



The Conveyancing Committee has been asked for its view on the rights and obligations of a solicitor acting for a vendor in a sale who receives from the purchaser's solicitor a contract for sale in a form acceptable to the vendor, accompanied by a cheque for the agreed deposit, so that all that remains for the contract to become effective is for it to be signed by or on behalf of the vendor and exchanged.

The committee is of the view that the vendor's solicitor should negotiate the cheque and hold the proceeds on trust for the purchaser pending the exchange of contracts, or, if the vendor declines to proceed to an exchange, until the purchaser requires the amount of the deposit to be returned.

The committee is satisfied that the negotiation of the cheque for the deposit does not derogate from a vendor's position of not being bound until contracts are exchanged. A vendor is entitled to know that the deposit has been validly tendered, which requires the clearance of the cheque. It is clearly more efficient to arrange to have the deposit cheque cleared as soon as possible in order to avoid delay after the vendor has signed.

The position where the contract is returned with amendments on which the vendor's instructions must be obtained is more obviously one in which the vendor cannot be bound by the negotiation of the deposit cheque in advance of the exchange of contracts.

The proceeds of the deposit cheque may not strictly speaking be clients' monies since the purchaser is not a client of the vendor's solicitor. The proceeds are, however, 'trust money' and must be held by the vendor's solicitor as such. They are not held by the vendor's solicitor as stakeholder until such time as the contract comes into effect. In acknowledging the receipt of the contract and deposit, the vendor's solicitor should advise the purchaser's solicitor that the deposit cheque is being negotiated and that the proceeds will be held by the vendor's solicitor in trust for the purchaser pending the parties becoming contractually bound.

The proceeds of the deposit cheque should be paid either:

- 1 Into a trust bank account kept solely for money subject to the particular trust, or
- 1 Into a client bank account.

LODGEMENT OF DEPOSIT CHEQUE PENDING EXCHANGE OF CONTRACT

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*The wording of standard
General Condition 5 in the
Contract for Sale (1995
Edition) insofar as it suggests
that the vendor's solicitor will
receive monies paid in
advance of the contract
coming into existence as
stakeholder is misleading
(but ceases to be so on the
contract coming into effect)
and is to be adjusted on the
next revision of the General
Conditions.*