



A GUIDE TO THE SALE OF PROPERTY



TABLE OF CONTENTS

List Of Items To Be Provided By You	3
What Does It Take To Get Up And Running? - Pre-Contract Steps.	5
An Overview Of The Transaction	6
Step 1: Finding A Buyer.....	6
Step 2: Preparing The Contract.....	7
Step 3: After Contract And Before Closing.....	11
Step 4: Closing The Sale.....	11
Diagram Of Stages Of Sale.....	14
Information That Might Help Identify Problems In Advance	15
Is It Usual To Have A Property Surveyed?	15
Is It Important To Know The Planning History Of Your Property?.....	15
Do I Have To Do Anything Extra If I Have A Septic Tank?	16
What Is Multi Unit Development Compliance And Where Does A Management Company Come Into It?.....	16
When Does The Mud Act Apply?.....	17
What Do We Need To Know About The Roads And Services?	19
Frequently Asked Questions	21
Who Pays The Auctioneer’s Fees?.....	21
Am I Bound To Go Ahead With The Sale After I Agree Terms With The Buyer?.....	21
When Is The Deposit Paid?	21
Do I Get The Deposit?	22
Who Prepares The Contracts?	22
What Do We Need To Prepare The Contracts?.....	22

Who Signs The Contract First?	23
How Long Does It Usually Take From The Verbal Agreement To Sell To The Day I Sign?	23
How Long Before I Have To Move Out?	23
Is The Closing Date "Sacred"?	24
What Does "Subject To Loan Approval" Mean?	24
Can I Cancel My Property Insurance After The Contract Is Signed?.....	24
Can I Take Away The Carpets, Curtains And Light Fittings On The Closing Date?	25
What Arrangements Are Made About The Outgoings As Of The Closing Date?	25
When Do I Pay Fees?.....	26
When Do I Get The Money?	26
Glossary Of Legal Terms	27

LIST OF ITEMS TO BE PROVIDED BY YOU

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

- **Your Photo ID and Proof of Address** – driving licence or passport and a current utility bill.
- **Revenue document with your (Personal Public Service Number) PPS Number and tax type.**
- **A NPPR Certificate of Discharge or Certificate of Exemption.**

Please note that a receipt for payment of the charge is not sufficient.

NPPR was an annual charge payable by owners for a Non Principal Private Residence for the years 2009 – 2013 (Inclusive)

The certificate issues from the Local authority – if Tipperary County Council, you can make an e-mail request to nppr@tipperaryccco.ie

- **Evidence of payment of the Local Property Tax.**

This is an annual charge on all residential properties in the State. Revenue will not issue Certificates for individual properties.

You will need to login to your online LPT account and print off property history which will show if the charges for the relevant years have been paid. To log in you will need;

- Property ID Number
- PPS Number
- PIN Number

- If the property has a septic tank, you will need proof that it is registered, i.e. the Certificate of Registration.

You can register and pay online @ www.protectourwater.ie

- A Building Energy Rating (BER) Certificate and Advisory Report which sets out the energy performance of your property. You will need to have this carried out by a BER Assessor. Your auctioneer may do this for you.

