

# LAW SOCIETY SUBMISSION

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**Submission to the Legal Services Regulatory Authority on the  
Creation of a New Profession of Conveyancer**

**6 January 2022**

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## 1. Executive summary

- 1.1 Conveyancing in Ireland is a key contributor to the Irish economy as it provides a base for investment in land and property. It is the bedrock of the Irish property market and an efficient and stable system of conveyancing is vital to protecting and facilitating that market. It is of key importance that the system of conveyancing is both modern and progressive. Reforming and updating the law to reflect this goal and to offer a cost effective, efficient system of conveyancing is vital to the Irish economy. The adoption of globalised technological developments, and the opportunities offered by such developments, mean that it will be possible to continue to offer a cost effective, speedy and reliable system of buying and selling property in Ireland
- 1.2 The current system of conveyancing has been in operation for centuries and has developed and evolved to meet the changing needs of society. While it is complex and can be slow, this is largely caused by the volume of legislative imposition on the process.
- 1.3 There is no evidence of general dissatisfaction with the delivery of conveyancing services or public demand for an alternative to the current delivery channels, nor is there any business case for such an alternative.
- 1.4 There is vigorous price competition within the sector. The available evidence suggests that conveyancing services are generally provided below cost. Even if a significant further drop in fee levels was achieved by the proposed reforms, this would have only a negligible effect on overall costs.
- 1.5 No evidence has been produced that the introduction of a new profession of conveyancer will have any effect on either the price or the quality of conveyancing services – it is more likely that it will have an adverse effect.
- 1.6 It is unlikely that any conveyancer or firm of conveyancers will be able to finance their operations, likely leading to a small number of monolithic providers operating their own monopoly to the detriment of consumers.
- 1.7 A prerequisite to the establishment of a new profession will be a completely new financial and general regulatory scheme. Considerable investment in education and training will also be required. The cost of these regimes will be prohibitive.

1.8 In circumstances where the Law Society of Ireland (LSI) is actively driving a substantial reform agenda by the introduction of a system of eConveyancing which will streamline and expedite the conveyancing process, reduce costs and enhance the experience of stakeholders, any substantial change to the current model of delivery is premature. Before any further changes are introduced, adequate time should be given to assess the impact of digitisation of the system.

## 2 Introduction

- 2.1 The Legal Services Regulatory Authority (“the **Authority**”) was established in accordance with section 8 of the Legal Services Regulation Act 2015 (“the **Act**”) to regulate the provision of legal services by legal practitioners and to ensure the maintenance and improvement of standards in the provision of such services in Ireland.
- 2.2 The LSI is the representative and educational body of the solicitors’ profession in Ireland, governed by a Council, comprising elected and nominated members of the solicitors’ profession. It is the professional body for its solicitor members, to whom it also provides services and support. It exercises statutory functions under the Solicitors Acts 1954 to 2015 in relation to the education, admission, enrolment, discipline and regulation of the solicitors’ profession.
- 2.3 Section 34(1)(c) of the Act provides that the Authority shall furnish a report to the Minister for Justice in relation to the creation of a new profession of conveyancer. Under section 34(5)(a) of the Act, a report on the creation of a new profession of conveyancer *“shall be provided to the Minister within a period specified by the Minister in a written notice to the Authority requesting the report”*.
- 2.4 In March 2021, in accordance with section 34(5)(a) of the Act, the Minister gave notice in writing to the Authority requesting that a report on the creation of a new profession of conveyancer be prepared and furnished by the Authority within eighteen months. Under section 34(1)(i), the Authority is required to carry out an appropriate consultation process prior to furnishing its report to the Minister.
- 2.5 By letter of 8 September 2021, the LSI was invited to make a submission to the Authority in relation to the creation of a new profession of conveyancer.

### 3. Overview of the conveyancing process

- 3.1 In the simplest of terms, conveyancing is the “*process of transferring ownership of immovable property from one person to another*”<sup>1</sup>. Immovable property, as the name suggests, refers to interests in land, and everything in, on and under it. Rights of way, easements, leases, tenancies and mortgages are examples of commonly encountered interests in land and these, together with numerous statutory and other interventions in the ownership, control and use of land, are the subject matter of conveyancing.
- 3.2 Conveyancing in Ireland has, as a result of historical, economic, social and political considerations, evolved into a complex and many layered process. It has always been recognised that the regulation of the ownership and control of land are critical to a functioning society and, from the earliest time, formalisation of the indicia and evidence of ownership of land was seen as fundamentally important aspects of a system of laws. In any international index of economic strength and stability, the rigour of the country’s system for the registration of ownership and title to interests in land, and its sophistication and flexibility, are amongst the most positive and important indicators. This is particularly so as the value of land and interests in land remain hugely significant, not just in terms of national wealth, but also individual wealth and indeed in terms of wellbeing.
- 3.3 The development of land and conveyancing law in Ireland largely mirrored that of England and, even after the formation of the State, Irish land law remained, in its fundamentals and processes, closely aligned to the English model. Indeed, a fundamental overhaul and update of Irish land law was not completed until 2009.<sup>2</sup> Ireland remains one of only a small number of common law jurisdictions in the world, and a practical consequence of this is that there was never a cadastral survey of the country carried out (where essentially a country was divided into squares and the ownership of each square registered *ab initio* in a centralised land registry system, as in e.g., the USA or Australia). Instead, ownership of land in Ireland, given its unique historical, economic and social history, can derive, not only from statute, but also from long ownership, deed, adverse possession (“squatting”) inheritance and various other means.

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<sup>1</sup> *Law Society of Ireland: Conveyancing Manual*, (2009) Oxford University Press at para. 1.1

<sup>2</sup> The Land and Conveyancing Law Reform Act 2009

- 3.4 Coupled with this historical and inherited complexity, there has been a long history of intervention by the State in land and its ownership. Thus, the State interest in the collection of taxes of all sorts, judgements, court decisions, family law act issues and third-party rights of all kinds can affect land and its ownerships without any sort of formal registration and, to protect the integrity of a buyer's title, all of these must be investigated.
- 3.5 Historically, the drawing and settling of deeds and documents relating to the ownership of land and interests in land fell to trained lawyers. The importance of properly drawn documentation to the integrity of land ownership was recognised in statutory provisions which were introduced to restrict the right to draw, prepare or register for reward documents affecting the transfer of land and mortgages to qualified persons. A more recent update of this restriction is contained in S51 of the Solicitors Act 1954 which contains a much more limited restriction in reserving (only) the drawing of a deed for reward to solicitors.

