



An extract from the Special Conditions of a Contract for the purchase of new houses built under the Dublin County Council “Small Builders” Scheme was submitted by a firm of solicitors to the Conveyancing Committee for consideration, the extract reads as follows:

“Delays may occur in obtaining the Transfer and other Documents of title from the County Council, but notwithstanding the Employer shall complete this transaction by way of bridging finance within seven days of being notified by the Contractor or by his solicitor that the premises have been so completed and shall accept an undertaking from the Contractor’s solicitor that they will furnish the transfer duly sealed by the County Council together with the other relevant documents when received by them from the County Council”.

The Conveyancing Committee considered that this clause is unfair and improper and should not appear in the Special Conditions of any contract; it is further recommended that no solicitor should give or ask another solicitor to accept an undertaking to furnish a transfer duly sealed by any County Council.

The clause creates an impossible position for purchasers solicitors who, in giving the normal form of undertaking for bridging finance, would be in breach of the terms of that undertaking in that bridging finance would be used to close the transaction and on closing no documents or title would be furnished by the Vendor’s solicitor to be held by the Purchaser’s solicitor for the Bank.

COMPLETION BEFORE ASSURANCE

*Published in Law Society
Gazette, May 1981*

In recent years the practice has developed that Vendors accept deposits of 10% on the execution of Contracts for the sale of property by private treaty.

As most Purchasers are dependent on 90% loans to enable them to complete their purchases, the Conveyancing Committee of the Law Society recommend that this should become standard practice, except in exceptional circumstances, such as where there is a long closing date or a purchase in trust for an undisclosed principal or the purchase price is small.¹

10% DEPOSIT ON EXECUTION OF CONTRACT

*Published in Law Society
Gazette, September 1981*

1. See page 12.3 hereof



**ISSUE OF
CONTRACTS TO
AUCTIONEERS IN
PRIVATE TREATY
SALES**

Notwithstanding a previous recommendation published in the July/August 1979 edition of the Gazette, it has come to the attention of the Conveyancing Committee that it is still the practice of some Auctioneers to procure contracts from Solicitor with a view to obtaining the signature of a prospective Purchaser to a Contract without the Purchaser's Solicitors first having an opportunity of considering its terms and advising the Purchaser on same. The Committee feels that this is a most undesirable practice and also understands that it is contrary to the directions of the I.A.V.I. to its members. Such a practice may not be in the best interest of the Vendor, as it is questionable whether such Contracts could be specifically performed.

The Committee considers that a Party to a sale should have an opportunity of having the Contract vetted by a Solicitor before executing same and recommends that in Private Treaty Sales the practice (where it exists) of sending out copies of Contracts to Auctioneers be discontinued.¹



The practice of seeking deposits of 25% of the purchase price on the conclusion of contracts for the sale of residential property declined following the recommendation made by the Conveyancing Committee in September 1981 that a deposit of 10% was generally more appropriate.

In response to some recent queries the Committee would like to reiterate that their recommendation was not intended to be an absolute one. There are clearly cases particularly where the consideration for the sale is a modest one or where an especially high price has been agreed in which a 10% deposit may not provide the vendor with a sufficient “cushion” in the event of the purchaser’s default. Accordingly while the Committee stands over its earlier recommendation it repeats it was intended to have general but not universal application.

In the case of auctions the Committee is aware of a tendency, particularly where very valuable properties are concerned, for auctioneers to recommend the vendor to accept less than a 25% deposit. The Committee recommends if a solicitor acting for a prospective purchaser wished to arrange for the payment of less than 25% he should arrange this with the vendor’s solicitor in advance of the bidding. If a request is not made until after the property has been “knocked down” the vendor is clearly entitled to reject it. The Committee would not consider it reasonable to make such a request during the actual bidding.¹

UPDATE: Practitioners are advised that since 1984 the more usual percentage deposit on Contracts of Sale both for sales by private treaty and sales by auction is 10% of the purchase price. Practitioners should also check the General Conditions of the current Contract of Sale in use by the Society.

DEPOSITS ON SALE OF RESIDENTIAL PROPERTY

*Published in Law Society
Gazette, March 1984*

1. See page 12.1 hereof



**APPORTIONMENT
OF PURCHASE
MONIES BETWEEN
THE PROPERTY AND
THE CONTENTS**

The Conveyancing Committee wishes to draw to the attention of practitioners the decision of the Court of Appeal in England in the case of *Saunders and Anor -v- Edwards and Anor*. (1987) 2 All ER 651.

The facts are as follows;

The Plaintiffs agreed to purchase from the Defendants the Defendant's leasehold interest in a flat for £45,000 to include certain fixtures and fittings. Prior to executing the contract, the Plaintiffs were shown around the flat and were particularly keen to buy it because it appeared to include a roof terrace. The Plaintiffs wished to save stamp duty and at their request the Defendants agreed that the total purchase price of £45,000 should be apportioned as to £40,000 for the property and £5,000 for the fixtures and fittings.

It was clear from the correspondence that the agreed apportionment was merely to facilitate the plaintiffs in reducing their stamp duty liability; the sum of £5,000 was far greater than the actual market value of the fixtures and fittings.

After completing the transaction and on discovering that the flat did not, in fact, include the roof terrace, the Plaintiffs sued the Defendants for damages for fraudulent misrepresentation. The Plaintiff's claim was in tort only and did not include a claim for damages for breach of Contract.

The Plaintiffs were successful at first instance and were awarded damages. The Defendants appealed, not against the find of fraudulent misrepresentation but against the entitlement of the Plaintiffs to damages. The nub of the appeal turned on whether the Plaintiffs were bound by the value of £5,000 put upon the chattels for the purpose of reducing stamp duty. There was expert evidence that at the date of completion of the transaction in November 1983, the value of the flat with a roof garden was £48,250 and without a roof garden was £40,650. The Defendants argued that the Plaintiffs should be bound by the apportionment in the Contract and should not be allowed to open up that apportionment and rely upon the true value of the fixtures and fittings in order to arrive at the proper value of the flat they had bought.

In the Court of Appeal Lord Justice Kerr concluded the fixtures and fittings were worth something between £500 and £1,000. He rejected the Defendants argument but stated that the practice of attributing false values to fixtures and fittings in order to avoid stamp duty cannot be condoned; he indicated that if a solicitor is involved in an apportionment of this kind which he knows not to be in accordance with the fact, then he must be guilty of professional misconduct and possible criminal offences; he also indicated that consequences for buyers may well be that their Contract becomes unenforceable. The



relevant maxim is *ex turpi causa non oritur actio*, meaning that an action does not arise from a base cause.

The Court of Appeal held in favour of the Plaintiffs and dismissed the Defendant's appeal on the grounds that:

- (a) The Plaintiffs had a non-answerable claim against the Defendants for fraudulent misrepresentation.
- (b) The Defendant's own moral culpability greatly outweighed that of the Plaintiffs and he ought not to be allowed to keep the fruits of his fraud and,
- (c) The illegal apportionment in the Contracts was wholly unconnected with the Plaintiff's cause of action in tort and that the Plaintiff would have suffered loss as a result of the fraudulent misrepresentation regardless of whether or not the Contract contained the illegal apportionment.

Lord Justice Kerr said in the Court of Appeal that there were a number of authorities which showed that the *ex turpi causa* defence lies mainly in the field of contractual claims and only rarely in tort. The *ex turpi causa* defence therefore failed.

APPORTIONMENT OF PURCHASE MONIES BETWEEN THE PROPERTY AND THE CONTENTS

(Contd.)

UPDATE: Practitioners should be aware that apportionments, while legal, must reflect true values and are open to query by the Revenue Commissioners. Apportionments which bridge a stamp duty threshold leave the property liable to stamp duty at the higher rate.

