



# A GUIDE TO THE PURCHASE OF PROPERTY



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## AN OVERVIEW OF THE TRANSACTION

### Step 1: Finding a Property

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

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

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

You can buy a property through an Auctioneer either by public auction or by private treaty. Private treaty is where you negotiate through the auctioneer. This is the more common way of buying a property. You can also buy directly from the seller.

The Seller pays the Auctioneer's fees.

The Auctioneer will usually look for a booking deposit. The booking deposit should be kept as low as possible. You should make sure that the booking deposit is refundable. This means that if you do not proceed with the purchase of the property you will get your deposit back.

The full deposit is paid later when you sign the Contract. The deposit is usually 10% of the purchase price. If you have paid a booking deposit you will be given credit for it.

You will pay the rest of the purchase price at the end of the process, the balance of 90%.

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

- We may find that the title is less than perfect
- You may not get loan approval
- The structural survey may reveal a problem

You should check with the Auctioneer or the Seller what, if any, contents (e.g. carpets and curtains) are included in the purchase price. Get a list of contents and give it to us. This may prevent unnecessary disputes at the end of the process.

## **STEP 2: LOAN APPROVAL**

As soon as you decide to buy a property, check with your Lender on the amount of your likely loan. Your Lender may give you, what is called "Approval In Principle" . This will give you an indication of the amount of money which they are willing to lend to you to buy a property.

After you have agreed to purchase a particular property and paid a booking deposit you will need to liaise with your bank or mortgage broker to make a formal mortgage application. It is important that you select the loan that best suits you.

A loan application may involve:-

- Loan application forms.
- Valuation fee.
- Fire insurance.
- Mortgage Protection Insurance.
- Direct Debit mandate.
- Valuation.

You will need to decide whether to avail of variable, tracker or fixed interest rates. 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 need a salary certificate from your employer. If you are self-employed you will have to provide accounts for your business.

The Lender will arrange a valuation.

This valuation is for the Lending Agency's own purposes. It is not a detailed survey.

It is vital that you have the property professionally and independently structurally surveyed.

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

### **STEP 3: SURVEY**

The basic legal rule which applies when buying property is "caveat emptor" i.e. let the buyer beware.

As a buyer you see the property as it stands and the Seller is not under any duty to disclose any physical defects in the property.

It is essential that you arrange a structural survey of the property by an engineer or suitably qualified and insured professional before the Contract is signed.

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

We would suggest that these details be included in the survey report.

### **STEP 4: INITIAL APPOINTMENT**

You should contact us as soon as you have decided to buy a property.

We will contact the Auctioneers to get the name of the Seller's Solicitor – unless they have already notified us.

We will make contact with the Seller's Solicitor to ask them to send us the Contract for Sale and copy title documents.

We will also ask you to complete a "Purchase Query Sheet".

This is a questionnaire that helps us process the transaction on your behalf.

We will give you an estimate of our fees and outlays.

## **STEP 5: INVESTIGATION OF TITLE**

We will carry out an investigation of the title to the property before the Contracts are signed.

It is our job is to ensure that you purchase a property with good marketable title.

If we identify any problems, we will advise you.

In the majority of cases any difficulties which arise can be surmounted.

From time to time we come across transactions where the problems are not fixable. In these cases we will advise you not to proceed with the purchase of the property.

At this stage, we also establish contact with your Lender.

All the requirements of the Lender must be attended to before they will release the loan funds.

We have the responsibility to deal with the requirements of your Lender to make sure that they have adequate security.

We will arrange to meet with you to have all legal documents required by your Lender signed.

We have to return them to facilitate the issue of the loan cheque in good time for the completion of the purchase.



At the same time you will need to liaise with your Lender to ensure that all non-legal requirements have been dealt with to the satisfaction of the Lender.

The most common items which can delay the release of funds are:

- Fire Insurance
- Mortgage Protection Insurance
- Direct Debit Mandates

## **STEP 6: SIGNING THE CONTRACT**

The Contract is the written agreement between you and the Seller.

It contains the names and addresses of the Seller and the Buyer, description of the property, the purchase price, deposit payable on signing the contract, the closing date and the terms and conditions of the agreement to buy the property.