## 4. The solicitors' role

- 4.1 By virtue of history, training, experience and intensive financial and professional regulation, solicitors have become the *de facto* gatekeepers of the conveyancing process in Ireland. Typically, a solicitor will act for each party to a transaction, although there is no prohibition of any sort on an individual carrying out their own conveyancing, though, as will be seen, there are practical difficulties if a mortgage transaction is contemplated, as few lending agencies will rely on an unqualified or unregulated intermediary.
- 4.2 It has been seen that the process is complicated. This complexity is not in any sense a result of a profession trying to “goldplate” its processes for anti-competitive reasons. It is rather the fact that, because of the historical and other legislative requirements outlined in this paper, the process has had to react to the increased complexity of business and commercial life and be amended and updated accordingly.
- 4.3 The LSI has a number of specialist professional committees which continuously monitor operation of the conveyancing system. Those committees and their executive support review new legislation and court judgements, revenue guidelines, and statutory change and regulation generally to ensure that a buyer or mortgagee of property is not adversely affected by the plethora of issues which now affect land and interests in land. In particular, the LSI's Conveyancing Committee regularly issues practice notes and guidance, which are continuously updated and revised as required.
- 4.4 A useful illustration of the work now required in the sale and purchase of property is set out in the workflow chart attached as **Appendix 1**.
- 4.4.1 The Conveyancing Committee also publishes the LSI's standard General Conditions of Sale, which is the format of contract used in most purchase/sale transactions.
- 4.4.2 The Conveyancing Committee also publishes the standard Requisitions on Title, a copy of which is attached as **Appendix 2**. A perusal of this document will quickly illustrate the huge number of issues which a solicitor must deal with, whether acting for a buyer or seller or indeed a lender or tenant/lessee.
- 4.4.3 It is suggested that the provision of standardised and agreed processes, and standard documentation, with the flexibility to be adapted to each individual



transaction, greatly eases the burden of investigation of title and thus greatly reduces the complexity, cost and delay in a conveyancing transaction.

- 4.5 The functions of the Conveyancing Committee do not stop at the provision of agreed processes and documentation. It also provides practice guidance, and under the terms of the Certificate of Title system (which will be described later), it acts as the arbiter of what is "*good and marketable title*" in the event of a dispute. Once again, this provides an efficient and cost-effective means of resolving such disputes, without recourse to litigation.

## 5. Undertakings and the Certificate of Title system

- 5.1 It is not possible to understand fully the conveyancing process without being aware of the relevance and importance of solicitors' undertakings.
- 5.2 An undertaking is "*any unequivocal declaration of intention addressed to someone who reasonably places reliance on it which is made by a solicitor in the course of their practice whereby the solicitor becomes personally bound*".<sup>3</sup> Once again there is a plethora of case law and practice around the giving of undertakings but they remain enforceable against a solicitor as a matter of professional discipline, and also as a contract. A solicitor is also subject to regulation by the LSRA, the LSI and the High Court in respect of that undertaking.
- 5.3 Typically, in any transaction, a document or matter may not be available on completion. To enable the transaction to proceed, a solicitor may consider giving, and their counterparty accepting, an undertaking. This enables a transaction to proceed with the knowledge that such undertaking can be relied on absolutely, protected by the full rigour of professional discipline, contract law and indeed professional indemnity insurance. Given the importance of undertakings, they are neither lightly given, nor lightly received, and the circumstances in which they can be given in conveyancing transactions is the subject of considerable practice and indeed statutory regulation. The recipient, in particular, has to be absolutely certain that they can rely on the undertaking.
- 5.4 As a matter of practice, undertakings will most commonly be seen in the relationship between parties and their bank. Hence, referring to the workflow in Appendix 1, it will be seen that even the initial step of taking up title deeds from a bank requires that an undertaking be given by the seller's solicitor as no lender could be expected to release the title deeds of the property, which are their security, to a third party without the reassurance that their interests were fully protected. Similarly, a buyer of property would be unlikely to conclude the transaction without having a release of the seller's mortgage available on completion. As, inevitably, any loan will be paid from the proceeds of sale, there is a temporal gap which has to be filled and this is achieved by the buyer relying on the seller's solicitor's undertaking to discharge the mortgage and furnish a release of the mortgage as quickly as possible.

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<sup>3</sup> "A Guide to Good Professional Conduct for Solicitors 3<sup>rd</sup> ed". ISBN 978-0-902027-99-2

- 5.5 Thus, it will be seen that solicitors' undertakings are the indispensable "*oil in the cogs*" of the conveyancing transaction.
- 5.6 Arising from the ability of banks to rely on solicitors' undertakings, a further major improvement to the conveyancing process is the abolition of the "*three solicitor system*" in residential conveyancing. Previously, a lender would have retained a solicitor to represent their interests, even in residential transactions. This, inevitably, added greatly to the cost and delay in a residential conveyance. After extensive and prolonged negotiations over a number of years, the Conveyancing Committee succeeded in agreeing a complex protocol, known as the Certificate of Title system, under which the lender will rely on the buyer's solicitor certifying the buyer's title, and also on behalf of the lender (without further remuneration) registering the lender's charge and forwarding the deeds to the lender in due course. This protocol had to be negotiated with a number of lenders, and their representatives, and remains under constant review and negotiation.
- 5.7 It is evident that the Certificate of Title system, which is fundamentally based on the ability of solicitors to give undertakings, is a major factor in the speedy and cost-efficient conveyancing of residential property.

## 6. Ongoing reform of the process in the digital era

6.1 Rapidly evolving digital solutions will inevitably transform the manner, cost and speed of conveyancing transactions. However, new technology must be backed up by legal expertise in the many areas of law which are relevant to such transactions.

6.2 The LSI's eConveyancing Task Force developed a vision for an electronic system of conveyancing (**eVision**) in 2008, in response to the Law Reform Commission initiative in this regard. This eVision is attached as **Appendix 3** and was concluded after a number of years of study, research, and extensive consultation with the profession and other stakeholders. The eVision describes eConveyancing as “a secure, paperless, electronic, end-to-end, pre-sale to post-completion, conveyancing process”. The eVision recognises that the:

*“current system is not adapted to deal with modern society, increased volume and diversity of transactions and market expectations for speed and transparency. It is hampered by a complex, cumbersome legislative framework and thus inherent delay. We have taken the view that the introduction of eConveyancing provides an ideal opportunity for a root and branch review of the entire conveyancing process.”<sup>4</sup>*

6.3 In essence, the Task Force's primary recommendation was that the process reverts back to the core activity of transferring title. Only those elements in the current process which impact on the transfer of title should be retained. The current system is utilised by the State as a tool for implementing social policy, for the collection of tax, for statutory enforcement and various other objectives. The process was not designed for these 'add-ons' and as a result, even the most basic residential conveyance now requires, as described above, multiple investigations that have little do with ownership, transfer and security of title. All these enquiries add to the complexity of the conveyancing process thereby causing delays and, ultimately, increased cost to the consumer.