*Published in Law Society
Gazette, December 1987*



DEPOSITS IN SALE GENERALLY

The Incorporated Law Society of Ireland General Conditions of Sale provide that in a sale by Auction and a sale by Private Treaty, the deposit monies are to be paid to the Vendor's Solicitor as stakeholder.

It is the practice, in some instances, for the Vendor's Auctioneer or Estate Agent to hold the whole or part of the deposit monies pending the completion of the transaction. In these instances, the Vendor's Solicitor and the Purchaser's Solicitor must advise their respective clients of the provisions of the Contract for Sale relating to deposits and take instructions on whether or not the Auctioneer/Estate Agent is to hold any part of the deposit monies, pending the completion of the transaction.

The Vendor's and Purchaser's Solicitors must also advise their clients of the risk to the deposit monies in the event of the Auctioneer/Estate Agent becoming insolvent; in this regard it should be noted that Auctioneers and Valuers who are members of IAVI attract the protection of the IAVI Compensation Fund. Clients should also be advised that further protection may be afforded by having the Auctioneers/Estate Agent hold the monies in his possession as stakeholder.

It must be emphasised that if the instructions received vary the General Conditions of Sale relating to deposits, the contract should be altered to reflect those instructions.

The Professional Purposes Committee feels that it would be good and prudent for a solicitor to obtain an irrevocable authority and instruction from a client prior to discharging any outlays from the proceeds of sale whether they had been fees of an Auctioneer/Estate Agent, Engineer or otherwise.



The Professional Purposes Committee has been considering the prevalent practice of solicitors sending out to Auctioneers copies of Contracts for sale where premises are for sale by private treaty and not by auction. It appears that Auctioneers frequently seek contracts from the Vendors' Solicitors once a sale has been agreed.

The Committee considers that the best interests of the public and solicitors duty are not served by the existence of this practice which does not allow a Purchaser's Solicitor a reasonable opportunity of considering the pre-contract title which is being offered before advising his client as to whether he should proceed to complete the contract.

There must be also some doubt as to whether a purchaser who executes a contract presented to him by an Auctioneer, without having had the opportunity either personally or through a solicitor of inspecting the title documents referred to in the first schedule of the standard form of contract, would be bound thereby.

The Committee considers that a party to a sale should have an opportunity of having the Contract vetted by a Solicitor before executing same and recommends that in Private Treaty Sales the practice (where it exists) of sending out copies of contracts to Auctioneers be discontinued.¹

SALE BY PRIVATE TREATY

ISSUE OF CONTRACTS TO AUCTIONEERS

*Published in Law Society
Gazette, April 1989*

1. See page 12.2 hereof



**PURCHASER'S
SOLICITOR'S PRE
CONTRACT CHECK
LIST ON
ACQUISITION OF
PRIVATE
DWELLINGHOUSE**

Client:

Property:

Requisitions on Title are designed to ensure that Title is given in accordance with contract and act as a Check List for both vendor's and purchaser's solicitors to remind them to obtain certain searches prior to closing. The purchaser's rights are determined by the contract for sale. The basic rule is that Caveat Emptor applies except in so far as the contract for sale otherwise provides, for instance the warranty contained in general Condition 36 in relation to development. Because of this there are many items which have to be clarified prior to the signing of the contract. To defer enquiry into such matters until the requisition stage could result in the purchaser being bound to complete the purchase regardless of whether the results of such enquiries are satisfactory or not.

With this in mind the following Check List has been prepared for the use of purchasers' solicitors prior to their clients being contractually committed to acquire the property.

Queries should be directed in the first instance to the purchaser. While some of the information will have to be obtained from the vendor the Check List is not designed for use as pre-contract requisitions.

This Check List is designed for general residential conveyancing. For Commercial Properties, Licensed Premises, Agricultural lands with Milk Quotas, Flats, Multi Storied Buildings (or part thereof) special pre-contract enquiries should be raised and in many cases the issue of complete extracts from the Standard Requisitions on Title may be justified.

CHECK LIST

1. Check that Insurance will be available for property. In the event of property being of a special category confirm purchaser has obtained Insurance of his beneficial interest to cover any loss in the event of non completion or delay in completion.
2. Check that survey effected which includes planning and new roads and road widening search, zoning as to amenities (e.g. commercial/industrial developments, halting sites) etc., and identity.
3. Which of the walls and fences belong to the property and which are party walls or fences? Confirm if there are any agreements.
4. Is the property registered under the National House Building Guarantee Scheme?¹. If so provide in contract for obtaining HG.6² Guarantee Certificate.
5. (a) How is the property serviced as to drainage, water supply and otherwise?
(b) If the property is serviced by a septic tank, is the tank and percolation area

1. Now "HomeBond"

2. Now "HG. 11"



- within the property boundaries?
- (c) Is water supply from Local Authority mains or from a well? If the latter, is this within the boundaries, or are there suitable easements of access?
6. Have the services (including roads, footpaths, sewers, drains) abutting or servicing the property been taken over by the Local Authority or if not are there appropriate easements and indemnities in existence?
 7. Are there any rights of way, easements, privileges or liabilities affecting the property known to the purchaser or apparent from an inspection of the property?
 8. Is there a television aerial or cable on or attached to the property? If so obtain details of ownership.
 9. Is there a telephone line to be supplied with the property?
 10. Check what contents and/or fixtures or fittings are included in the sale.
 11. Is the property or any part of it let or subject to a Lease or Licence?
 12. Is there a service charge for refuse collection, water supply or other public services?
 13. Is the property situate in a County Borough, Urban District or Town and, if not, does the purchaser require consent under Section 45 of the Land Act 1965?
 14. Is the property or any part thereof the vendor's "Family Home" within the meaning of the Family Home Protection Act 1976?
 15. Has there been in relation to the property any development (including change of use or extensions) within the meaning of the Local Government (Planning and Development) Acts on or after the 1st October 1964?

Update:

16. Has any Notice, Certificate or Order been served upon or received by the Vendor or has the Vendor notice of any intention to serve any Notice relating to the property or any part thereof under the Derelict Sites Acts?

UPDATE (2001): The Conveyancing Committee has investigated the advisability of introducing Pre Contract Requisitions and after due consideration has decided against the adoption of the practice. Practitioners should therefore have due regard to the Pre Contract check list as set out on the two foregoing pages.

UPDATE (2006): Note at item No. 4 of the Check List that current options include Premier Guarantee Scheme.

**PURCHASER'S
SOLICITOR'S PRE
CONTRACT CHECK
LIST ON
ACQUISITION OF
PRIVATE
DWELLINGHOUSE**

(Contd.)

*Circulated with Law Society
Gazette, July/August 1990*



**DOCUMENTS
SCHEDULE IN
CONDITIONS OF
SALE**

The intention of the Law Society Conveyancing Committee in preparing the standard Conditions of Sale for general use was that the Vendor would disclose at contract stage sufficient and adequate particulars of the Vendor's title to enable a Purchaser's solicitor to consider properly the adequacy of such title before completion of contracts in accordance with long standing conveyancing practice.

The Conveyancing Committee anticipated that the documents which would be listed by Vendors' solicitors in the Documents Schedule to a draft contract would disclose *inter alia*, the root of title and also the length of title being furnished.

The Conveyancing Committee has become quite concerned at the developing practice of solicitors acting for vendors furnishing to purchasers' solicitors copies of all documents relating to the vendor's title coupled with a special restrictive condition worded in the following or similar terms viz:

"The title shall consist of the documents listed in the Documents Schedule and shall be accepted by the purchaser as full and adequate evidence of the vendor's title to the subject property".

It is the view of the Committee that such a practice is a highly undesirable one as the Committee considers it to be unfair to purchasers and their solicitors as it is a clear attempt to restrict the raising of proper requisitions on title. Furthermore, the Committee considered that such practice also is unfair to purchasers and their solicitors as by putting them on notice of such documents at the pre contract stage it obliges the purchaser's solicitor to carry out a full and detailed investigation of title before advising his client to complete the contract.

