

The Real Estate Agency Practice Manual

SCSI Guidance Note



The Real Estate Agency Practice Manual

SCSI Guidance Note

Published by the Society of Chartered Surveyors Ireland (SCSI)

No responsibility for loss or damage caused to any person acting or refraining from actions as a result of the material included in this publication can be accepted by the authors or SCSI.

Published November 2013.

© Society of Chartered Surveyors Ireland. Copyright in all or part of this publication rests with the SCSI and save by prior consent of SCSI, no part or parts shall be reproduced by any means electronic, mechanical, photocopying or otherwise, now known or to be advised.

The Real Estate Agency Practice Manual

SCSI Guidance Note

SCSI Guidance Note

This is a guidance note. It provides advice to SCSI members on aspects of their work. Where procedures are recommended for specific professional tasks, these are intended to represent 'best practice', i.e. procedures which in the opinion of SCSI meet a high standard of professional competence. Members are not required to follow the advice and recommendations contained in the note. Members must be aware, however, that this guidance refers to statutory legislation from the Property Services (Regulation) Act 2011 which must be adhered to as it is the law.

The following points should also be noted. When an allegation of professional negligence is made against a surveyor, a court or tribunal is likely to take account of the contents of any relevant guidance notes published by SCSI in deciding whether or not the surveyor had acted with reasonable competence. In the opinion of SCSI, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence if they have followed those practices. Members have the responsibility however, of deciding when it is inappropriate to follow the guidance. Alternatively, it does not follow that members will be found negligent if they have not followed the practices recommended in this note. It is for each surveyor to decide on the appropriate procedure to follow in any professional task. Where members do not comply with the practice recommended in this note, they should do so only for a good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice. Also, if members have not followed this Guidance, and their actions are questioned in an SCSI disciplinary case, they will be asked to explain the actions they took and this may be taken into account by the Panel. In addition, guidance notes are relevant to professional competence in that each surveyor should be up-to-date and should have knowledge of guidance notes within a reasonable time of their coming into effect.

Glossary of Terms

Advised Market Value	<p>For the purposes of this Guidance Note and as defined under the Property Services (Regulation) Act 2011. In relation to land valued for sale by a licensee (PSP), means the licensee's reasonable estimate, at the time of such valuation—</p> <p>(a) of the amount that would be paid by a willing buyer in an arm's length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion, or</p> <p>(b) of the relevant price range within which would fall the amount that would be paid by a willing buyer in an arm's length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion</p>
Agent	A person who acts on behalf of another person and for the purposes of this Guidance Note this relates to a Property Service Provider. (PSP).
Client	Anyone instructing a real estate agent to act on their behalf for the buying, selling, leasing and providing professional advice of real estate.
Conflicts of interest	Where an agent acts for clients who have competing interests, or where an agent's personal interests conflict with those of their client.
Member	A member of the Society of Chartered Surveyors Ireland/ Royal Institution of Chartered Surveyors
Practitioner	A Property Service Provider
Property Service Provider	A Real Estate Agent with a valid licence issued by the Property Service Regulatory Authority of Ireland.
PSRA	Property Service Regulatory Authority. The Statutory Authority responsible for Statutory regulation of Property Service Providers.
RICS	Royal Institution of Chartered Surveyors
SCSI	Society of Chartered Surveyors Ireland
The Society	Society of Chartered Surveyors Ireland
Vendor	Anyone seeking to dispose of an interest in real estate.

SCSI Guidance Note

Foreword & Acknowledgements	6
Introduction	7
Section 1	
1. The general principles of agency	10
1.1 Types of agency	10
1.1.1 Sole Agency	10
1.1.2 Joint Sole Agency	11
1.1.3 Multiple Agency	11
1.1.4 Auction	11
1.2 Receiving instruction & the PSRA Letter of Engagement	11
1.2.1 Advised Market Value	12
1.2.2 Commissions and Expenses	12
1.2.4 Mutual agreement to termination of Agency	12
1.2.5 Termination of agreement by the Client	13
1.2.6 Termination of the agreement by the Agent	13
Section 2	
2. Sale Method	18
2.1 Introduction	18
2.2 Private Treaty	18
2.3 Public Auction	18
2.4 Tender	20
2.5 Conclusion	20
Section 3	
3. Sales Procedure	22
3.1 Introduction	22
3.2 Instruction	22
3.3 Barriers to an efficient sale process	23
3.4 Communications with vendors	24
3.5 Communications with solicitors	24
3.6 Communication with prospective purchasers	24
3.7 Deposits and receipts	26
3.8 Client Money	26
3.9 Building inspection surveys	26
3.10 The Family Home Protection Act 1976 as amended	27
3.11 Multi Unit Developments	28
Section 4	
4. Auctions	30
4.1 Instructions	30
4.2 Property Auctions	30
Section 5	
5. Recommended procedure for members on property sales	34
– excluding new homes	
5.1 Introduction	34

Section 6

6. Recommended procedures for members on property sales – new homes	36
6.1 Introduction	36
6.2 Marketing and Flexibility	36
6.3 Checklist of important items for marketing brochure	37

Section 7

7. Advertising, Promotion and Marketing	40
7.1 Introduction	40
7.2 Building Energy Ratings	40
7.3 Particulars	41
7.3.1 Photography's	41
7.3.2 Applicant list	41
7.3.3 Window displays	42
7.3.4 Signboards	42
7.3.5 Estate Agents signs	42
7.3.6 Directional signs	42
7.3.7 Marketing properties	42
7.4 Agreeing the marketing strategy	42
7.5 Providing relevant documentation	43
7.6 Describing the property	43
7.7 Press advertising	43
7.8 Internet	43
7.9 Website and Email	43
7.10 Advertising – Obligations, Codes and Practice	44
7.11 The National Consumer Agency	44
7.12 Advertising Standards Authority of Ireland	44
7.13 Relevant Local Authority and Signage	44
7.14 The Society of Chartered Surveyors Ireland	44
7.15 Essence of good advertising	45
7.16 Other important member checklist	45

Appendices

Appendix A	Sample checklist information of property	48
Appendix B	Form of authority	49
Appendix C	Letter of instruction to Solicitors	50
Appendix D	Sample receipt	51
Appendix E	Sample confirmation of sale	52
Appendix F	Sample sale advice note	53
Other useful websites		54

Foreword

It is with great pleasure that I introduce to you the SCSi Real Estate Agency Practice Manual. This Guidance Note sets down a marker as to the standards of real estate agency and is designed to assist members to conform to best practice and help comply with statutory regulation of the estate agency profession.

This guidance note will play a vital role in terms of upholding high standards amongst the membership and will provide estate agents with a single point of contact for day to day information for running their businesses. The residential property market and members' obligations are forever changing and this document will be updated and reviewed periodically to reflect further changes to the profession.

The estate agency profession has undergone a significant change in terms of regulation. Businesses have witnessed an increase in overheads partly due to obligations to conform to the new statutory legislation. Borne from this is the call for guidance to assist members carrying out their functions in a timely and efficient manner whilst ensuring high standards are consistently met.

It is intended to review this guidance note regularly to keep up to date with the introduction of any supplementary legislation within the industry.

The Society of Chartered Surveyors Ireland would like to acknowledge the following members for their assistance in preparing this guidance note;

Acknowledgements

Simon Stokes, Stokes Property, Dublin 4
Edward Carey, Property Team Carey Auctioneers, Enfield, Co. Meath
Eamonn Maguire, Maguire Chartered Surveyors, Dublin 2
Edward McAuley, SCSi, 38 Merrion Sq, Dublin 2
Simon Ensor, DTZ Sherry FitzGerald, Dublin 4
Felicity Fox, Felicity Fox Auctioneers, Valuers & Estate Agents, Dublin 2
John O'Sullivan, Lisney, Dublin 2

Simon Stokes
Chairman of the Residential Agency Surveying Professional Group

Introduction

Statutory regulation of estate agents in Ireland commenced in 2012. The Society of Chartered Surveyors Ireland has therefore taken the initiative to produce useful guidance for members to assist in the day to day running of their practices in line with regulation.

This guidance note sets a framework for best practice in the execution and delivery of real estate agency (residential property sales) services in Ireland. The standards offer generic guidance applicable to the residential property market, including private treaty sales, tenders and auctions. This guidance note now provides members with an informative, authoritative guide detailing how to conform to the obligations as set out in the Property Services (Regulation) Act 2011. This guidance note is applicable to B & C licence holders only.

