

Submission by IPAV to the LSRA

Creation of Profession of Conveyancer



About us

IPAV is the representative professional body for qualified, licensed auctioneers, valuers and estate agents throughout Ireland. We are the administrators of the blue book European valuations standards in Ireland.



**6,000 +
Property Service
Providers**



**25,000 +
Employees**



**Presence in
every county**

Our Primary Objectives

- Promoting professional standards within the industry
- Fostering relations between members
- Providing training, education and support
- Working with policymakers to influence the development of a sustainable property market where people can buy, sell or rent properties according to their needs



Introduction

The Legal Services Regulatory Authority has invited interested parties to make written submissions ahead of its report to the Minister for Justice, Helen McEntee TD in relation to the creation of a new profession of conveyancer in Ireland.

The Institute of Professional Auctioneers and Valuers (IPAV) represents 1,500 Auctioneers and Valuers throughout Ireland and the association is grateful to have the opportunity to make its members' views known on the creation of a new profession of conveyancer.

IPAV is a member of two pan-European Associations; the European Group of Valuers' Associations (TEGoVA), which represents 65 professional bodies across 35 European countries working for standards, ethics and quality in the real estate valuation market. IPAV is also a member of the European Association of Real Estate Professions (CEPI), which represents 29 Institutes and 300,000 members across Europe. CEPI assists member associations to promote standards and equal opportunities among its membership.

IPAV is the only professional Institute in Ireland which has awarding rights to administer the Recognised European Valuer (REV), and the TEGoVA Residential Valuer (TRV) status as governed by TEGoVA. IPAV REVs and TRVs, like our 100,000 European counterparts, have adopted the 2016 European Valuation Standards of the "Blue Book", recognised and accepted by both the Irish Central Bank and the European Central Bank as international valuation standards. In 2016 the new European Mortgage Directive was transposed into law by the Irish Government and Irish REVs and TRVs carry out 'Blue Book' commercial and or residential valuations, as the favoured valuation standard of the European Central Bank.

As a key stakeholder in the property sales process, IPAV considers the creation of a new profession of conveyancer to be a logical step in the continuing reform of the area of conveyancing and recognises that it builds on key recommendations of the Competition Authority in 2006. Central to the introduction of any new professional grade is the continued reform of conveyancing and, in particular, the greater use and support of technology in an increasingly digitised world.

The case for implementing a national system of electronic conveyancing has been part of public discourse for some years, including the Law Reform Commission's report on e-conveyancing, *Modelling of the Irish Conveyancing System (2006)* and in a Law Society of Ireland task-force document, *eConveyancing: Back to Basic Principles (March 2008)*. eConveyancing has also been considered in the Government's *Construction 2020: a Strategy for a Renewed Construction Sector*, which was adopted on 16 May 2014.

It is critical that government policies are developed with a full understanding of stakeholder needs, and we respectfully request that our views, as expressed herein, will be considered fully when the Minister commences the formulation of policy in this area.

Creation of a profession of conveyancer

– an industry perspective

IPAV members welcome the creation of a new profession of conveyancer as we fully recognise that this initiative will help to speed up the transfer of property in Ireland - which will ultimately deliver significant cost and time savings to the consumer.

The Competition Authority's report of 2006 noted: *"The Law Society, the Bar Council and the King's Inns have not sufficiently promoted the interests of consumers of legal services. They have failed to provide consumers with necessary information for dealing with the legal profession. They have also placed unnecessary limits on how consumers access legal services and on who can become a solicitor or barrister. They have presided over restrictions on competition which may have benefits for lawyers, by sheltering them from competition, but which harm consumers. The overall effect of the myriad restrictions on competition in legal services has been to limit access, choice and value for money for those wishing to enter the legal profession and those purchasing legal services."*

Creating the profession of conveyancer emulates the practice of other common law jurisdictions such as England, Wales, Scotland, New Zealand, and most Australian states, that have professional conveyancers operating with appropriate regulation. Experience from these jurisdictions demonstrates over-arching benefits derived from the establishment of this stand-alone profession which includes:

- Enhanced protection and promotion of the interests of consumers
- Greater competition in the provision of services
- Encouragement of an independent, strong, diverse and effective legal profession
- Increased public understanding of the citizen's legal rights and duties
- Promotion of and adherence to professional principles

It is clear, some fifteen years after the 2006 Competition Authority report, that even minor changes to the existing legal services and structures in Ireland are implemented at a frighteningly slow pace of reform. Ireland risks being left behind while other EU member countries and the UK rapidly embrace eConveyancing and technological reform. As a country with a vibrant tech and digital presence, the lack of action on conveyancing reform could arguably be damaging, as Ireland positions itself at the heart of the digital economy.

Indeed, conveyancing delays were identified as far back as 2005 in the *Auctioneering/Estate Agency Review Group*, a report that was delivered to the Minister for Justice, Equality and Law Reform. In particular, the report stressed that: *"The Regulatory Authority should make it a priority, in its consumer awareness role, to ensure that buyers and sellers are better informed about the conveyancing process."*

The current delays being experienced by consumers are unacceptable – they lead to real, tangible and stress-inducing problems for families, couples and individuals navigating the choppy waters of the Irish property market today. By way of example, a common problem with the current system has emerged whereby buyers' 'mortgage approved' status has expired as a result of conveyancing delays or indeed, of families finding themselves with a chaotic gap between the sale of their existing property and the home they had planned to move into.

To remedy such delays, IPAV has proposed legislation, which was introduced by Deputy Marc MacSharry in Dáil Éireann in November 2021. The Seller's Legal Pack for Property Buyers Bill 2021 and the provisions contained therein, is a clear acknowledgement that the conveyancing process is not working as efficiently as it could, and that delays have led to frustration for all parties concerned. Amid the immense stress on our housing market, it is vital that the State takes proactive measures to ensure that the closing of property transactions can occur in a timely, efficient and cost-effective manner, rather than continue to allow the current situation continued unabated.

This Bill seeks to achieve efficiencies in the process by establishing a requirement that certain legal and planning documents are compiled by a seller in advance for a property being advertised for sale on the open market.

The Bill expressly provides for:

- Property-related documents to be provided in advance of advertising a property for sale
- Documents to be made available in electronic and or physical form, and all true copies of same, are legible, clear and readable
- The age of the documents deemed acceptable
- Exemptions from the provision of stated documents in exceptional circumstances
- Exclusion of certain property transactions
- Enforcement action in the event that the stated provisions of the Act are breached

This Bill is a formal follow on to the introduction by the Law Society of Ireland's 'Pre-Investigation Of Title' two years ago. It also supports the proposal for the establishment of a new Occupation of 'Conveyancer' which is the subject of this consultation.



A conveyancer as a profession – potential impact

IPAV asserts the creation of professional conveyancers and the greater use of e-conveyancing and technology is the appropriate way forward that will lead to a more efficient and economic service to clients.

The UK Solicitors Regulation Authority's (SRA) report on technology and legal services has highlighted the enormous benefits of greater digitisation in the legal profession. The report highlights that faster processing of everyday routine legal tasks coupled with better engagement will make clients more satisfied. The Authority has also noted that the main challenge to the legal market is the realisation of the many benefits of investing technology within the business - as legal technology can potentially help law firms offer a more efficient, productive, and accurate service to their clients [1].

IPAV's motivation to change the current status quo is rooted in the Association's recent Conveyancing Survey wherein it was discovered that **79% of auctioneers are experiencing conveyancing delays** from the time a property is deemed 'sale agreed' to when the sale eventually closes.

This statistic can be broken down further in order to fully understand the nature of such delays being endured by our industry and consumer alike:

- **The average time it takes from when a property is 'sale agreed' to when contracts are signed is ten weeks, and;**
- **The time it takes from the signing of the sales contracts to date the sale closes is six weeks.**

Aside from this, the experience of IPAV members indicates that banking institutions are taking three to four weeks to conduct the necessary steps to facilitate the conveyancing process.