The Conveyancing Committee disapproves of the foregoing practice and recommends that in accordance with established conveyancing practice the documents listed in the Documents Schedule to the standard Conditions of Sale should be limited to:-

- a) The root of title being shown.
- b) Any document to which title is stated to pass under the special conditions.
- c) Any document which is specifically referred to in a special condition.
- d) Planning documentation.¹

The Conveyancing Committee disapproves, save in very exceptional circumstances, of a practice which would unreasonably restrict solicitors for purchasers in carrying out proper and detailed investigations of title on behalf of their clients

*Published in Law Society
Gazette, January/February
1990*

1. "d) Planning documentation"
was added in October, 2000



Practitioners should be aware that prior to 1994 the Conveyancing Committee had taken the view that the licence duty chargeable for a Publican's Licence or any other excise duties or licence duties for licences attached to a premises in sale should not be apportioned on the closing of the sale. In March 1994 that view was changed and as a direct result the 1995 Edition of the General Conditions of Sale of the Law Society provides at Condition 27(f) that excise and kindred duties payable in respect of the subject property or any licence attached thereto shall be apportioned on a day to day basis as at the apportionment date up to which the liability for the same shall be for the account of the Vendor and thereafter for that of the Purchaser and Condition 27(c) shall apply for the purposes of such apportionment.

INTOXICATING LIQUOR LICENCES

APPORTIONMENT



**CONDITIONS
OF SALE (1991
EDITION)**

The Conveyancing Committee has revised the standard Conditions of Sale. The new (1991) edition went on sale in April 1991.

Special Conditions should be utilised in instances where it is required to adopt recommendations or advices of the Law Society or of any Committee associated with it, where such recommendations or advices are at variance with the provisions expressed in the General Conditions.

Other than some minor changes in spacing of printing the following are the only changes to the standard Law Society Conditions of Sale.

GENERAL CONDITIONS

1. The expression "Competent Authority" has been extended slightly so as to allow for the application of the Multi-Storey legislation.
27. This condition relating to apportionment has been expanded so as to allow for clarification but does not in essence alter the original concept of apportionment to the date of completion. Practitioners should take special note of the liability for rates in particular cases and insert appropriate provisions in the Special Conditions.
28. The obligation placed on a Purchaser to arrange for Section 45 consent has been extended so as to provide that the contract is not conditional upon such consent being obtained. A Purchaser should arrange to have an appropriate provision inserted in the Special Conditions, if necessary.
29. While the obligation remains with the Purchaser to register the title where necessary, the emphasis within this condition has been altered slightly and a requirement has been placed on the Vendor to furnish the necessary map.
35. This condition has been reworded in the interest of clarity but there has been no change from the original meaning.
36. In part (a) of this Condition, it is provided that a Vendor is not required to warrant the position as to Bye-Laws prior to 1st October, 1964
In part (c) the reference to the date "1st January, 1970" has been omitted and a Vendor should provide for any particular situation in the Special Conditions.
45. Paragraph (b) has been included to avoid any doubt that a Purchaser has a right to rescission in the event of the destruction of the property.
51. The appointment of an Arbitrator has been extended to allow for a situation where the President is unable or unwilling to make the appointment.



Section 22 (7) of the Building Control Act, 1990, contains a most helpful amnesty with regard to works executed prior to 13 December, 1989 in contravention of bye-laws.

Section 19 of the Local Government (Planning and Development) Act, 1992, introduced important alleviations in relation to enforcement procedures under the planning legislation. These are dealt with comprehensively in an article by John Gore-Grimes published at page 383 et seq. of the Gazette for December, 1992. (Vol. 86 No. 10).

A vendor, anxious to avail of the foregoing amnesty and/or alleviations or any extension thereof and to rely on same, should disclose the non-conforming matter in his Special Conditions (possibly detailing appropriate dates and other relevant data by way of Statutory Declaration), and provide (likewise by Special Condition) for any required consequential relaxation in, or departure from, the application of General Condition 36.

Failure to cover a non-conforming issue as suggested or in some other appropriate manner will mean that the full vigour of General Condition 36 will continue to operate with resultant exposure on foot of the warranties therein specified.

It should be mentioned that the latest (1991) edition of the Society's General Conditions of Sale was published prior to the coming into operation of the Building Control Act, 1990, and its attendant regulations, and same are, therefore, not referred to therein. Accordingly, any party desiring to provide for evidence of compliance with such regulations should cater for same by way of Special Condition.

**THE LAW
SOCIETY'S
STANDARD
GENERAL
CONDITIONS
OF SALE**

UPDATE: Practitioners should have regard to any amendments to General Condition 36 (including any note in the margin thereof) of any subsequent edition of the Conditions of Sale.

*Published in Law Society
Gazette, September 1993*



**AMENDMENTS TO
CONVEYANCING
CONTRACTS BEFORE
EXECUTION BY A
PURCHASER**

The view of the Professional Purposes Committee is that when a vendor's solicitor furnishes a contract to a purchaser's solicitor, he must expect that no amendments will have been made to the contract, or to any map attached to the contract, unless this fact is clearly stated in the purchaser's solicitor's covering letter returning the contracts.

Accordingly, it is a recommendation of the Professional Purposes Committee that a vendor's solicitor must be clearly alerted by the covering letter that a contract or map has been amended. **Failure to so alert could be regarded by the Committee as a breach of the professional etiquette which should exist between colleagues.**

Professional Purposes Committee

*Published in Law Society
Gazette, October 1993*

**POSSESSION PRIOR
TO CLOSING**

As a matter of convenience to both parties a vendor may agree with a purchaser to allow the purchaser into possession prior to the closing date on condition that the purchaser signs a caretaker's agreement and places the balance of the purchase money in a joint deposit account in the names of the vendor's and purchaser's Solicitors. This is most common where a closing document is not immediately available.

The solicitors for both vendor and purchaser should, before possession is taken, be satisfied that the outstanding document will ultimately become available.

It is very unwise to allow a purchaser into possession in circumstances where there is an outstanding item which may not become available. In such circumstances both vendor and purchaser should be advised clearly as to the dangers.

Both parties should also be advised of the insurance risk implications.

*Published in Law Society
Gazette, March 1994*



Many solicitors have adopted the practice of furnishing Conditions of Sale which refer to, and incorporate the General Conditions, without actually including a print of the General Conditions with the contract of Sale.

For a number of reasons the Conveyancing Committee disapproves of this practice:-

1. If everyone adopts this practice, practitioners will become less familiar with the contents of the General Conditions;
2. Clients may not be fully advised as to the implications of the General Conditions;
3. If the clause incorporating the General Conditions is incorrectly drafted it may well create uncertainty as to which edition of the General Conditions applies to the transaction;
4. In the event of litigation, special proof would be required to identify the General Conditions which were intended to apply to the particular sale.

PRACTICE OF NOT PROVIDING A FULL CONTRACT



**CONTENTS OF
DOCUMENTS
SCHEDULE IN
CONDITIONS OF
SALE**

The intention of the Law Society Conveyancing Committee in preparing the standard Conditions of Sale for general use was that the Vendor would disclose at contract stage sufficient and adequate particulars of the Vendor's title to enable a Purchaser's solicitor to consider properly the adequacy of such title before completion of contracts in accordance with long standing conveyancing practice.

The Conveyancing Committee has become quite concerned at the developing practice of Vendors' solicitors furnishing to Purchasers' solicitors copies of all documents relating to the vendor's title coupled with a special restrictive condition worded in the following or similar terms viz:

“The title shall consist of the documents listed in the documents Schedule and shall be accepted by the purchaser as full and adequate evidence of the vendor's title to the subject property”.