The SCSi Real Estate Agency Practice Manual references the Royal Institution of Chartered Surveyors (RICS) *Real Estate Agency and Brokerage Standards* (REABS). REABS is a RICS guidance note and has been produced to ensure that estate agency standards are consistent with internationally recognised standards and ethics.



Section 1:

1. The general principles of agency	10
1.1 Types of agency	10
1.1.1 Sole Agency	10
1.1.2 Joint Sole Agency	11
1.1.3 Multiple Agency	11
1.1.4 Auction	11
1.2 Receiving instruction & the PSRA Letter of Engagement	11
1.2.1 Advised Market Value	12
1.2.2 Commissions and Expenses	12
1.2.4 Mutual agreement to termination of Agency	12
1.2.5 Termination of agreement by the Client	13
1.2.6 Termination of the agreement by the Agent	13

Section 1

1. The General Principals of Agency

An agent is a person who is employed for the purpose of bringing his / her Principal into contractual relations with third parties. The principal must have legal capacity because, if not, a contract cannot be made by the employing of an agent to act on behalf of the principal. Therefore, a minor or bankrupt may not be a principal.

1.1 Types of Agency

There are four main types of agency as set out in the property service regulation legislation as follows;

Sale of land other than by auction –

- Sole Agency
- Joint Sole Agency
- Multiple Agency

Sale of land by auction –

- Sole Agency

¹It should be noted however, that it is not uncommon to have a joint sole agency of land by auction.

Land is defined in the Property Service (Regulation) Act 2011 as “includes-

- (a) any estate or interest in or over land, whether corporeal or incorporeal,
- (b) mines, minerals and other substances in the substratum below the surface, whether or not owned in horizontal, vertical or other layers apart from the surface of the land,
- (c) land covered by water,
- (d) buildings or structures of any kind on land and any part of them, whether the division is made horizontally, vertically or in any other way,
- (e) the airspace above the surface of land or above any building or structure on land which is capable of being or was previously occupied by a building or structure and any part of such airspace, whether the division is made horizontally, vertically or in any other way,
- (f) any part of land;

1.1.1 Sole Agency

The vendor gives the agent sole agency for a specified period but reserves the right to dispose of the property privately. The vendor will be liable to pay remuneration to the agent, in addition to any other costs or charges agreed, if at any time unconditional contracts for the sale of the property are exchanged with a purchaser introduced by the agent during the period of the sole agency or with whom the agent had negotiations about the property during that period.

¹Members should note that at the time of printing, there was no specified PSRA form for Auction of Land Joint Sole Agency

1.1.2 Joint Sole Agency

The vendor instructs two or more agents to work jointly for a specified period of time. The agents are aware of each other and in the event of a sale commission is usually shared equally between the agents. The details of which will be set out in the letter of engagement.

1.1.3 Multiple Agency

The vendor may retain several agents agreeing only to pay the agent who introduces the purchaser. This will have competing contractual relationships simultaneously with several sellers or buyers.

1.1.4 Auction (see section 4 Auction)

1.2 Receiving Instruction and the PSRA Letters of Engagement

In order to comply with the Property Service Provider (PSP) licence one must exercise the appropriate prescribed letters of engagement produced by the Statutory Regulator. These letters of engagement are as follows;

- Sale of Land other than by Auction - Sole Agency
- Sale of Land other than by Auction – Joint Sole Agency
- Sale of Land other than by Auction - Multiple Agency
- Sale of Land by Auction – Sole Agency

These letters of engagement may change from time to time. It is the responsibility of the agent to be fully and wholly up to date on the current letters of engagement. The most recent and up to date version can be sourced by contacting the Property Service Regulatory Authority.

The various letters of engagement are produced by the Property Service Regulatory Authority (PSRA) and agents are legally obliged to have these forms fully completed and signed by both parties (i.e. the agent and vendor) prior to commencing work. The letters of engagement are an important document as it will provide vital information of the agreement between the two parties in terms of advised market value, sale method, marketing, fees and duration of the agreement. The PSRA letters of engagement can be sourced from the PSRA website www.psr.ie and SCSi guidance to members on completing these forms can be downloaded at <http://www.scsi.ie/Regulation/PSRACompliance>

Property Services (Regulation) Act 2011 Part 2, Property Services Agreements for the sale of land specifies that;

“a property services agreement for the sale of land shall also include—

- (a) the advised market value of the land,
- (b) a description of the agency model (sole agency, joint agency or multiple agency),”

1.2.1 Advised Market Value

The Property Service Regulatory Authority requires that agents complete an Advised Market Value form confirming the agents' estimate of the sale price. This is to be provided to the vendor within 7 working days of the carrying out the appraisal or longer if agreed by both parties.

The definition of "advised market value" under the Property Service (Regulation) Act 2011 –

In relation to land valued for sale by a licensee, means the licensee's reasonable estimate, at the time of such valuation—

(a) of the amount that would be paid by a willing buyer in an arm's length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion, or

(b) of the relevant price range within which would fall the amount that would be paid by a willing buyer in an arm's length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion'

Note: The asking price of the property or land can be higher but not lower than the AMV. This may be adjusted with the consent in writing of the vendor to take account of prevailing market conditions.

1.2.2 Commissions and Expenses

Letters of engagement are required in all instances where an agent is to act for a vendor (or purchaser). The specified forms are set out in the PSRA website.

If there is to be an action by the agent for the recovery of fees the letter of engagement should provide the necessary information as a basis to the resolve any complaints. The Letters of Engagement require the following information in respect of fees;

*The Agent's fee shall be ((**PERCENTAGE**)% of sale price] or [for the agreed fixed price of €(**FEE**)] or [**OTHER FEE STRUCTURE**)]*.*

OR

*If the property sells for the advised market value the level of fee payable shall be ([€(**FEE**) (where the advised value is a specified amount)] or [between €(**LOW FEE**) and €(**HIGH FEE**) (where the advised value is a specified as a range)].*

*The fee shall be subject to VAT at (**VAT RATE**)%.*

*The fee shall become payable on ((**THE DATE THE CONTRACT FOR THE SALE OF THE PROPERTY IS CONCLUDED**)) or [(**SPECIFY OTHER CONDITION**)]).*

Members should note that when agreeing the terms of the Letter of Engagement with the Client, any items within brackets should be replaced with the appropriate text or any option which is inappropriate should be removed to confirm the agreement between the client and agent. For example, "within (NUMBER) days" could be changed to "within 21 days" or "Arrangements ([will] OR [will not])* be made by the Agent" would be changed to "Arrangements will not be made by the Agent" as appropriate.

Additional clauses, which do not negate or conflict with those in the specified form or breach any statutory provision, may be added by agreement of both client and agent.

1.2.4 Mutual Agreement to Termination of Agency

The letters of engagement agreement between the agent and the client may be terminated (without penalty) at any time with the mutual consent of both parties or by either party by giving (agreed number) of days written notice.

1.2.5 Termination of Agreement by the Client

The letter of engagement also specifies that the agreement may be terminated in other ways including;

The agreement may be terminated by the client where the agent:

- (a) is in material breach of the letter of engagement and fails to remedy such breach within (NUMBER) days of having been notified, in writing, by the Client; or
- (b) is an individual who is declared bankrupt; or
- (c) is a body corporate which is wound up or liquidated; or
- (d) is a partnership and any one of the partners is declared bankrupt; or
- (e) has had his/her licence suspended, not renewed or revoked; or
- (f) has a conflict of interest in relation to this agreement and the client does not consent, in writing, to the agent continuing to act for the client.

1.2.6 Termination of the Agreement by the Agent

Statutory legislation permits that the agreement may be terminated by the Agent where:

- (a) the Client
 - (i) fails to pay any amount owing to the agent under this agreement, or
 - (ii) acts or fails to act so as to prevent the agent from properly carrying out his/her obligations under this agreement, and
- (b) having being notified in writing by the agent of any matter referred to in paragraph (a) fails to address such matter within 21 days of such notification.

Although not included with in the PSRA Letters of Engagement, members should be aware that agency relationships can be terminated in many other ways as follows:

- The agent has achieved the desired results i.e. property sold and commissions paid;
- Someone else has achieved the desired results, in accordance with the contract;
- The death of either agent or principal;
- The destruction of the property.

