a Certificate of Compliance with Planning Permissions and Building Regulations.
5. Title documents, unless you have an existing mortgage.
6. Details of your existing loan, if any.

## FREQUENTLY ASKED QUESTIONS

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### WHAT DOCUMENTS SHOULD I GIVE TO MY SOLICITOR PRIOR TO THE COMPLETION OF THE MORTGAGE?

If married, we will require your **Civil Marriage Certificate** which is obtainable from the Registrar of Births, Deaths and Marriages. If you have separated or divorced a copy of your separation agreement, judicial separation order or divorce decree will also be required.

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### WHEN DO YOU PAY FEES?

All fees and outlay are paid on the closing date. We normally deduct the agreed fees from the loan cheque.

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### WHEN DO I GET THE MONEY?

We pay off any loans on the property and deduct fees and outlays. We should be able to give you a cheque for the net proceeds of mortgage transaction within 24 hours of the closing of the mortgage.

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### WHEN SHOULD I ARRANGE INSURANCE?

If you are getting a loan the Lending Agency will insist that the house is insured from the date of issue of the loan cheque.

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### SHOULD I ARRANGE SEPARATE CONTENTS INSURANCE?

The insurance cover arranged by your Lender will normally only cover the cost of rebuilding the house; therefore, you should have your contents insurance in place.

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

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

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## WHAT ARE "SEARCHES"?

Searches are essential checks carried out by us on the day the transaction closes to confirm that no attempt to sell or mortgage the property to another party has been made, e.g. a bankruptcy search to ensure no persons on title have been adjudicated bankrupt.

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## WHERE DO MY TITLE DOCUMENTS GO?

After the transaction is completed we will register your mortgage.

On completion of registration the original documents are lodged with the bank or building society.

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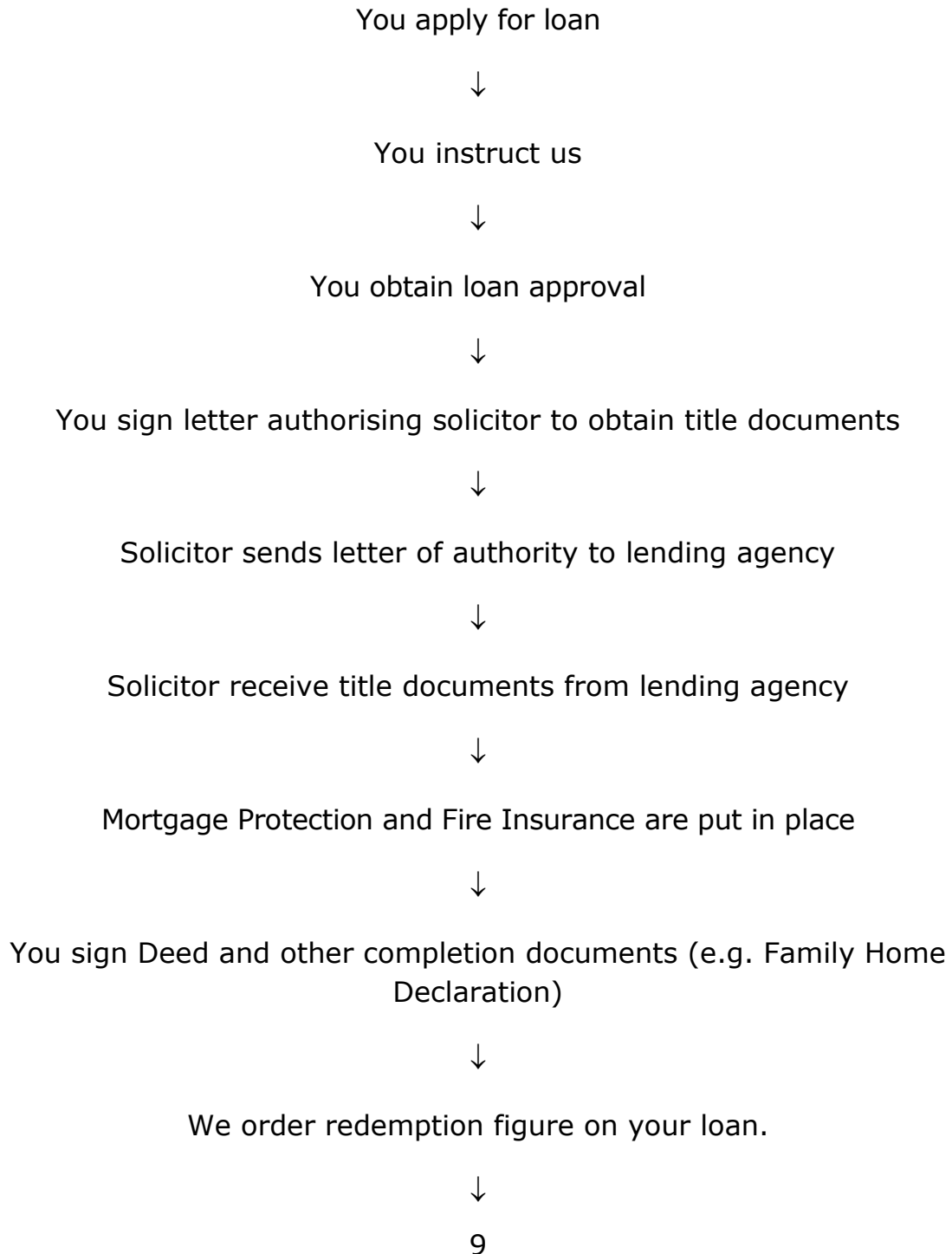
## HOW LONG DOES IT TAKE TO STAMP AND REGISTER THE DOCUMENT?

