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Cathaoirleach James Lawless
Joint Oireachtas Committee on Justice
Leinster House
Dublin

Sent by email to justice@oireachtas.ie

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Submission to the Joint Oireachtas Committee on Justice, Seller's Legal Pack for Property Buyers Bill 2021

Dear Cathaoirleach,

The Society of Chartered Surveyors Ireland (SCSI) wishes to share with you and the committee our insights on the Seller's Legal Pack for Property Buyers Bill 2021 which is scheduled for committee scrutiny next week.

As the leading professional body for chartered surveying professionals working in the property, construction and land sectors across Ireland, we represent 12 professional disciplines with 6,500 members. The Chartered Surveyors that operate in the area of property sales are SCSI auctioneers, estate agents, property valuers, geomatics/land surveying, building surveying and property management surveyors. As such, the SCSI is well placed to provide insights on the Seller's Legal Pack for Property Buyers Bill 2021.

The SCSI supports efforts to further streamline the property sales and conveyance process. It is important that the current process is improved to speed up the sales process and that this is achieved without adding additional costs or delays to either party - the seller or buyer.

The SCSI acknowledges the work of the Department of Justice and other government departments with the establishment of an Expert

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Group to examine the property transaction and probate process. Government plays a crucial role to co-ordinate, simplify and expedite the property transaction process, in the public interest. There is no single solution to reducing the costs and time of a property sale and conveyance. SCSi's research indicates that it takes on average, over four months for the negotiation of a sale and conveyance of residential property. There are instances of this taking much longer if issues arise such as title issues, mapping, and planning irregularities are uncovered.

During a housing supply crisis, the delays associated with closing sales can compound the wider supply concern. Second-hand home sales are particularly exposed to conveyancing delays because there can be a multitude of matters to be addressed during conveyance that are not necessarily associated with new properties such as building defects, maintenance issues, boundary challenges and any subsequent changes to a building without necessary consents.

While the SCSi acknowledges the good intentions behind the proposed Bill, there are several areas that require scrutiny to ensure no unintended negative consequences arise for sellers or buyers. The SCSi has reviewed the Bill and sets out below our comments on particular headings of the Bill. There is an opportunity to learn from other jurisdictions that have had experience with similar regulations including the Home Information Packs introduced in the UK in 2007. Within a few years, the UK introduced emergency legislation to remove Home Information Packs because it increased the cost and hassle of selling homes and stifled the housing market. There was much criticism from sellers and agents regarding the upfront costs of selling and the level of red tape required at the outset that the UK government quickly moved to remove unnecessary regulation from the home buying process.

The SCSi's position is that the priority should be given to establishing a more efficient conveyance process, with the introduction of e-conveyancing. It is important that efforts are made to address the root causes of the delays through e-conveyancing rather than focussing efforts on front loading them, delaying when a property can be brought to market. If the various conveyance paperwork was accessible in digital format in a timelier manner to confirm title, mapping, financial receipts and payments etc, then this would speed up the process.

E-Conveyancing can and should be progressed with urgency and there are opportunities to digitise the process incrementally towards full e-conveyancing i.e. digitise all the various stages and certificate applications.

The SCSi and the Law Society of Ireland have collaborated and will shortly make available consumer guidance for sellers of property to help guide them through the sales and conveyance process by advising of the average time periods required to gather important documents needed to sell a property. It is envisaged that this will improve conveyance times. The guidance will be available at <https://scsi.ie/selling> along with other valuable material on this topic.

I set out below SCSI's commentary on the wording of the Bill for your committees' perusal. If I can be of any further assistance, please do not hesitate to contact me.

Yours sincerely,



Shirley Coulter
CEO

Private Members Bill titled Seller's Legal Pack for Property Buyers Bill 2021		
Section of Bill	Heading/Contents of Bill	SCSI Comments.
Section 3.1 (C) & Section 3.1 (D)	an Architect's Certificate of Compliance with planning permission and building regulations;	<p>The Law Society practice notes accept certificates of compliance or certificates of opinion from:</p> <ul style="list-style-type: none"> • <i>Persons who are on the register of architects,</i> • <i>Persons who have been in practice as architects or engineers on their own account for ten years,</i> • <i>Qualified engineers practising in the construction industry,</i> • <i>Qualified building surveyors practising in the construction industry,</i> • <i>Persons from another jurisdiction in the European Union whose qualification is entitled to recognition in Ireland under the Architects' Directive.</i> <p>SCSI recommends, in the interest of clarity, that the reference to 'Building Surveyor' should simply be 'Registered Building Surveyor' as per the Building Control Act 2007 regulations.</p>
Section 3.1 (e)	a copy of all planning permissions and building regulations documents;	<p>As per Section 3. (d) and (e) SCSI recommends that the Statutory Certification within the Building Control Amendment Regulations 'Certificate of Compliance on</p>