It is the view of the Committee that such a practice is highly undesirable and unfair to purchasers and their solicitors as a clear attempt to restrict the raising of proper requisitions on title. Furthermore, the Committee considers that the practice is also unfair to purchasers and their solicitors as by putting them on notice of such documents at the pre contract stage it obliges the purchaser's solicitor to carry out a full and detailed investigation of title before advising his clients to complete the contract. This is particularly the case where property is being sold by auction.

Even if the condition merely says “The title shall consist of the documents listed in the Documents Schedule” a purchaser's solicitor is by virtue of General Condition 6 put on notice of certain covenants etc.

The Conveyancing Committee disapproves of the foregoing practice and recommends that in accordance with established conveyancing practice the documents listed in the Documents Schedule should be limited to:-

- a) The root of title being shown.
- b) Any document to which title is stated to pass under the special conditions.
- c) Any document which is specifically referred to in a special condition.
- d) Planning documentation.¹

The Conveyancing Committee disapproves, save in very exceptional circumstances, of a practice which would unreasonably restrict solicitors for purchasers in carrying out proper and detailed investigations of title on behalf of their clients.

*Published in Law Society
Gazette, March 1995*

*1. “d) Planning documentation”
was added in October, 2000*



1st September, 1995

Dear Colleague,

As Chairman of the Law Society Conveyancing Committee, I am writing to you and to every Principal/Managing Partner of a solicitor's practice in the State to announce the completion of a comprehensive revision of the Society's standard conveyancing contract the 'General Conditions of Sale - Particulars and Conditions of Sale by Private Treaty or by Auction'.

This new 1995 edition replaces the 1991 edition and incorporates many amendments required by changes in the law and in conveyancing practice together with some other improvements. I am pleased to enclose a specimen copy of the new (1995) edition together with an explanatory memorandum¹ drawing your attention to the changes made which the Committee trusts practitioners will find both instructive and helpful.

The 1995 edition is now available for purchase from the Society (contact Linda Dolan - price £20 for 50). Production of the 1991 edition has been discontinued.

In a conscious effort to restore the status of the General Conditions of Sale, the Committee has upgraded the quality and layout of this new edition and hopes that the profession will find it more clear and user-friendly.

The Committee is concerned at the increasingly prevalent practice on the part of some practitioners of using a shortened form of contract containing a provision purporting to incorporate the standard general conditions without actually setting them out. The Committee disapproves strongly of this practice which it considers to be not only contrary to good conveyancing practice but also potentially hazardous for practitioners.

The Committee emphatically recommends that henceforth the entire General Conditions of Sale should be used by practitioners to avoid possible difficulties with the interpretation of contracts.

The Committee has also been engaged in revising and updating the current edition of the Standard Requisitions on Title to meet the requirements of the profession. This revision has reached an advanced stage and it is hoped to have the new edition of the Requisitions on Title available for use by the profession in the near future.

Yours sincerely,

COLM PRICE
CHAIRMAN OF THE CONVEYANCING COMMITTEE

**NEW GENERAL
CONDITIONS OF
SALE**

1995 EDITION

*1. Reproduced at pages
12.18 to 12.20 hereof*



**NEW GENERAL
CONDITIONS
OF SALE**

1995 EDITION

(Contd.)

GENERAL CONDITIONS OF SALE

(1995 EDITION)

Explanatory Memorandum

The Law Society Standard General Conditions of Sale have been revised, and the new (1995) Edition will be available from the Society from September of this year.

The Conditions of Sale have been considered in the light of legislative and other changes, and also submissions and recommendations made to the Society. To the extent that some items are not reflected in the 1995 conditions, it was felt that they were either not of sufficient general significance or were deemed to be more suited for introduction by way of Special Condition.

The following are the changes, and are identified by reference to the General Conditions as numbered in the revised Edition.

2. The definition of “working day” has been refined to exclude the seven days immediately succeeding Christmas Day and also Bank Holidays.
5. (b) Provides that the recipient of any part of the deposit, if nominated by the Vendor, will be deemed to be a stakeholder thereof.
8. (b) Has been introduced as a result of the introduction of Section 146, Finance Act, 1994. This will also serve as a reminder of the important consequences of this Section.
8. (c) This provision has been introduced as a result of doubts raised as to whether a Purchaser takes “free from encumbrances”. Unless otherwise stipulated, the Vendor is to be obliged to discharge all mortgages and charges for the payment of money affecting the property. If this is not to be the case, or if, on the other hand, there are other matters in the nature of encumbrances which are to be dealt with by the Vendor prior to completion, same should be covered specifically by way of Special Condition. In the ordinary course General Condition 16 will apply.
11. (b) This provision is new and has been designed to meet difficulties on the investigation of registered titles in the areas of Capital Acquisitions Taxes and Voluntary Dispositions.
13. (g) This provision requires the Vendor to redeem any Land Purchase Annuity affecting the property.
15. The disclosure requirement has been extended to reservations and taxes affecting the property.
20. The requirement of legislation on Residential Property Tax have now been included together with Capital Gains Tax.



25. (a) This provides the Vendor with the right to take the rents and profits of the property up to the date of completion in addition to the right to claim interest in the event of the purchaser's default.
25. (b) Requires a defaulting Vendor to give to his Purchaser five working days notice of his ultimate ability to complete.
27. (f) Provides for the apportionment of excise duties on sales of properties with bar licences.
33. Has been substantially restructured, and removes certain rights (believed to have been superficial) previously afforded to Vendors.
36. This section has been expanded considerably to allow for changes in the legislation, and should be read with care. It contains an important marginal note, which, in substance, reflects the recommendation published in the Gazette of September, 1993.
51. The arbitration provision has been amended - consequentially upon other changes, and also to meet questions arising on the issue of interest.

The following points should be mentioned:

- (a) The Professional Purposes Committee has already expressed the view that, when a Vendor's Solicitor furnishes a Contract to a Purchaser's Solicitor, he must expect that no amendments will have been made to the Contract or to any Map attached thereto, unless such are clearly disclosed by the Purchaser's Solicitor when returning the Contract. Failure so to disclose and thus to alert the Vendor could be regarded as a breach of professional etiquette.
- (b) It has come to the attention of the Society that some members have adopted the practice of utilising a limited form of Contract, which incorporates a provision purporting to adopt the Standard General Conditions without setting same out. This course is regarded as being potentially hazardous, and it is recommended that all Contracts should contain physically a full set of the Standard General Conditions.
- (c) Any variation in the General Conditions should be dealt with by way of Special Condition.
- (d) The numbering system previously obtaining has, to a certain extent, become established amongst practitioners, and same has, accordingly, been maintained substantially.
- (e) Likewise, the basic format of the Conditions has been retained, as also have the first three Special Conditions. The third of these deals with Value-Added Tax implications, and each case should be considered carefully in this particular context.
- (f) General Condition 24 (b) provides, as heretofore, that completion is to take place at the Office of the Vendor's Solicitor. The Conveyancing Committee is aware of the fact that lending Institutions frequently appoint Solicitors practising in suburban areas to represent their interests, and that, in turn the latter may require transactions

**NEW GENERAL
CONDITIONS
OF SALE**

1995 EDITION

(Contd.)

**NEW GENERAL
CONDITIONS
OF SALE****1995 EDITION**

(Contd.)

- to be completed at their offices. The resultant anomaly between this and 24 (b) should be faced in each individual case and agreement reached between the parties as to the actual place of completion.
- (g) Section 76, Finance Act, 1995, in effect, places an obligation on a person acquiring an asset (in a non - monetary situation), not only to notify the Revenue Commissioners of the transaction, but also to “pay to the Collector-General an amount of Capital Gains Tax equal to 15% of the market value of the consideration”. While such a case is not within the normal contemplation of the Standard Conditions, it is important to note that, should same arise, provision should be made by way of Special Condition to enable the acquiring party to collect from the disponent a sum corresponding to that required to be paid over to the Collector-General.
- (h) As ever, the Conveyancing Committee recommends that Members would view with care the warranty embraced by General Condition 36. There have indeed been suggestions that this should be abolished completely, and it has also been mentioned that same might be qualified so as not to extend to matters disclosed expressly by the Vendor to the Purchaser prior to the sale and whether in response to pre-Contract enquiries or otherwise. It was, however, felt that these were issues which should be addressed by way of Special Condition.
- (i) The General Conditions do not deal with whether roads or services are in charge of the Local Authority. If appropriate, this should be dealt with by way of Special Conditions.
- (j) Exchange Control requirements, environmental issues and the implications of a variety of enactments (as, for example, those dealing with Mergers and Monopolies, Multi - storey Buildings etc) should be approached either by pre-Contract Enquiry or through the medium of Special Conditions.