We must wait for the Seller's Solicitor to send us the Contracts and Title Documents before we can take any action.

This can sometimes be a slow process if the Seller's solicitor is not ready to issue the contract .

We will usually try to get the Seller's solicitor to give us a time estimate.

When we get the Contract and the Title documents, we carry out an investigation of title and check that the contract is acceptable.

When this is done and we have received your loan offer from your lender, we will discuss the contract and loan documents with you.

There are a number of factors which may delay the signing of the Contract e.g. we may have to look for additional information from the Seller's Solicitor, if you are selling another property we may have to coordinate both transactions, or we might have to wait for your loan to be approved.

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

- If you are not yet in receipt of loan approval, it will be necessary to include "a subject to loan approval" clause.

This means that if you do not get written loan approval within a specified period the Contract is at an end and the deposit is refunded.

- It may be necessary to negotiate on the terms of the contract – e.g. planning for an extension, contents or fencing .

As soon as the terms of the Contract have been agreed we will arrange for you to sign both copies of the Contract.

We will need to have your loan offer to complete this stage of the transaction.

At this stage the deposit of 10% of the purchase price, less the booking deposit already paid by you, is payable.

Both copies of the Contract signed by you are returned to the Seller's Solicitor together with the deposit.

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

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

The Seller signs both copies of the Contract and one copy is returned to us.

Exchange of Contracts is then completed and we are ready to move to the next step.

## **STEP 7: CLOSING THE SALE**

Once the contracts are signed by buyer and seller, the next and final step is to complete or 'close' the purchase.

The Contract will specify the closing date.

This may be a specific date e.g. 1st August or after a specified event e.g. the issue of your loan cheque.

The closing date is the day the Seller hopes to move out of the house and get the money and you pay over the money.

The closing date may change even in the best-planned transactions.

For example, there may be a few days delay in the issue of your loan cheque or the Seller may want a few extra days to arrange alternative accommodation.

So it is important that you have a Plan B and that you talk us, to the Seller or the auctioneer before the date set for completing the transaction.

The average sale takes 12 to 24 weeks to process from the time you agree to buy.

We need to do a number of other tasks before we complete which will have an effect on how long it takes :

- We may need to chase you loan approval.
- You will have to deal with your loan conditions.
- You may be selling another property and timing on this transaction may affect your purchase.
- If the sold property does not have proper planning, we may have to wait for the permission to issue.
- The Seller may be buying another house which may effect the timing of the closing.

The sale is closed in the Seller's Solicitor's office. However, if the other Solicitor is not based in Clonmel, the sale may be closed by post.

On the closing day we electronically transfer the balance of the purchase monies to the Seller's Solicitor and in return we get the title documents and the keys. (or the keys may be picked up from the Auctioneer).

We will carry out checks , called 'Searches', on the closing day to confirm that everything is in order and that the Seller has not, for example, attempted to sell the property to someone else, remortgage the property or gone bankrupt.

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

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

Our work is not yet completed!

We will present your title documents to the Revenue Commissioners for stamping and pay over any stamp duty due.

After stamping, your title has to be registered in the Land Registry or Registry of Deeds.

If your title is not registered in the Property Registration Authority, we will have to apply for a first registration.

If you have a mortgage, we will lodge the title documents with your Lender on completion of registration.

We will also give the Lender our Certificate of Title. This is our personal guarantee to the bank that you have a good marketable title to the property.

## LIST OF ITEMS TO BE ATTENDED TO BY YOU

1. Please give us a copy of your **LOAN SANCTION/APPROVAL** as soon as you receive same.
2. Please arrange a **structural survey** of the property. This should be done before the Contract is signed.
3. Please arrange mortgage protection, property insurance and any other matters required by your Lender.
4. If married, we will need your **Civil Marriage Certificate**. This can be requested from the Registrar of Births, Deaths and Marriages.
5. If you are separated or divorced, a copy of your separation agreement, judicial separation order or divorce decree will also be required.
6. We will require a 10% deposit which is payable by you on signing the **CONTRACT FOR SALE**.
7. We will require evidence by way of Revenue documents, of your **PPS Number** and tax type. This allows for the stamping of your title documents with the Revenue Commissioners.

