

Paul McNeive: Digitalisation will bring conveyancing into the modern era, finally





While most processes for buying and selling a home have leapt into the 21st century, conveyancing still hasn't managed to get itself into the 20th

The journey towards digitising the conveyancing of residential and commercial property has taken a step forward as The Law Society's conditions of sale have been amended to provide for digital contracts for the sale of property.

This means that contracts can be created by digital signatures and exchanged digitally, with no need for a physical copy. Digital contracts are now provided for in the "standard terms and conditions" and Michael Walsh, partner at Byrne Wallace LLP, and a recent chairman of the conveyancing committee, told me digital contracts will "soon become mainstream".

Mr Walsh is at the forefront of a drive to streamline the conveyancing process. While the system has changed for the better, with an emphasis on "front-loading" the legal work, instead of vendors first contacting their solicitor when a sale is agreed, he feels that solicitors can be unfairly blamed for delays.

All too often, he said, sales are described as being as "at legals", when that process hasn't even started, as the solicitor hasn't had sight of the title documents.

Solicitors are also often blamed, he says, when purchasers fail to come up with the money, and the sale falls through.

"Solicitors aren't the problem," he said, "it's the process." One of the problems is that solicitors can get tied up in inappropriate and arcane legislation.

He cited the requirement for witnessed, physical signatures, under the 1938 Act, which caused particular problems during the pandemic.

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Another issue is that solicitors are required to investigate planning matters going back over 60 years, whereas the enforcement period for local authorities is generally seven years, and the authorities only have to keep records for six years.

The Law Society called for the creation of a new classification called “an established, non-conforming development”, although that has not been included in the first draft of the Planning and Development Bill, recently published.

That classification, for properties older than 15 years, would avoid historic investigations as to whether or not it was authorised, and it would be simply accepted as “existing.” Mr Walsh hopes that this proposal will be incorporated in the new Bill at a later stage.

Other interesting developments in the area include that the Legal Services Regulatory Authority is to report in Q1 of 2024 on the possible creation of a new profession to be known as “conveyancing,” with the process not necessarily carried out by solicitors.

He is of the view that with 44pc of Ireland’s 10,000 solicitors involved in conveyancing, the market is already well served.

Mr Walsh told me that the Law Society has been working on an exciting project with the Society of Chartered Surveyors Ireland (SCSI), for which he also provides workshops on the legal process.

This will see the launch early next year of a joint guide on how to speed up the sale of property. “It sets out what everyone must do and will encourage clients to ask their solicitors to request title documents before agreeing a sale, which could save four to six weeks.”

The last big step is the funding of a software platform which brings together Tailte Éireann (incorporating the Land Registry), buyers, sellers, lenders and solicitors.