6.4 After a number of false starts over several years, the Task Force concluded that it should not continue to attempt to implement a full end to end system, in effect attempting to impose its own solution in circumstances where, given the passage of time, numerous participants in an eConveyancing system such as the PRAI, Revenue and some lenders were already well advanced on their own digital journeys. Instead, the Council of the LSI has recently endorsed a program which will digitise the parts of the process which it could more directly influence.

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<sup>4</sup> Law Society of Ireland, (2008) *eConveyancing: Back to Basic Principles, Vision of an Electronic System of Conveyancing (eVision)*

- 6.5 To this end, the LSI has almost concluded the design and development of a digital Seller Questionnaire, which is in effect a replacement for the Requisitions on Title already described, the responses to which will populate an eContract automatically. This will be in essence the current LSI form of contract, with appropriate amendments to reflect its digital status. This can be negotiated, completed and executed by the parties using a Qualified Electronic Signature, entirely digitally.
- 6.6 The recent COVID-driven requirement for remote working and the significant use of digital technologies in legal work has provided a huge impetus for the completion of this work, and the digital contract is expected to be rolled out to the profession in 2022. In addition, the LSI has finalised the digitisation of the entire client on-boarding process, together with a fully FATF compliant risk assessment module.
- 6.7 The platform has been designed with an open architecture so that it will be able to interface with those of other participants in the process with comparative ease. There can be reasonable confidence therefore that numerous elements of the process will be linked seamlessly and digitally within the near future which should bring significant savings in both time and money, as well as greater efficiencies, to the process.
- 6.8 It will be noted in this regard that the Government has a roadmap for its electronic commerce agenda and digitisation of the conveyancing process as set out in various LRC Reports<sup>5</sup>. Further, the Minister's invocation to the LSRA to conduct "*a full consideration of how digital technology, which is rapidly evolving, could transform the manner, the cost and the speed of carrying out a conveyance, and how digitalisation should inform a decision to establish a conveyancer profession*", the LSI believes that the Authority should have a fuller understanding of what is in train in this context. The LSI would welcome an opportunity to present its eVision and demonstrate its new platforms to the Authority at an early opportunity. Its introduction will transform the Irish conveyancing system fundamentally and for the future, to the ultimate benefit of the consumer, other stakeholders and the State.

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<sup>5</sup> See Law Reform Commission, *Report on the Reform and Modernisation of Land Law and Conveyancing Law*, (LRC 74-2005) and *Report on eConveyancing: Modelling of the Irish Conveyancing System in Ireland* (LRC 79 – 2006)

## 7. The drivers for change

- 7.1 It is to be assumed that the Authority will, in the course of its investigations, carry out its own economic and competition law analysis. What follows here is accordingly a high-level commentary rather than in-depth analysis, which the LSI is not qualified of itself to undertake.
- 7.2 An exploration of the potential disruption of any market must include a rigorous consideration of the impact, purpose, advantages and disadvantages of the proposed intervention to the existing provision of services in that market. The introduction of a new profession of conveyancer could lead to circumstances where solicitors - who are fully qualified, trained, experienced, trusted by other stakeholders, covered by professional indemnity insurance and regulated by the Authority, the LSI and the High Court – are displaced in favour of an untried, untested, model with all of the attendant set up and regulatory costs in a small market to obtain a dubious and uncertain advantage to the consumers of conveyancing services in that market, where there is no current demand for any such intervention.
- 7.3 The LSI submits that the only valid drivers for change would be findings, supported by empirical evidence, that the introduction of non-solicitor conveyancers would have a significant impact on either quality or cost of conveyancing services. We comment on each of these in turn:

### **7.3.1 *Quality of service***

- (a) The LSI suggests that there is no evidence that there is a lack of quality in the provision of conveyancing services, albeit that delays and complexities in the system inevitably result in unacceptable delays in some cases. It has already been noted that these complexities are not created by solicitors but result from complex legislative and other interventions in the process. The proposed digitisation of (in the first instance) aspects of the conveyancing transaction should greatly speed up the process.
- (b) Surgeons are trained in general medicine. Architects are trained in planning law. Accountants are trained in taxation. Similarly, all solicitors have a broad general education in not just property law, but the various other branches of law which impact on property. Property law is itself a highly complex area of law and a standard conveyancing transaction requires knowledge of many

other areas of law. Planning law, family law, environmental law, succession law and taxation law all intersect in a conveyancing transaction, and knowledge of both the law and practice in those areas is required properly to advise a party in the buying and selling of property.

- (c) Where problems arise in a conveyancing transaction, the legal issues can be very complex resulting in a significant cost for one (or both) of the parties. A solicitor is a qualified legal advisor who is expert in many areas of law, not simply conveyancing. Conveyancers could not offer the same level of legal knowledge and expertise as solicitors which will ultimately result in an inferior service for consumers. If, for example, a difficulty in a property transaction led to the necessity for dispute resolution or litigation, a conveyancer will need either to refer the entire transaction to a solicitor, or subcontract with a solicitor to provide legal services and advice which the conveyancer is unable to furnish. This will inevitably lead to significantly increased costs and delays for the consumer of legal services.
- (d) Typically, a consumer of legal services when buying or selling a property will purchase additional services, such as the making of a will, which is a sensible and socially desirable matter to undertake when purchasing so valuable an asset as a property. A conveyancer will not be in a position to provide these services.
- (e) There is no guidance in the Ministerial direction to the Authority as to the type of business model which may be envisaged as being appropriate for the delivery of conveyancing services by conveyancers. In this regard, it should be recalled that in 2004, the LSI expressed serious concern around a proposal to open up the conveyancing market to financial institutions. The risk of anti-competitive conduct which could result led the Competition Authority (as it then was) to recognise that *“permitting banks to provide conveyancing services could result in tying (for instance, the sale of mortgages on condition that the buyer also purchases the bank’s legal services) or cross-subsidisation (using profits from the market for mortgages to sell legal services below cost)”*.<sup>6</sup> This concern persuaded past Governments that it would be unwise to widen the conveyancing services market in the manner proposed. Even accepting some

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<sup>6</sup> Law Society of Ireland, [‘Supplementary submission to the Competition Authority in respect of its Study into Competition in the Professions of Architect, Barrister, Dentist, Engineer, Medical Practitioner, Optometrist, Solicitor & Veterinary Surgeon, pursuant to Section 11 of the Competition Act, 1991 \(as amended\)’](#), August 2004 at para. 8.13

convenience in one-stop-shopping, the risk to consumers was considered to be too great.