## FREQUENTLY ASKED QUESTIONS

### SHOULD I PAY MONIES DIRECTLY TO THE SELLER?

On no account should you pay monies directly to the Seller.

For the reasons below;

- The Seller may not be the legal owner.
- You may not get loan approval.
- The Title to the property may be unacceptable.
- If you pay money directly, it may prove impossible to recover the monies paid.

### SHOULD I PAY ANY MONIES TO THE AUCTIONEER?

Normally you pay the deposit to your Solicitor who will forward it to the Seller's Solicitor who is required to hold it as stakeholder.

This means that the Seller's Solicitor cannot release the monies to his client and must hold the monies on behalf of both parties.

An Auctioneer may seek a booking deposit. If so,

- Keep the booking deposit as small as possible.
- Make sure that the Auctioneer is insured.
- That you have receipt of payment.
- That you have written confirmation that the money is refundable.
- That he will hold the deposit as stakeholder.

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## WHEN DO I PAY THE DEPOSIT?

The deposit is normally payable when you sign the Contract. The deposit is usually 10% of the purchase price, less any deposit you paid to the auctioneer.

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## WHO PREPARES THE CONTRACT?

The Seller's Solicitor prepares two copies of the Contract and sends them to the buyer's Solicitor.

The Seller's Solicitor will have to get the Seller's Title documents before they can send out the Contracts and this may take some time.

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## WHEN DO I SIGN THE CONTRACT?

We will advise you to sign the Contracts after we approve the title and clarify any issues with the contract or title with the Seller's Solicitor.

We will then need to agree the loan offer with the Lender.

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## WHAT SHOULD I BRING TO MY SOLICITOR ON MY FIRST APPOINTMENT?

- You should bring a copy of your Civil Marriage Certificate if you are married.
- If you have separated or divorced a copy of your separation agreement, judicial separation order or divorce decree will also be required.
- If you have a sales advice note, deposit receipt, loan approval or other paperwork on the purchase, you should bring these along also.

- In order to comply with our obligations under the Money Laundering legislation we will also require photographic id and a utility bill.
- We will make a copy of the documents and return the originals to you.

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## WHAT IS MEANT BY "EXCHANGE OF CONTRACTS"?

Both copies of the Contract signed by you are returned to the Seller's Solicitor.

The Seller signs both copies and one copy is returned to us.

This is called "Exchange of Contracts" and means that all parties are bound by the contract.

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## IF MY LENDER CARRIES OUT A SURVEY IS THERE A NEED FOR ME TO HAVE A SURVEY?

The Lender carries out a valuation survey for their own benefit.

This will not be a detailed survey.

We would strongly advise that you arrange for an independent structural inspection by an Engineer or another suitably qualified and insured professional, before signing the contract.

If you are buying a second hand property you should have the survey carried out before signing the Contract.

You should accompany the Engineer to the Inspection.

If you are buying a new property you should arrange for an Engineer or Architect to inspect the property during the course of construction. An inspection should also be done when the property is finished. The engineer or architect should prepare a snag list of items for the builder.



Often, problems exist unknown even to the present owner of the home. An independent survey reduces the risk by checking for obvious problems or defects before you purchase the property.

By doing a survey, you may avoid costly and unwarranted problems that you have to fix after you have closed the purchase.

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

No. It is important that any fittings included in the sale price are set out in the contract.

Otherwise there may be difficulty on the closing date.

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## WHEN SHOULD I ARRANGE INSURANCE?

If you are getting a loan you will usually have to insure the property before the lender will issue the loan cheque.

If you are not getting a loan you should make sure that insurance is arranged before the sale is closed.

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

The Standard Law Society Contract provides that the Seller carries the risk between Contract and the closing date.

If the property burns down you cannot be compelled to complete the purchase and you will be entitled to the return of your full deposit.

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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 property.

Therefore, you should have your contents insurance in place before you place any of your belongings in the property.

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

You will be required to complete a detailed application form.

You will usually need to furnish evidence of your income (P60) and a Certificate from your Employer confirming your employment and your present salary.