- If the Local Authority is responsible for the roads and utilities servicing the property, a letter from local authority confirming the roads and services are within their charge.
- We will get this for you on receipt of a fee of €60 payable to the local authority.
- If you are married, a Copy of your Civil Marriage Certificate.
- You can get one for a fee of €20 plus postage from the Registrar of Births, Deaths and Marriages or online <http://www.hse.ie/eng/services/list/1/bdm/Certificates/>.
- If divorced or separated, a Copy of Divorce/Judicial Separation Orders and Separation Agreement.
- If we did not deal with your divorce or separation, you can ask the solicitor who did to provide you with a copy. Otherwise you could get one from the Circuit Court office.
- Receipts for:
 - Ground Rent;
 - Service Charges which you have paid to a management company if you live in a block of apartments or a private residential estate.
 - Commercial rates if paid on a commercial property.
- Copy of all Planning Permissions for the property and Certificates of Compliance dealing with the planning from an Engineer or Architect.
- We can get these for you by employing an Engineer who usually charges a set fee of €123
- If contents are included in the sale, a List of contents.
- Details of alarm or other access codes.
- If the owner of the property is deceased, a Grant of Probate or Letters of Administration and death certificate.
- A Grant of Probate or Letters of Administration is the legal document that gives authority to sell to the Executor / Administrator of the Estate.
- If we were not involved, you may get Probate and Cert. from the solicitor who looked after the Estate or from the Probate Office which is attached to the Circuit Court office, for a fee of €10.
- You can get the Original Death Certificate for online at <http://www.hse.ie/eng/services/list/1/bdm/Certificates/> for €20 plus postage.
- If the property is owned by a company , a Certified copy Certificate of Incorporation; and a Memorandum and Articles of Association of

the Company. This can be obtained by accessing <https://www.cro.ie/en-ie/Services/Duplicate-Certificate>.

NOTE: Do not be alarmed by the length of this list. You may not need to provide each document on this list. We have prepared this list to cover every eventuality in a sale. We will tell you at your initial consultation which documents you will need to get. It is always helpful if you bring any documents on the list that you have.

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

- You will need to sign the Authority to take up title documents unless we already have them.
- We will give you an fixed fee quote of the cost of the transaction.
- We will explain what we do and our fees and ask you to sign an agreement, called 'Terms of Business'.
- We will give you a "Sales Query Sheet".

The Query Sheet is a questionnaire about you and your property. The answers to the questions will help us process the transaction more efficiently.

- We will also arrange for you to sign an authority for us to get your Title documents from your Bank.

We need your title documents to prepare the Contracts.

This letter of Authority will also allow us to pay off any loans on your property.

It also allows us to deduct fees and outlays from the proceeds of sale.

AN OVERVIEW OF THE TRANSACTION

STEP 1: FINDING A BUYER

You can sell the property yourself or hire an Auctioneer. We would recommend using an auctioneer to get the best price. They know the market and are usually better placed to negotiate for you .

You should agree the Auctioneer's fee beforehand. The fees are usually a percentage of the sale price. They are commission fees and are only payable if the auctioneer finds a buyer.

If the Auctioneer does not find a buyer you will usually be responsible for paying a advertising costs. They will often look for advertising fees before they start selling the property.

You should shop around – but remember that the cheapest is not always the best.

NOTE: Beware of the situation where you are approached directly by a buyer or where you do a deal to sell yourself. You may still have to pay the auctioneer's commission fee.

Once instructed, we will talk to your auctioneer. It is important that we work with the auctioneer and visa versa to make the sale transaction as efficient as possible.

By doing this we try to deal with any potential issues at an early stage.

Make an appointment to see us as soon as possible, preferably as soon as you decide to sell the property.

This will give us the opportunity of getting your Title Deeds from your Bank and to check for any problems that might delay the sale of the property.

If we can check that everything is in order before you find a buyer we will be able to issue a contract as soon as a Buyer is found.

NOTE: There can be delays with the bank issuing your documents and so early contact with us is recommended.

Getting all the information at an early stage is the key to getting the Buyer to sign a contract.

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

Warning: The sooner you sign the authority to take up your title documents the better. In practice there is a long delay in getting these from the Lender. We have experienced delays of up to 12 weeks which unfortunately we have not been able to prevent..

STEP 2: PREPARING THE CONTRACT

Once a Buyer is found, we get the transaction moving by preparing the Contract for Sale and all the documents that need to go with it.

To do this we need your Title Documents (if we do not already have them) and all the additional information that will help us to respond to the Buyer's solicitor's queries.

When we get the documents and the property information we prepare the Contract.

