REGISTRY OF DEEDS

The Dublin Solicitors Bar Association has been engaged in correspondence with the Registry of Deeds with a view to reducing delays in the comparison and registration of Deeds.

The Assistant Registrar has explained that delays in comparison were due to the combination of a number of factors, including above - average levels of lodgements following the postal strike. Extra staff have been assigned to the office and already considerable progress has been made in reducing the arrears, resulting in a noticeable improvement from behind the Solicitor's desk.

The Assistant Registrar took the opportunity of pointing out that a proportion of the delay was inevitably caused by material appearing to be defective at comparison stage and having to be returned to the Solicitors concerned. The most frequent defects are:

(i) failure to complete the Memorial by the accurate inclusion of the execution and witnessing of the Deed;
(ii) incomplete description of the premises;
(iii) defects in the Affidavit or Jurat.

In future in order to minimise delay, the staff of the Comparison Office have been instructed to make a brief examination of all Memorials, to check for the more usual short comings. Only if a Memorial passes this examination, will comparison proceed.

It was pointed out to the Assistant Registrar that his staff had introduced, without warning or apparent authority, a practice rule that the particulars of execution and witnessing included in Memorials should be typewritten, instead of being inserted in handwriting.

For clarity, we set out of the following practical guidelines, observance of which will greatly facilitate the Registry staffs:

1. The body of the Memorial as well as the particulars of execution and witnessing, should be typewritten, for maximum legibility.
2. The Deed and its Memorial should have a properly detailed description of the premises.
3. Ensure that the Deed and its Memorial are properly witnessed and that the Affidavit of the attesting witness and the Jurat to that Affidavit are both properly completed and dated.

As a further practical aid to the completion of Memorials, we would remind Solicitors acting for Purchasers to obtain on closing detailed particulars of the witnesses to the Vendor's execution of the purchase Deed and Memorial.

REGISTRY OF DEEDS

(Contd.)

The Association has also been discussing with the Registry of Deeds the possibility of procuring Searches by post.

This proposal was made by the Assistant Registrar, who invited the Association to consider it and let him know its views. The Conveyancing Committee of the Association was unanimously in favour of the suggestion and is so informing the Registrar.

The broad basis of the arrangement would be that the Requisition for Search would be lodged by post, together with a standard fee. When the Search was ready, it would be certified by the Registry and returned by post to the Solicitors. When the sale had been completed and the closing act registered, the Purchasers Solicitors would relodge the Search, with a standard fee,so that it could be continued and closed as heretofore. It would then be returned to the Solicitor by post.

Published in Law Society Gazette, April 1980

This system would link satisfactorily with a further proposal that Registry of Deeds fees should, so far as possible, be standardised.

INTEREST ON CLIENT ACCOUNTS

The Society recommends that when a Solicitor holds or receives for or on account of a client money on which, having regard to all the circumstances (including the amount and the length of time for which the money is likely to be held) interest ought in fairness to the client be earned for him, the Solicitor shall either:

(a) Deposit such money in a separate designated account and account to the client for any interest earned thereon or

(b) Pay to the client a sum equivalent to the interest which would have accrued for the benefit of the client if the money had been deposited in a separate designated account.

The Solicitor is entitled to charge fees for any work in relation to the placing of monies on deposit or accounting to the Revenue Commissioners for interest earned.

Published in Law Society Gazette, November 1980

USE OF VENDOR AND PURCHASER ACT SUMMONS PROCEDURE

In a recent case, Mulligan v Dillon, judgement delivered on 7th November 1980 (unreported) brought under the Vendor and Purchaser Act 1874, Mr. Justice McWilliam indicated that he was of the opinion that both parties were under a misapprehension as to the functions of the Court in such Applications. In this case the Vendor's Solicitors had to reply to the standard form of Requisition number 52 in the Law Society's printed form of Requisitions, dealing with the Family Home Protection Act and replied as follows:

52 (a) Is there on the property any "Family Home" as defined in the Act?
Answer: "No"

52 (c) If the answer to (a) is in the negative please state the grounds relied upon and furnish now draft Statutory Declaration for Approval verifying these grounds.
Answer: "The Vendor's spouse had never resided on the property, herewith draft Statutory Declaration for approval".

In fact four draft Declarations were furnished, a full one by the Vendor with the following relevant provisions. "(2). I say I am the sole owner of the property which I have purchased by way of Lease dated 28th day of September,1973 which purchase I effected entirely with my own money and I further say that I have resided in the property continuously since the month of August 1973.(3) I say I have been separated from and lived apart from my husband Malachy since the 26th March 1967 and I further say since I acquired the property in 1973 my husband has neither resided in, visited, occupied nor has been accommodated in the property".

The draft declaration of the children were in the following terms subject to variance as to the period of residence: "I say that I resided in the property continually during the period between August 1973 and 30th December, 1977 and I further say that my said father Malachy Mulligan neither resided in, visited, occupied nor was ever accommodated in the property during the period aforesaid".

The Defendant's Rejoinder was as follows: "Purchaser notes contents of draft Statutory Declarations. However it is now clearly established that either a corroborative Statutory Declaration of the Vendor must be furnished or a Court Order obtained declaring that the premises are not a "Family Home". Please advise which procedure the Vendor will follow".