The details of termination of a sale agreement are set out in the appropriate PSRA Letters of Engagement. This document will provide a foundation from which the resolution of any disputes may commence. The SCSi has produced guidance for completing the PRSA Letters of Engagement and this can be viewed at <http://www.scsi.ie/Regulation/PSRACompliance>

Members Checklist - Letters of Engagement		
	Responsible Party	
	Company	Staff
You should receive a completed letter of engagement signed by all parties, within 7 days of being awarded the instruction to sell a property. Marketing of a property cannot commence until this contract has been completed. For simultaneous multiple instructions from the one client, an appendix can be attached to a single letter of engagement listing all properties where instructions have been received at the same time. Advised Market Values (A.M.V) must be available on signing of the contract if this method is being chosen and the details must be provided to every property listed in an appendix which can be attached to the letters of engagement.		✓
Statement of Advised Market Value also to be provided to Vendor.		✓

Compliance checklist - taking the property instruction		
	Responsible Party	
	Company	Staff
1. The appropriate letter of engagement has been completed, agreed by both parties and signed by the agent and the vendor.	✓	✓
2. Retain on file comparable evidence used to advise the client on A.M.V	✓	
3. Building Energy Rating Certificate is completed and a copy retained on your file.	✓	✓
4. Client advised to make contact with their Financial Institution (if applicable) to loan deeds to vendors solicitor. Please refer to draft letter in appendix B for guidance.	✓	

Member Checklist -- Legislation		
Responsible Party		
	Company	Staff
<p>Require all staff especially holders of Property Service Provider (PSP) licences to be fully conversant with the publications from the Property Services Regulatory Authority including but not limited to;</p> <ul style="list-style-type: none"> ➤ Guide to becoming a licensed PSP. ➤ Property Services (Regulation) Act 2011 (Client Moneys) Regulation 2012. ➤ PSRA Code of Practice ➤ PSRA Letters of Engagement. <p>Information on the above publications can be sourced from;</p> <ul style="list-style-type: none"> ➤ www.psr.ie. 	✓	✓



Section 2:

2. Sale Method	18
2.1 Introduction	18
2.2 Private Treaty	18
2.3 Public Auction	18
2.4 Tender	20
2.5 Conclusion	20

Section 2

Sale Method

2.1 Introduction

A key point upon which the property professional will advise the vendor is the method of sale. The most common methods in Ireland are private treaty, public auction and tender.

Among the variables that will influence the choice will be:-

- The Vendor
- The Property
- The Market
- Availability of Finance

The vendor will, more often than not, rely on the agent's advice and recommendations. It is, therefore, vitally important that the agent explains clearly and concisely what each method involves and the various advantages and disadvantages of each respective method.

2.2 Private Treaty

At its simplest, the private treaty method involves marketing and promoting the property in a pre-defined manner. An asking price or guideline price is usually disclosed to prospective purchasers or viewers. The asking price must in all cases be equal to or higher than the AMV.

The agent may be instructed by the vendor to:

- Sell the property to the highest bidder.
- Negotiate with the highest bidder.
- Revert to the under bidders and use a process of elimination to exhaust the bidding process.

Private Treaty is by far the most common method because it is relatively inexpensive, negotiations can be exhaustive and thorough and various bidders can be pitched against each other with relative anonymity. On the downside under bidders can be suspicious by nature and may often wonder if there is a higher offer. A good agent can reassure bidders on this matter.

In conclusion, the private treaty method is suited to almost any type of property and is usually favoured in a less buoyant market.

Negotiations are conducted with interested parties until the optimum offer is secured. The vendor must be kept apprised of all meaningful developments. Policy on disclosure of specific offer levels to rival bidders varies from firm to firm. Some firms disclose the actual level of all offers, whereas other firms merely indicate to a party that their bid has been "topped" and invite them to improve on their standing bid. Whatever your policy, it must be consistent for all parties. Members are advised that it is now necessary to retain proper file notes on all verbal communications with both vendor and all potential buyers. The level and date/time of each offer and

response must be on record in the specified PSRA format. Form PSRA S61-2012 can be found on the PSRA website www.psr.ie. These records must be kept on file for a minimum of 6 years.

If it becomes clear that more than one buyer is willing to increase on the indicated price level, some firms resort to a "Best and Final Offer" (or BFO) to resolve the impasse. This involves inviting all seriously interested parties to submit their best and final offer in writing to the agents by a stated deadline. In many cases a 5% initial booking deposit is requested on the understanding that cheques will be returned un-cashed to unsuccessful parties. Members should be advised that the booking deposit is subject to contract and should be returned should the sale fall through (prior to signing unconditional contracts). Some firms insist that all required surveys are completed prior to this stage.

In a small number of cases a private auction between interested parties may prove a more satisfactory method of finalising matters.

In order to prevent future difficulties for the member, always advise intending purchasers when accepting their offer on the vendor's instructions and taking the initial deposit, (see Appendix A) that they have not secured the property until formal exchange of contracts.

Once an offer is accepted and an initial deposit received members must, subject to their client's overriding instructions:-

- Change any sign/s on the property or other marketing material including internet sites to read "Sale Agreed".
- Immediately instruct the vendor's solicitor in writing to prepare and issue formal contract documentation (having advised them previously to take up the title deeds once the property was brought to the market [see Appendix B])

Cease marketing the property and cease showing the property to new prospects once instructed to do so by the vendor. Show the property only to the buyer and his/her surveyor.

Ensure that all correspondence whether to the vendor, vendor's solicitor, purchaser's solicitor or purchaser state that the sale is subject to contract and that no agreement shall be deemed to be binding or in force until formal contracts have been signed and exchanged.

Notwithstanding the foregoing, if a higher offer is made for the property by another party prior to the formal exchange of contracts, agents are legally bound to so advise their client and take the client's instructions.

Members should never refer to prospective buyers as "clients". An agent has only one client in a transaction - the vendor. To refer to a buyer as a "client", particularly in discussion with the vendor, can at best cause confusion and at worst can cause suspicion of split loyalties on the part of the agent.

2.3 Public Auction

The key feature of a public auction is that potential purchasers are assembled and invited to bid publicly for the property on a specific time and place. There can, therefore, be active competition and the matter of the sale can be brought to a head very quickly.

Another major advantage of the public auction is the eventual purchaser is required to sign a contract and pay a deposit at the conclusion of the Auction. This is in contrast to the protracted process of exchanging contracts in the private treaty method and can be a decided advantage. The main disadvantage with the public auction method is that of cost. It is essential to have a clearly defined and accurately targeted advertising campaign for at least three weeks prior to the auction date. This campaign must be sustained to be effective.

In addition, an appropriate venue is required and this may involve the hire of a room again adding to the cost. These costs will have to be borne whether or not the property sells. Finally, there can be demand fluctuations in the lead-time required for an auction. It is customary, therefore, to advertise a property for sale by public auction - "unless previously sold".

N.B. See also Section 4.

2.4 Tender

Public Tender

The property is advertised and potential purchasers are invited to submit an offer in writing together with a deposit which is usually 10% of the submitted offer. The tender document must be completed and this involves the potential purchaser entering into a conditional contract, the main condition being that the contract is subject to the vendor's acceptance of the offer.

Sale by tender is usually appropriate where it is known that there is going to be very active interest in the property but the value may be difficult to determine. The value may be relative to the proposed purchaser and the particular use to which the property may be put. All prospective purchasers who wish to submit a tender must "put their best foot forward". This method has the major advantage of confidentiality but can have the drawback of being expensive to market and organise. It is vital that the tender document, which is prepared by the vendor's solicitor, be assembled with the co-operation of the agent. A drawback of this method however, is that some prospective purchasers can find tender documents complex and intimidating.

The vendor is not be obliged to take the highest or any offers on the property, and similar to an auction may reserve the right to sell the property in advance of a tender date in which case the words "unless previously sold", or other similar construct may be seen in the advertising material.

Private Tender

Private tenders are by invitation only. This can be to a group of bidders already involved in a private treaty negotiation or to a selected number of potential purchasers.

Members must understand that a tender, whether public or private involves the issuing of contracts into which tendering parties insert their purchase price and perhaps some other conditions or information and the tender document is returned with usually a 10% deposit which is contractually binding on the tendering party once the vendor accepts the price (and conditions, if any) offered. It is not the same as 'best and final offers' as these are not binding or contractual but merely bring to a head the private treaty negotiations.

Members should inform all interested parties in a transparent manner of the preferred sale method or any changes to the sale method.

2.5 Conclusion

In summary the selection of a method of sale involves a careful consideration of all the variables involved in this complex equation. The importance of guiding and assisting the vendor in this process is vital to the successful outcome of both the agent's and the vendor's mutual objective.