- (f) Current regulation of conveyancing services ensures that the consumer is protected against anti-competitive conduct and mis-selling, irrespective of the market power of the financial institution. The current position ensures that the consumer has an objective adviser in their corner, with no ties of any sort to the counterparty, or any lender. While not the specific focus of the current consultation process, it is noteworthy that this was not the first occasion on which a review has been conducted on the potential expansion of the categories of providers who might be enabled to provide conveyancing services, but which foundered upon closer examination.
- (g) The experience in England and Wales (whose conveyancing processes and market size are not analogous to Ireland) suggests that the only economic manner in which conveyancers could deliver their services is as employees of a small number of “conveyancing factories” - namely large firms providing a conveyor belt type service. In a small market like Ireland, it is likely that a few of these firms would evolve into a mini monopoly of their own which would be counter-productive in terms of the delivery of conveyancing services of a proper quality at reasonable cost.

Incidentally, it is noteworthy that licensed conveyancers in England and Wales comprise only 5% of the service providers there. In Scotland, the demographics of which are very similar to Ireland, there are only 10 licensed conveyancers practising.

### **7.3.2 Cost of conveyancing services**

- (a) The LSI suggests that there is no evidence of any lack of price competition in the provision of conveyancing services. On the contrary, empiric evidence suggests that conveyancing services are generally being provided below cost as either one or both of “*loss leaders*” or to generate cash flow for a firm.

Any firm which costs the provision of conveyancing services in relation to the professional and administrative time consumed in the delivery of those services will have concluded that they are selling the service below cost. It is notable that the largest firms in Ireland, and many other smaller firms, no longer offer residential conveyancing services as they are uneconomic.



- (b) There are no set scales of fees nor is anything permitted by the LSI or the Authority (or would be permitted by the Competition and Consumer Protection Commission) which suggest ranges or “appropriate levels” of fees. This allows for competitive quotes, negotiation on fees and “shopping around” by consumers. The ‘Get a Quote’ service provided by the LSI helps members of the public to seek quotations from solicitors for whichever legal service they need. To seek a quote, members of the public can contact participating firms and explain that they want to use the ‘Get a Quote’ service. The firm will take their questions, explain their terms of business and provide a quote. This allows consumers to access the best value legal services for conveyancing transactions and to compare fees across a number of potential providers.
- (c) The provisions of S150 of the Act set out a comprehensive, compulsory regime for the notification to the client of, not just fees, but all attendant legal and analogous charges on engagement of their solicitor. Thus, there is full visibility to the consumer of all the charges which they are going to have to pay (of which, typically, the solicitors fee is often the least part, as will appear later in this submission) from the commencement of the transaction, with ample opportunity to compare these charges to other providers and walk away if they so wish.
- (d) While the cost of conveyancing might be expected to decrease with the introduction of a new profession of conveyancer, the competition between such conveyancers would likely mean that, in order for the businesses of these conveyancers to be viable, it would be necessary to maximise the volume of transactions and reduce overheads (e.g., staffing levels). Such actions often result in a lack of care and attention, a disregard for safeguards and a drop in standards - all of which result in consumer dissatisfaction.
- (e) There has been an *a priori* assumption that, as solicitors are the only suppliers of conveyancing services, there is no price competition between them. If such an assumption were correct, one would expect to see barriers or restrictions on the entry of solicitors wishing to enter the conveyancing market. There is no evidence of any such restrictions. The number of solicitors on the Roll increases year on year, bringing more and more competition in the provision of legal services. The Law Society Annual Report 2020/2021 confirms that the

total number of solicitors now stands at 11,836, an increase of nearly 500 new solicitors since 2017<sup>7</sup>.

- (f) Looking to other jurisdictions, the experience has been that opening the conveyancing market to other providers does not automatically result in increased competition:

*“The experience in the UK indicates that introducing licensed conveyancers is not the way to achieve competition in Ireland. In the UK, conveyancing fees rose faster in markets where licensed conveyancers operated compared to markets where they did not. This may initially seem somewhat surprising. However, this finding can be explained by the total dependence licensed conveyancers have on just the conveyancing market, with all their revenue and therefore their profits coming from just one market.”*<sup>8</sup>

- (g) If a driver of the Ministerial direction to the Authority is to save costs to the consumer, then it is worth looking at solicitors' fees as a component of the overall costs of property transfer. Reference should be had to the tables at Appendix 4, which summarise research carried out by Integro Business Services for LSI in connection with its eConveyancing project. It will be seen that the largest beneficiary from conveyancing-related activity is the State with c. 55% of all costs in 2020 accruing to the State. This comprises principally of stamp duty tax receipts.

The State also has the benefit of surplus revenue (averaging 50% of its total turnover of c. €30m per annum) remitted from the PRAI to central funds each year. It is particularly noteworthy that PRAI fees are extremely high, both in absolute terms, and as a proportion of the overall cost to the consumer. The average PRAI fee to the buyer on a purchase with mortgage is in the region of €890.00. There is no apparent economic justification for the level of these fees (which are set by Ministerial order). They generate an income of almost twice the cost of delivering the PRAI's services.

It will be seen from Appendix 4 that the State also has the benefit of VAT relating to estate agent and solicitors' fees plus VAT on property-related advertising.

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<sup>7</sup> See <https://www.lawsociety.ie/globalassets/documents/about-us/annual-reports/2017-annualreport-lawsocietyofireland.pdf>

<sup>8</sup> Edward Shinnick, 'Regulation, regulatory reform and competition in the Irish solicitor profession', *Conveyancing and Property Law* 2004, 9(4), 89-92 at p.4

After the State, estate agents are the next largest beneficiaries in the property transfer process. Their average revenue is almost twice that of solicitors.

If we take an example of a residential purchase at €300,000.00 and assume a solicitor's fee of €2,000.00, the total purchase costs (leaving aside bank charges, survey fee, life and property insurances and similar costs) will be in the region of €6,200.00. Assuming that increased price competition reduced the so- licitor's fee by 20%, the actual saving to the consumer is only in the region of 6% of their outlays<sup>9</sup>.

