



**T**he Conveyancing Committee receives many queries about the conduct of a sale of property where there is joint carriage of sale. The committee has considered a practice note published by Dublin Solicitors' Bar Association in March 1996 and the committee has decided to adopt this practice note and recommends same to the profession. While the practice note is drafted in the context of a sale arising out of family law matters, the committee has decided that the principles involved should be adopted in all cases where there is joint carriage of sale. This would be particularly important where the parties are co-owners of the property in question.

The committee wishes to thank the conveyancing and family law sub-committees of the DSBA for their permission to re-produce the practice note as set out below:

'The precise terms of the joint carriage should be agreed in writing in advance, or the procedures laid down by this protocol be followed. The committees recommend the following procedure:

#### **Letter of authority**

- 1.1 Both parties sign a letter of authority for one of the solicitors to take up the deeds on accountable receipt. The solicitors for the spouses should specify the proportions in which the proceeds of sale are to be distributed between the parties after payment of costs, outlay and encumbrances, including the redemption of any mortgage and payment of local authority and similar charges. The committees recommend the usual searches affecting the property be carried out against the husband and the wife at this stage to ensure that no unforeseen encumbrances appear on closing.

#### **The first solicitor's instructions**

- 1.2 The authorised solicitor (the 'first solicitor') takes up the title deeds, takes instructions, investigates title and prepares:
 

*(If one of the solicitors involved acted in the purchase of the property, then it is recommended that that solicitor be the first solicitor as defined)*

  - 1.2.1 Letter of engagement (section 68)
  - 1.2.2 Draft contract
  - 1.2.3 Draft replies to requisitions
  - 1.2.4 Draft family law declaration
  - 1.2.5 Draft ST21
  - 1.2.6 Draft tax clearance forms.

These are then submitted to the solicitor for the other party ('the second solicitor') for approval with the results of the searches, including a planning search for

## **JOINT CARRIAGE OF SALE**

**JOINT CARRIAGE  
OF SALE**

(Contd.)

comment. The solicitors should pay particular attention to the contents to be included in the sale, the closing date and the division of the remaining contents between the husband and wife.

**The second solicitor's instructions**

1.3 The second solicitor takes instructions and approves the draft documents before returning them. A letter of engagement issues.

*Note: Unless there are substantive issues of title or contract involved, the second solicitor should refrain from commenting on the conduct of the transaction.*

**Issue of contract**

1.4 When the draft documentation is returned, the first solicitor sends the engrossments with the copy title to the purchaser's solicitors, informing them that the second solicitor has joint carriage of sale.

**Exchange of contract**

1.5 On receipt of the signed contracts and deposit from the purchaser's solicitors, the first solicitor puts the deposit on interest and asks his or her client to sign.

Contracts are then sent to the second solicitor for signature.

Where the property is a family home and title is in the name of one spouse only, the solicitor for the non-owning spouse arranges for that spouse to execute his or her consent prior to the execution of the contract by the other spouse.

1.6 The second solicitor returns the signed contracts to the first solicitor, having kept a copy.

**Undertaking**

1.7 The first solicitor asks the mortgagee for details of the redemption figures and sends a copy to the second solicitor with an undertaking to send the first solicitor's client account cheque payable to the second solicitor for the amount due to the second solicitor's client immediately after completion. The first solicitor should obtain his or her client's irrevocable written authority to give this undertaking. The second solicitor furnishes his or her client's RSI number and income tax district to the first solicitor at the same time.

**Completion of exchange of contract**

1.8 The first solicitor completes the exchange of contract with the purchaser's solicitors and either forwards the CORT requisitions on title with replies to the purchaser's solicitors or replies to the purchaser's solicitors' requisitions on title in accordance with the draft replies already approved by the second solicitor. The first solicitor should not give a reply to a requisition on title without the prior approval of the second solicitor.



### Approved draft deed

- 1.9 The first solicitor approves the draft deed. If in doubt, it should be referred to the second solicitor for further approval.

### The engrossed deed

- 1.10 On receipt, the first solicitor sends the engrossed purchase deed and all other original documentation to the second solicitor for signing. On return, the first solicitor has his client sign and arranges a completion.

### Completion

- 1.11 Prior to completion, the first solicitor prepares a draft financial statement for approval by the second solicitor. Following completion, the mortgage, if any, is redeemed by the first solicitor and the proceeds of the sale divided as agreed. The second solicitor then discharges the first solicitor from all undertakings insofar as the second client is concerned.

If it is agreed that one solicitor may have **sole carriage of sale**, the committees recommend as follows:

- 2.1 That the spouses both sign a letter confirming which solicitor should act.  
2.2 The solicitor acting has the replies to the factual requisitions confirmed by the other solicitor.  
2.3 That a similar undertaking be given concerning the sum to be paid to the other spouse's solicitor.

### Costs

The engagement letters should state the fees to be charged, to be agreed between the solicitors before the section 68 letters issue. The committees note two-thirds of the fee should be paid to the first solicitor and one third to the second solicitor. The clients should be informed that the fee quoted in the section 68 letter is based on the presumption that the sale proceeds without undue complications.

## JOINT CARRIAGE OF SALE

(Contd.)