This is the written agreement between the Seller and Buyer. It contains the names and addresses of the Seller and Buyer, description of the property, the purchase price, deposit payable on signing the contract, the closing date and the terms and conditions upon which you are selling and the Buyer is buying the property.

We send two copies of the Contract, copies of your Title Documents and Replies to Title Queries (called 'Requisitions on Title') to the Buyer's Solicitors.

These Requisitions on Title are in advance replies to any queries that the Buyer's solicitors might have about the property or the Title to the property. The document is a pre-agreed list of questions.

To do all of this we need your help in getting all the documents in the LIST OF ITEMS TO BE PROVIDED BY YOU Section.

NOTE: It is not always the big things that hold up the signing of the contract – e.g not having a receipt can hold everything up just as much as having to apply for planning permission for an extension.

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

It can take anything up to 6 weeks to 3 months to get past this stage.

There are a number of ways that you can help us make this happen within that time frame or earlier:

- Come to us when you put the property on the market.
- Give us the information at the start.
- Sign all authorities as soon as you can – especially the authority to take up title documents.
- Get all your documents at the beginning.
- Highlight any problems such as negative equity (mortgage arrears), planning, road and services or Management Company or common areas.
- Be proactive - Fix problems rather than hope any buyer will accept them – e.g if you have no permission for an extension apply ; if you have no legal right of way , look for one; if you have a mapping issue, go about fixing it.

Note: Often the time it takes to fix a problem can be less than the delay in signing the contract. The problem is that if you leave it until contract stage you may lose the Buyer.

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

- Agree contents to be included e.g. carpets, curtains or furniture.
- Ask Buyer to arrange survey.
- Ask Buyer if he has loan approval.
- Agree a closing date.
- Agree deposit.
- Agree any special conditions – e.g the sale is subject to the buyer getting a loan; subject to the buyer getting a satisfactory survey ; sale is subject to the buyer selling their property; sale subject to boundary fences being erected by you.

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

As soon as the terms of the Contract have been finally agreed the Buyer's Solicitor will arrange for their client to sign the Contracts.

At this stage the deposit is paid by the Buyer to their Solicitor who will send it to us with the Contracts.

Usually a 10% deposit is paid by the Buyer. They may already have paid a booking deposit to the Auctioneer and this will be taken into account i.e. a 10% deposit in total is the norm.

We will then advise you to sign the Contracts.

We hold the deposit as Stakeholder for both parties. This means that if the transaction is successfully completed we pass on the deposit to you as

part of the proceeds of sale. However if the transaction does not proceed and if under the terms of the Contract the Buyer is entitled to the return of the deposit (e.g. if they do not get loan approval within the period stated in the Contract) we send the deposit back to the Buyer's Solicitor. One copy of the Contract is returned to the Buyer's Solicitor and we retain the other copy on our file.

It is not unusual for the Buyer to have signed the Contract subject to certain conditions e.g. getting loan approval within a specified period or getting a satisfactory survey report within a specified period.

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

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

The sooner they are identified and addressed the better.

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

NOTE: Do remember, however, that it is usual that issues have to be discussed and agreed and enquiries to be answered between ourselves and the Buyer's Solicitor before the Contracts are signed.

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

Warning: After we send the contracts to the Buyers solicitors there may be a delay to allow you and us as your Solicitor check it. This does not necessarily mean that there is something wrong. We wish to reassure you that this is perfectly normal and not a cause for alarm. We are aware of the time sensitivity of your sale and will TRY to limit such delays.

STEP 3: AFTER CONTRACT AND BEFORE CLOSING

You now have a signed contract.

This means that the Buyer is legally obliged to complete the transaction unless there are conditions in the contract that have to be fulfilled. – e.g. the buyer might have made the contract subject to getting planning permission or to getting a loan.

If there are such conditions then there will be no binding contract until those conditions are fulfilled.

However, the Buyer cannot use another reason to refuse to complete the purchase and must take all reasonable steps to fulfil such conditions.