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<sup>9</sup> We have used a residential conveyance as an example. In a commercial case, the Stamp Duty take would be over seven times higher, and the difference to the consumer from a like decrease in fees would be negligible. However, we believe that there is no prospect that a commercial client will use the services of a conveyancer, as such clients require a much more holistic service over several legal disciplines which cannot be provided by a conveyancer.

## 8. Other considerations

8.1 There are a number of other considerations which must be borne in mind in considering whether the introduction of a profession of conveyancer would be of overall societal or consumer benefit. We deal with them as follows:

### **8.1.1 Economic model:**

At this stage, it is not clear what business model will be proposed or would be appropriate for the provision of services by conveyancers. It is very hard to see how “sole practitioners” or small partnerships of conveyancers could actually exist as a viable business or obtain capital or finance to establish such a business. As will have been seen, such empiric evidence as is available suggests that the provision of conveyancing services at current price levels is actually loss-making. Given the higher relative costs which will arise for firms of conveyancers, without the benefit of some element of cross subsidisation from the provision of other legal services, it is highly likely that such firms will be unviable. Assuming that these firms hold client funds there is potential for increased risk to client funds from individuals or firms who are under financial stress. As we have observed previously, it is more likely that conveyancers will be employed as “low-cost labour” by large firms of conveyancers or possibly banks or other financial services companies with, we suggest, no or negative benefits for consumers of these services with only a marginal cost differential from a full-service solicitors’ firm.

### **8.1.2 Financial Regulation**

The handling of client monies received by solicitors in the course of conveyancing transactions is rigorously regulated by the LSI supported by the statutory Compensation Fund, which protects consumers from any misappropriation of client monies and has been funded by solicitors since 1954. The proposed profession of conveyancer would have to offer a similarly rigorous system of regulation and compensation. Unless this is provided, consumers would face a much lower level of protection when dealing with a conveyancer, as against that which is available when engaging a solicitor. An obvious difficulty in this regard is that conveyancers will almost certainly be too few in number to finance an adequate Compensation Fund, bearing in mind the large sums of money which are involved in a conveyancing transaction and which are thus at risk. Who is then to finance a Compensation Fund? It has taken the LSI nearly 70 years to raise a fund of its current size.

### **8.1.3 General Regulation**

If a regulatory body for conveyancers was to be genuinely independent and effective in the discharge of its function, it would need to retain control over the standards of those entering the profession. The regulation of licensed conveyancers would have to include the administration of tests of competence, the issuing of licences, the drawing up and enforcement of a Code of Conduct, a regulated PII regime, a Compensation Fund and a system for the hearing of complaints against conveyancers. This regulation will have to be self-financing. If the entire financial regulatory burden is to fall on the Authority who is to pay for it? There could be no question that this cost could be spread across the other professions regulated by the Authority. If the cost of financial and general regulation is to be borne by a conveyancers' profession itself, we suggest that its cost would be prohibitive to that profession, feeding further into the financial unviability of any likely business model.

### **8.1.4 Professional Indemnity Insurance**

Potential negligence in conveyancing transactions by solicitors is underwritten by professional indemnity insurance ("PII") which offers a very high level of protection for consumers. The cost of PII has risen exponentially over the last number of years. This increase has largely been driven by conveyancing related claims which comprise over 50% of all negligence claims against solicitors.

PII providers require, as part of the annual proposal form, a breakdown of the types of work carried out by the firm as a proportion of their fee income. Firms which show a high level of income from conveyancing work suffer a significant loading on their premiums. In the case of one leading insurer, if more than 25% of a firm's turnover is from conveyancing, they will decline to quote. Other firms also decline to quote, albeit that the percentage levels which trigger a declination are higher.

The increased prevalence and success of cyber-attacks are causing significant concern to insurers, particularly in the conveyancing sphere, where significant sums of money are in question. It is likely that a firm of conveyancers, particularly of unknown competence and experience, will find it virtually impossible to obtain PII cover, and certainly not at any cost which would make the provision of their services economically viable.

Consideration should be given to the overall effects on the legal PII market in Ireland. If that market was to spread the perceived risk of conveyancers across the entire legal PII market, that would be likely to increase further the cost of such cover thus driving up the cost of conveyancing transactions, and potentially the cost of all legal services.

### **8.1.5. Concentration of providers**

Unless a profession of conveyancer was subject to the same rules, regulations, restrictions and obligations as solicitors, a competitive advantage would accrue to conveyancers who are likely to have fewer overheads than practising solicitors. Such a development would make it difficult for smaller solicitors' firms to compete. This would disproportionately impact small rural practices which rely heavily on conveyancing. This could see the closure of firms which would in turn reduce access to full legal services for consumers, particularly in rural areas which are already heavily impacted by the concentration of professional services in larger centres of population. The Law Society Annual Report 2020/2021 indicates that 91% of solicitors were in firms of 5 or less and 5% in firms of 20+ which indicates that the majority of solicitors are engaged in the provision of some conveyancing services.<sup>10</sup>

### **8.1.6 Education and training**

Education and training of a new profession would be of paramount importance. Such training would need to be at a level to ensure that the public is satisfied with the adequacy of skills. Tests of competence would be needed to ensure a conveyancer's ability to identify potential problems. Many potential difficulties are not easy to recognise as such until a very late stage. Written tests would need to be supplemented by a period of practical experience testing both a theoretical knowledge of relevant law and procedure and a practical ability to carry out the mechanics of conveyancing transactions. The solicitors' profession demonstrates that even a high level of academic knowledge needs to be complemented by a period as a trainee learning the substantial practical knowledge that is required to carry out conveyancing transactions. Trainee solicitors spend at least six months of their traineeships working in conveyancing and sometimes much longer. Even when newly qualified, solicitors usually work under supervision for a considerable period and have more experienced mentors to assist with complicated issues that arise.

A competent conveyancer would need to understand more than land law and property law. Conveyancing must be viewed in its wider context to ensure that conveyancers do not have so narrow a knowledge of the law as to put related issues arising in connection with property transfer beyond their capabilities. A broad understanding not only of conveyancing but also of those other aspects of the law which can have a

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<sup>10</sup> See Performance at <https://annualreport.lawsociety.ie/#performance>

bearing on a transaction would be required. An understanding of the details of certain key subjects – conveyancing, land law, planning law, landlord and tenant law – as well as accounting procedures are crucial elements for the quality of standard needed.

Ongoing professional development would also be necessary to ensure that conveyancers kept their skills and knowledge up to date and in line with market developments.