Section 3:

3. Sales Procedure	22
3.1 Introduction	22
3.2 Instruction	22
3.3 Barriers to an efficient sale process	23
3.4 Communications with vendors	24
3.5 Communications with solicitors	24
3.6 Communication with prospective purchasers	24
3.7 Deposits and receipts	26
3.8 Client Money	26
3.9 Building inspection surveys	26
3.10 The Family Home Protection Act 1976 as amended	27
3.11 Multi Unit Developments	28

Section 3

Sales Procedure

3.1 Introduction

Clarity of communication is essential for the smooth administration of any practice. In addition, an established procedure is a useful tool in the management of a practice. Procedures are not intended to inhibit creativity - they are intended to assist and guide. Procedures are also particular to each practice. In this section some of these are outlined together with suggestions of areas where principals might wish to establish procedures. The cornerstone of this section is based on the importance of communications.

3.2 Instructions

When a member of the public comes into an agent's office to instruct the sale of their property, the SCSi recommends that structured procedures are established in the interest of clarity and transparency. Equally, the SCSi recommends that established procedures are in place covering the manner in which instructions are solicited by the agents practice. While adhering to the PSRA's *Code of Practice for Property Services Providers* there are certain procedural issues that should be attended to at the time of instruction. The general procedure is contained in the PSRA *Code of Practice*. See PSRA website for further information (www.psr.ie)

Members Checklist - Receiving Instructions		
	Responsible Party	
	Company	Staff
<p>1. Agents should ensure that prior to accepting instructions from a client that there is no conflict of interest in existence. Please refer to <i>RICS Real Estate Agency and Brokerage Standards Chapter 2, Conflicts of Interest</i>.</p>	✓	✓
<p>2. Money Laundering Any method whereby the proceeds of criminal activities are disguised or converted and then realised as legitimate funds or assets constitutes money laundering. Investing in property as a means of conversion and subsequent resale or mortgaging can release clean funds. Legislation has created the following criminal offences. These are:</p> <ul style="list-style-type: none"> • assisting a criminal to obtain, conceal or retain or invest funds if the person giving assistance knows or suspects the funds to be the proceeds of crime; 	✓	✓

Members Checklist - Receiving Instructions (continued)		
	Responsible Party	
	Company	Staff
<ul style="list-style-type: none"> tipping off a person who is the subject of suspicion or is under investigation; and failure to report knowledge or suspicion of laundering acquired in the course of a person's trade, profession, business or employment. <p>The Money Laundering Regulations apply to those who undertake relevant financial business. The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 was enacted into Irish law in July 2010 to update Irish anti-money laundering and terrorist financing legislation. You should be aware of the legislation in order to minimise the risk of committing a criminal offence.</p> <p>The SCSi has prepared additional guidance for Agents on anti - money laundering and is available for downloading at http://www.scsi.ie/regulation_psracompliance_draft_money_laundering_guidance</p>	✓	✓
<p>3. Record and maintain a database of comparable properties used in reaching an opinion of advised market value. The prescribed 'Advised Market Value' form can be downloaded from www.psr.ie.</p>		✓
<p>4. In the case of sole agency, transaction fees (e.g. commission) should be agreed in such a manner to promote transparency and structured in such a way that the agent will negotiate the best deal for the client. (<i>Refer to RICS REABS Chapter 2</i>).³</p>		✓

3.3 Barriers to an Efficient Sale Process

On many occasions, property sales for whatever reasons do not progress as efficiently as they could. This can often lead to frustration on all parties and therefore agents should be mindful of all potential barriers to an effective and efficient sale process. This often where the experience of the agent comes into play however, the following are some issues to be cognisant of when taking the instruction;

Main reasons for a sale falling through

1. Planning permission non-compliance.
2. Boundaries not defined and accurate as per property registration maps.
3. Advice from building inspections reports.
4. Financing the property.
5. Burdens or rights of way registered on the title of the property

Agents should be mindful of the above and other barriers to an efficient sale process. It would be wise to gather as much information as possible from the outset in order to avoid any issues later on in the sale process.

³The Royal Institution of Chartered Surveyors, Real Estate Agency & Brokerage Standards Guidance Note 1st Edition 2011.

3.4 Communications with vendors

The first meeting with the vendor will usually involve the agent agreeing terms in relation to agency, fees, method of sale, advertising, advised market value / reserve price / asking price, duration of agency, building energy rating performance, appointment, viewing, sales particulars, photographs, window displays, signboards, solicitors, maintenance and mortgage redemption.

It is essential to confirm the above mentioned points in writing with the vendor as set out in the prescribed PSRA Letters of Engagement. Agents are required to have on their file a completed and signed letter of engagement from the vendor prior to any marketing of the property for sale. Such a document is of benefit if a dispute arises.

3.5 Communications with Solicitors

The Society recommends that members should advise vendor's solicitors of all the relevant details of the property to be sold on the day they take instructions or as early as is practicable.

Sample guidance letters are issued by the Society to enable members to prepare their own in-house style (see Appendix C). The agent should ask the solicitor to confirm details of tenure/title, planning, location of title documents and any other relevant matters. It is also important that the agents advise the Solicitor of all developments in relation to the sale, e.g. questions may arise in relation to boundaries, neighbouring disputes or rating queries. At the other end of the sale process i.e. when a sale has been negotiated, it is advised that the agent send a letter and sale advice note in accordance with the appropriate practice note issued by the Society, to the vendor's solicitor. (Appendix E - "Practice Note - Confirmation of Sale").

Effective and professional communications with solicitors in the matter of a sale promote the member's professional image and engender a favourable perception of the profession as practiced by members of the Society with the legal fraternity.

3.6 Communications with Prospective Buyers

The first point of contact with a prospective purchaser is usually by phone call to your office, an enquiry letter / email or a personal visit. Whatever the point of contact this event should be handled with due care and courtesy. It is vital that enquirers feel they have discussed the property with a professional familiar with it and that the enquiry is followed through expeditiously and thoroughly. If not, your professional reputation and your business will suffer. An established system of recording enquiries is essential. It is useful to record:

- Details of the enquirer.
- Their specific requirements.
- References of property details issued to them.
- Availability for viewing.

Communication lines should always be adhered to with enquirers:-

Always:

- Return telephone calls.
- Answer correspondence.
- Issue requested details.

- Confirm the viewing arrangements or appointment.
- Record viewings.
- Follow up enquiries.
- Respond to offers.
- The key to communications is to remember that the enquirer may become a vendor and will comment on your practice's efficiency or lack of efficiency.

It is good practice to inform all interested parties of any changes to the sale method of a property. For example, a vendor may have agreed to sell a property by auction and then subsequently revert to a private treaty sale or tender. In any event, agents should inform all interested parties of the new sale method in a transparent manner.

Members Checklist - Ethics		
Responsible Party		
	Company	Staff
<p>You should require all staff to be conversant with the Ethics standards set out by the PSRA and the <i>RICS Real Estate Agency and Brokerage Standards</i>.</p> <p>This should include but is not limited to the following;</p> <ul style="list-style-type: none"> • Abide by the legislation especially that set out in the Property Services (Regulation) Act 2011. ⁴ • Provide measures to protect and promote the interest of the client. 	✓	✓

Member Checklist - PSRA Code of Conduct		
Responsible Party		
	Company	Staff
<p>Establish a system to ensure that all staff members adhere to the guidelines issued by the PRSA including but not limited to;</p> <ul style="list-style-type: none"> • Code of Practice for PSPs. • Frequently asked questions. <p>Provide training where necessary to staff in an effort to address any knowledge deficiencies.</p> <p>Ensure that you have evidence showing that training has been supplied to address any knowledge gaps.</p>	✓	✓

Professional Indemnity Insurance		
	Responsible Party	
	Company	Staff
You must take out and maintain sufficient professional indemnity insurance cover as required by the Property Services (Regulation) Act 2011, Professional Indemnity Insurance Regulations 2012 and in order to maintain membership of the Society of Chartered Surveyors Ireland.	✓	

3.7 Deposits & Receipts

Deposits and receipts must only be transacted between the licensee (property service provider) and the prospective purchaser or their agent. Under the Property Service (Regulation) Act 2011, it is a criminal offence for any other unlicensed persons to take deposits on behalf of the Property Service Provider.

The PSRA Letters of Engagement specify that the agent holds the booking deposit. By definition, a booking deposit is a deposit paid pre-contract stage where no contractual obligations have been created between the vendor and the purchaser. If the purchaser pays a booking deposit and then requests return of this deposit they are entitled to receive this back unless a contract has been entered into by that time.

An initial or booking deposit of 5% of the agreed sale price is appropriate. As in all correspondence, the receipts should state categorically that the sale is subject to contract and that no contract will exist between the parties unless and until formal contracts have been signed and exchanged.