The Vendors reply to this dated 9th October was "The Vendor is issuing a High Court Special Summons seeking a Declaration that premises are not a "Family Home". You might please advise whether you have authority to accept service of the Summons".

A Special Summons was issued on the 20th October, 1980 and claimed an Order pursuant to Section 7 of the Act of 1874 for

USE OF VENDOR AND PURCHASER ACT SUMMONS PROCEDURE

(Contd.)

(a) A determination as to whether or not the said flat is a family home within the meaning of Section 2 of the Family Home Protection Act 1976;

(b) A determination as to whether or not the Defendant is a bona fide purchaser for value within the meaning of Section 3 of the Family Home Protection Act 1976;

(c) Further or other Relief;

(d) Costs.

Mr Justice McWilliam said that he was of opinion that both parties were under a misapprehension both as to the appropriate steps to be taken under an investigation of title on a sale and as to the function of the Court. It was not the function of the Courts to take over the duties of Conveyancing Counsel or Solicitors on an investigation of title. Once the facts have been established or the Vendors fail to make disclosure or the parties have joined issue as to the legal effect of the facts or of the failure of the Vendor to furnish information it is then for the Court to decide what is the legal position "whether good title has been shown or whether the Vendor was bound to furnish further or better evidence of title". In the instant case he indicated that it was for the Defendant to consider the particulars furnished in the Affidavit of the Plaintiff, make such further enquiries as she may be advised and then decide whether or not she would accept or refuse the title.

Mr. Justice McWilliam indicated that as no argument had been addressed to him under Law applicable to the contention made in the Defendant's Rejoiner he would not make any further pronouncement on it.

Section 9 of the Vendor and Purchaser Act 1874 provides that a Vendor or Purchaser of Real or Leasehold Estates in Ireland or their representatives may apply to a Judge of the High Court in Ireland "in respect of any Requisition or Objection, or any claim for compensation or any other question arising out of or connected with a Contract, (not being a question affecting the existence or validity of the Contract) and the Judge shall make such order upon the application as to him shall appear just and shall order how and by whom all or any of the costs of or incidental to the application shall be borne and paid.

Published in Law Society Gazette, December 1981

DECLARATION OF SOLVENCY

Where either a voluntary assurance appears on the title or the current transaction involves a voluntary assurance, it is unreasonable for a purchaser's/mortgagee's Solicitor to insist on a Declaration of Solvency made by the Grantor's Accountant. The Committee felt there was no reason to depart from the long-standing practice of accepting a Declaration from the Grantor.

This is not to suggest that a Declaration by an Accountant should not be accepted in lieu of a Declaration by the Grantor.

Published in Law Society Gazette, December 1981. JC

SEARCHES

The Dublin Solicitors' Bar Association asked whether it was reasonable to expect Lenders' Solicitors to accept Searches carried out by Solicitors, rather than Searches prepared by a recognised firm of Law Searchers. In the case in question, the practitioner had confirmed in writing that the Solicitor had professional indemnity insurance which covered searching.

The Joint Committee of Building Societies' Solicitors and the Law Society was unanimously of the opinion that it would be acceptable to refuse searches in such circumstances.

Published in Law Society Gazette, June 1983. JC

STATUTE OF LIMITATIONS

DECEASED OWNER

RECOVERY OF LAND

A member of the Society raised with the Conveyancing Committee the difficulty which arises in relation to the operation of the Statute of Limitations in respect of land forming part of the estate of a deceased following the Judgement of Mr. Justice McMahon in the case of *John Drohan -v- Mary Drohan* given on 31st July 1980. In his judgement Mr. Justice McMahon held that a personal representative of a deceased was entitled to recover property for the benefit of the estate of the deceased at any time within a period of twelve years from the date on which the right of action accrues i.e. when adverse possession was taken of the property.

The difficulty arises if the personal representative recovers the property after the expiration of 6 years from the date of death of the deceased. Section 45(1) of the Statute of Limitations 1957, as amended by Section 126 of the Succession Act 1965, provides that no action in respect of any claim to the estate of the deceased person shall be brought after the expiration of 6 years from the date of the right to receive the share or interest accrued. The date on which the right to receive the share or interest accrued is the date of death. Accordingly under the provisions of Section 45 it would appear that the rights of the beneficiaries to share in the estate are statute barred after the expiration of 6 years from the date of death. On the face of the legislation it would appear that if the personal representative recovers the property of the deceased from some third party, say a Solicitor, after the expiration of 6 years from the date of death he would be personally entitled to the recovered property but this hardly seems in accordance with the general principles of law in relation to a personal representative namely that a personal representative's duty is to administer the estate for the benefit of the beneficiaries.

The Conveyancing Committee has sought the advice of Senior Counsel who has advised that the questions raised are extremely difficult and can really only be determined by the Courts. The Committee would be interested in hearing from any Solicitors who may be involved in cases in which property has been recovered by a personal representative after the 6 year period and where claims are being pressed by beneficiaries.