At their recent meeting the Conveyancing Committee considered a number of applications received from practitioners seeking the permission of the Law Society to input the new General Conditions of Sale in their entirety on to their WP or computer data bases for general use by their offices in conveyancing transactions.

Having considered the matter at length, the committee unanimously decided to recommend that the Law Society should not grant its consent to such applications as it considered that the adoption of such practice would place an unnecessary additional burden on other solicitors who would be required to ensure that the reproduced copies of the Contract would replicate in all respects the standard printed General Conditions of Sale. Furthermore, it was the unanimous view of the committee that the use of the new form of contract as produced by WPs would add significantly to their bulk with little or no saving in financial costs to practitioners adopting this practice.

The committee is satisfied that the universal use by the professional of the new contract in its standard printed form will be in the best interests of practitioners as it will lead to an overall standardised procedure being adopted by the profession in conveyancing matters.

The committee is aware of the existing widespread practice of the first four pages of the contract being placed on WP data bases. The committee accepts the practical benefits of this practice and approves of the practice provided that the General Conditions of Sale in their entirety are appended to the first four pages of contract.

In this regard, the committee emphatically repeats the recommendation expressed in clear terms both in the letter to the profession from the Chairman on the launch of the new contract and also in the explanatory memorandum accompanying the new contract that the new form of contract in its entirety be used by practitioners.

The committee requests that in their own interests practitioners accept and put into practice the committee's recommendation in this matter.

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 fulfil the requirements of General Condition 36 be dealt with through the medium of Special Condition.

GENERAL CONDITIONS OF SALE

**GENERAL
CONDITIONS OF
SALE**

Many practitioners now issue General Conditions of Sale or parts thereof which have been produced by a word processor. The Conveyancing Committee recommends that contracts produced in this way should indicate the edition from which the general conditions are taken so that practitioners who receive these contracts are assured that the most up to date edition is being utilised. A previous recommendation was made by the committee that these contracts should bear a caveat which is reproduced hereunder. The committee wishes to remind practitioners that all contracts produced by a word processor should bear this warning.

*This contract shall be read as if it contained unamended the Incorporated Law Society General Conditions of Sale () *Edition. Permission to reproduce these conditions has been obtained from the Incorporated Law Society whose copyright in these conditions is acknowledged.*

*Insert date of appropriate edition.



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

*Published in Law Society
Gazette, November 1998*

*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.*

**DEDUCTION OF TAX
FROM PAYMENTS OF
INTEREST**

On the payment of yearly interest:

1. By a company to any party, tax must (in almost all instances) be deducted at source
2. By an individual to any party other than a non-resident, payment should be made gross (that is, without deduction of tax)
3. By an individual to a non-resident, tax must be deducted at source.

Interest on the balance of purchase money payable in respect of a conveyancing transaction is regarded as yearly, because it could technically cover a period in excess of a year. This was held to be the case in *Bebb v Bunny* (1854), and it has been confirmed by the Revenue Commissioners as being their acknowledged practice.

Tax in the foregoing context means tax at the standard rate and, where deducted at source:

- a) Same should be accounted for to the Revenue Commissioners by the party deducting, who
- b) Should forward to the recipient of the interest a certificate of deduction in Form 185 or its equivalent.

Payments of short (that is, non-yearly) interest should in all instances – irrespective of the identities of the payer and of the recipient – be paid without deduction of tax.

This note has been approved by the Revenue Commissioners.



The Conveyancing Committee was recently asked to reconsider its recommendation on the question of what documents should be included in the documents schedule in contracts for sale. The Committee was requested to reconsider its recommendation on the basis that many practitioners do not appear to be adhering to the practice as originally recommended and are instead listing all documents of title in the documents schedule thereby putting a purchaser's solicitor on notice of such documents at the pre-contract stage.

The Committee considered the fact that such a practice would oblige a purchaser's solicitor to carry out a full and detailed investigation of title (including the raising of Requisitions on Title pre-contract) before advising the purchaser to complete the contract. The Committee expressed grave doubts about whether full investigations of title could be completed pre-contract in these cases in the timeframe usually available.

The Committee unanimously decided that it would be extremely dangerous to change its previous recommendation as to do so would have the effect of exposing purchasers' solicitors to claims for negligence. The Committee urged that purchasers' solicitors resist conditions in contracts which seek to attempt to restrict the raising of proper Requisitions on Title or which put them on notice of documents at pre-contract stage which would oblige them to carry out a full investigation of title pre-contract. The Committee likewise urged solicitors acting for vendors not to insert such conditions into draft contracts as, in the view of the Committee, such conditions are highly undesirable and unfair to purchasers and their solicitors.

The original Practice Note is re-published below for the information of the profession with the addition of a new sub-paragraph d).

"CONTENTS OF DOCUMENTS SCHEDULE IN CONDITIONS OF SALE

The intention of the Law Society Conveyancing Committee in preparing the standard Conditions of Sale for general use was that the vendor would disclose at contract stage sufficient and adequate particulars of the vendor's title to enable a purchaser's solicitor to consider properly the adequacy of such title before completion of contracts in accordance with long standing conveyancing practice.

The Conveyancing Committee has become quite concerned at the developing practice of vendors' solicitors furnishing to purchasers' solicitors copies of all documents relating to the vendor's title coupled with a special restrictive condition worded in the following or similar terms viz:

CONTENTS OF DOCUMENTS SCHEDULE IN CONDITIONS OF SALE - A REMINDER



**CONTENTS OF
DOCUMENTS
SCHEDULE IN
CONDITIONS
OF SALE -
A REMINDER**

(Contd.)

The title shall consist of the documents listed in the documents schedule and shall be accepted by the purchaser as full and adequate evidence of the vendor's title to the subject property".

It is the view of the committee that such a practice is highly undesirable and unfair to purchasers and their solicitors as a clear attempt to restrict the raising of proper requisitions on title. Furthermore, the committee considers that the practice is also unfair to purchasers and their solicitors as by putting them on notice of such documents at the pre contract stage it obliges the purchaser's solicitor to carry out a full and detailed investigation of title before advising his clients to complete the contract. This is particularly the case where property is being sold by auction.

Even if the condition merely says "The title shall consist of the documents listed in the documents schedule" a purchaser's solicitor is by virtue of General Condition 6 put on notice of certain covenants etc.

The Conveyancing Committee disapproves of the foregoing practice and recommends that in accordance with established Conveyancing practice the documents listed in the documents schedule should be limited to:-

- a) The root of title being shown.
- b) Any document to which title is stated to pass under the special conditions.
- c) Any document which is specifically referred to in a special condition.
- d) Planning documentation.

The Conveyancing Committee disapproves, save in very exceptional circumstances, of a practice which would unreasonably restrict solicitors for purchasers in carrying out proper and detailed investigations of title on behalf of their clients.

Published in Law Society Gazette, March 1995 and re-published at page 12.16 of the Law Society's Conveyancing Handbook, 2nd Edition.

