



**T**he Committee was asked for its view on the practice which is becoming widespread of the Vendor's Solicitor inserting a special condition in the Contract for Sale providing that the Purchaser's Solicitor accept Vendor's solicitor's undertaking to discharge Vendor's Mortgage out of the proceeds of sale on completion. The Committee recommends that this practice be discontinued.

Vendor's Mortgage is Vendor's problem. Purchaser's problem is to secure loan approval and where necessary bridging accommodation to enable Purchaser to complete on the contract closing date without payment of interest. Vendor's problem should not become a problem for the purchaser. On payment over by the purchaser of the balance of the purchase money Purchaser should obtain an unencumbered title. The words "as beneficial owner" used in many deeds imply this.

Where purchases are completed with the aid of bridging finance a Purchaser's Solicitor who accepts aforesaid condition in the contract could be in breach of his undertaking to the lending body. Where purchases are completed on three-way closings with a Building Society loan the Building Society's Solicitor cannot accept such a condition having regard to Section 80 of the Building Societies Act 1976 which provides that a Building Society must have the first mortgage on the property.

If for any reason Vendor's Solicitor did not comply with his undertaking Purchaser's Solicitor could be found to be negligent in accepting such a condition in which case Purchaser could not look to the compensation fund.

The Committee suggests that on closing between Vendor and Purchaser only it might be mutually agreed between Vendor's and Purchaser's Solicitors that Purchaser would if given sufficient notice in advance provide the purchase money for closing by two bank drafts - one for the redemption price of Vendor's mortgage and the other for the balance of the purchase price. Purchaser's Solicitor could then undertake to transmit the bank draft to the lender.

On a three-way closing where Vendor's mortgage is in favour of the same Building Society as Purchaser's Building Society then the Building Society may be prepared to split the loan cheque (on being given adequate notice in advance) and the Building Society Solicitor could then discharge Vendor's mortgage with the Building Society's own cheque. Where a Building Society is not prepared to split the cheque or where Vendor's mortgage is not with Purchaser's Building Society Vendor should make his own arrangements to redeem his own mortgage either before or at the three-way closing.

**UPDATE: The Building Societies Act, 1976 has now been repealed and replaced by the Building Societies Act 1989.**

## UNDERTAKINGS TO DISCHARGE MORTGAGE ON COMPLETION OF SALE

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