We deal with all potential queries by sending, what are called, Replies to Requisitions on Title when we send out the contract.

If we do not have all the answers we cannot issue to contract.

The Buyer's Solicitor will usually send us further queries or request clarification on the contract and documents.

When we have satisfied the Buyer's Solicitor's queries and agreed the contract terms, we are then ready to complete the transaction.

STEP 4: CLOSING THE SALE

The contract will specify a closing date.

This may be a specific date e.g. 1st of August or on the occurrence of a specified event, for example; 14 days after the issue of the Buyers loan approval.

The closing date is the day you move out and get the money and the Buyer pays over the money.

The sale does not often close on the date selected.

It may be changed even in the best-planned transaction. It is important that the parties cooperate in this respect. For example, there may be a few days delay in the issue of the Buyer's loan cheque or you may want a few extra days to arrange alternative accommodation.

Suggestion:

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

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

The average sale takes 10 to 12 weeks to process from the time you find a buyer.

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

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

- The Buyer may be selling another property.
- You may have to apply for planning eg Retention Planning for an extension or the buyer's application for planning to build a house on a site.
- You may have to get the agreement of your Lender to the sale.

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

On the closing day the procedure is that the Buyer's Solicitor gives us a bank draft or transfers the funds into our Bank for the balance purchase monies owed.

When we get the funds we send them the Title Deeds.

They carry out various checks (called Searches) and when they confirm that these are in order the keys are released.

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

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

DIAGRAM OF STAGES OF SALE

You Decide to Put Property on the Market

↓

You give us all the paperwork and details of the property: Complete Sales Query Sheet

↓

If necessary, you sign authority for us to take up title documents

↓

We put together a draft agreement ready for any Buyer's solicitor

↓

We discuss sale with Auctioneer

↓

Buyer agrees to buy

↓

You or auctioneer tells us

↓

We send Contracts & Legal Paperwork to Buyer's Solicitor

↓

We get contracts back signed with Deposit & Draft Deed

↓

We draft closing documents

↓

You sign contracts & closing documents

↓

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

↓

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

↓

We pay off your mortgage and any other loans on property

↓

We take our fees and give you the balance of purchase monies

INFORMATION THAT MIGHT HELP IDENTIFY PROBLEMS IN ADVANCE.

IS IT USUAL TO HAVE A PROPERTY SURVEYED?

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

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

We try to avoid putting in a condition in the contract that the sale is subject to survey by the Buyer.

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

If your property was built after 1st of October 1964 we will have to give copies of the Planning Permission to the Buyer's Solicitor.

It is also necessary to produce evidence that the Conditions in the Planning Permission have been complied with.

This is done by Declaration from an Engineer or Architect who declares that the permission was complied with and the property was built in substantial compliance with the Planning Permission.

You may have built an extension, garage or shed after you first built or purchased your property.

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

get planning permission or, if permission was required, a declaration that the conditions of the planning permission have been complied with.

Building Regulations came in to force on the 1st of June 1992 imposing rigorous standards for construction, extension and renovation works.

From this date there is a legal obligation to comply with the Building Regulations for all new buildings, alterations, extensions or changes of use.

If you have carried out any work since this date an architect's declaration of compliance or exemption for the building regulations is required.

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

If your property is serviced by a septic tank, it will be necessary to arrange for an Architect or Engineer to inspect the property.

He has to sign a Certificate that the septic tank and the percolation area are located within the boundaries of your property.

It is now the law that you will also have to register the septic tank, (If not already done so) with www.protectourwater.ie.

You will need to provide us with a certificate of registration for your septic tank.

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

If your property is part of a Block of Apartments or an estate of properties, we will need to decide if what is known as the MUD Act, applies to the property.

This is essentially a legal obligation by a developer of a block of apartments or estates of properties to properly deal with what are called “common areas” such as roads, services, green areas, stairways etc.