Re-published in Law Society Gazette, May 2000 with the addition of "d) Planning documentation"



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**

*Published in Law Society
Gazette, May 2000*



**ISSUING OF MORE
THAN ONE
CONTRACT
FOR SALE**

The Conveyancing Committee has been asked to indicate the correct practice in the following circumstances:-

The vendor's solicitor has issued a contract to a purchaser's solicitor, but then received instructions to issue a second contract to a second purchaser's solicitor without calling for the return of the first contract from the first purchaser's solicitor, and without informing the second purchaser's solicitor of the issuing of the first contract.

The Conveyancing Committee is of the opinion that this is not proper practice, and that the first purchaser's solicitor should be informed in writing that the vendor is not proceeding with the sale to his/her client, and that a contract should not be issued to the second purchaser's solicitor without first calling for the return of the first contract from the first purchaser's solicitor.

*Published in Law Society
Gazette, May 2000*

**REFUND IF
CONTRACT SIGNED
UNAMENDED
WITHIN 7 DAYS**

The Conveyancing Committee has been asked to indicate the correct practice in the following circumstances:-

The vendor's solicitor has issued a contract to the purchaser's solicitor containing the following special condition:-

"If the purchaser signs the contract documentation without alteration or addition, and it is returned with the full deposit to us within 7 days of today's date, then the purchaser will receive a refund of £2,000. Time is of the essence in this regard."

The Conveyancing Committee is of the opinion that the insertion of such a special condition is not proper practice because:-

- 1 The purchaser's solicitor could not in these circumstances advise his/her client properly in relation to title and other essential matters and
- 1 It might introduce a conflict of interest between the purchaser's solicitor and the purchaser and
- 1 It might act as an inducement for the purchaser's solicitor to overlook some aspect of the transaction to which he/she would otherwise object.

*Published in Law Society
Gazette, May 2000*



It has come to the attention of the committee that a lot of unnecessary pressure and aggravation is caused to colleagues by completion dates which are too short and unreasonable being included in contracts for sale.

It is the view of the committee that in usual circumstances a reasonable completion or closing date would be five weeks from the date of the contract for sale.

CONTRACT CLOSING DATES

*Published in Law Society
Gazette, July 2000*

It has come to the notice of the Committee that some practitioners have attempted to exclude the Law Society General Conditions of Sale where reliance is placed upon a Building Agreement solely, incorporating some Special Conditions dealing with title. Practitioners are reminded that the format of the Certificate of Title clearly expresses that the "**purchase was effected on foot of the current Law Society's Conditions of Sale and/or Building Agreement**". The Committee is of the view that to preclude any such conditions en bloc would prevent the purchaser's solicitor giving a certificate of title.

The Committee is further of the view that it is not correct to state that the Law Society form of Conditions of Sale was never intended for use in relation to new houses in the course of construction where a Building Agreement has been entered into. Practitioners are therefore forewarned to be very careful about accepting any condition in the Building Agreement which expressly or by implication excludes the Law Society General Conditions of Sale.

For the avoidance of doubt the committee confirms that the use of the wording "Conditions of Sale and/or Building Agreement" in the certificate of title documentation was intended to mean that the Conditions of Sale are required in relation to the purchase of a second hand property and both the Conditions of Sale and Building Agreement are required in relation to the purchase of a newly constructed property or property in the course of construction.

LAW SOCIETY GENERAL CONDITIONS OF SALE / BUILDING AGREEMENT

*Published in Law Society
Gazette, March 2001*



**LAW SOCIETY
GENERAL
CONDITIONS OF
SALE**

2001 EDITION

**EXPLANATORY
MEMORANDUM**

The Society's General Conditions of Sale have been revised and the new 2001 Edition will be available from mid-December for use by the profession from 2nd January, 2002 onward.

The Conditions have been reviewed in the light of legislative and other changes and of submissions and recommendations made to the Society. Remarkably few changes have been sought. Amongst those advocated were a number which were considered to be of insufficient overall significance to warrant adoption as General Conditions. It was felt that, where pertinent, these more isolated incidents should be made the subject of Special Conditions, and this course is recommended.

The general format and ordering of the Conditions has been retained, with the following being the more important changes therein:-

1. Recognition of the Euro and the provision on page 1 of spaces for the PPS numbers of the parties. These numbers have an added importance in conveyancing matters and the spaces should, at the initial stage, be completed accurately in all relevant cases.
2. No change has been made in Special Condition 3 dealing with Value-Added Tax, but attention is drawn to the important marginal note opposite same regarding assignments and surrenders of leasehold interests.
3. The introduction of a "Non-Title Information Sheet" at pages 5 and 6. This is an innovation which is tied to General Condition 33 and care must be taken to ensure that the Sheet be completed correctly.
4. The inclusion on page 7 of an additional introductory note to the effect that a Special Condition altering or deleting a General Condition should give the reason for such variation.
5. Condition 3 contains a severance clause with regard to void, illegal or invalid provisions.
6. Condition 5 has been expanded to clarify the point that moneys paid by the Purchaser to the Vendor's Solicitor prior to the sale are to be held by him as Trustee for the Purchaser.
7. A new Condition 9 has been inserted to highlight the fact that where the Vendor is a body established outside the State, this must be disclosed prior to the sale. The Condition goes no further than requiring disclosure, but it is anticipated that the



Purchaser's awareness of the position will encourage him to approach the Vendor (pre-contract) on the lines of the recommendation published at pages 34 and 35 of the Society's Gazette of March, 2001.

8. Condition 13 (h) is new and places an obligation on the Vendor to deal with Land Registry mapping queries where the transaction involves a part only of the lands comprised in a Folio. This obligation extends to the discharge of Registry fees which ought properly to be paid by the Vendor including those attributable to his default.
9. Condition 20 (b) is also new and deals with the completion and handing over by the Vendor of the "Particulars Delivered Form" where same is appropriate.
10. New Condition 25(c) deals with disputes regarding the payment of interest and is self explanatory. This provision should help to ease an area of difficulty and avoid delays.
11. The wording of Condition 35 has been somewhat revised partially in recognition of the expanded scope of the Planning Register as introduced by the Planning and Development Act, 2000. Practitioners, whether acting for a vendor or purchaser, must ensure that a planning search is carried out before contracts are exchanged.
12. Condition 36 has always been contentious. Alternative approaches to the existing planning warranty were considered but ultimately the warranty has been retained in a modified form. The new Condition should be read carefully. The amendments seek to reduce the exposure of vendors, particularly where they are not aware that opinions or certificates on which they have relied are inaccurate or erroneous. The Law Society's recommendation in relation to evidence of compliance with financial conditions where roads are in charge has been incorporated in Condition 36(e)(i).

In recent times there has been a tendency to delete Condition 36 entirely, and often for reasons which are either not stated or are unjustified. This trend should be resisted and the planning warranty should not be excluded save in exceptional circumstances, or where there is full disclosure (by way of Special Condition or otherwise) of the underlying facts.

13. The new Condition 41(a) alters the wording of the former Condition 41 slightly and Condition 41(b) introduces a procedure affording protection to a stakeholding Solicitor on the forfeiture of a deposit.
14. Condition 42 has been expanded to incorporate sub-Condition (b), which, in effect, excludes the applicability of the oft-criticised Rule in *Bain v. Fothergill*. Basically, the

LAW SOCIETY GENERAL CONDITIONS OF SALE

2001 EDITION

EXPLANATORY MEMORANDUM

(Contd.)



**LAW SOCIETY
GENERAL
CONDITIONS OF
SALE**

2001 EDITION

**EXPLANATORY
MEMORANDUM**

(Contd.)

*Circulated to the profession
with a sample of the new
contract,
December 2001*

**AMENDMENTS TO
CONDITIONS OF
SALE, 2001 EDITION**

*Published in Committee Notes
Section of Law Society
Gazette, March 2002*

latter denies damages to a Purchaser for loss of bargain where a contract goes off due to the Vendor's failure to show good title. In such a circumstance, provided the Vendor was not fraudulent and did not otherwise act in bad faith, the Purchaser is limited to recovery of his deposit with interest and expenses incurred in the investigation of title. The introduction of sub-Condition(b) is felt to be fair and to be justified, but it could create yet further exposure for members of the profession.