Published in Law Society Gazette, October 1984

UPDATE: Practitioners are directed to the decision of the Supreme Court in the Case of Gleeson - v - Feehan [1997] 1 ILRM 522.

PRECONTRACT SEARCH BY PURCHASERS

Practitioners are reminded of the necessity of reminding clients that a check should be made before Contract to see if the property is affected to any extent by any Local Authority road plans or schemes. It is possible to have such searches carried out by firms of Law Searchers but to get reliable results from them one needs fairly clear instructions together with an accurate map identifying the property. The latter in particular is not always available. The Conveyancing Committee feels that Solicitors should in general not undertake the actual searches themselves except in special circumstances. In the absence of an accurate map and clear instructions the best person to make the search is the purchaser. Staff in the Local Authority offices are normally very helpful to a person checking such matters.

In addition to reminding clients of the need to take such precautions Solicitors should make a note on their file of the fact that they have done so and the response.

Published in Law Society Gazette, November 1984

INSURANCE BLOCK POLICY

The Profession might take note that all the "big five" Building Societies are now accepting Block Policies of Insurance on Apartments. The Societies require sight of the following:-

1. A copy of the Policy for the entire block
2. An endorsement noting the Borrower's and the Society's interest in the premises being mortgaged.
3. A letter from the Insurance Company confirming it will not cancel the Policy without at least 28 days' notice in writing to all interested Parties.
4. Evidence of payment of the last premium.

Published in Law Society Gazette, October 1985

NEED TO MAKE COMPANIES OFFICE SEARCHES AGAINST BUILDER/VENDOR

The Supreme Court has recently held in a case of Roche-v- Peilow that a Solicitor acting for a person who proposes to enter into a Building Contract and Agreement for Sale with a Builder/Vendor should not only make a Search in the Land Registry or where appropriate a Registry of Deeds Search, but a Search against the Builder/Vendor in the Companies Office. If the Purchaser's Solicitor finds that the site is encumbered by a Legal or Equitable Mortgage he must bring that fact to the notice of his client and allow his client, after proper advice, to decide whether or not the client should take the risk of accepting the transaction with the risk posed by the existence of the encumbrance.

The Court emphasised that advice on this aspect of the transaction should be given to the prospective Purchaser in addition to the advice already normally given by solicitors in such situations namely, that a Client making periodic payments during the course of building is likely to lose them all if the Builder goes Bankrupt, has a Receiver appointed to it or goes into Liquidation.

It is suggested that Searches should be made by the Purchaser's Solicitor in any case in which money is being paid to a Builder/Vendor or any person as Agent for a Builder/Vendor on account of the Building Contract Price or the purchase price of the land.

Published in Law Society Gazette, October 1985

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.

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's 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.

(e) 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 Solicitor shall be entitled to release to the Vendor the purchase monies.

(f) 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.

(g) 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

CLOSING OF A SALE BY POST

(Contd.)

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.

Published in Law Society Gazette, January/February 1986

UPDATE (1998): Practitioners are also directed to the Practice Notes on this topic at page 13.17 and page 13.53 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.

PURCHASING FROM LIQUIDATOR OR RECEIVER

Confirmation has been sought as to what special documentation should be insisted upon when purchasing from a Receiver or Liquidator of a Company. The proper standard of practice from a conveyancing point of view is:

Liquidator

A. Court Liquidation

1. Official copy of Winding Up Order of High Court.
2. Ensure that Court Order contains appointment of Liquidator. If not copy of Order of such appointment should be obtained.
3. Confirmation as to whether application made for Order of Sale. If so, obtain copy of such Order.

B. Creditors Liquidation

1. Copy of Ordinary Resolution of Company as to Winding Up as filed in the Companies Office.
2. Copy of Resolution appointing Liquidator.
3. Copy of Notice of Appointment of Liquidator with his endorsed acceptance of appointment as filed in the Companies Office.
4. If Directors are to be joined in sale copy of authority of Committee of Inspection sanctioning the continuance of the powers of the Directors (Section 269 (3)) of the Companies Act, 1963).

C. Members Liquidation

1. Copy of Special Resolution of Company as to Winding Up as filed in the Companies Office.
2. Copy of Resolution of Company appointing Liquidator.
3. Copy of Notice of Appointment of Liquidator with his endorsed acceptance of appointment as filed in the Companies Office.
4. If Directors are joining in sale obtain copy of Liquidator's authority sanctioning the continuance of the Powers of the Directors (Section 258 (2) of the Companies Act, 1963)

Receiver

A. Unregistered Land.

1. Satisfactory documentary evidence that the right to appoint Receiver has arisen e.g. that demand has been made but not met.
2. Certified Copy of Appointment of Receiver.
3. (a) Original Mortgage if all property in Mortgage being released.
   (b) Certified copy of Mortgage if only partial release. A plain copy is never sufficient.