The registration process takes approximately six months from the closing date.



## DIAGRAMS

### DETAILED MORTGAGE DIAGRAM



Lender forwards loan cheque to us.



We pay off loans, deduct our fees and forward the net proceeds of the loan to you



We register the mortgage and on completion of registration forward original title documents and Certificate of Title to the Lender

## GLOSSARY TERMS OF CONVEYANCING

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

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

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

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

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

The Caretakers Agreement is sometimes used if a Buyer is anxious to get immediate possession. The Buyer comes up with the purchase monies which are placed in the joint names of the Sellers and Buyers

Solicitors with the interest on the monies to go to the Seller. The Buyer is allowed into possession and the Seller gets the purchase monies on the formal closing of the sale.

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

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

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

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

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

**CONSIDERATION:** The Purchase Price.

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

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

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

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

**CONVEYANCE:** A Deed that conveys ownership of property.

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

**COVENANT:** A promise binding in law.

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

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

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

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

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

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

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

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

**EASEMENT:** A right over someone else's property.

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

**EXECUTION:** The signing of a Document.

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

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

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

Under the Family Home Protection Act 1976, in any sale or mortgage of the property it is necessary for the person selling or mortgaging to

confirm whether or not the property is a Family Home. If the property is in the sole name of a husband or wife the other spouse must join in the Declaration.

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

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

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

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

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

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

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

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

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

### **INCUMBRANCE:**

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

**INDENTURE:** Another word for Deed.

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

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

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

If your property is registered in the Land Registry you may get one original title document called a Land Certificate. If however the property is registered in the **REGISTRY OF DEEDS** you will get a

bundle of documents reflecting the change of ownership over the years.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

See **LAND REGISTRY**.

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

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

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

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

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

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

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

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

**WARNING:** Retention permission is not granted automatically.

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

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

**SALARY CERTIFICATE:** A certificate stating your income from Employer.

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

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

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

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

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

**STAGE PAYMENT:** A part payment for the purchase price.

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

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

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

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

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

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

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

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

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

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

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

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

**UNDERTAKING:** A promise enforceable at law.

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

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

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

**VENDOR:** Legal term for the Seller.

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

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

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

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