15. Condition 49(c) allows for service of notices by facsimile transmission.

16. Questions under Condition 25 regarding interest are no longer to be referable to arbitration and accordingly former sub-paragraph (b) of Condition 51 has been removed.

The opportunity is taken of re-emphasising the importance of dealing with appropriate matters by way of pre-contract enquiry.

UPDATE: Practitioners should have regard to the changes made by any subsequent edition of the Conditions of Sale or any subsequent practice note.

The attention of practitioners is drawn to the following matter:

The first print run of the new Conditions of Sale, 2001 Edition, at General Condition 36, did not impose an obligation on the vendor to provide the purchaser with a certificate of compliance in appropriate cases in respect of the Building Control Act and Regulations made thereunder. Subsequent print runs of the contract document contain appropriate amendments to address that situation. The principal amendment is the addition in the third sub-paragraph of Condition 36(e)(ii) of the words "and (where applicable) the requirements of the Building Control Act, 1990 and regulations made thereunder".

Practitioners using the first print run of the Conditions of Sale 2001 Edition should provide for this matter by way of special condition.



Concerns have been expressed to the Conveyancing Committee about the practice of builders' solicitors issuing documents which are an amalgam of excerpts from the standard Building Agreement and Contract for Sale. Practitioners should remember that, while in practical terms the sale of a new dwelling is a single transaction as far as the client is concerned, from the legal point of view, two separate transactions are involved. The committee, in ease of the profession generally, has over the years encouraged universal acceptance of the standard documentation, and is always reluctant to see any departure from it.

The view of the committee is therefore that in an appropriate transaction, the two standard documents should be used. This saves trouble, not only for the purchaser's solicitor, but also for the vendor's, as s/he is not obliged to deal with queries in relation to the minutiae of a non-standard document. It also allows the purchaser's solicitor to give an unqualified certificate of title as the standard certificate of title requires the purchaser's solicitor to certify that the property was acquired "on foot of the current Law Society's Conditions of Sale and/or Building Agreement". The committee has previously confirmed in its practice note published in the March 2001 issue of the Gazette, inter alia, that this phrase is intended to mean, in relation to the purchase of a new dwelling house, that both documents should be used.

As usual, any amendments or additions to the standard documentation should be dealt with by Special Condition.

There have been a number of complaints to the Conveyancing Committee to the effect that some practitioners are refusing to deal with pre – contract queries.

It is the view of the committee that the raising of reasonable and appropriate pre-contract queries is in accordance with proper conveyancing practice. It follows therefore that such queries should be responded to by a Vendor's Solicitor and that no unreasonable time or other constraints should be imposed in relation to such queries.

HYBRID AGREEMENTS FOR SALE OF NEW HOUSES

*Published in Law Society
Gazette, July / August 2002*

PRE – CONTRACT ENQUIRIES

*Published in Law Society
Gazette, December 2002*



**PROPER
PRE-CONTRACT
ENQUIRIES**

It has been brought to the attention of the Conveyancing Committee that, in an increasing number of cases, pre-contract enquiries such as or similar to the following are being raised as a matter of course by solicitors acting for purchasers:-

"Has the Vendor disclosed all letters, notices, orders or documents or other matters relating to the property which might prejudice the Purchaser?"

It is the view of the committee that the above is an improper pre-contract enquiry as it effectively purports to negate the principle of caveat emptor as it applies to the Law Society's standard contract for sale.

*Published in Law Society
Gazette, March 2003*

**PRE-CONTRACT
ENQUIRIES
REGARDING
PROTECTED
HABITATS**

The following enquiries should be raised pre-contract, as part of a prospective purchaser's pre-contract investigations, where there is a prospect that there is a sensitive habitat in the area, or that an environmental protection is in place. They are not appropriate for residential property in the middle of urban areas, and would rarely be necessary in the case of other residential properties, unless a significant land holding is involved.

Where replies in the affirmative are received then further and more detailed enquiries should be made.

Habitats Directive and related environmental legislation

1. Is any part of the property designated as a natural heritage area, special area of conservation or special protection area?
2. If not, is the vendor aware of any proposal for any such designation affecting the property?
3. Has any order been made, notice served or agreement entered into under the Wildlife Acts 1976 and 2000 affecting any part of the property?

*Published in Law Society
Gazette, May 2003*



The new Special Condition 3 in the standard contract for sale has been introduced, firstly, to recognise any practice issues arising from the introduction of the reverse charge provisions in certain surrenders and assignments of leaseholds and the "Economic Value Test" introduced by the Value Added Tax Act, 1972 (as amended) and related VAT regulations (herein collectively called "the VAT Act") and, secondly, to formalise the procedures in relation to sales where the "VAT Form 4A" procedure is to be used.

For the majority of transactions Clauses 3(a) and (b) are all that may be required if Special Condition 3 is not being deleted in its entirety, as will be the case in most residential sales.

Practitioners are warned that, where a substantive VAT issue arises, careful consideration should be given to the particular circumstances of the case and if practitioners are in any doubt about the application of the relevant provisions of the VAT Act they should proceed with great care and take specialist advice where appropriate.

It is recommended that the VAT treatment of any transaction should be determined and agreed pre-contract.

Notes:

- 1 *A copy of the new Special Condition 3 has recently been circulated to every practitioner.*
- 1 *The new Special Condition 3 can also be downloaded from the Society's website www.lawsociety.ie*
- 1 *The new VAT clause will be incorporated into the contract document at the next available print run and the revised contract will thereafter be called "2001 (Revised) Edition".*
- 1 *Until then it is suggested that the three new pages be photocopied or downloaded from the website and inserted in contract documents in substitution for the old pages 3 and 4.*

UPDATE: Practitioners should have regard to the changes made by any subsequent edition of the Conditions of Sale or any subsequent practice note.

**NEW VAT CLAUSE
IN CONTRACT FOR
SALE**

**2001 (REVISED)
EDITION**

**EXPLANATORY
MEMORANDUM**

*Published in Law Society
Gazette, March 2004*



SPECIAL CONDITIONS IN CONTRACTS FOR SALE

The Conveyancing Committee is concerned about the growing tendency of including in contracts for sale special conditions which are unnecessary, badly drafted, unfair or unacceptable for some other reason. Some solicitors are using what might be termed “standard special conditions” in all contracts, including contracts for the sale of second hand houses.

Amendments to General Conditions

The General Conditions of Sale of the Law Society as amended from time to time have been accepted by the profession for a considerable time as, on balance, reasonable to both parties. Where Special Conditions are inserted for the purpose of amending the General Conditions there should be a particular reason as to why the General Conditions cannot be adopted. The necessity for Special Conditions that conflict with the General Conditions should be capable of being explained to the solicitor for the purchaser unless this is obvious). Otherwise considerable time can be wasted in negotiating conditions which are not necessary.

For example, special conditions requiring the purchaser to accept the boundaries of the property etc. may be unnecessary if this is already adequately covered by General Condition 14 under the heading “Identity”.

Similarly, clauses providing that the purchaser buys with full knowledge of the state of repair of a second hand house is unnecessary as it is covered by the caveat emptor rule and only leads to queries as to why the special condition has been inserted.

Special Conditions re Title

Special conditions are typically used to preclude a purchaser from insisting on something relating to the title to which he would be otherwise entitled. The special condition should be specific as to what is missing or excluded from the title and should not mislead. If there is a defect on the title a purchaser cannot be precluded from an investigation unless the condition contains a warning about the defect. It should not be stated that something is not known to the vendor if, in fact, it is.

Planning

Similarly if there is any unauthorised development or other planning defect this should be disclosed by Special Condition and an indication given as to what extent and why the warranty in General Condition 36 is to be limited.