4. Original Release (and Memorial) duly executed by Bank and stamped (or cheque to cover same).

B. Registered Land

1. Satisfactory documentary evidence that the right to appoint Receiver has arisen e.g. that demand has been made but not met.
2. Certified copy of Appointment of Receiver.
3. (a) Original instrument creating charge if fully discharged.
   (b) Certified copy of instrument creating charge together with undertaking that original charge will be lodged in the Land Registry for the purpose of the dealing.
4. Original Deed of Discharge duly executed by Bank and stamped.
5. Original Certificate of Charge either to be handed over or lodged in Land Registry depending on whether full or partial release.
6. Letter addressed to Land Registry from party which originally lodged dealing in Land Registry that returned documents should be sent to Purchaser's Solicitors on completion of dealing.

Other than the above the normal requirements as to documentation and searches applies. It should be noted that where the Mortgage or Debenture affects other lands than the subject of the Purchase, it is unnecessary to require an undertaking for production, safe custody or delivery of copies.

As to The Execution of Documents the following rules apply:

A. Liquidator

The Liquidator takes over the function of the Directors and accordingly the execution of a Deed of Assurance by a Company in Liquidation should be effected by the affixing of the Company Seal which should be attested by the signature of the Liquidator. The Liquidator should also be joined in the Deed and execute as Liquidator to confirm the sale.

B. Receiver

The Receiver acts on behalf of the Company and normally with the benefit of a Power of Attorney contained in the Instrument under which he is appointed signs the Deed of Assurance as Attorney for the Company.

One should check that the Company in Receivership had the required power to give a Power of Attorney, and also that such Power of Attorney was contained in the Instrument under which the Receiver is appointed. If either of the elements is missing, then the Company and its Directors must execute in the normal fashion, or the Bank must convey as Mortgagee.

Published in Law Society Newsletter, September 1986

UPDATE: See also the Practice Notes on this topic at page 13.17 and page 13.46 hereof.

ROCHE-V-PEILOW FOLLOW-UP

In a Practice Note published in the October 1985 issue of the Gazette, solicitors acting for persons who proposed entering into a building contract and agreement for sale with a builder/vendor were advised of the necessity of making appropriate searches in the Registry of Deeds, Land Registry and the Companies Office and of advising their clients of the risks posed by the existence of any encumbrances.

Recent High Court decisions have highlighted the risks involved for purchasers in the above situation and the importance of solicitors properly advising their clients of these risks. In the absence of any bonding scheme to protect purchasers' monies pending the completion of the purchasers' transaction, it is recommended that Solicitors acting for purchasers in the situation outlined above, should request the builder's/vendor's solicitor to hold all monies as stakeholder pending the completion of the transaction. In the event of the builder's/vendor's solicitor being unwilling or unable to act as stakeholder, purchasers' solicitors should strongly advise their clients in writing of the substantial risk of losing the monies and the inadvisability of entering into the transaction.

DEPOSITS AND STAGE PAYMENTS ON NEW RESIDENTIAL PROPERTIES

Published in Law Society Newsletter, November 1986

CLIENT FUNDS ON DEPOSIT RECEIPT

Deposit Receipts have traditionally been popular in solicitors' practices as a convenient method of accounting for any interest due to clients in respect of monies held on their behalf. Deposit Receipts enable the solicitor to give a clear account of the interest received on client funds held.

There are however, certain disadvantages associated with Deposit Receipts which appear to outweigh their benefits. These matters are considered as follows:

(a) Simple Interest -v- Compound Interest

Interest is only paid on a Deposit Receipt when it is uplifted. The interest which is then paid is Simple Interest - not Compound. Consequently, if a Deposit Receipt is held over a period of one year, the benefit of compounding interest will be lost unless the Deposit Receipt is uplifted as frequently as the normal crediting of interest by the Bank.

(b) Possible negligence in accounting for interest on Deposit Receipts.

Solicitors are advised that clients may feel aggrieved if funds held on deposit receipt on their behalf have not been uplifted for interest purposes at regular intervals, thus depriving then of the compounding effect of the interest credited. In such situations, a client may feel that his solicitor has acted negligently and seek appropriate compensation. Solicitors are reminded to present the deposit receipts for encashment at intervals corresponding with those on which the banks credit interest.

(c) Accounting problems associated with Deposit Receipts

The Solicitors Accounts Regulations require solicitors to account for all clients monies held. This requires Deposit Receipts to be accounted for as an integral part of the clients ledger. With most bookkeeping systems in operation in this country, Deposit Receipts are purchased by means of cheques drawn on the clients bank account. In accounting for such cheques, the clients ledger balances are often reduced by the cheques so drawn. If this happens, the clients ledger account does not truly reflect the indebtedness to the client. As the solicitor is obliged by the Solicitors Accounts Regulations to incorporate Deposit Receipts as an integral part of the clients ledger, solicitors should maintain a Deposit Receipt Register to enable them to satisfy this requirement. The experience of the Accountants in the Society is that the larger the number of Deposit Receipts in a practice, the more cumbersome they can become and the more difficult to exercise full accounting control over them.

(d) Deposit Account -v-Deposit Receipts

The operation of a clients Deposit Account in preference to individual Deposit Receipts has the distinct advantage that the solicitor has the benefit of a premium

rate of interest arising from the quantum of funds held. This premium compensates the solicitor to some degree for the extra administration costs involved in handling clients monies including the annual return of clients interest to the Revenue Commissioners.