Once again, the question arises as to whether the Authority is expected to design an appropriate curriculum, devise the necessary training and provide the resources to deliver both the initial training and certification and ongoing professional development.

#### **8.1.7 Third party relationships.**

We have already seen that solicitors do not act in a vacuum when carrying out conveyancing transactions. They interact on a daily basis, not only with other solicitors, but with lenders, the PRAI, Revenue and many other stakeholders.

We have referenced in particular the relationship between solicitors and lenders. If conveyancers are to provide conveyancing services on an equivalent basis to solicitors, then all the extensive protocols with various lenders and their representatives would have to be negotiated by them *ab initio*. There is no guarantee whatsoever that these counterparties will be satisfied to deal with what they may well regard as less financially strong and less skilled counterparties on the same basis as they do for solicitors. It needs to be remembered that the current system of lenders accepting Certificates of Title was painstakingly negotiated over several years, it did not come about overnight. Its early implementation was problematic, and the relationships require ongoing management. It is not easy to see how a similar matrix of relationships could be created overnight to enable a new profession to offer the consumer led facility that is the Certificate of Title system.

Currently, the PRAI operates a system of registration that relies heavily on the experience, knowledge and expertise of solicitors. Frequently, the solicitor for the applicant must assert the legal position and entitlement of his/her client to procure registration. In certain registration applications, the PRAI insists on a solicitor's confirmation in respect of a power of attorney being given in order to facilitate registration. The speed and efficiency operated by the PRAI and the volume of transactions that can be processed and registered by them on an annual basis is heavily influenced by the current system of reliance on certifications of title and other matters operated between the PRAI and solicitors. The LSI is concerned that

conveyancers would be unable to offer certification in a similar manner to facilitate the timely registration of transactions, with the difficulties of delayed registration being visited on the consumer.



## 9. Conclusion

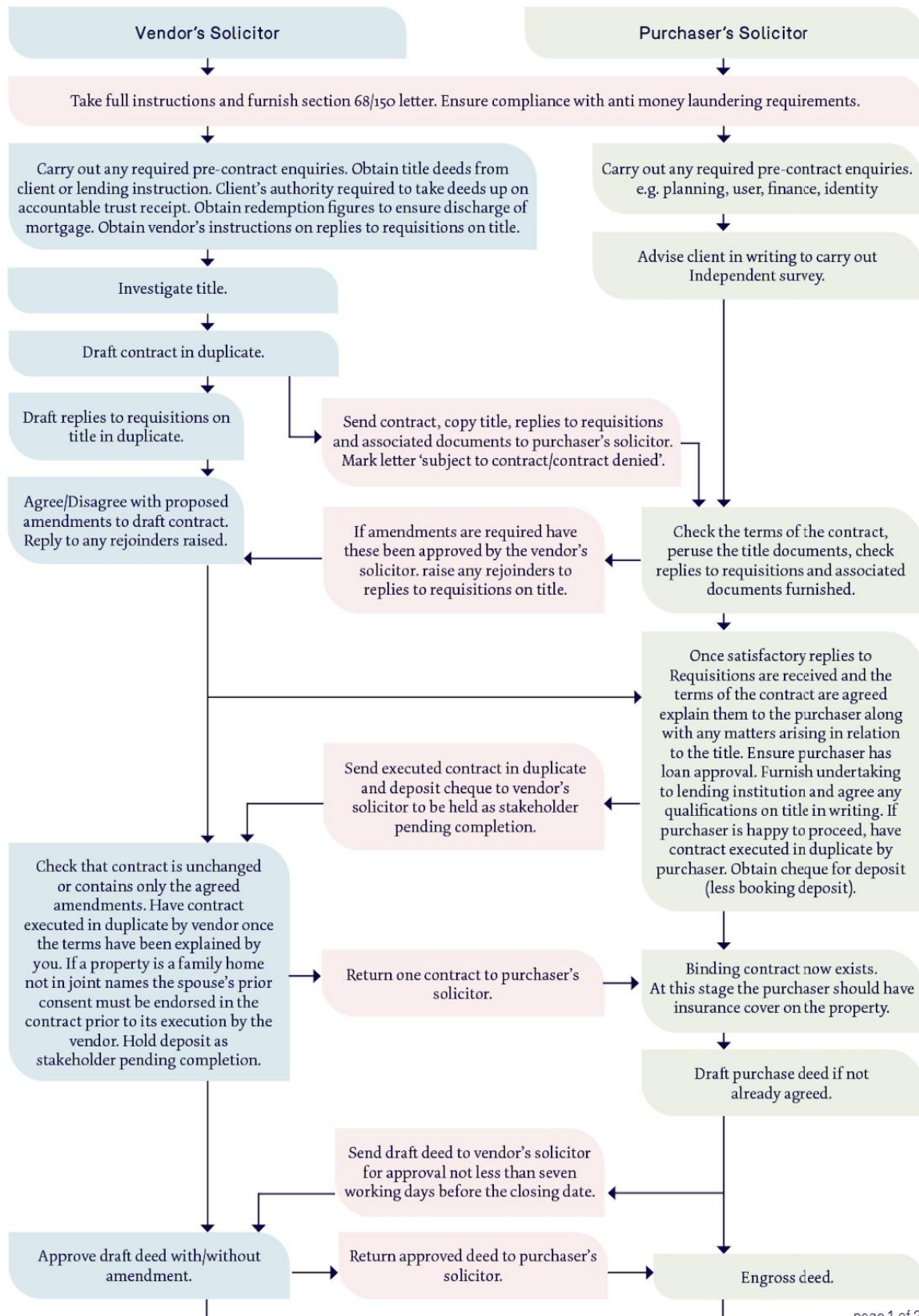
- 9.1 The current system of conveyancing has been in operation for centuries and has developed and evolved to meet the changing needs of society. While it is complex and can be slow, this is largely caused by the volume of legislative imposition on the process.
- 9.2 There is no evidence of general dissatisfaction with the delivery of conveyancing services or public demand for an alternative to the current delivery channels.
- 9.3 There is significant evidence of vigorous price competition within the sector - the available evidence suggesting that conveyancing services are generally provided below cost. Even a significant further drop in fee levels would have only a negligible effect on overall costs.
- 9.4 No evidence has been produced that the introduction of a new profession of conveyancer will have any effect on either the price or the quality of conveyancing services – it is more likely that it will have an adverse effect.
- 9.5 It is unlikely that any conveyancer or firm of conveyancers will be able to finance their operation, likely leading to a small number of monolithic providers operating their own monopoly, to the detriment of the consumer.
- 9.5 The cost and difficulty of establishing a completely new financial and general regulatory scheme will be prohibitive.
- 9.6 In circumstances where the LSI is actively driving a substantial reform agenda to redesign and recalibrate the process for the digital era, any substantial change to the current model of delivery is premature.
- 9.7 The LSI hopes that the Authority finds these observations and recommendations to be helpful and will be glad to engage further on any of the matters raised.