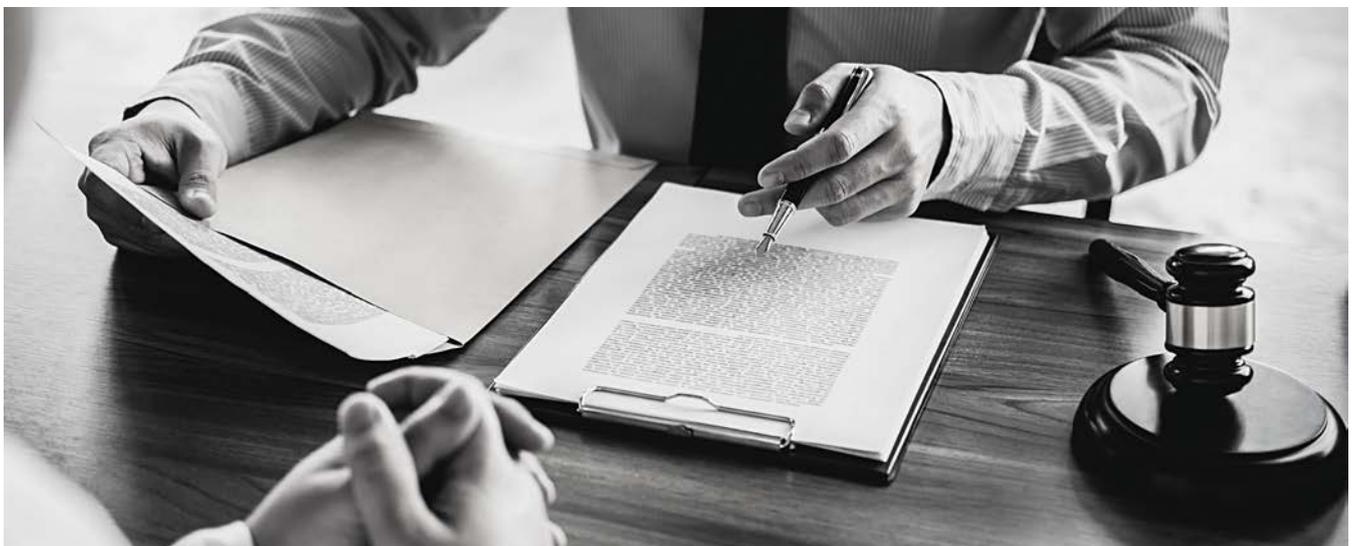
There is a need to streamline this process, and therefore make it more efficient. There is a clear need to put limits on the duration of these processes. To accomplish this, every opportunity to implement common-sense solutions should be taken. This includes steps such as those express provisions contained in the Seller's Legal Pack for Property Buyers Bill 2021, which are designed to ameliorate delays through the frontloading of the conveyancing process, without leading to further, additional costs.

Implications for the legal services sector and the solicitors' profession

Establishing a standalone profession of conveyancer will deliver systematic efficiencies as the conveyancer will be full-time and will not be attending to other unrelated duties in a practitioner's office. Should it be necessary, both vendors and purchasers will still continue to have the choice of getting their own legal advice. However, the issues of who will put the legal papers required for any transaction, the holding of deposits, the final transfer of funds to the Vendors and the arrangement for mortgages will have to be reviewed, as well as the holding of deeds by the financial institutions.

Successive polls in the UK have indicated approval of the changes to their conveyancing system; one poll found that **people are generally happy with high street conveyancers** (First Title) with 76% of conveyancers being somewhat satisfied in their jobs (searches UK). However, research undertaken last year by InfoTrack (UK) found there to be massive demand among house-movers for their conveyancers to implement technology in order to improve digital communication and access to real-time information about their transaction. The same was concluded in a report by tmgroup, a leading provider of law searches and other services to conveyancers [2]. The use of dedicated professional conveyancers has increased significantly in the UK since their introduction. **Some 43% of home-movers in 2017 chose a conveyancer in favour of a traditional solicitor** [3].