Where a clients Deposit Account is operated, it is not difficult to determine the amount of interest due to a particular client. The banks will assist with this calculation if requested.

(e) Joint Deposit Receipts

The use of Deposit Receipts which is obviously most justified is where money is placed on joint deposit in the names of two solicitors. The usual example is where a solicitor's client is allowed into possession of property on putting the money on joint deposit. Clearly, this is the best and most convenient method of putting money in a joint account.

While the Solicitors Accounts Regulations specifically exclude joint deposit receipts from the definition of clients funds, it is good accounting practice to maintain a memorandum account reflecting all joint deposit receipts held.

(f) Conclusion

It is recommended that all solicitors who hold Deposit Receipts should review their appropriateness in the light of the foregoing. In any event, it should be borne in mind that the Deposit Receipts should be uplifted as frequently as interest is credited by the bank on a normal deposit account.

Published in Law Society Newsletter, April/December 1986

SOLICITORS' REMUNERATION GENERAL ORDER, 1986 S.I.NO 379 OF 1986

The following schedule shall be substituted for Schedule 11 to the Order of 1884

Schedule 11

1. Drawing deeds, wills, powers of attorney, bonds, memoranda and articles of association, cases for Counsel, regulations, bye-laws, agreements, notices, requisitions and other documents not specifically excluded -
   per page £3.00
2. Engrossing - per page £1.00
3. Copying Documents - per page £0.12
4. Perusing (where not allowed for in the fee for instructions); Deeds, Wills, powers of attorney, bonds, memoranda and articles of association, cases for Counsel, regulations, bye-laws, requisitions, searches, agreements and other documents not specifically excluded newly drawn and fair copied and submitted by or on behalf of another party for examination, approval or agreement on their contents – per page £1.00
5. Certifying any documents as a true copy £1.50
6. Attendance in Solicitor's Office:
   (a) first half hour.....£12.00
   (b) for second and each subsequent half hour £8.00
7. Attendance outside the Solicitor's Office
   (a) first half hour.....£13.00
   (b) for second and each subsequent half hour £13.00
8. Attendance outside Ireland - per day.....(Discretionary - not to exceed £300 per day)
9. Writing, signing and entering letters:
   (a) not exceeding one page £5.00
   (b) exceeding one page £7.50
10. Registration of Deed.....£21.00
11. Instructions. Such fee as may be fair and reasonable having regard to all the circumstances of the case including:
    (a) The complexity, importance, difficulty, rarity or urgency of the questions raised;
    (b) where money or property is involved, its amount or value;
    (c) the importance of the matter to the client;
    (d) the skill, labour, and the responsibility involved therein

SOLICITORS' REMUNERATION GENERAL ORDER, 1986 S.I.NO 379 OF 1986

(Contd.)

and any specialised knowledge given or applied on the part of the solicitor;

(e) the number and importance of any documents perused;

(f) the place where and the circumstances in which the business or any part thereof is transacted; and

(g) the time reasonably expended thereon.

NOTE: If having regard to all the circumstances of the case, including the complexity of the matter, the novelty of the questions raised, the skill, labour and responsibility of the solicitor, the amount involved and the importance of the matter to the client, where it is reasonable to do so, the foregoing charges for drawing, perusing, attendances and letters may be increased. The said charges may also be reduced by the Taxing Master for any special reason.

Published in Law Society Newsletter, April/ December 1986

SALE BY RECEIVER

At a recent meeting between representatives of the Conveyancing Committee and the Land Registry the question of what the Land Registry's requirements would be where a Receiver was selling property under a Deed of Appointment was raised. The Land Registry representatives confirmed that the Registry would require the original Deed of Appointment to be furnished together with a certified copy. The certified copy will be retained by the Registry and the original returned to the Solicitor.

UPDATE: See also the Practice Notes at page 13.11 and page 13.46 hereof.

Published in Law Society Newsletter, April 1987

CLOSING BY POST

The Committee is aware that difficulties will arise for the Undertaking Solicitor if it is necessary to complete the sale transaction by post. In the event of the loan cheque or the title documents being lost in the post, the Undertaking solicitor may not be in a position to comply with the terms of his Undertaking. Accordingly, extreme caution must be exercised where completion is taking place through the post.

UPDATE (1998): Practitioners are also directed to the Practice Notes on this topic at page 13.9 and page 13.53 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

Published in Law Society Newsletter, July 1987

ROADS-IN-CHARGE CERTIFICATES

ARE THEY TOO EXPENSIVE?

The Conveyancing Committee wishes to draw to the attention of practitioners, the high fees being charged by Dublin County Council and Dublin Corporation for providing Certificates confirming Change of Address or confirming that Roads, Footpaths and Services abutting a property are in charge. The Profession should be aware that the charge for each of the above Certificates is now £15.00 representing an additional cost of £30.00 in the normal second-hand house sale. The Committee is of the view that these charges are excessive and has considered methods of amending current practice to lessen this burden on the Vendor.