A receipt for a deposit should always be in the SCSi approved format - See Appendix D.

3.8 Client Money

The PSRA have strict rules in place for holding client money and this is laid out in section 2.3 of the *PSRA Code of Practice for Property Services Providers guidance*. This guidance note can be sourced from the PSRA (www.psr.ie).

3.9 Building Inspection Surveys

Building Surveyors should not be allowed unsupervised access to properties and if in exceptional circumstances unaccompanied surveys occur, the property should be inspected afterward to ascertain whether damage has been done. Building Surveyors require the written permission of the vendor before any opening up of works are permitted.

Members should be aware that Professional Negligence claims have arisen in Ireland out of difficulties in this particular area.

The SCSi has developed guidance on building inspections for Building Surveyors and also a consumer version of this guidance is available for downloading on www.scsi.ie. This consumer guide may be of particular interest to potential purchasers and indeed Agents client(s) i.e Vendor.

3.10 The Family Home Protection Act 1976 as amended by Family Law Act 1995.

The 1976 Act came into operation on the 12th July 1976. It essentially prohibited one spouse, without the prior written consent in writing of the other spouse, conveying any interest in a family home and if there was any such conveyance without prior consent in writing, the conveyance was void.

There are two definitions to be considered. The first one is "What is a family home?". The Act primarily says that a family home is a dwelling in which a married couple ordinarily reside. The original definition was enlarged somewhat under the provisions of the Family Law Act of 1995. A dwelling was originally defined as any building or any structure, vessel or vehicle (whether mobile or not) or part thereof, occupied as a separate dwelling and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise, acquired for the amenity or convenience of the dwelling. It can apply even though the spouse whose protection is at issue may in fact have left the dwelling house but ordinarily resided there before so leaving.

The 1995 Act substituted for the definition of dwelling in the 1976 Act, a new definition so that a dwelling now means any building or part of a building occupied as a separate dwelling and includes any garden or other land usually occupied with the dwelling being land, that is subsidiary and ancillary to it, is required for amenity or convenience and is not being used or developed primarily for commercial purposes and includes a structure that is not permanently attached to the ground and a vehicle or vessel whether mobile or not occupied as a separate dwelling.

It can be seen from the foregoing that it is not just the actual sale of the house itself can be caught but for example part of a garden which is normally attached to a family home, if it is being sold off separately, can be caught by the provisions of the Act.

The second word that is defined is the word "conveyance" and this includes (under the definition section) not only the obvious meaning of the word but includes a mortgage, a lease, an assent, transfer, disclaimer, release or any other disposition of property other than by a Will and also includes an enforceable agreement, whether conditional or unconditional, to make any such conveyance. Of importance to the agent is the latter part of the definition of the conveyance that is the question of an enforceable agreement to sell a property. Insofar as an Agent's role in a sale by private treaty is concerned, it is unlikely that the provisions of the Act would be of concern to the agent.

Where the agent is selling a property by private treaty he/she will at best accept a booking deposit and make it clear in any correspondence that any arrangement he has entered into on behalf of the vendor is not binding until such time as formal contracts are signed and exchanged and a full deposit paid. Hence in a situation like this it will, in the vast majority of cases, be the responsibility of the purchaser's solicitor and indeed the vendor's solicitor to ensure that provisions of the Act are complied with, in that if it is a family home as defined in the Act, then the prior written consent of the vendor's spouse, (if the property stands in the sole name of one spouse), should be obtained before there is a binding contract between the parties.

The situation for an agent in relation to a sale by public auction is different. Under auction conditions where an agent declares that the property is on the market and signifies that the property is to be sold in the traditional manner by bringing down the gavel, then at that stage the highest bidder, to whom the property has been knocked down, is entitled to have the contract for sale completed by the vendor. In the event of there being a reluctant vendor, the agent is empowered to sign on his behalf. In such circumstances it is incumbent upon the agent, if the property being sold is a family home, to determine first of all if the title stands in the sole name of one of the parties who of course must be married. If it stands in the sole name of one of them then in order to discharge his responsibilities in the matter, the agent should ascertain that the other spouse has given his or her prior consent in writing to a sale of the property and that the spouse also specifies the price at which that consent is to operate.

In other words if a reserve price is being fixed before the auction, then the other spouse should give his or her written consent to the property being sold at the reserve figure or a price in excess of it. Failure to get such a prior written consent could lead to difficulties for the agent and could potentially give rise to a claim for damages for misrepresentation of his authority to sell the property.

Likewise in a sale by private treaty, if the agent is purporting to have the authority of a vendor to conclude a sale in such a way as to be binding on both parties before formal contracts are signed, then if the property is a family home, he should also get the prior written consent of one spouse if the property stands in the sole name of the other spouse.

Where the property is held by a married couple jointly and they are both involved in the sale, no prior consent from either is required. If, however, the property is held by them as tenants in common, either in equal or unequal shares, then technically each should give their prior consent to the sale by the other of their respective shares of the property.

All solicitors in the state are fully aware of the complexities that have arisen in conveyance from what appeared at first sight to be relatively straight-forward provisions of the 1976 Act. It would accordingly be somewhat unusual to find the property being auctioned without the vendor's solicitor ensuring that the necessary provisions of the Act are complied with in advance.

Another area requiring care is a situation with a mixed residential and business property e.g. a licensed premises in which the owners would live in residential accommodation over the property. Such a property would, of course, be caught by the provisions of the Act.

This particular Act has given rise to a substantial amount of litigation which has been necessary to obtain specific clarification on a number of matters arising from the wording of the Act. For example, in 1995 for the first time the Supreme Court issued a Judgment that prior written consent must be an informed consent. The word "informed" appears nowhere in the Act and arose in the case where a spouse gave her prior written consent but was not separately legally represented where her husband was signing a mortgage in favour of the Bank over their farm which included the dwelling house. There are many other complex situations which arise from time to time upon which the Act is not at all clear e.g. if the parties are separated and have each acquired property subsequent to the separation there can be a difficult area of proof in terms of whether such property is or is not caught by the Act. The real problem with the Act is that if a prior written consent is required under the Act and is not obtained then any subsequent documentation is totally void.

3.11 Multi – Unit Developments

The Multi-Unit Development Act 2011 was introduced into law in April 2011. This legislation contains obligations on developers and owners relating to common areas, setting up Owner Management Companies, sinking funds, insurance, budgets and service charges. Agents should communicate and provide information and documentation on the existence and purpose of the Owners Management Company, in particular details of the operational methodology, services, service charges and sinking fund as well as compliance generally with the MUD Act.

Section 4:

4. Auctions	30
4.1 Instructions	30
4.2 Property Auctions	30

Section 4

Auctions

4.1 Instructions

Before conducting an auction, members should have clear instructions from the vendor as to what level one would have authority to sell at. Members should remember that the transaction which you are conducting may be only one of many, whereas, for the vendor it is a most important and often a traumatic event. It is advisable to explain everything clearly and make sure that you have proper instructions. If a vendor is absent it is important to have written authority or somebody present who has the vendor's authority.

4.2 Property Auctions

Although the conducting of a property auction may appear to be a simple process, it is anything but that. The practitioner should carefully consider what he or she is about to sell before setting foot on the rostrum. Only the person with a category B Property Service Provider license may conduct an auction. The agent should have a detailed knowledge of the property being offered. This means inspecting it, making a careful study of boundaries, checking relevant maps, documents, and in particular planning documentation. While on the rostrum you are considered to be an expert, your code of conduct as a member of the Society of Chartered Surveyors Ireland requires that you act in a professional and competent manner.

You should get a copy of the particulars and conditions of sale from the solicitor having carriage of sale at an early stage. Check that document against your descriptive particulars to see if there are any discrepancies. If so ascertain the reason why and make sure that any errors are brought to the notice of intending purchasers. You should provide suitable premises, where the bidders undivided attention can be had. Equally if you are successful in conducting your sale, a suitable room should be available in order that the contract can be signed by the purchaser and the deposit paid. It is prudent to have this action carried out before introducing the purchaser to the vendor.

Although the Property Services (Regulation) Act does not require offers to be recorded at an auction, members should appoint a staff member to act as clerk who will record the offers. The clerk should also record any questions or queries raised from the floor and if possible identify the person who raised the question as well as the bidders. Such a record can be invaluable should a dispute arise. It is advisable to keep a proper auction book where a record of the bidding for each auction you have transacted is kept. It is custom and good practice, to read the special conditions from the particulars and conditions of sale to the assembled bidders before the auction commences. If they are particularly lengthy and complicated it is no harm to have copies available and hand them to interested parties. Full copies of the Conditions of Sale should also be available for inspection prior to the Auction.