For the legal profession more generally, solicitors will have more time to assist other clients on matters that require consultation, as opposed to process, which will deliver real benefits to a practice and also to the consumers of such services.



Potential advantages and disadvantages to consumers

IPAV identifies the following advantages and disadvantages that may arise from the introduction of the proposed profession of conveyancer:

ADVANTAGES

- Simplification of process for the consumer
- Reduced time-frame for the completion of property deals
- Avoidance of risk to consumer
- Clarity and transparency around fees
- Reduction in costs given dedicated resources will be targeted at a specific legal area
- In a defined and regulated process, the risk of gazumping and gazundering will be ameliorated

DISADVANTAGES

- In some cases, access to legal services will still be required to cover consumer protection and contractual dispute elements of a purchase
- There may be a need for greater investment by legal practices
- Fraud as per the facts contained in *P&P Property Limited v Owen White & Catlin LLP and Another* [2016] and *Patel v Freddy's Ltd and Others* [2017]



Potential benefits and challenges to enterprise and national competitiveness

Assuming appropriate use and regulation of a conveyancer profession, Ireland's competitiveness will improve substantially. In a National Competitiveness Council Bulletin NCC (2016) on Legal Costs, it stated that; *"The cost competitiveness of legal services has a direct impact on national competitiveness - based on World Bank data Ireland is an expensive location to enforce a business contract."* The same Bulletin recommended that a specialist conveyancer profession should be developed and that procedural reforms should adopt ICT.

Having a first-class legal process for the transfer of land is of crucial importance to the country for many reasons, and particularly in circumstances where our foreign direct investment model is under threat as a consequence of global tax reforms. Frustration with such basic processes can only serve as a further deterrent to potential investors.

One of the overarching benefits of the establishment of a conveyancer profession is that a conveyancer's work will be of a singular focus which would greatly reduce the arduous correspondence between legal professionals. This very often takes weeks at a time while industry is waiting.

With delays being the most common cause for complaints, using technology-empowered conveyancers will unquestionably help complete the work much quicker and accurately. This in turn, will facilitate solicitors to concentrate on alternative client-work which will assure the delivery of the highest standards of service and client satisfaction.



How digitalisation should inform a decision to establish a conveyancer profession

Ireland is a laggard in the use of technology transactions. There are substantial gains to be had in the enhanced use of technology especially in the sourcing of the deeds of transfer, and recording the actual conveyance. It is worth pointing out that as an EU member-country, Ireland has legally recognised eSignatures since 2000, with the Electronic Commerce Act, established after the passing of the EU Directive in 1999. In addition, Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the “eIDAS Regulation”) came into force on 1 July 2016. The eIDAS Regulation repealed and replaced the eSignatures Directive (1999/93/EC) and is directly applicable in the 28 member countries of the European Union.[4]

The electronic signing of deeds has already commenced in the UK and there is no reason as to why it cannot be introduced in Ireland. We must embrace electronic conveyancing and overcome whatever legal, systematic and operational obstacles that are preventing its introduction. The Electronic Commerce Act 2000 specifically confirms that contracts cannot be denied enforceability merely because they are concluded electronically.

By introducing electronic signing, the UK and Wales has seen the additional benefit of curbing potential fraud with the elimination of ‘wet signatures.’ More importantly, there has also been an overall reduction in time wasted (up to a week) due to documents not having to be sent by post [5].

However, the eIDAS does not affect national law or the validity of contracts or other legal or procedural obligations relating to their form as per article 2.3 of eIDAS. In addition, Recital 49 states that *“it is for national law to define the legal effect of electronic signatures”*.

eConveyancing does not exist at the moment – a clear failure of the country’s eConveyancing legislation and Government must act with haste to remove the legal uncertainty surrounding e-signatures. A failure to do so will leave Ireland lagging behind the UK and other EU member states.

