



UNDERTAKINGS RE: TIMBER-FRAMED HOUSES

It has come to the attention of the Conveyancing Committee that companies in the business of providing construction systems or kits for wooden-framed houses frequently insist on obtaining a letter of undertaking from a purchaser's solicitor to discharge the cost of the system/kit to the supplying company. This notwithstanding the fact that there is a written contract in place between the purchasing client and the supplying vendor which states that the purchaser will pay the cost of the system to the vendor.

The committee has received several queries from solicitors from whom undertakings have been demanded by the supplying companies before they will deliver the timber-framed structure to the purchaser's site. It is the recommendation of the Conveyancing Committee that a purchaser's solicitor should not under any circumstances give an undertaking of this nature. In the same way as a purchaser and vendor/builder of a conventional block built dwelling will enter into a contract for the construction of the dwellinghouse the purchaser of a timber-framed dwellinghouse will enter into a contract with the supplier of the house for the supply and construction of the timber-framed dwelling in the same way. In both cases the vendor/builder and the supplier/builder agree to provide a dwellinghouse and the purchaser agrees to pay a certain purchase price for same. It is not necessary in either case to obtain a further undertaking from a solicitor to pay the vendor/builder or the supplier/builder the amount as agreed in the contract. This is tantamount to asking a solicitor to pay for his/her client's house and the Committee is most concerned that such an undertaking would be sought.

Solicitors asked to provide such an undertaking should refuse to do so as they might compromise their client's rights under the contract in the event of a dispute arising between the client and the supplier as to the suitability or adequacy of the materials supplied. In such cases solicitors might find themselves personally liable to comply with their undertaking while the client might instruct them not to pay any monies due to the inadequacy or unsuitability of the materials supplied or the service rendered.