



**A**s a vendor's solicitor, how often have you received a letter from the purchaser's solicitors in the following terms:

"We enclose a bank draft in respect of the balance of the purchase money payable. Same is being sent on trust, pending receipt by us of our closing requirements in accordance with our requisitions and satisfactory explanation of our searches".

Where there is a formal closing of the sale, the vendor's solicitor is in a position to release the purchase monies to his client forthwith. If he closes the sale on the above terms, the vendor's solicitor is unable to release the money to his client and, further, he is unable to say when he will be in a position to release the money to his client.

When the balance of the purchase money is furnished on the above terms a number of questions arise:

- When is the sale deemed to be closed?
- When does the risk pass to the purchaser?
- When is the purchaser entitled to get the key?

Because of the dangers inherent in closing sales through the post, in 1986 the Conveyancing Committee issued a code of practice for the closing of sales through the post. The purpose of this code of practice was to create a standard procedure for closing sales through the post.

For those practitioners who may not be familiar with its contents, the code is printed below.

Many transactions require personal closing. In the event of a loan cheque or the title documents being lost in the post, a solicitor may not be in a position to comply with any undertaking given. Accordingly, caution must be exercised when considering the completion of a transaction by postal closing.

#### **Code of practice : closing of a sale by post**

A sale of property is normally completed by the purchaser's solicitor attending the vendor's solicitor's office. On occasion the purchaser's solicitor will elect to close by post. While disclaiming responsibility for any adverse consequences of this practice, the Conveyancing Committee suggests that, if the sale is to be closed by post, the vendor's solicitor can reasonably insist that the sale should be closed in the manner herein set out. The closing procedure, which shall be described as the 1986 code of practice for closing sales by post, shall apply only where both vendor's and purchaser's solicitors have previously agreed to its operation.

## **POSTAL CLOSINGS**

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CLOSINGS**

(Contd.)

The sale shall be closed in the following manner:

- (a) The purchaser's solicitor shall not later than four days prior to the closing date send to the vendor's solicitor a list of closing requirements (in accordance with the replies to requisitions on title and subsequent correspondence).
- (b) When the vendor's solicitor is immediately able to satisfy or meet these closing requirements, notice shall be given (and where applicable mortgage redemption figures shall be furnished) to the purchaser's solicitor who shall then (save in the circumstances in paragraph (c)) send to the vendor's solicitor a bank draft for the balance of the purchase money or the balance due to the apportionment account (if any).
- (c) The vendor's solicitor will agree (without charge) to act as agent for the purchaser's solicitor with a view to receiving the deed of assurance containing the receipt clause. This is with a view to the purchaser's solicitor getting a good receipt for payment of the purchase monies pursuant to the provisions of section 56 of the Conveyancing and Law of Property Act, 1881.
- (d) Completion will be deemed to have taken place when the vendor's solicitor has received the balance purchase money outstanding and is at the same time in a position to furnish to the purchaser's solicitor the deeds and other items outstanding to close in accordance with the vendor's solicitor's replies to the requisitions on title and subsequent correspondence, in a position to satisfactorily explain all acts appearing on the searches (if any) submitted by the purchaser's solicitor to the vendor's solicitor for explanation, and in a position to hand over or otherwise make available the keys of the property. The vendor's solicitor should confirm by telephone or telex to the purchaser's solicitor that completion has taken place and thereupon the vendor's solicitors shall be entitled to release to the vendor the purchase monies.
- (e) After completion and until posting or other dispatch the vendor's solicitor holds the documents of title and other items to close as agent for the purchaser's solicitor.
- (f) As soon as possible after completion, the vendor's solicitor shall send to the purchaser's solicitor by registered post or as agreed the documents and other items and the keys (or an authority to the auctioneers to release these) if they have not been made available on a telephone or telex instruction after completion is deemed to have taken place. The documents and items are sent by registered post or as agreed at the sole risk of the purchaser's solicitor.

**UPDATE (1998):** Practitioners are also directed to the Practice Notes on this topic at page 13.9 and page 13.17 hereof.

**UPDATE (2006):** Please also refer to the further practice note on this topic published in the July, 2006 issue of the Gazette and re-published at page 12.39 and page 13.102 hereof.