IPAV seeks an urgent repeal of Section 10 of the eCommerce Act, which lists a number of legal documents that must be signed using wet-ink signature. These documents include:

- Wills, codicils, or any other testamentary instruments to which the Succession Act 1965 applies;
- Trusts;
- Enduring powers of attorney;
- Documents by which interest in real property (including a leasehold interest in such property) may be created, acquired, disposed of, or registered, other than contracts (whether or not under seal) for the creation, acquisition or disposal of such interests;
- Affidavits or a statutory or sworn declarations; and
- Documents required by the rules, practices or procedures of a court or tribunal.

We must embrace fully the concept of eConveyancing. At present it appears that we have adopted a 'half-in, half-out' approach to eSignatures. This approach is counter-productive to business certainty in the area of conveyancing.

IPAV is also currently aiming to shorten the length of time in the conveyancing process by promoting legislation around the introduction of a Seller's Legal Pack (SLP). IPAV believes the legal document requirements to complete a sale should be compiled before a property goes on the market hence substantially shortening the time to transact.

The Seller's Legal Pack for Property Buyers Act 2021 (see details of supporting property service providers at Appendix One), will reduce conveyancing transaction times and, as a result, streamline the costs associated with same which will help to reduce the potential for gazumping and gazundering, allow for more certain and transparent transactions of property and afford protection to sellers and, more crucially, the consumer.

The Act was introduced as a Private's Members Bill in Dáil Eireann on November 23rd, 2021[6]. The legislation seeks to establish a statutory procedure whereby when a seller of a property places the property on the market, a set of legal mapping and planning documents (the "Seller's Legal Pack") shall be compiled and advertised with the property and made available to potential buyers for scrutiny. By front-loading the process, buyers will have key information relating to the property thus ensuring the conveyancing journey is more efficient.

These proposed measures highlight the broader point that in establishing a profession of conveyancer, it makes sense not to burden conveyancers with an antiquated system that will carry over problems afflicting the property market today. From the outset, conveyancers should have modern digital tools at their disposal, including the regulatory basis and means to conduct e-conveyancing seamlessly.

Barriers to the establishment of new providers for conveyancing services

Responsibilities of the profession of a conveyancer will determine the challenges it is likely to confront. The conveyancing system requires simplification to enable it to be more efficient and quicker, with enhanced communication and access to information.

There is likely to be resistance to the introduction of the profession from existing legal representative bodies. In 2006, the then director of the Law Society of Ireland said the introduction of conveyancers in Scotland had been a "*fiasco*", while "*cut-throat*" competition already existed between solicitors as they vie for conveyancing business. There was also a specialised knowledge of the law required for much conveyancing work in Ireland, and he doubted a "*pseudo profession*" would survive [7].

A properly informed debate on the merits of the introduction of dedicated conveyancers will assist Government in acquiring public acceptance and support for the new role, particularly where it is highlighted that the role will ultimately benefit the consumer.



Possible training and models for regulation of a new profession of conveyancer

As previously referred to in this submission, responsibilities of the profession of conveyancer will be determined by improvements in the system.

Considerations of a new profession of a conveyancer should include;

- A requirement for set qualifications
- Detailed responsibilities of a conveyancer
- The introduction of a regulated body to provide oversight
- Educational requirements of QQI professional standard qualification
- Appointment of suitable education providers

Clearly, there will need to be some consideration given to the professional qualifications required in order to obtain the title of 'conveyancer'. However, consideration must be given to the view that entry to the newly created profession must not be overburdened to such an extent that only existing legal professionals would apply. A diverse and inclusive system of selecting conveyancers is an important bedrock for any proposed profession.

Therefore, it is important that any qualifications agreed, as a prerequisite to becoming a conveyancer, are readily accessible via a broad range of educational institutions and that there would remain a number of routes to becoming a professional conveyancer. Consideration must also be given to the accessibility of such courses – a variety of options would make entry to the profession attractive and such models as part-time and remote study would achieve this objective.

For example, in England and Wales, you can become a conveyancing by completing a professional qualification through the Council for Licensed Conveyancers (CLC) such as a Level 4 Diploma in Conveyancing Law and Practice or a Level 6 Diploma in Conveyancing Law and Practice. Study for such courses can be completed without working in the legal profession. There is also an apprenticeship route available.