The MUD Act is there to make sure that all these common areas are looked after by a management company.

WHEN DOES THE MUD ACT APPLY?

- If there are more than five residential units.
- If none of the properties in the development were sold prior to 1st April 2011.

then a management company must be in place;

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

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

The chance of selling can be improved where the management company is not in place if there is an Insurance Bond in place or there is an agreement by the developer/builder of the estate or apartment to complete the roads and services.

The Insurance Bond is usually a requirement of planning that a Developer/Builder takes out insurance to cover the situation, if it arises, that the roads and services are not completed.

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

WARNING: Some solicitors for buyers will not allow their clients to buy properties if the Management Company is not compliant – e.g. the property owners do not take an active part in its running or do not pay the service charges or is short on funds to run the common areas.

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

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

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

A Buyer will want to know who is responsible for the roads and services – e.g. who owns the road way, who is responsible for its upkeep; where is the water source, what are the arrangements for waste.

In the case of a standalone property you may know the position or, if not, it may be obvious from the paperwork.

In the case of a housing estate property the situation may be less obvious.

If the position is not clear then it will be necessary to seek clarification from the Local Authority.

We will then request confirmation from the Local Authority who charges a fee of approximately €60.

WARNING: If the Local Authority has not taken responsibility for the roads and services and there is no management company then we will need to ensure that the developer retains responsibility and that he has an insurance bond in place.

We will request confirmation of this. The Local Authority charge a fee of €25.

An insurance bond is there as a protection against the failure of a developer to complete the roads and services.

If he fails to do so, the Planning authority can use the monies from the Bond to pay for the work necessary to finish the roads and services.

If none of these are in place, you may have difficulty selling the property.

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

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

FREQUENTLY ASKED QUESTIONS

WHO PAYS THE AUCTIONEER'S FEES?

If you instructed the Auctioneer and he introduces a purchaser you will be responsible for paying a commission fee, VAT and advertising costs.

It is advisable to agree the Auctioneer's fees in advance.

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

The general rule is that you are not legally bound to go ahead until you sign the contract.

If however, the Buyer relied on the verbal agreement and, for example, sold his existing property, got loan approval and planning permission and you stood by and allowed him to do so he may be able to enforce the verbal agreement.

Furthermore, if an agent (e.g. Auctioneer or Solicitor) puts the terms in writing you may be bound.

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

WHEN IS THE DEPOSIT PAID?

Usually 10% deposit is payable by the Buyer when the Contract is signed. The deposit is returned with the Contract to us.

An Auctioneer may have obtained a booking deposit from the Buyer when the terms of the sale were agreed.

The booking deposit may be small, e.g. 3% of the purchase price or may be the total 10% deposit.

As a general rule a total deposit of 10% is payable by a Buyer, i.e. if the Buyer has paid a booking deposit he should be given a credit for this.

DO I GET THE DEPOSIT?

No, the Deposit must be retained by us as stakeholder for both parties until the sale is closed.

We cannot release it to you until the transaction is completed or must refund it if the sale does not go through.

WHO PREPARES THE CONTRACTS?

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

WHAT DO WE NEED TO PREPARE THE CONTRACTS?

- Your title documents.

- A completed Sales Query Sheet.

- Signed Terms of Business.

- The documents that we have set out in the 'LIST OF ITEMS TO BE PROVIDED BY YOU' section.

WHO SIGNS THE CONTRACT FIRST?

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

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

The procedure is that we get your title documents from the Bank or Building Society, prepare the Contracts and send them to the Buyer's Solicitors.

The Buyer's Solicitors return the contracts signed and you then sign.

This can take as short as 4 weeks or as long as 16 weeks (or even longer).

HOW LONG BEFORE I HAVE TO MOVE OUT?

Again the time varies.

The average sale takes about 6 – 8 weeks to process from the time you agree to sell.