If you are self-employed you will usually have to provide business accounts.

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

Sometimes a buyer will sign the Contract before getting written loan approval.

If so it is important that "a subject to loan approval" condition is inserted in the Contract.

This means that if you do not get written loan approval within a specified period the contract is at an end and you are entitled to get your deposit back.

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## WHEN DO I GET POSSESSION?

On the closing date, the balance purchase monies are paid to the Seller's Solicitor.

In return the keys and title documents are handed over.

You are then entitled to go in to possession of your property.

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## IS THE CLOSING DATE "SACRED"?

The closing date may be changed even in the best planned transactions.

It is important that you keep in contact with us to be sure that the closing date is on track.

It can often be a good idea to make contact with the auctioneer or, even the seller to make the practical arrangements for the move into the property.

It is important to understand that the closing date is not in fact sacred! For example, there may be a few days delay in the issue of your loan cheque or the seller may want a few extra days to arrange new accommodation.

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## WHAT ARE "SEARCHES"?

Searches are essential checks carried out by us on the day the sale closes to confirm that the seller has not;

- Attempted to sell the property to someone else.
- Remortgaged the property.
- Gone bankrupt.

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

- A licensing search on the purchase of a pub.
- In the case of a new property a Companies Office search against the Builder, if stage monies are to be released.

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## WHAT IS A STAGE PAYMENT?

This a part payment of the purchase price in the purchase of a new property.

Some Builders insist that payments are made at stages of the construction e.g. at foundation or roof level.

This may cause you difficulty if your Lender will not release part of your loan cheque.

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## WHAT IS "BRIDGING"?

A bridging loan is a short term loan that will tide you over until your mortgage is available.

The interest rate charged is higher than the normal mortgage rate.

As a matter of office policy, we try to make sure that bridging is only used as a last resort.

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## WHAT IS "A SNAG LIST"?

A snag list is relevant when you are buying a new property.

When the Builder tells you that the property is complete, your Engineer or Architect should inspect the property.

A written list of outstanding work, commonly known as a snag list, should be prepared.

This list should be presented to the Builder and all work detailed on the list completed before the purchase money is paid over.

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

A further inspection should be carried out once you have been told that the snags have been done.

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## DO I HAVE TO NOTIFY THE LOCAL AUTHORITY THAT I AM THE NEW OWNER OF THE PROPERTY?

No. The Seller's Solicitor will already have given the details to the Local Authority.

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

All outgoings, such as ESB, Gas or Household charges are payable by the Seller up to the date of closing.

Normally an appointment is agreed with the Seller's Solicitor.

You are responsible for all outgoings after the sale is closed.

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## ARE THE EXPENSES IN SELLING AND BUYING A PROPERTY THE SAME?

No. The expenses when buying a property are usually substantially greater.

They include stamp duty, registration fees, searches, and Surveyor fees.

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## WHAT IS STAMP DUTY?

Stamp duty is a tax payable to the Revenue Commissioners on the purchase of property.

Stamp duty is payable by the Purchaser.

Different rates apply depending on the type of property that is being purchased.

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## WHERE DO MY TITLE DOCUMENTS GO?

After the sale is closed we have to stamp your purchase deed.

After stamping we register you as the owner of the property.

On completion of registration the original documents are lodged with your Lender.

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

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

The stamping has to be done within 30 days of closing the sale.