The Committee is of the view that it is essential in many cases to obtain one or other of the above Certificates and does not intend recommending a change in the current practice of furnishing these Certificates. The Committee wishes to advise however that it is the current policy of Dublin Corporation and Dublin County Council not to charge members of the public for attending at their offices and inspecting the relevant registers and road maps to satisfy themselves of the position. Accordingly, it is possible for a representative of the Vendor's Solicitor to attend and inspect the relevant records free of charge. The Vendor's solicitor would then be in a position to certify whether or not the roads, footpaths and services were in-charge and also to certify the position in relation to Change of Address (if any). The Committee recommends that if the Vendor's Solicitor can certify in this manner, then the Purchaser's Solicitor should accept such a Certificate in lieu of a Certificate from the Local Authority itself.

It should be noted that this Recommendation is confined to sales of second-hand dwellinghouses only.

Published in Law Society Newsletter, September 1987

UPDATE: The attention of practitioners is directed to the provisions of the current edition of Requisitions on Title and also to the Practice Notes on this topic at page 13.19 and page 13.20 hereof.

ROADS IN CHARGE CERTIFICATES

In the September, 1987 Newsletter the Conveyancing Committee indicated that Dublin County Council and Dublin Corporation are now charging a £15.00 fee for a Certificate confirming change of address or for a Certificate confirming roads, footpaths and services are in charge.

The Committee further indicated that it is the current policy of Dublin Corporation and Dublin County Council not to charge members of the public for attending at their offices and inspecting the relevant registers and road maps to satisfy themselves of the position.

The Committee has now ascertained that whilst there is no charge for inspecting records relating to roads, there is normally a charge for inspecting records relating to services.

UPDATE: The attention of practitioners is directed to the provisions of the current edition of Requisitions on Title and also to the Practice Notes on this topic at page 13.18 and page 13.20 hereof.

Published in Law Society Gazette, June 1988

HOUSING (RENT TRIBUNAL) REGULATIONS

The Minister for the Environment has made Regulations under the Housing (Private Rented Dwellings) Act, 1982 amending the provisions in the Housing (Rent Tribunal) Regulations, 1983 regarding the awarding of costs and expenses by the Rent Tribunal.

The Rent Tribunal was established in August, 1983 under Section 2 of the Housing (Private Rented Dwellings) (Amendment) Act, 1983 to replace the District Court as the arbitration body for determining terms of tenancy of dwellings which were formerly controlled under the Rent Restrictions Acts.

The new regulations, known as the Housing (Rent Tribunal) Regulations, 1983, (Amendment) Regulations 1988, came into force on 1st July, 1988 and will apply to applications received by the Tribunal on or after that date. The main provision of the regulations allows the Rent Tribunal to make awards in cases where applications are determined without an oral hearing. Formerly, costs could be awarded only in respect of oral hearings. Also, the Rent Tribunal will have more discretion in making awards in any case. The new provisions will ensure a more balanced and equitable treatment of parties in written cases where, very often, costs similar to those in oral cases are incurred.

Published in Law Society Gazette, October 1988

EVIDENCE THAT ROADS AND SERVICES ARE IN CHARGE OF THE LOCAL AUTHORITY

The Conveyancing Committee consider that it is quite acceptable for a solicitor to certify either from his own personal knowledge or from an inspection of the Local Authority records that Roads and Services are in charge of the Local Authority. Such a Certificate where forthcoming, should be accepted by a Purchaser in lieu of a letter from the Local Authority itself.

Published in Law Society Gazette, February 1989

UPDATE: See previous Practice Notes on this topic at page 13.18 and page 13.19 hereof.

POWERS OF ATTORNEY ACT, 1996: ENDURING POWERS OF ATTORNEY

What might be considered a reasonable and fair professional fee which should be charged by solicitors for preparing the new enduring powers of attorney established by the Powers of Attorneys Act, 1996? The question is as broad as it is long.

There is no straightforward or simple answer to such a question. There will be opposite ends of the spectrum in respect of this transaction.

For example, there may be quite straightforward enduring powers of attorney, say, executed as between husband and wife either at the time of making or execution of a will or preparing a codicil to an existing will. These would fall under the lower end of the spectrum and a fee in the order of £150 or thereabouts for each power of attorney would be appropriate.

Into the next category would fall cases where there may be some substantial amount of investigative work on the part of the solicitor, such as effectively gathering in assets, satisfying himself as to the criteria and testamentary and mental capacity of the donor and establishing with clarity the precise intentions behind the power of attorney and giving consideration to the question of the attorney's provision situation. Each one of these situations would have to be taken on its merits as undoubtedly there would be situations whereby the assets may be straightforward or indeed the Solicitor may already possess a list of the assets in the context of estate planning, taxation and inheritance tax advice. Consequently these situations would want to be considered in isolation.

However, taking a situation where a new client would call to a Solicitor, seek instructions and advice, a fee in the order of £500 might be appropriate for putting into effect the enduring power of attorney. After this, there is a third category which involves careful consideration as to the mental capacity of the donor. This is a very careful and subjective assessment requiring medical advice and careful consideration of the issues. Indeed, it is my experience that in cases where there are issues of mental capacity in addition to the medical advice, there will usually be an element of infirmity on the part of the donor which often necessitates physical attendance at the donor's house or nursing home or hospital.