These factors may be relevant:

- How long it takes the Buyer to get his loan.
- You may be buying another property and progress on this transaction may affect your closing date.
- The buyer may be selling another property and this may affect the timing.

IS THE CLOSING DATE "SACRED"?

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

It is important that the parties cooperate in this respect.

For example, there may be a few days' delay in the issue of the Buyer's loan cheque or you may want a few extra days to arrange alternative accommodation or your new property may not be ready.

WHAT DOES "SUBJECT TO LOAN APPROVAL" MEAN?

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

In these circumstances, a condition "subject to loan approval" may be inserted in the Contract.

This means that if the Buyer does not get written loan approval within a specified period (or such further period as agreed) the contract is at an end and the Buyer is entitled to get the deposit back.

This condition should be avoided, if possible. It makes the contract uncertain and causes delays.

CAN I CANCEL MY PROPERTY INSURANCE AFTER THE CONTRACT IS SIGNED?

No. You continue to carry the risk between contract and the closing of the sale.

If the property burns down the Buyer is not obliged to complete the purchase and is entitled to the return of the deposit.

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

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

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

If you have agreed with the Buyer that you can keep certain items, e.g. curtains in the living room, you should draw our attention to this before the Contracts are signed.

If the Contract states that carpets, curtains and light fittings are included you cannot remove them.

We would suggest that you give us a list of items that are included in the sale and we will attach this list to the contract.

If there is no agreement, you can take fittings but must leave fixtures.

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

Outgoings, e.g. water charges, service charges and rent are shared between you and the Buyer as of the date of the closing of the sale.

You have to pay them up to the day of vacating the property and then the buyer is responsible for them.

For annual charges – such as NPPR or local authority charges, you will pay for the year and get a refund from the Buyer.

For example, if the sale closes on the 1st of October you should discharge all outgoings up to 31st of December and give us the receipt. We will get

a cheque from the Buyer's Solicitor to your credit for October, November and December for which period the Buyer is responsible.

WHEN DO I PAY FEES?

All fees and outlay are paid on the closing date.

We normally deduct the agreed fees from the proceeds of sale.

WHEN DO I GET THE MONEY?

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

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

This usually takes five working days.

GLOSSARY OF LEGAL TERMS

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

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

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

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

CARETAKER'S 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 Caretaker's 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 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 that everything is in order.

CLOSING DATE: The day you hope 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. You get your money and the Buyer gets 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 you 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 us on receipt of the title documents from your lending agency. Two copies are each signed by both you and the Buyer. One copy is retained by us 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 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 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 10% of the purchase price paid by the Buyer on signing the Contract.

The **DEPOSIT** is passed on by the Buyer's Solicitor to us who hold 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. property, caravan.

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, by signing a written consent.

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 you 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 property 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 property. Buyers of properties from Builders who have registered 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 Caretaker's Agreement the purchase monies are placed on joint deposit in the joint names of ourselves and the Buyer's Solicitor with the interest to accrue to you pending the closing of the transaction.

(See **CARETAKER'S 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.

The 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 borrower 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**.

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 Buyer's Solicitors.

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

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 e.g. on foot only or at certain times of the day or general e.g. for all purposes or at any time.

SEARCHES: Checks carried out by the Buyer's Solicitor on the day the sale closes to confirm that you have 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 us 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.

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 you on behalf of both parties until the transaction is closed. In other words the we cannot release the Deposit to you.

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.

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 you have insisted on making time of the essence and if for some reason you 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. we will usually give an undertaking to the Buyer's Solicitor to pay off any loans out of the proceeds of the sale.

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

You 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.