The Particulars and Conditions of Sale are altered by the Law Society on occasions. Practicing real estate agents/ PSP's should be familiar with the version in current use.

Within reason it is advisable to avoid accepting bids in unrealistic amounts and it is generally advisable to suggest an opening level. On a €100,000 property a reasonable suggestion for an opening bid would be c. €85,000.

By doing so, you can often avoid delaying people unnecessarily. The custom is such, that if a property is withdrawn because the bidding is below the level at which the vendor will sell, the agent negotiates on behalf of the vendor with the highest bidder. When conducting an auction it is often useful to announce that you will negotiate solely with the highest bidder for a certain period after the auction to the exclusion of everybody else until such time as an agreement can be reached or not. In doing so you are hopefully giving reluctant bidders a prod forward as they may wish to earn the right to negotiate.

There is no obligation on the vendor, or his/her selling agent, to give a guide as to the anticipated reserve. However, in more recent years it has become an accepted practice to do so. In order to maintain public confidence in the auction process, all members should give an Advised Market Value within 10% of the anticipated reserve price.

The agent may also disclose the reserve price in advance of the auction. This is known as a Disclosed Reserve. Once bidding reaches the disclosed reserve figure at the auction, the property is then "on the market" i.e. will be sold to the highest bidder thereafter.

The agent must act on the bona fide instructions of his/her client. However, an SCSI member must, in the event of a formal complaint, be able to show that he/she used his/her best endeavours to comply with the SCSI's practice position on guidelines.

Members must also be aware that the Property Services (Regulation) Act 2011 section **58** stipulates that where land is offered for sale by auction, the vendor **shall not** —

- (a) bid at the auction, or
- (b) procure, authorise or permit any person to bid on the vendor's behalf



Section 5:

5. Recommended procedure for members on property sales – excluding new homes	34
5.1 Introduction	34

Section 5

Recommended Procedure for Members on Property Sales - Excluding New Homes

5.1 Introduction

Solicitors and estate agents have a joint duty to ensure that the sale of property on behalf of a client goes through the required procedure by the most efficient means possible. This presupposes co-operation between both parties and it also assumes that both parties will be fully paid for their expertise.

To this end:-

1. Members of the Society should advise solicitors of all relevant details of the property to be sold on the day they take instructions or on the day following. Try to anticipate any special requirements which will be needed for the contract. For example, if the property proposed to be sold is a house - has the vendor made any alterations to it and if so whether appropriate legislative requirements were complied with. The agent should also be mindful that the anticipated selling price of the property is greater than any mortgage, which could give rise to difficulties later on. Confirmation and assurances should be sought and provided for by the vendor. If the property being sold is part of a larger building, steps should be taken to get the line of the new boundary defined and a map prepared which would be needed for the contract. In most cases the vendor's solicitor obtains the Land Registry compliant map for conveyance purposes. The SCSi has issued guidance on boundaries which may be useful to agents this and can be accessed at http://www.scsi.ie/boundaries_guidance_note.
2. Other examples would be the fact that an entrance, well or septic tank may be shared with another property. The solicitor will need the documents of title to prepare a contract and getting them takes time. If the client has not already seen a solicitor, members should try to ascertain the whereabouts of the deeds when taking instructions. If they get the client to complete a Form of Authority on the lines of the specimen (Appendix B) and send this to the solicitor with the details of the property, it will be very helpful to the solicitor. It will also save time which will be in the interests of both the client and their advisors.
3. Members will ensure in every case that the prospective purchaser consults his/her solicitor before signing a contract or any form of agreement.
4. Solicitors should in turn be asked to advise members of the progress of the sale in the vendor's best interests.
5. Agents will hold a pre-contract deposit from a prospective purchaser, in each case, such booking deposit after the contract is signed to be retained by the agent. The payment of such booking deposit ensures intent by the purchaser.
6. Solicitors should be requested to notify the agent simultaneously with notification to the vendor that the sale has been completed. The notification must be accompanied by a letter of authority from the purchaser's solicitor releasing the booking deposit.
7. The booking deposit, less the agreed fees and outlay due to the agent will then be forwarded immediately to the solicitor or client together with any deposit interest, if appropriate and subject to 8 below. As a reasonable guide to the amount payable, the deposit will be 5%.
8. In the event of an abortive sale, the booking deposit plus interest, if appropriate, without any deduction for fees and outlay, should be returned immediately. A letter of authority should be received from the vendor's solicitor authorising the return of the booking deposit to the purchaser.

Section 6:

6. Recommended procedures for members on property sales – new homes	36
6.1 Introduction	36
6.2 Marketing and Flexibility	36
6.3 Checklist of important items for marketing brochure	37

Section 6

Recommended Procedure for Members on Property Sales - New Homes

6.1 Introduction

Early planning in any marketing campaign is important to ensure success. The developer should be advised to begin the marketing of a development as soon as early as possible. All advertisements should be tailored toward the cohort of potential purchasers most likely to purchase from the development e.g. families for family type homes 3 and 4 bed-semis.

The creation of a totally original message for the launch and selling of each development is essential. With the high costs of site works and constructing show houses, it is imperative that an initial batch of sales are received in order to assist with the high outlay required of the developer in constructing homes. The creation and implementation of a practical marketing strategy is crucial in achieving this objective.

6.2 Marketing and Flexibility

Market conditions can change rapidly and it is important that the agents' marketing material is clear and concise as to what is included in the sale of the property. Many potential purchasers know exactly what they require from a property and any blurring of this will have only a negative effect.

A good clear brochure is essential at the launch of any development and newspapers notices should be clearly designed and carry a message that will have immediate effect to the target audience.

The main selling points of the development, along with any additional features which are worth stressing, need to be highlighted at every opportunity. Apart from the attributes of the particular development, there are also a number of other associated items which could have a bearing on the effectiveness of the overall campaign. These include the presentation of show houses, early landscaping of the site, the attitude, appearance and knowledge of sales staff both in the show houses and in the off-site discussions.

Regrettably there are failures where the particular strategy adopted was ill-conceived and a waste of money for all concerned. A clear original message incorporated into the overall marketing strategy, allied to having the right product available in the right location and at the right price, should ensure the success of any new homes development being built in Ireland today.

It is worth noting that some developers may be committed to disposal strategies from financial institutions and agents need to be aware of any conditions imposed on builders by the banks, such as lesser specifications in the completed houses than were applicable at the commencement of the development.

6.3 Checklist of Important Items for marketing brochure

- a) Hardwood/uPVC double glazed windows and doors.
- b) Gas/oil fired or electrical heating systems.
- c) Fitted kitchen units with space provision for white goods. (White goods not normally included)
- d) Fireplace in main living room - is it standard or is there an allowance?
- e) Fitted wardrobes - in how many bedrooms?
- f) Wiring for t.v. & telephone points. Pre-wiring for alarm system. Ample plug sockets. Check locations and number of points.
- g) Sanitary ware in guest bathroom, en-suite and downstairs w.c.
- h) Decoration allowances - is the home wall papered or painted as standard.
- i) Type and quantity of wall tiling provided in kitchen and bathrooms or allowance for same. Check.
- j) Check garden boundary treatments, finish to gardens and type of driveways.

Details that should be obtained when buying a new property include:

- (a) Identify the professional team involved in the development, i.e. solicitor, architect, engineer etc.
- (b) Get background information on the builder or developer including data on previous developments carried out?
- (c) Itemise the facilities and amenities in the area and the proximity to essential services. Get information on transport facilities.
- (d) Ascertain if the immediate surroundings are likely to improve or dis-improve in the future, based on lands available for re-development.
- (e) Check planning permissions received, Local Authority road proposals etc.
- (f) Ensure that the booking deposits are payable subject to contract and title are therefore refundable if sales do not proceed past contract stage. What is the amount of the booking deposit and the contract deposit and are there to be any interim payments in advance of completion?
- (g) What title is to be offered with the new homes? Are they to be freehold or long leasehold?
- (h) Annual service charges payable in Multi- Unit Developments.