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

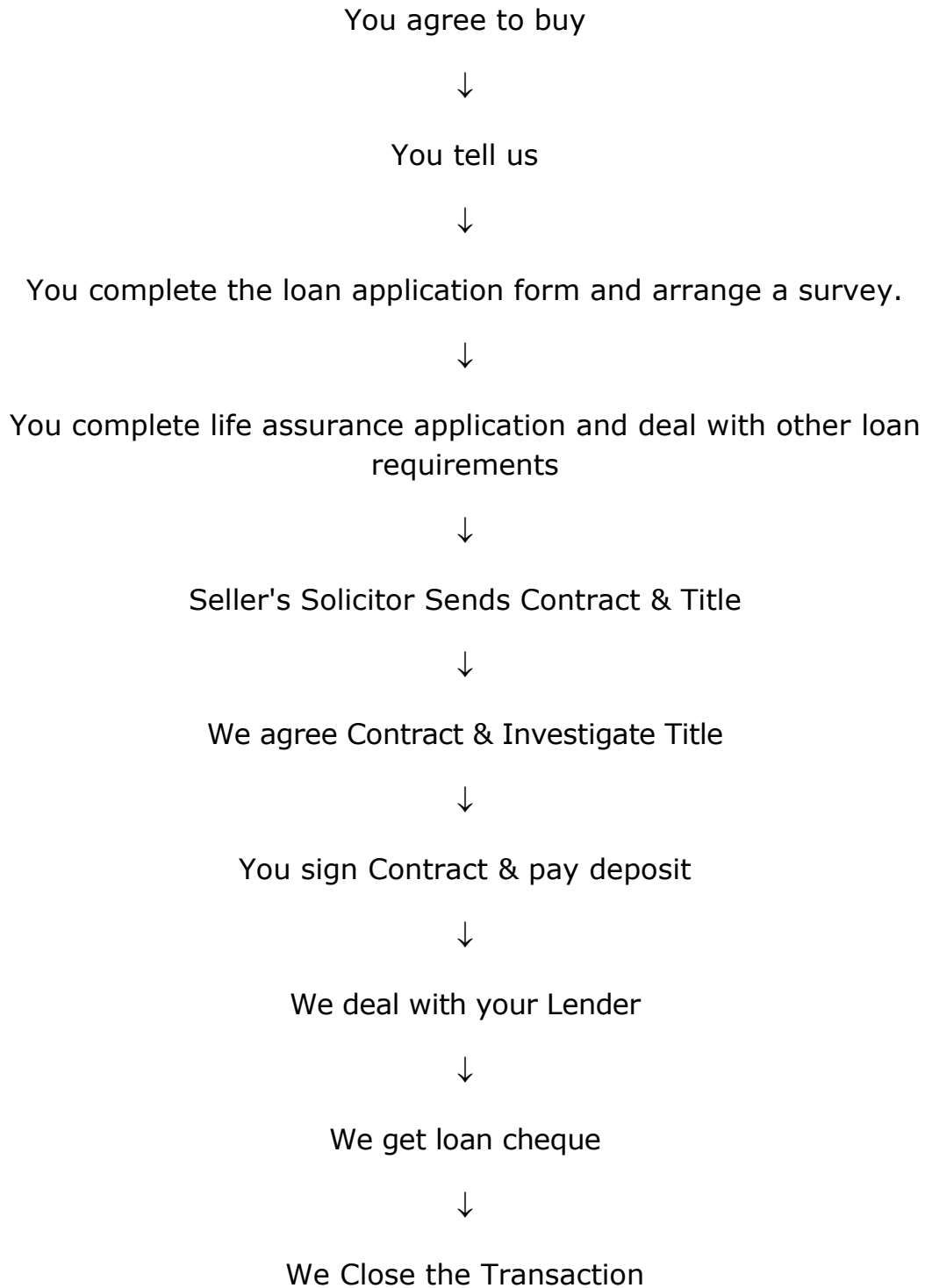
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## SHOULD I GET AN INDEPENDENT VALUATION OF THE PROPERTY?

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

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## SUMMARY PURCHASE DIAGRAM





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## DETAILED PURCHASE DIAGRAM

Seller and Buyer reach verbal agreement



Buyer instructs Solicitor



Buyer arranges survey and applies for loan



Buyer Solicitor asks Seller's Solicitor for Contract, Title & Requisitions



Buyer has loan approval



Buyer's Solicitor validates Contract and Title



Buyer signs approved Contract & Loan Documents



Contract, Deposit, & Draft Deed sent to Seller's Solicitor



Seller signs Contracts and Exchanges



Life Insurance Cover and Pre-drawdown requirements put in place



Buyer's Solicitor requests and chases loan funds



Loan cheque issues to Buyer's Solicitor



Buyer gives any balance and fees and outlays to Solicitor



C O M P L E T I O N DATE AGEED BETWEEN SOLICITORS



Buyer's Solicitor electronically transfers balance of purchase monies



Buyer's Solicitor Law Searcher sends searches to Seller's Solicitor



Seller's Solicitor forwards original title documents & endorsed searches



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



Buyer's Solicitor stamps and registers the documents



On completion of stamping and registration documents and Certificate of  
Title are lodged with lending agency