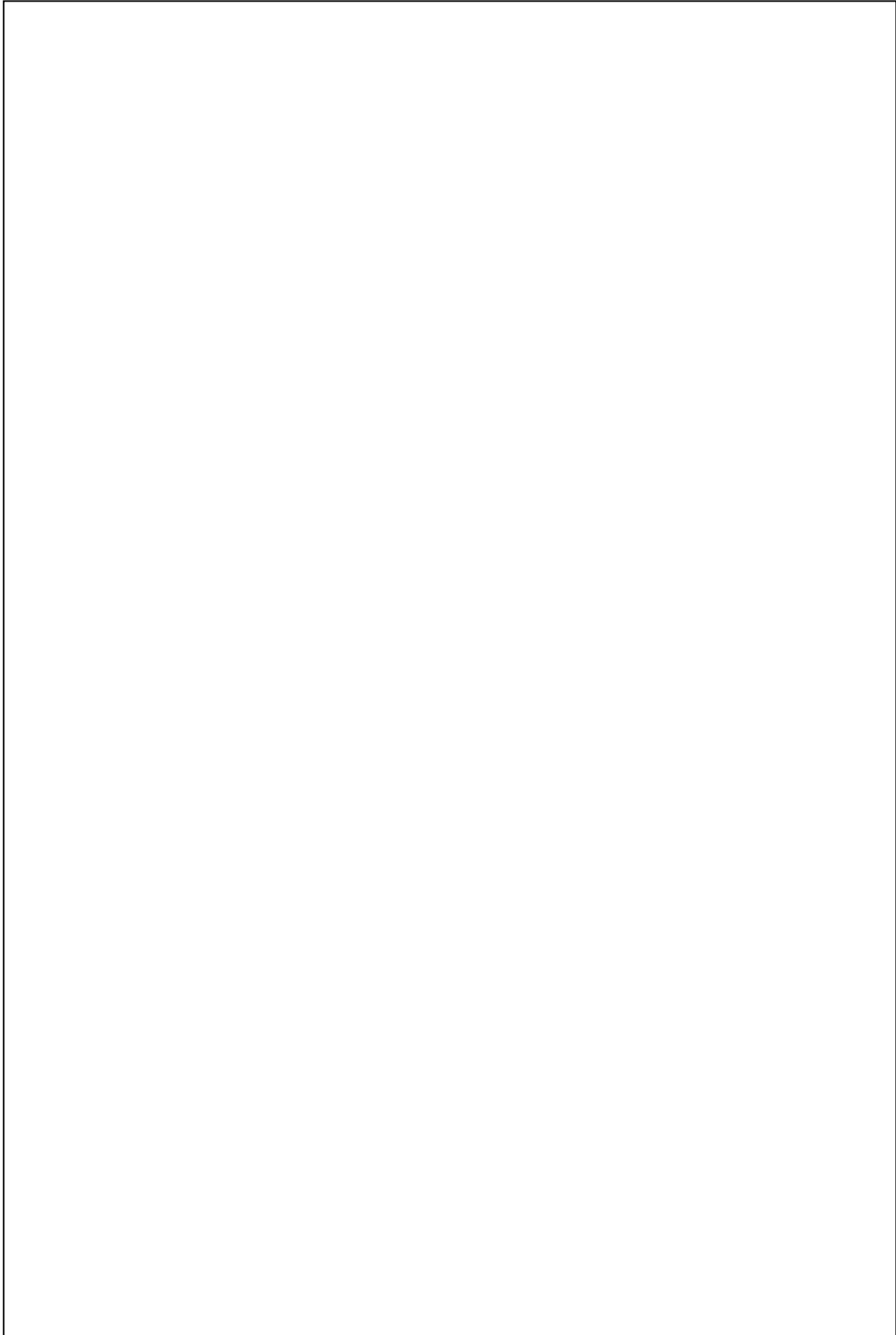
Stamp duty is payable on the market value of the property not the monies passing hands. The rate is reduced for inter family transactions.

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.