Section 7:

7. Advertising, Promotion and Marketing	40
7.1 Introduction	40
7.2 Building Energy Ratings	40
7.3 Particulars	41
7.3.1 Photography's	41
7.3.2 Applicant list	41
7.3.3 Window displays	42
7.3.4 Signboards	42
7.3.5 Estate Agents signs	42
7.3.6 Directional signs	42
7.3.7 Marketing properties	42
7.4 Agreeing the marketing strategy	42
7.5 Providing relevant documentation	43
7.6 Describing the property	43
7.7 Press advertising	43
7.8 Internet	43
7.9 Website and Email	43
7.10 Advertising – Obligations, Codes and Practice	44
7.11 The National Consumer Agency	44
7.12 Advertising Standards Authority of Ireland	44
7.13 Relevant Local Authority and Signage	44
7.14 The Society of Chartered Surveyors Ireland	44
7.15 Essence of good advertising	45
7.16 Other important member checklist	45

Section 7

Advertising, Promotion And Marketing

7.1 Introduction

As prescribed by the PSRA letters of engagement the member should agree all outlays required for the sale of the property while any additional outlays are to be agreed in writing prior to any expenditure incurred.

The member's professional advice should, with the vendor's approval make for a situation where the vital elements of the marketing mix can be brought together for everybody's benefit.

7.2 Building Energy Ratings (BER)

A BER is an indication of the energy performance of a property. It covers energy use for space heating, water heating, ventilation and lighting calculated on the basis of standard occupancy.

New regulations have been introduced into Ireland by way of Statutory Instrument No. 243 of 2012 European Union (Energy Performance of Buildings) Regulations 2012. This requires the inclusion of Building Energy Ratings (BER) in all residential sale advertisements including newspaper adverts, internet advertisements and window advertisements.

The SEAI (Sustainable Energy Authority of Ireland) have produced a guidance document for agents to assist them with complying with the new regulations. This guidance note provides examples of acceptable sale advertisements which include the building energy rating. This can be sourced from their website www.seai.ie.

Member checklist - Building Energy Ratings		
	Responsible Party	
	Company	Staff
An Agent offering a property for sale shall ensure that the energy performance indicator of the current BER certificate for the building is stated in any advertisements, where such advertisements relate to the sale of that building. All staff should be informed of this piece of legislation to ensure marketing of properties do not commence without a Building Energy Rating Certificate.		✓

7.3 Particulars

Every practice should have its own house style of property particulars. These will evolve with changing market conditions to a more market orientated production. In addition to highlighting the properties key benefits/features, the particulars sheet should include inter alia:-

- Name/address/location
- Directions
- Services
- Schedule of accommodation
- Measurements – Please refer to the SCSi Measuring Practice Guidance Notes for further information <http://www.scsi.ie/measuringprac>
- Viewing arrangements
- Gross internal area
- Building Energy Rating and certificate number.
- Title and other relevant legal information

Particulars must be fair, accurate and above all must encourage the reader to enquire further and inspect the property. It is advisable to show and discuss with the vendor draft particulars and advertisements prior to printing. Members should incorporate a disclaimer on their particulars and should devise their own formula with the assistance of their legal advisor.

7.3.1 Photographs

Your practice should have a clear policy in relation to photography. For example, many members take their own photographs while others employ a professional photographer.

Whichever method is adapted, it is clear that photographs on sales particulars, newspaper advertising and window displays play a very important role in selling properties and should, therefore, be of high quality.

7.3.2 Applicant List

Servicing a mailing list of property enquiries is expensive. It is, therefore, important to:-

keep an accurate up to date list of applicants make regular contact with prospective purchasers to see if they have bought property elsewhere decide how long enquirers should stay on the list review the requirements of those on your mailing list at fixed intervals.

7.3.3 Window Displays

Your display will reflect your practice and should, therefore, be attractive, interesting, current and varied to retain interest. The display should be clean and tidy and serviced regularly, i.e. withdrawn properties removed, faded brochures replaced and so on.

7.3.4 Signboards

Signboards are probably the most effective and cost efficient marketing tool available to the member. Local bye-laws and regulations must be adhered to when erecting sign boards. It is essential that members ensure that their boards are properly and safely erected and well maintained. Signs in certain locations may be vulnerable to damage through vandalism, creating a possible danger to the public. It is important to minimise this risk.

Under the Planning Regulations 2001, advertisements relating to the sale or letting of any structure or other land on which they are exhibited is considered exempted development.

7.3.5 Estate Agents' signs

Sign boards relating to the sale of a dwelling must not exceed 0.6 sq. metres in area (1.2 sq. metres for commercial/industrial sales/lettings). Not more than one sign should be erected on a property and it must be removed within seven days after the sale of the property. Agents are required by law to 'conspicuously display the licensee's registration number (PSRA Licence Number) on any sign erected by or on behalf of the licensee'.

As with all publicity, visible promotional tools, such as signboards, are a reflection of your practice. Members should be aware that the Building Energy Rating (BER) must be advertised on all advertising boards. More information can be found on www.seai.ie

7.3.6 Directional Signs

If any sign is placed on common or public ways (including ESB or Eircom telephone poles) then prosecution can follow.

7.3.7 Marketing Properties

You must not put any property on the market without your client's permission and you should ensure that your client is the person with the legal right to dispose of an interest in the property. This is covered in the 'confirmation of instruction section' of this guidance.

7.4 Agreeing the marketing strategy

You must agree an appropriate marketing strategy with your client and review this regularly with them. Your adopted marketing strategy must be property and country specific. You should explain clearly to your client the reasons for the strategy that you recommend.

7.5 Providing relevant documentation

You must ensure that any documentation that should be available when marketing a property has been obtained prior to commencement of marketing. This may include information on the energy performance of the property.

7.6 Describing the property

You should take reasonable steps to ensure that all statements made about a property whether oral, pictorial or written are correct and not misleading.

7.7 Press Advertising

Press advertising serves a dual purpose of promoting your clients property and promoting your practice and professional image. It is possible for press advertising to be effective and innovative without being misleading or inaccurate. The Advertising Standards Authority for Ireland monitors all media advertising and can bring prosecutions under consumer legislation if advertisements are proven to be misleading. An effective advertisement will stimulate the public's interest. The desired response is that they will direct an enquiry to your office. Drafting an advertisement, therefore, takes time and expertise. It is good practice to brief your staff in relation to advertisements which will be appearing in the newspapers so that they are ready to respond to enquiries received.

In general, since the advertisement will be a reflection of your practice, it can be useful to have professional advice in terms of creating a model layout and copywriting. In addition, it is useful to read other agents' advertisements both at home and overseas. This can indicate ways in which your advertising may be improved. The selection of media is very much a function of the type of property being promoted and the market that must be targeted.

7.8 Internet

The most successful and popular method of advertising is the internet. There are numerous websites dedicated to advertising residential properties for sale. This is often the most cost effective method of advertising. The SCSi reminds members to keep the status of their properties for sale updated as properties no longer for sale should either be removed from the internet or updated to sold.

7.9 Web-site/E-Mail

All agents are now expected by the public to have a website & e-mail address. In using this method of communication care should be taken to update information at regular intervals. Many agents have embraced other forms of online advertising such as social media including Twitter and Facebook. These internet portals work extremely well in circulating your message to members of the public in the fastest and most cost effective way. Public Relations is often described as free advertising and this can be used to great effect when announcing practice innovations, change of offices, new properties on the market and successful and noteworthy sales. The most important tenet in PR, as far as the member is concerned, is that the relationship with the client, vendor, is not compromised in terms of confidentiality. In any communications to multiple

parties where the identity of the recipients should be withheld for confidentiality reasons, members should always use BCC rather than CC in the e-mail address box.

It is also good practice for Agents to inform clients that the sale price is likely to be made available to the public via the Property Price Register.

7.10 Advertising - Obligations, Codes and Practice

Apart from the PSRA and the SEAI the following four bodies influence the property profession in terms of advertising- obligations and codes of practice. The four bodies are:-

1. The National Consumer Agency
2. The Advertising Standards Authority of Ireland
3. The relevant Local Authority
4. The Society of Chartered Surveyors Ireland

7.11 The National Consumer Agency

The National Consumer Agency (NCA) is a statutory body established by the Irish Government in May 2007 to enforce consumer law and promote consumer rights.

7.12 Advertising Standards Authority of Ireland

The Advertising Standards Authority for Ireland is the independent self-regulatory body set up and financed by the advertising industry and committed, in the public interest, to promoting the highest standards of marketing communications that is, advertising, promotional marketing and direct marketing.

7.13 Relevant Local Authority and Signage

The chief basis of involvement in relation to advertising relates to siting and size of signs. Signs should be sited only on the property and they should remain only for 7 days after the sale. If the sign is under 0.6 square metres (Residential) or 1.2 square metres (Commercial) in size then it is exempted development, if larger than 0.6 square metres, it requires planning permission.