## GLOSSARY OF LEGAL TERMS

**ASSIGNMENT:** A DOCUMENT that transfers a leasehold property.

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

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

**BUILDING AGREEMENT:** An Agreement that sets out the terms and specifications of a newly built property.

**CARETAKER'S AGREEMENT:** A written Agreement allowing someone into possession of a property as a caretaker. The person must leave immediately when 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 Seller's and Buyer's Solicitors with the interest on the monies going to the Seller. The Buyer is allowed 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 it is. The Buyer should have the property surveyed by an Architect or Engineer for any possible hidden defects.

**CERTIFICATE OF TITLE:** A Document signed by the Buyer's Solicitor guaranteeing the Lender that the Title is in order.

**CLOSING DATE:** The day the Seller hopes to move out and get the money and the Buyer hopes to move in and pay over the money.

The Closing date is not "sacred" and there is usually some leeway given.

**COMPLETION:** The date the transaction is finished. The Seller gets their money and the Buyer gets the title documents and keys.

**COMPLETION NOTICE:** A notice calling on either the Buyer or Seller's solicitor to complete the transaction. 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 sets out the terms under which the property is sold.

The Contract is prepared by the Seller's Solicitor on receipt of the title documents from the Seller's Lender. Two copies are each signed by both the Seller and the Buyer. One copy is retained by the Seller's Solicitor and the other by the Buyer's 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 document. A promise by someone e.g. to erect and maintain a fence around their property or to use the property only as a private property.

**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 a percentage of the total purchase price (usually 10%) paid by the Buyer on signing the Contract.

The **DEPOSIT** is passed on by the Buyer's Solicitor to the Seller's Solicitors who holds it as **STAKEHOLDER** until the transaction is completed.

**DEVELOPMENT:** Any works or change in property for which planning permission is necessary. E.g. Extensions, alterations, or changes of use from shop to office.

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

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 works have been done or there has been a change of use in the property, 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.

**FILE PLAN:** The file plan is a map of the property attached to the Folio. It is not a guarantee of 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.

**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.

**FOLIO:** A folio is a document issued by the Property Registration Authority or 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 the best title that you can have.

**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 property. Buyers from REGISTERED Builders under the scheme may be compensated for major structural defects occurring in a property 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.

**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 a copy of your registration details – called a Certified Copy Folio.

If the property is registered in the **REGISTRY OF DEEDS** you will have a bundle of documents showing your ownership.

All purchases now must be dealt with in the Land Registry.

**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 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 Lender.

The offer is usually subject to these conditions;

- 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 Buyer's 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**.

**Property Registration Authority :** A state organisation dealing with the registration of Title to property. It deals with both the Land Registry and the Registry of Deeds..



**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. The Land Registry is the more modern system. All purchases now must be dealt with in the 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 Purchaser's Solicitors.

In a Land Registry title it is now done electronically.

**REQUISITIONS ON TITLE:** A list of questions sent by the Buyer's Solicitors to the Seller's 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/Buyer's 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 person's property.

A right of way can be limited;

- On foot only
- 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 Lender 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 Buyer's 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 property a Companies Office search against the Builder if stage monies are to be released.

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

The Buyer's Solicitor will enquire from the Seller's 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.

In a multi-unit development a management company usually has the responsibility for the services and common areas.

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

Certain Builders insist that payments are made at certain stages of construction of a property e.g. at foundation, roof level etc. This may cause difficulty for a buyer if the Lender 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 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 deposit is paid by the Buyer on signing the Contract and is held by the Seller's Solicitor on behalf of both parties until the transaction is closed. In other words the Seller's 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 tax, 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 property should arrange for a Surveyor to inspect the property during the course of construction and also once the property 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 Seller's Solicitor will usually give an undertaking to the Buyer's 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.