Drafting

Inserting Special Conditions may not always have the intended effect and regard should be had to a number of aspects:



1. Bad drafting may turn out to be a problem for the vendor as any ambiguity will be construed in favour of the party whose rights are to be restricted. Usually this means that it will be construed against the party drafting the Special Condition.
2. The Law Society Conditions provide that the Special Conditions shall prevail in case of any conflict with the General Conditions.
3. In the case of new houses a term which is found to be unfair within the meaning of The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 will be unenforceable. Certain terms found by the High Court in December 2001 to be unfair within the meaning of the Regulations may not be included in a building agreement.
4. Some conditions are, in any event, prohibited by statute, such as
 - (a) a condition precluding a purchaser from objecting to title on the grounds of absence or insufficiency of stamps on any instrument executed after 16th May 1888 - Section 131 Stamp Duties Consolidation Act, 1999;
 - (b) a term designed to prevent the raising of Requisitions in relation to burdens generally or to any particular burden which, by virtue of Section 72 of the Registration of Title Act 1964 may affect registered land - Section 115 of the Act;
 - (c) a condition excluding a purchaser from raising Requisitions in relation to letting, sub-letting or sub-division of an agricultural holding - Land Act 1965 Section 12;
 - (d) a condition requiring one party to pay any of the legal fees incurred by the other party on the granting of a Lease - Section 32 Landlord and Tenant (Ground Rents) Act 1967;
 - (e) a condition requiring a purchaser, lessee or tenant to pay the fees of an auctioneer or house agent employed by the Vendor, Lessor or Landlord - Section 2 Auctioneer's and House Agents Act, 1973.

Practitioners are requested to give some thought to Special Conditions and not to include them merely because they have been seen in contracts prepared by other solicitors or because they find they can impose them on purchasers regardless of their suitability or necessity. The reputation of the profession depends on individual solicitors acting in a professional manner at all times.

SPECIAL CONDITIONS IN CONTRACTS FOR SALE

(Contd.)



**USE OF “ENTIRE
AGREEMENT”
CLAUSES IN
CONTRACTS FOR
THE SALE OF
RESIDENTIAL
PROPERTY**

The Conveyancing Committee is concerned to note that the use of “entire agreement” clauses in contracts for the sale of residential property appears to be increasing.

While these clauses may take different forms they essentially preclude a purchaser from relying on any advertisement or statement oral or in writing, whether or not in the course of any negotiations for the sale by the vendor or the vendor’s agent and that the contract for sale represents the entire terms and conditions of the agreement between the parties.

“Entire agreement” clauses are commonly found in mergers and acquisitions agreements and are not unreasonable there. In such transactions the prospective purchaser will have carried out comprehensive “due diligence” and significant warranties on a number of matters will have been included in the agreement.

An entire agreement clause in a contract for sale of residential property will not only prevent the purchaser from relying on any advertisement, brochure or representation made or published by or on behalf of the vendor, but also any replies given to a purchaser in pre-contract enquiries. It will also exclude any oral answers given in reply to questions raised at an auction as well as to any statements made by the vendor to the purchaser.

The Conveyancing Committee takes the view that such clauses should not be included in agreements for the sale of residential property, whether by auction or private treaty.



Due to the increasing practice of purchasers' solicitors not personally attending at the offices of vendors' solicitors for the completion of sales, the Conveyancing Committee has been asked to provide guidelines on how to address the difficulties for

1. purchasers' solicitors in parting with possession of purchase monies (which may include loan proceeds, in respect of which the purchasers' solicitors will have given undertakings to lending institutions) before they receive title deeds to the property being purchased,
and
2. vendors' solicitors in parting with title deeds (in respect of which they may have given undertakings/accountable trust receipts to lending institutions) before they receive the balance of purchase monies due to complete the sale.

The committee has decided to deal with the matter by way of amending the existing provisions of General Condition 24 of the current Law Society General Conditions of Sale 2001 (Revised) Edition. The text of the revised General Condition 24 is set out in this practice note and practitioners should familiarise themselves with these changes.

The revised wording of General Condition 24 will be implemented in the next print run of the current edition of the General Conditions of Sale pending the introduction of the next edition of the standard document. Pending the next print run, a Special Condition should be used to incorporate the revised wording of General Condition 24 into the standard contract.

NEW GENERAL CONDITION 24 OF THE LAW SOCIETY GENERAL CONDITIONS OF SALE 2001 (REVISED) EDITION:-

COMPLETION AND INTEREST

24. (a) The Sale shall be completed and the balance of the Purchase Price paid by the Purchaser on or before the Closing Date.
- (b) Unless otherwise agreed, completion shall take place at the office of the Vendor's Solicitor.
- (c) Where completion is to take place otherwise than at the office of the Vendor's Solicitor then the following provisions shall apply:
- (i) the Purchaser's Solicitor shall nominate seven days prior to closing the manner in which all completion documents are to be dispatched (registered post, courier, DX, collection or other

**NON-PERSONAL
CLOSING**



NON-PERSONAL CLOSING

(Contd.)

agreed mode of dispatch). The mode of dispatch will be at the Purchaser's Solicitor's sole risk and expense, provided that the Vendor's Solicitor uses the mode of dispatch nominated by the Purchaser's Solicitor or otherwise agreed

(ii) not later than four days prior to closing the Purchaser's Solicitor shall send to the Vendor's Solicitor a list of closing requirements in accordance with the terms of the contract and as agreed in replies to Requisitions on Title and rejoinders on title (if any) (hereafter referred to as 'the completion documents'). It is the responsibility of the Purchaser's Solicitor to ensure that closing searches are furnished to the Vendor's Solicitor on or before the Closing Date and failure to do so will not be a reason to postpone the completion of the Sale

(iii) when the Vendor's Solicitor is immediately able to satisfy these closing requirements, then:

- where applicable, redemption figures for any mortgage or charge on the Vendor's title shall be furnished to the Purchaser's Solicitor
- the Vendor's Solicitor shall undertake with the Purchaser's Solicitor in the following form

“In consideration of the completion of the within sale and in consideration of your furnishing the balance of the Purchase Price to us (in the agreed manner) we hereby undertake with you to immediately furnish copies of all the completion documents to be signed by the Vendor properly executed and to act as your agent (without charge) in accepting delivery of the Deed of Assurance containing the receipt clause (thereby complying with Section 56 of the Conveyancing and Law of Property Act 1881) and immediately thereafter to dispatch to you all of the completion documents in accordance with the agreed list of completion documents and the mode of dispatch nominated or otherwise agreed.”



**NON-PERSONAL
CLOSING**

(Contd.)

- (iv) completion shall take place at the office of the Vendor's Solicitor when the Vendor's Solicitor:
 - has received the balance of the Purchase Price and
 - is in a position to satisfactorily explain all acts appearing on any closing searches received and
 - is in a position to satisfy all of the Purchaser's closing requirements in accordance with the terms of the contract.

- (d) All of the completion documents shall thereupon be dispatched to the Purchaser's Solicitor by the mode of dispatch nominated or otherwise agreed to include satisfactory explanation of all acts appearing on searches and the property's keys or authority for their collection. The Vendor's Solicitor shall communicate with the Purchaser's Solicitor in a recorded form advising that completion has taken place and thereupon the Vendor's Solicitor shall be entitled to release the purchase moneys and the Purchaser shall thereupon be entitled to vacant possession.

- (e) Pending completion in accordance with these Conditions any moneys received in advance of completion by the Vendor's Solicitor, other than the deposit, shall be held by the Vendor's Solicitor as trustee for the Purchaser.

UPDATE:

Please note this practice note is an update on the previous practice notes on this topic published at pages 13.9, 13.17 and 13.53 hereof.

Practitioners should have regard to the changes made by any subsequent edition of the Conditions of Sale or any subsequent practice note.

*Published in
Law Society Gazette,
July 2006*