7.14 The Society of Chartered Surveyors Ireland

The Society's rules on advertising by members are contained in Rule No 2.14 of the Members Professional Conduct Rules, Monitoring and Investigation Procedures, Disciplinary Rules and Procedures Part Two: Rules of Conduct of the Code of Conduct. This can be downloaded from http://www.scsi.ie/Regulation/rules_procedures__conduct

7.15 Essence of Good Advertising

All advertising should be legal, decent, honest and truthful. All advertising should be prepared with a sense of responsibility both to the consumer and to society.

All advertising should conform to the principles of fair competition as generally accepted in business.

7.16 Other important Member Checklist

Money Laundering and Criminal Activity		
	Responsible Party	
	Company	Staff
<p>Any method whereby the proceeds of criminal activities are disguised or converted and then realised as legitimate funds or assets constitutes money laundering. Investing in property as a means of conversion and subsequent resale or mortgaging can release clean funds. Legislation has created the following criminal offences. These are:</p> <ul style="list-style-type: none"> • assisting a criminal to obtain, conceal or retain or invest funds if the person giving assistance knows or suspects the funds to be the proceeds of crime; • tipping off a person who is the subject of suspicion or is under investigation; and • failure to report knowledge or suspicion of laundering acquired in the course of a person's trade, profession, business or employment. <p>The Money Laundering Regulations apply to those who undertake relevant financial business. The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 was enacted into Irish law in July 2010 to update Irish anti-money laundering and terrorist financing legislation. You should be aware of the legislation in order to minimise the risk of committing a criminal offence.</p>	✓	✓

Client Money Regulations		
	Responsible Party	
	Company	Staff
<p>Property Services (Regulation) Act 2011 (Client Moneys) Regulations 2012 outlines Agents obligations with handling clients' money. You should require that staff are fully conversant with the regulations.</p> <p>Some important information regarding Client Money;</p> <ul style="list-style-type: none"> ➤ client money must be held in a designated client account maintained in the State ➤ 'client account' must be disclosed in the name of the account and it must be used for holding client money; ➤ multiple client accounts must be with the same bank and there can be no transfer of amounts between client accounts; ➤ client money must be lodged promptly and payments / withdrawals are only permitted in specified situations; ➤ interest earned on client accounts is to be treated as client money and paid to the individual client; and, ➤ any money withdrawn in contravention of the regulations must be made good by the licensee. <p>More information can be sourced from;</p> <ul style="list-style-type: none"> ➤ www.psr.ie ➤ http://www.fireworks-video.com/scs/cpd-psra.htm 	✓	✓

Complaints and Procedures		
	Responsible Party	
	Company	Staff
<p>Provide for a transparent and effective method to handle complaints and lay down a procedure to lodge complaints to designated complaints officer or senior management. Please refer to <i>PSRA Code of Practice for Property Service Providers 4.2 Complaints Procedure</i>. This Code clearly states the procedure for complaints against an agent.</p>	✓	✓

Appendices

Appendix A	Sample checklist information of property	48
Appendix B	Form of authority	49
Appendix C	Letter of instruction to Solicitors	50
Appendix D	Sample receipt	51
Appendix E	Sample confirmation of sale	52
Appendix F	Sample sale advice note	53
Other useful websites		54

Appendix A

Sample Checklist information of Property

Property address; _____

Description; _____

Tenure Freehold Leasehold

Other _____

Vacant possession Yes No

Whereabouts of deeds _____

Is property mortgaged? Yes No

Name of lending institution & account _____

Known rights of way _____

Rateable valuation _____

Outgoings _____

Water supply Mains Well

Notices from Local Authorities _____

(CPO, Preservation, Planning, Local Property Tax, Non- Principal Private Residence Tax)

Sublettings / Tenancies / Grazing or Conacre agreement. _____

Other useful information _____

Appendix B

Form of Authority

To: (Lending Agency)

Name
Address

PROPERTY

ACCOUNT/REFERENCE NO. _____

Dear Sirs,

I propose selling my property above mentioned. Please loan the Title Deeds held by you to my solicitor(s)

Name: _____

Address: _____

on their accountable receipt or, alternatively, make them available for inspection,

SIGNED: _____

DATE: _____

Appendix C

Letter of Instruction to Solicitors

Dear

Our mutual client has instructed us to sell _____ on his behalf by Auction/Private Treaty the property of which details are given below. He/She has informed us that you will be his/her solicitor in the sale.

The Society of Chartered Surveyors Ireland has been advised by your Society that it is very helpful to solicitors to get as much information at the earliest possible date and accordingly a schedule of details is enclosed. These are not intended to be exhaustive. We realise that you will wish to get more detailed instructions and we have asked our mutual client to arrange to call to see you as soon as possible.

A form of authority to enable you to take up the title deeds is enclosed. If when you have considered the documents in the light of the proposed sale, there is any matter you think we should have regard to in the sale please let us know.

If we receive any further relevant information we will inform your office.

Yours sincerely,

Appendix D

Sample Receipt (Subject to Contract)

PREMISES: _____

RECEIVED FROM _____

OF _____

THE SUM OF _____ EUROS _____

being the booking deposit in respect of a proposal to purchase the above premises.

NOTE

This receipt is not an acknowledgment of an existing agreement for the sale of the property. No agreement or contract shall be deemed to be in force or binding until a formal contract has been signed by both parties and exchanged.

SIGNED: _____

DATE: _____

(This Receipt Form is approved by The Society of Chartered Surveyors Ireland).

Appendix E

Sample Confirmation of Sale

Without Prejudice - Subject to Contract

Dear Mr/Mrs/Ms (VENDOR'S SOLICITOR),

VENDOR'S NAME:

ADDRESS OF PROPERTY:

The details of the proposed sale of this property and the conditions attaching thereto are outlined in the Sale Advice Note enclosed herewith.

A copy of these details is being forwarded to the purchaser's solicitor. We should be obliged if you would please issue contracts as soon as possible.

We trust that this transaction proceeds to its successful conclusion but please note that no agreement shall be deemed to be in force and binding on the parties until formal contracts have been signed by both vendor and purchaser and exchanged.

Please keep me fully advised of any developments regarding this transaction.

Yours sincerely,

cc. Vendor

Encl

Appendix F

Sample Sale Advice Note

(Subject To Contract - Contract Denied)

DATE _____
 SELLING AGENTS _____
 PROPERTY _____
 VENDOR _____
 PROPERTY ADDRESS _____
 PHONE _____ E-MAIL _____ FAX _____

VENDORS SOLICITOR _____
 ADDRESS _____
 PHONE _____ EMAIL _____ FAX _____

PROPOSED PURCHASER _____
 ADDRESS _____
 PHONE _____ EMAIL _____ FAX _____

PROPOSED PURCHASERS SOLICITOR _____
 ADDRESS _____
 PHONE _____ EMAIL _____ FAX _____

PURCHASE PRICE € _____

SPECIAL CONDITIONS – No agreement shall be deemed to be in force or binding on the parties until a formal contract has been signed by both parties and the full deposit duly paid (see below)

SALE TO INCLUDE
 DEPOSIT

1. Booking deposit already paid to agent € _____
2. Deposit to be paid on signing of contracts € _____

PROVISIONAL/PROPOSED CLOSING DATE _____

COPIES TO:

VENDOR	<input type="checkbox"/>	PROPOSED PURCHASER	<input type="checkbox"/>
VENDORS SOLICITOR	<input type="checkbox"/>	PROPOSED PURCHASERS SOLICITOR	<input type="checkbox"/>

APPROVED BY THE SOCIETY OF CHARTERED SURVEYORS IRELAND

Other useful website links

Property Services (Regulation) Act 2011 (Client Moneys) Regulations 2012	http://www.irishstatutebook.ie/2012/en/si/0199.html
Property Services (Regulation) Act 2011	http://www.irishstatutebook.ie/2011/en/act/pub/0040/





Dating back to 1895, the Society of Chartered Surveyors www.scsi.ie Ireland is the independent professional body for Chartered Surveyors working and practicing in Ireland.

Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognised mark of property professionalism.

Members of the profession are typically employed in the construction, land and property markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.

All aspects of the profession, from education through to qualification and the continuing maintenance of the highest professional standards are regulated and overseen through the partnership of the Society of Chartered Surveyors Ireland and RICS, in the public interest.

This valuable partnership with RICS enables access to a worldwide network of research, experience and advice.

www.scsi.ie

Society of
Chartered Surveyors Ireland
38 Merrion Square,
Dublin 2, Ireland
Tel: + 353 (0)1 644 5500
Email: info@scsi.ie