



**FLOOR AREA  
COMPLIANCE  
CERTIFICATES  
ON CLOSING**

In its practice note to the profession in the March 2005 issue of the Gazette, the Conveyancing Committee recommended that purchasers' solicitors utilise special conditions in contracts for the purchase of new properties in order to ensure that floor area compliance certificates (FACCs) are available for closing of purchases in cases where the purchasers wish to avail of and are entitled to first time buyer stamp duty relief.

Notwithstanding the terms of the practice note, the committee has been advised that many solicitors acting for builders persist in resisting the inclusion of such special conditions. In fact it is reported that many builders' solicitors insist on including conditions that oblige a purchaser to complete a purchase whether or not the necessary FACC is in place at closing, in contradiction of what is expressed in the Finance Act certificate in the deed. There are two reasons why it is essential to obtain the FACC on closing:-

1. the purchaser can legitimately claim stamp duty relief where entitled to do so
2. the purchaser can be satisfied that the new house or apartment complies with "such conditions as may be applied by the Minister from time to time ... in relation to the standards of construction and with the requirements of the Building Regulations", as required by Paragraph 5 of S.I. 128 of 2004 – Housing (Floor Area Compliance Certificate) Inspection Regulations 2004.

The stamp duty relief for first time buyers of houses and apartments under 125 square metres is used by the Department of Finance and the Department of the Environment to police building standards for these smaller, so-called "grant-sized" dwellings and to ensure that builders' VAT and tax clearance (C2) position with Revenue is in order. The Department of the Environment has indicated that if FACCs are applied for in time there should normally be no problem in having them available for closing and, if a FACC has not issued, it is indicative of a substantive problem with the house or of the builder's position with Revenue not being in order. In either case, the FACC will not issue until the relevant problem has been rectified, and as these matters are not within the control of the builder's solicitor, it is not appropriate to either give or accept an undertaking on closing to furnish the FACC following closing.

If purchasers' solicitors do not insist on obtaining the FACC on closing

- (1) they will be legally obliged to stamp the deed within the statutory period and they must obtain the appropriate stamp duty monies from their clients in advance of closing in order to do so. This cannot be cured by an undertaking from the builder's solicitor to furnish a FACC following closing, because the Finance Act certificate to the effect that there was a FACC in existence at the date of the deed (i.e. the date of closing) cannot be used retrospectively in the deed



and

- (2) the purchaser is forced to complete the purchase of a house or apartment without the required confirmation that proper building standards have been observed. If remedial work is required by the Department before issuing the FACC this may, in any event, prove to be very inconvenient for both builder and purchaser if the purchaser is in occupation.

The use of conditions in contracts that would tend to result in purchasers losing their entitlement to stamp duty relief, or in forcing purchasers to close without confirmation that necessary building standards have been adhered to, is considered by the committee to be most unreasonable and should be resisted and discouraged by all practitioners for the reasons outlined above. Appropriate special conditions should be used to ensure that the FACC is available for closing.

## FLOOR AREA COMPLIANCE CERTIFICATES ON CLOSING

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