**For further information please contact:**

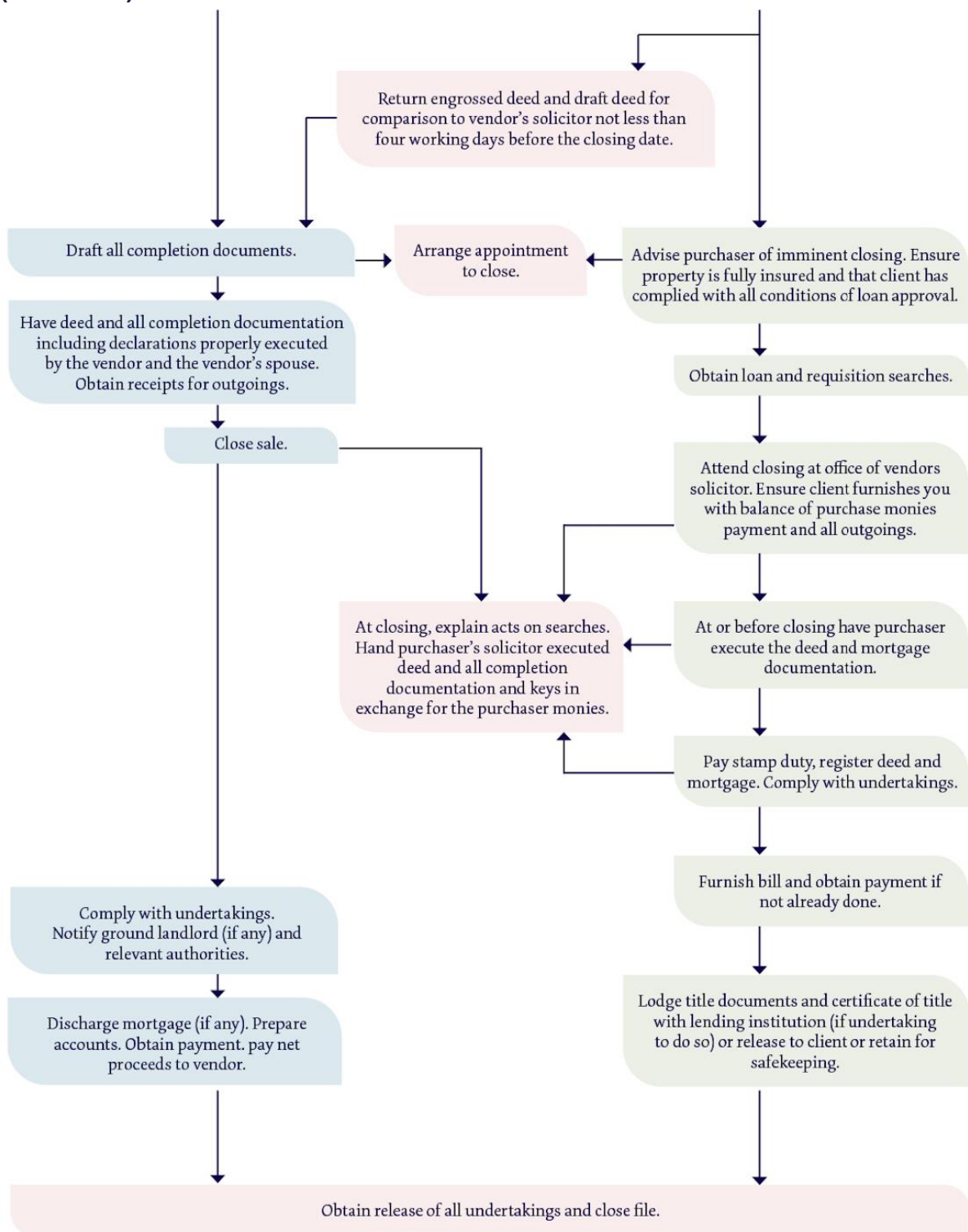
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# APPENDIX 1: CHART OF STEPS IN A BASIC CONVEYANCING TRANSACTION



**APPENDIX 1: CHART OF STEPS IN A BASIC CONVEYANCING TRANSACTION  
(Continued)**



- Appendix 2**            **Sample Requisitions on Title** (attached separately)
- Appendix 3**            **eVision** (attached separately)
- Appendix 4**            **Analysis of Conveyancing related revenue generated by key stakeholders**

