



A practice appears to be developing whereby vendors' solicitors, in drafting conditions of sale, automatically insert a special condition deleting the entire of General Condition 36 (the planning warranty).

While many circumstances exist where vendors are not in a position to give any planning warranty because they have no personal knowledge of the property (such as liquidators and personal representatives) the Conveyancing Committee considers that the automatic deletion of General Condition 36 is unfair to purchasers and should be resisted. Vendors' solicitors should take full instructions in relation to the planning history of the property in sale and disclose any planning difficulties in the contract. The planning warranty can then be modified accordingly, and in an appropriate case, limited to the period during which the vendor has been familiar with the property.

Purchasers faced with a blanket exclusion of General Condition 36 must carry out a full investigation of planning issues prior to contract. While this will sometimes be appropriate in any event, it can lead to substantial delays from the vendor's perspective in having contracts exchanged. The vendor can avoid such delays by a full disclosure of planning issues in the contract. In an auction situation the vendor's solicitor who deletes in full General Condition 36 may find him/herself dealing with pre-contract planning queries from numerous interested parties.

Practitioners' attention is drawn to the note published in the Law Society Gazette October 1995 (page 12.21 of the Conveyancing Handbook) an extract from which is reproduced below.

"NOTE:-

*There is a recommendation within the marginal note to General Condition 36 that certain matters be dealt with expressly by Special Condition. Practitioners are reminded that a corresponding recommendation extends to issues arising under any of the General Conditions including inter alia, points of difficulty or doubt on warranties or compliance or as to the existence or nature of conditions referred to in General Condition 36 itself. In the latter connection the Committee considers it important for an intending vendor, prior to contract, to put the prospective purchaser in possession of all material information in the spheres of planning, building control and kindred legislation, and that any inability to fulfill the requirements of General Condition 36 be dealt with through the medium of Special Condition".*

While this note is directed at General Condition 36, the same principal applies to other General Conditions. Any deletion of General Conditions, for reasons which are not self-evident, should be accounted for in the Special Conditions.

**LAW SOCIETY  
GENERAL  
CONDITIONS  
OF SALE**

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