		Completion' is specifically named within the Bill.
Section 3.1 (f)	Receipts for financial conditions;	Further clarity on what this is referencing is required to avoid any misinterpretation. SCSI assumes this requirement relates to local authority receipts for development contributions.
Section 3.1 (h)	local property history details;	It is unclear what is being referred to and SCSI suggests further details are provided to avoid misinterpretation.
Section 3.1 (i)	a BER Certificate & Advisory Report Certificate of discharge or exemption from Non-Private Residence Charge;	<p>These are two separate matters.</p> <p>BER is already legislated for via S.I. 243 of 2012 EUROPEAN UNION (ENERGY PERFORMANCE OF BUILDINGS) REGULATIONS 2012.</p> <p>The non private residence charge cert relates to Property Tax (NPPR) and should be stated as such.</p>
Section 3.2	The Seller's Legal Pack may also include documents, either in electronic and/or physical form, consisting of or containing any of the following information:	<p>SCSI assumes the definition of 'may' as an expression of possibility and provides some degree of discretion.</p> <p>If the above definition is accurate, SCSI recommends that additional clarity is provided who makes the decision to include or exclude these additional items.</p>
Section 3.2 (a)	a property surveyor's report or an engineer's report;	SCSI assumes this is in relation to a pre purchase (condition) survey & associated report. If this assumption is correct, there are typically three professions that provide such services such as building surveyors,

		<p>architects and engineers. The Bill should accurately reflect this in the text.</p> <p>The buyer of residential property typically commissions a pre purchase survey report ahead of sale to satisfy themselves regarding the general condition and any defects of the property. The Bill proposes that instead, the Sellers Legal Pack 'may' include a building condition survey provided by the vendor. The current practice is a building report prepared for a client can only be relied upon by that client and does not extend to third parties. There may be Professional Indemnity considerations required if this practice is to change and also this could have wider implications for the well-established 'Caveat Emptor' principle where the buyer is the one responsible for satisfying themselves of the purchase, including the building condition, prior to contract signing.</p>
Section 3.2 (b)	documentary evidence of any safety, building, repair or maintenance work as has been carried out in relation to the property prior to the property being advertised for sale;	<p>Subject to SCSI comments within section 3.2, SCSI believes that this requirement is too broad. Although the information would be useful it would require considerable burden on sellers. The current common practice is for buyers to complete a building condition survey prior to purchase. A requirement for the vendor to disclose this detail could have implications for caveat emptor principle.</p>
Section 3.2 (d)	information about the design or standards to which a property has been or is being built;	<p>Subject to SCSI comments within section 3.2, this would not be appropriate for the standard type of situation as this is effectively encompassed within the certificate of compliance.</p>

		<p>There may be some merit in this in the circumstances where say new practices and methodology are being employed such as say steel framed houses, insulated concrete or passive/green houses.</p>
Section 3.2 (j)	<p>ground stability, the effects of mining or extractions or the effects of natural subsidence;</p>	<p>Subject to SCSi comments within section 3.2, SCSi believes that this requirement is too broad. Although the information would be useful it would require considerable burden on sellers. The current common practice is for buyers to complete pre purchase surveys prior to purchase. A requirement for the vendor to disclose this detail could have implications for the caveat emptor principle.</p>
Section 3.2 (k)	<p>actual or potential environmental hazards, including the risks of flooding or contamination from radon gas or any other substance;</p>	<p>Is a Radon test being sought here? Not clear what this will result in terms of practical measurables. Radon testing can be easily manipulated as it's a test performed over a period.</p>
Section 3.2 (n)	<p>the potential or actual effects of transport services, including roads, waterways, trams and underground or over-ground railways;</p>	<p>The Bill is unclear in relation to this section.</p> <p>SCSi presumes that the benefit of this is to promote the property and to note the benefits of public transport to the property. The other aspect to consider here is the impact of say a planned new roadway or railway line would have a material impact on the setting of the house in the future.</p>
Section 4 (a)	<p>properties where no marketing is required (e.g. sale to member of the family)</p>	<p>Clarity regarding what represents 'member of the family'.</p> <p>There is the potential to create a two-tier market whereby more sales</p>

		are conducted off market to avoid the obligations of providing a Sellers Legal Pack; a two tier market would not be in consumers interest.
Section 6 Enforcement	The enforcement of the arrangements shall be carried out, in each instance, by the seller's property service provider who shall not place on the market any property for sale unless he or she is satisfied that the conditions of sale have been met i.e. where the intention of the Seller is so that the entire beneficial interest in property is to be passed to a buyer on the making of an enforceable contract for the sale or other disposition of land.	Clarity required regarding the quality and accuracy of information within the Sellers Legal Pack and who takes responsibility for it i.e., what level of additional risk potentially lies with the Property Service Provider?