In addition, there would also be a requirement that the power of attorney be registered in the Wards of Court Office. For attending to all these duties, an appropriate fee would be in the order of £600.00.

As in every rule, there will be exceptions and the above guidelines should be treated exactly as such. As always, there will be those Solicitors who would give the matter very considerable attention and there will be those who deal with the matter on a more cursory basis but yet achieve the same result. Consequently, a degree of restraint and caution should be considered in relation to the guidelines referred to above.

Paul Behan

Published in Law Society Gazette, December 1996

REQUISITIONS ON TITLE

1996 EDITION

NOTES

Requisition numbers have been changed due to new Requisitions being introduced and due to change in sequence. The format of a number of Requisitions have been changed for ease of reference with no substantive changes and accordingly are not commented on in this note.

Requisition Nos.

Old	New	
1	**1**	**Premises**
1.2	**_**	Reference to television aerial or cable has been deleted as more appropriate to pre-contract enquiries.
1.9/10	**1.4**	Reference to the HomeBond Scheme, the new name for the National House Building Guarantee Scheme has been introduced.
2	**2**	**Services - note change in heading**
2.8	**2.3**	Reference to lanes has been added. The wording "have all charges on account thereof been paid" has been dropped. If the roads are in charge it follows that a purchaser is unconcerned with payment of charges.
3	**3**	**Easements and Rights**
4	**4**	**Obligations/Privileges**
5	**5**	**Forestry**
6	**6**	**Fishing**
6	**7**	**Sporting** Fishing and Sporting has been split into two separate Requisitions 6 and 7 respectively. First of all a distinction had to be made between rights etc. arising by virtue of usage as against those granted by Deed wherein the latter case non exercise would not end the right and second a further distinction has to be made in regard to rights reserved to the Land Commission. In regard to Sporting Rights a further distinction had to be made between Registered Land and Unregistered title.

REQUISITIONS ON TITLE

1996 EDITION

NOTES

(Contd.)

7	**8**	**Possession**
7.2	_	7.2 has been deleted as superfluous.
8	**9**	**Tenancies**
_	**9.1.a.**	This is a new paragraph to take into account the provisions of the new Landlord & Tenant Act 1994.
8.2	_	This Requisition has been deleted since the replies given at 9.1.c. will have already elicited this information.
_	**9.8.a-c.**	These are new Sections to take into account the provisions of the Housing (Miscellaneous Provisions) Act 1992 and Regulations thereunder .
_	**9.8.d.**	This covers the Housing (Registration of Rented Houses) Regulations 1996 which came into force on 1 May 1996.
9	**10**	**Housing (Private Rented Dwellings Act) 1982-1983**
10	**11**	**Outgoings**
11	**12**	**Notices**
11.1	**12.1.a**	The list of Acts has been expanded to include the following: Air Pollution Act Building Control Act Environmental Agency Act Registration of Title Act Water Pollution Act Wild Life Act
12	**13**	**Searches**
13	**14**	**Incumbrances/Proceedings**
13.3	**14.1.c**	The Bord of Works charge has been replaced with a general rent charge.

REQUISITIONS ON TITLE

1996 EDITION

NOTES
(Contd.)

22	**15**	**Voluntary Dispositions/Bankruptcy - note change in heading**
22.1	**15.b.**	The period of years has been reduced from ten years to five years in line with the Bankruptcy Act 1988.
_	**15.c.**	To cover the existing situation where there is a voluntary disposition which can be set aside by the official assignee in the event of the disponer becoming bankrupt within a period of two years from the date of the voluntary disposition[1].
14	**16**	**Taxation**
_	**16.2**	This has been added to deal with Section 8 of the Capital Acquisitions Tax Act 1976.
_	**16.5.a & b**	These have been added to cover Probate Tax pursuant to Section 111 of the Finance Act 1993.
_	**16.6**	This is a new Requisition to cover any claim to property by way of adverse possession pursuant to Section 146 of the Finance Act 1994
_	**16.10**	This is a new Requisition to cover Section 76 of the Finance Act of 1995.
_	**16.11**	This Requisition is new to deal with Residential Property Tax Clearance Certificate.
14.13	**16.12**	This has been amended to deal with the new P.D. Form.
15	**17**	**Non Resident Vendor** This Requisition remains the same save and except reference to exchange control has been deleted as such controls have been abolished.
16	**18**	**Body Corporate Vendor**
_	**18.5**	This had been added to cover Section 29 of the Companies Act 1990.
_	**18.6.**	This has been added to cover Section 31 of the Companies Act 1990.