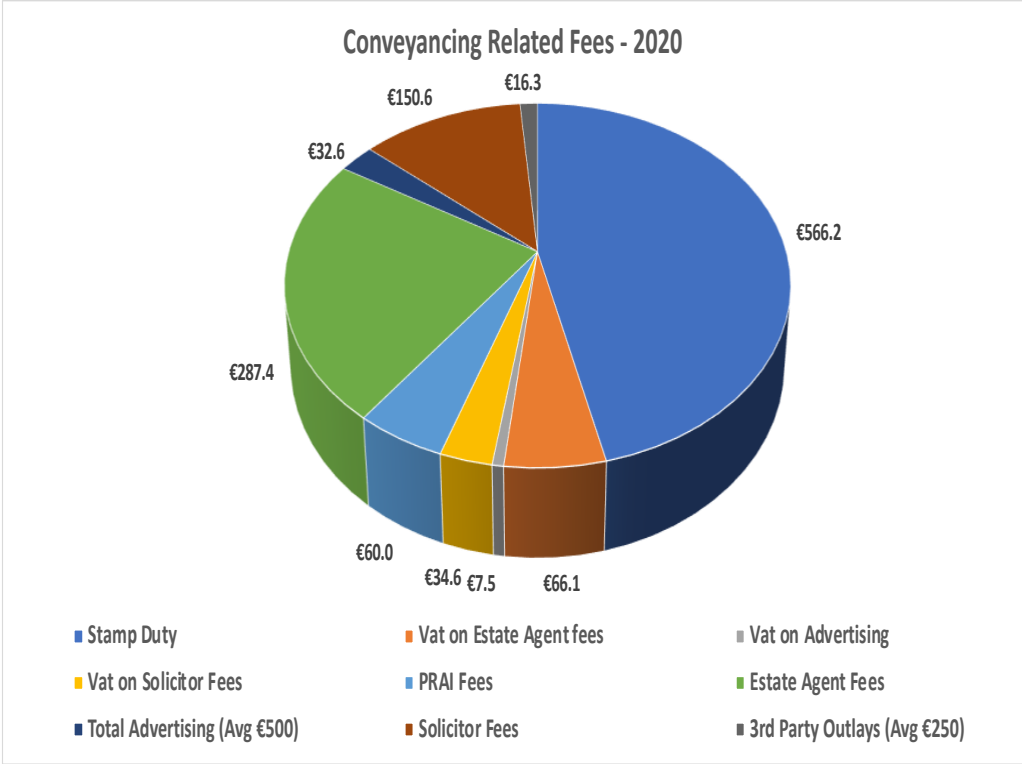
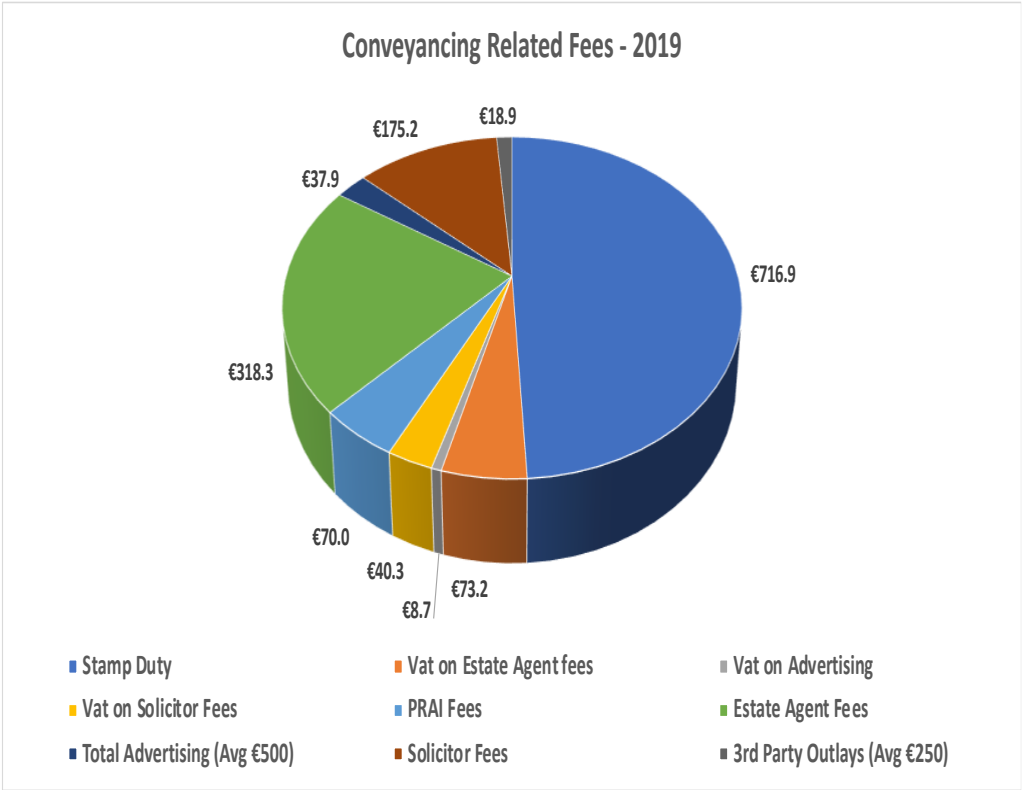
The following is a high-level analysis of Conveyancing related revenue by key stakeholders within the Irish property market for 2019 and 2020.

This information was compiled by Integro Ltd utilising a range of market sources such as the Revenue Tax Strategy Group - Review of Stamp Duty – September 2021 plus the Integro developed property market analysis model.

It is estimated that there were c. 75,000 residential/commercial property transactions in Ireland in 2019 with a combined value of c. €22bn in value. Transaction numbers were c. 13% lower in 2020 due to the impact of Covid 19 on market activity with c. 65,000 transactions with a combined value of c. €20bn.

After the government related revenue, estate agents are the next biggest beneficiaries with average revenue almost twice that of solicitors.

<b>€m</b>	<b>2019</b>	<b>% of total</b>	<b>2020</b>	<b>% of total</b>
Stamp Duty	€716.9	49%	€566.2	46%
Vat on Estate Agent fees	€73.2	5%	€66.1	5%
Vat on Advertising	€8.7	1%	€7.5	1%
Vat on Solicitor Fees	€40.3	3%	€34.6	3%
PRAI Fees	€70.0	5%	€60.0	5%
Estate Agent Fees	€318.3	22%	€287.4	24%
Total Advertising (Avg €500)	€37.9	3%	€32.6	3%
Solicitor Fees	€175.2	12%	€150.6	12%
3rd Party Outlays (Avg €250)	€18.9	1%	€16.3	1%
<b>Total</b>	<b>€1,459.4</b>	<b>100%</b>	<b>€1,221.3</b>	<b>100%</b>



This analysis has been developed using a range of market sources which includes a number of core assumptions to cater for the gaps in market available data e.g. non-residential transactions, non-mortgage related activity and weighting for number of solicitors involved in each property transaction.

### Property Related Stamp Duty Receipts

Year	2018	2019	2020
Residential Property	€171.54m	€179.22m	€158.53m
Non-Residential Property	€488.21m	€537.64m	€407.66m
<b>Total</b>	<b>€659.75m</b>	<b>€716.86m</b>	<b>€566.19m</b>

Source: Revenue Tax Strategy Group - Review of Stamp Duty – September 2021

### PRA Annual Revenue

Year	2018	2019	2020
	€66.9m	€69.9m	€59.7m

Source: PRAI Annual Report 2020

**Estate Agents estimated total commission** (based on total Property Market Value estimate)

Estate Agents Income	2019	2020
Total Tx Value est	€18,189,164,070	€16,424,916,008
Avg Comm	1.75%	1.75%
<b>Est Total Commission</b>	<b>€318,310,371</b>	<b>€287,436,030</b>

**Solicitors estimated total revenue** (based on total Property Market transactions x solicitor estimate)

Solicitors Income	2019	2020
Total no of transactions	140,135	120,517
Avg fee per tx	€1,250	€1,250
<b>Est Total Fees</b>	<b>€175,168,750</b>	<b>€150,646,250</b>

Source: BPFI Stats 2020