

Comment

Reforms set to accelerate property sales process



Michael Walsh The Law Society of Ireland has two teams working on proposals to streamline and speed up the currently glacial pace of property conveyancing

Amid discussions about stimulating supply to meet the housing crisis, and necessary planning reform, rumblings continue about the property transaction timeline. It is estimated that in Ireland the average period is up to seven months from the decision to sell until the sale is completed. For unregistered land, it can take several years before land ownership becomes registered in the Land Registry.

This reflects conveyancing and land registration systems which are in need of state investment and reform.

Last November, a private members' bill, the Seller's Legal Pack for Property Buyers Bill 2021, was introduced to the Dáil. It aims to create a statutory requirement for a seller's pack, including legal documents, to be made available to potential buyers when a property is placed on the market.

There is often a delay between a property becoming sale agreed, and draft contracts and title being issued to the buyer. The reasons for this lag are myriad, but most often sellers do not engage solicitors until a buyer is found and a clear survey has been procured by the buyer. It can then take several weeks for lenders to release the title deeds to the seller's solicitor, without which the solicitor cannot progress the sale.

The Law Society of Ireland's conveyancing committee's view is that, while well intended, the bill misunderstands the dynamics at play, since buyers and sellers will almost always prefer a prudent stepped approach to incurring

costs. It could be counterproductive to a healthy property market to force sellers to incur material costs (including surveyors, legal and other costs) in speculation of a sale.

The Law Society believes the solutions lie elsewhere and, with two special groups working specifically on conveyancing reform, it is moving forward at pace.

While the conveyancing timeline is a relatively small part of the overall property transaction timeline, there is consensus that an electronic conveyancing system (ECS) will speed up 'the legals'. The vision of an ECS involves a fully electronic system: an electronic contract, followed by an electronic transfer of title with live updating of public registers to record that the ownership has transferred.

Building an ECS system is a massive undertaking that cannot be fully realised until all land in Ireland is registered. The Land Registry estimates that 93 per cent of the land mass of the state and almost 90 per cent of the legal titles in Ireland are now registered, but the coverage is significantly lower in Cork and Dublin (less than 60 per cent).

Despite state-wide compulsory registration since 2011, there is a lot more work to be done. With some first registrations taking up to five years to complete, a full ECS seems remote without additional investment in the Land Registry to accelerate the registrations process.

Helen McEntee, the Minister for Justice, recently ran a consultation process on whether to introduce a new



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profession of conveyancer. The Law Society and the Bar Council of Ireland separately submitted to government arguing that this would not improve standards or reduce costs. Lack of competition is not the issue, with a significant number of law firms, both large and small, offering this service line.

As to costs, professional indemnity insurance (PII) is a considerable line item for all professions. Recent High Court and Court of Appeal cases highlighted that our Statute of Limita-

tions 1957 (as amended) is not fit for purpose; a claimant could potentially bring an action against a professional decades after the relevant event.

Professionals must maintain PII cover for all of the work they have carried out for many years, potentially decades. This clearly carries a cost burden that is ultimately passed down to the consumer. A reasonable balance needs to be struck to enable claims to be pursued within a reasonable period of time. Urgent reform is needed to bring legal clarity, and rebalance the competing interests, for the benefit of consumers as a whole.

In relation to planning law, limitation periods are equally unclear. Conveyancing solicitors have to investigate planning compliance for a property all the way back to 1964. Many local authorities no longer host pre-2000 planning documents for public searches. This creates an obvious difficulty in that sellers and buyers must be concerned about the planning history of developments that they cannot fully investigate. This too must form part of the reform agenda, to narrow the planning title investigations to a rea-

sonably proximate period.

In Ireland, a total of 31 local authorities support property dealings. When I buy a home, for example, I want to know that I can access it and get services like water and waste water treatment. If the roads and services directly adjoining the property are not public (in charge), this could cause serious difficulty. I could be held to ransom by the adjoining landowner to buy the rights that I need for the land.

Historically, local authorities have issued letters confirming roads and services are in charge, charging fees currently ranging from €31.75 to €125. A small number so far have stopped doing so, and for those that do, the response time is varied.

Since Irish Water took over water services, it has not established a reliable system to confirm to landowners that water services for a property are in their charge. If the state is serious about conveyancing reform, it should mandate that Irish Water and each local authority holds reliable online registers of roads and services in charge.

While some of this information is

available from a number of local authorities, it comes with ubiquitous disclaimers. Reform of the law would benefit consumers by reducing cost, cutting down on delays and creating efficiencies within the public bodies.

Live to the pressures of reform towards a digital agenda, there is some cause for optimism. As I recently reported in this newspaper, the legal basis for recognition of electronic signatures here is the Electronic Commerce Act 2000.

Recently, new regulations were made extending the use of electronic signatures to deeds of registered land. Conveyancing solicitors received the news with excitement: it is a radical move that could help speed up conveyancing where clients engage with digital signatures, and a stepping stone to an ECS.

However, the excitement was short-lived: the Land Registry announced in the days following that it was not yet set up to receive e-signatures. The upshot is that while the new regulations are welcome, they are of little use to consumers until the state authority is ready. It's not something to be rushed, since there is much at stake. Forgery is not unheard of in the land of 'wet ink' signatures, and the authentication of digital signatures is a more complex affair.

So, the reform agenda is gathering momentum. Both the Law Society's conveyancing practice reform and e-conveyancing task forces have been making progress with their respective work programmes towards the goal of e-conveyancing. To make this a reality, the state will need to invest in structural change, the law must be updated, and all relevant stakeholders will need to engage.

For so long, it has felt like the advent of a system of paperless transacting and registration for real estate was remote; now the prospect could soon emerge on the near horizon.

Michael Walsh is partner and chair of property law at ByrneWallace LLP and is the current chair of the conveyancing committee of the Law Society of Ireland

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