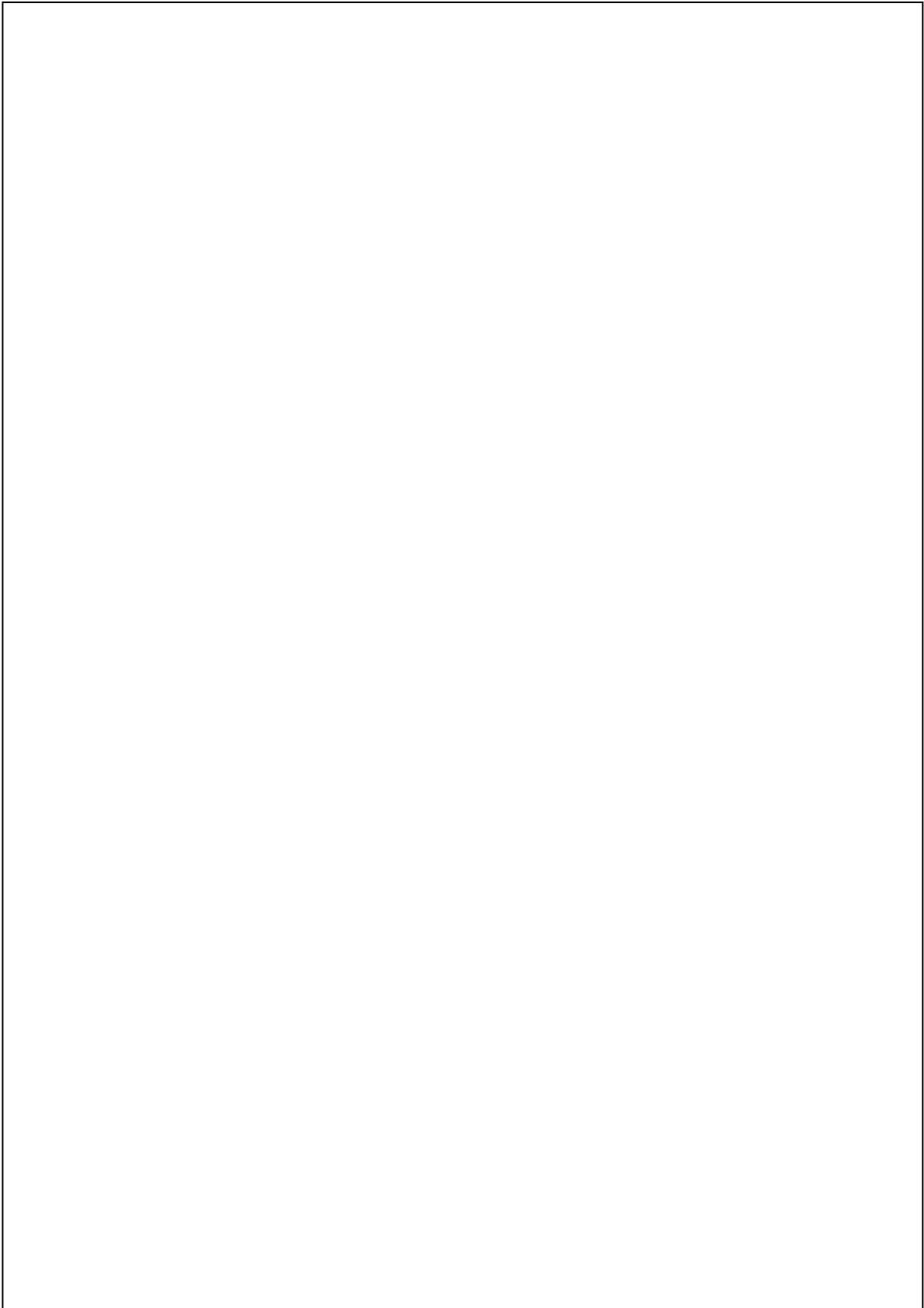
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***Thank you for taking the time to read this
booklet.***

***We hope you found it helpful and that it will act
as a reference for you throughout the case.***

***If you have any questions, or need some
clarification, please feel free to talk to us.***



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legal advice.**