Consideration should also be given to licensed conveyancers to become Commissioners for Oaths, which means that they would have the legal authority to administer and witness official documents. This would ensure a further speeding up of the eConveyancing process.

To ensure that the educational path of conveyancer is desirable to potential candidates, it is also recommended that, as in England and Wales, a dedicated regulator, outside of the legal profession, is set up to oversee standards and to award qualifications.

Further considerations related to Ireland's domestic economy and the wider legal services sector

IPAV contends the SLP would work well in conjunction with the new profession, but the system must be reviewed and changes made to the conveyancing system as a whole, to make it consumer-friendly and fit for purpose.

The system should not fear change and, as such, it should be keen to embrace technology as it pertains to the provision of legal services in this country.

It is vitally important that non-solicitor conveyancers, with the appropriate qualifications, are not denied the opportunity to undertake the role of professional conveyancers. It must be stressed that the new role must be open to market competition, if the legal services sector is to become more inclusive, while offering better value to consumers.



Conclusion

IPAV contends that the continued reform of the conveyancing system in Ireland will result in an enhanced experience for the end-user; the consumer. Creating a new profession of conveyancer will bring about transformative change in the transferring and selling of property.

Having a dedicated professional working full-time at conveyancing, allied with the greater use of technology, can only bring about significant cost and time savings for the consumer. Where IPAV has recommended legislative changes, as set out above, we do so in the spirit of meeting the needs of a vibrant market economy in the 21st century.

Separate to IPAV's position already outlined in this submission, we would encourage that a steering group, constituted with relevant stakeholders, would be established, which would ensure that the reform process is well-informed, pragmatic and efficient. As an important industry body, with significant reach, IPAV is willing to contribute fulsomely to any proposed engagement process that may be established.



References

[1] Sako, M. & Parnham, R. (2021) Technology and Innovation in Legal Services: Final Report for the Solicitors Regulation Authority. University of Oxford.

[2] See 'Consumers Pushing For Technology In Conveyancing To Bring Transparency,' Today's Conveyancer, Oct 30, 2018 available at <https://www.todayconveyancer.co.uk/main-news/consumers-pushing-technology-conveyancing/>

[3] See UK home movers more likely to use specialist conveyancers than ever before, Property Reporter, 21st February 2018 available at <https://www.propertyreporter.co.uk/business/uk-home-movers-more-likely-to-use-specialist-conveyancers-than-ever-before.html>

[4] The eIDAS Regulation is technology neutral and defines three types of electronic signature (SES, AES, QES). Article 25(1) provides that an electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or does not meet the requirements of a QES. Articles 25(2) and (3) give a QES the same legal effect as a handwritten signature and ensure that a QES recognized in one Member State of the EU is also recognized in other Member States. Finally, Recital 49 allows national law to set requirements regarding which type of electronic signature may be required in which circumstances.

[5] The Law Gazette article on the introduction of electronic signatures in the UK and Wales is instructive as to its potential here. See the article here - 'Digital conveyancing is here to stay, says early adopter, - <https://www.lawsociety.ie/gazette/top-stories/digital-conveyancing-is-here-to-stay-says-early-adopter-lawyer>

[6] See the Dáil report of the introduction of the Bill here: <https://www.oireachtas.ie/en/debates/debate/dail/2021-11-23/8/>

[7] As reported in the Irish Times, 'Creation of specialist 'conveyancers' will not work, says Law Society,' Tue, Dec 12, 2006 available at <https://www.irishtimes.com/news/creation-of-specialist-conveyancers-will-not-work-says-law-society-1.1036971>.

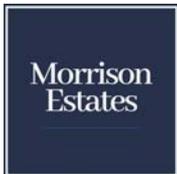


The Sellers Legal Pack for Property Buyers Bill 2021 is endorsed by:

ipav

Institute of Professional Auctioneers & Valuers

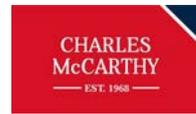
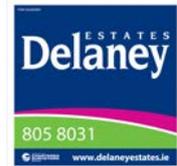
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