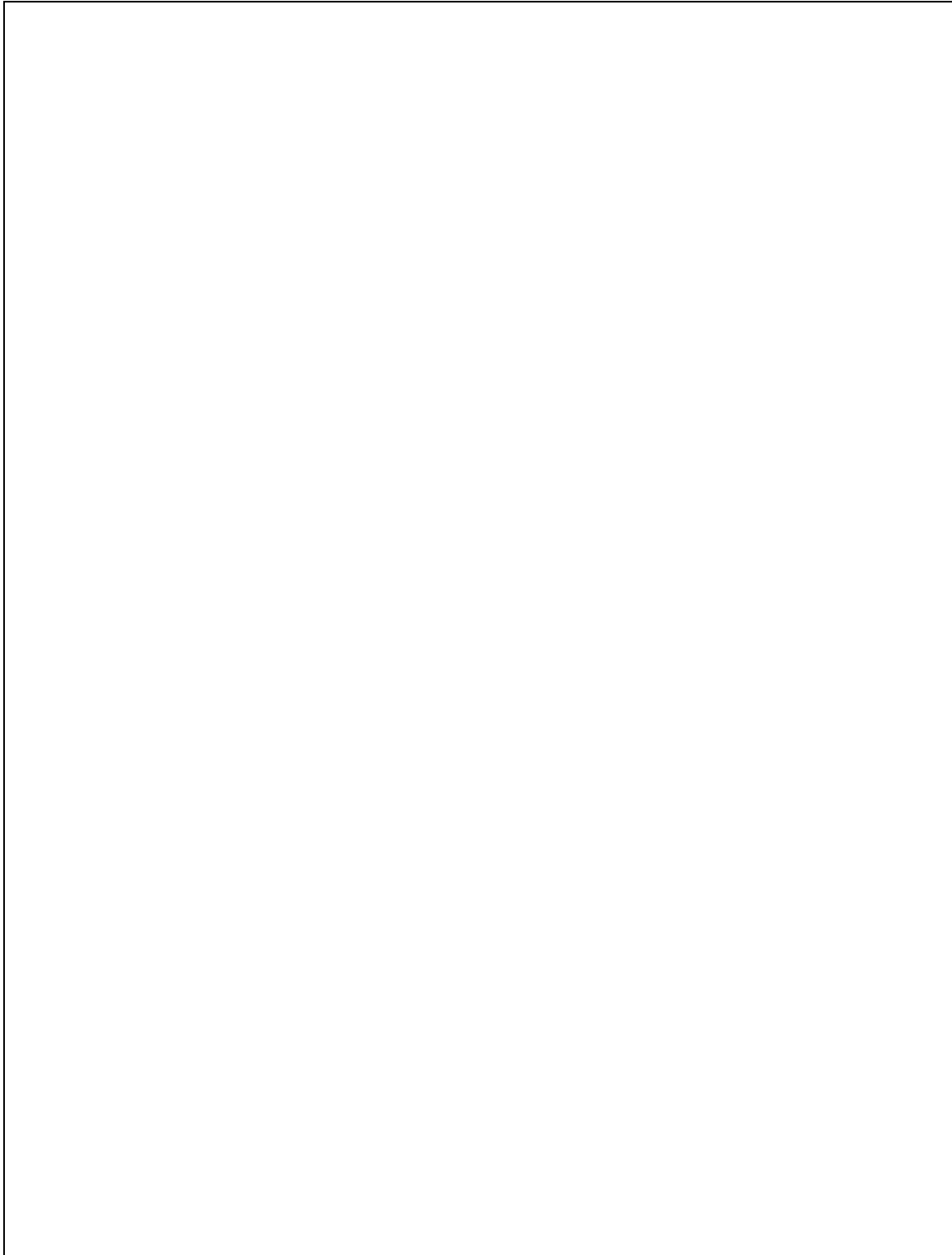
**VOLUNTARY DISPOSITION:** A transaction where no purchase monies or less than the market value of the property pass between the parties e.g. a transfer from a parent to a son or daughter.

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 person's property must be made good.



## Notes



## Notes



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***The information in this pack is for guidance only  
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