1. Please note that the next reprint of the 1996 Requisitions will incorporate a futher amendment to this Requisition in view of the Practice Note at page 13.62 hereof

17	**19**	**Land Act 1965** This Requisition has been changed by deletion of 17.1 and replaced by 19.1 to cover all situations where relevant. The Requisition has been further expanded to provide for a requirement of the Land Commission to consolidate. Any reference to Land Commission compulsorily acquiring land has been deleted in view of the fact that the land Commission are no longer acquiring lands.
18	**20**	**Unregistered Property** This requisition has been changed somewhat to deal with compulsory registration before or after completion and there is a tightening of the undertaking mentioned in the Requisition.
21	**21**	**Identity - note change in heading**
19	**22**	**Registered Property**
19.1	**22.1.a.**	This Requisition asks for copy *certified* copy Folio at this stage.
19.8/11	**22.1e/f.**	These have been merely moved from "furnish on closing" to "furnish now".
20	**23**	**Newly Erected Property**
_	**23.1.g.**	A new paragraph has been inserted to enable P.D. Stamp be impressed prior to completion.
_	**23.1.h.**	HB10 is needed at Requisition stage.
20.8	**23.2**	This now has a provision for assessment for Stamp Duty (for non grant type houses).
20.14	**23.2.g.**	HG5 has been replaced by HB10.
20.15	**23.2.h.**	HG6 has been replaced by HB11.
20.16/17	_	These Requisitions have been deleted to avoid duplication (as they are already in Registered Land Requisitions).

REQUISITIONS ON TITLE

1996 EDITION

NOTES
(Contd.)

23	**24**	**Family Home Protection Act 1976 and Family Law Act 1995 note additional reference to Family Law Act 1995**
24	**25**	**Family Law Act 1981 ("The 1981 Act")/Family Law Act 1995 note additional reference to Family Law Act 1995**
24	**26**	**Judicial Separation and Family Law Reform Act 1989/Family Law Act 1995 - note additional reference to Family Law Act 1995**
25	**27**	**Local Government (Planning & Development) Act 1963**
_	**27.11**	This is a new Requisition pursuant to Sections 9 and 10 of the 1992 Local Government (Planning & Development) Act.
_	**27.12.a & b**	This is a new Requisition to deal with Section 22 of the Building Control Act of 1990.
_	**28**	**Building Control Act 1990** Note of the above new Requisition has already been published.
34	**29**	**Fire Services Act 1981**
_	**29.3**	This is new, bearing in mind the fact that you will not normally get evidence of compliance from the Fire Officer himself pursuant to the Fire Services Act of 1981.
_	**30**	**Safety Health and Welfare at Work (Construction) Regulations 1995 ("the Regulations")** New Requisition. This Requisition will only apply where there is a "client" as defined in the Regulations. It will not apply to the majority of residential purchases.
_	**31**	**Environmental** Environmental law has become increasingly important in property transactions. Accordingly a new Requisition has been included and should be sufficient for most property transactions, but care should be taken with regard to commercial transaction.
32		**Food Hygiene Regulations** This is a new Requisition and it is to highlight the registration of

		premises such as hotel, restaurant, takeaway, public house, butcher shop, holiday camp or food manufacturer which must comply with the requirements of the Food Hygiene Regulations. However, it is important to note that a premises which, for example, sells sandwiches which are not prepared on the premises would have to comply with the Food Hygiene Regulations, but need not be registered.
26	**33**	**Leasehold/Fee Farm Grant Property**
27	**34**	**Acquisition of fee simple under the Landlord and Tenant (Ground Rent) Acts 1967**
28	**35**	**Requisitions Local Government (Multi Storey Buildings) Act 1988**
_	**35.2**	New Requisition to establish whether the above Act or the Building Control Act 1990 apply.
_	**35.9**	New Section to elicit evidence of compliance with Local Government (Multi-Storey Buildings) Act 1988.
29	**36**	**New Flats/Managed Properties** The heading and definitions in former Requisition 29 have been expanded to take into account privately managed developments to include houses and mixed house/apartment developments.
29.27	**36.13.c.**	See additional wording.
29.32(iii)	**36.15.c.**	See additional wording.
30	**37**	**Second Hand Flats/Second Hand Managed Properties**
_	**37.1.a.**	This is new and is for the purpose of establishing whether or not there are problems with the management company.
_	**37.2.ad**	These are new and are needed **<u>at this stage.</u>**
31	**40**	**Licensing** The reference to Food Hygiene Regulations has been extracted and expanded in a separate section. See Requisition No. 32.

32	**41**	**Restaurant/Hotel**
–	**42**	**Special Restaurant Certificate** This is a new Requisition to deal with a new type of Licence created by the Intoxicating Liquor Act 1988 permitting the sale of the full range of intoxicating liquors in a defined type of restaurant and the provision of a substantial meal therein.
33	**43**	**Dancing Music and Singing**
35	**44**	**Completion**

UPDATE: Practitioners should bear in mind that there may be further amendments in subsequent editions of the Requisitions on Title or in subsequent practice notes.

LOCAL GOVERNMENT (MULTI STOREY BUILDINGS) ACT 1988 [1]

This Act became law on the 14th November 1988. It affects all multi storey buildings which were not completed on or before the 1st January 1950. The multi storey building as defined in the Act means a building comprising five or more storeys and a basement is regarded as a storey. The Act applies to all such buildings whether residential, apartments, office blocks, hotels or any other buildings. This Act also applies to any multi storey building in the course of construction or to be built in the future. In the interests of protecting your Clients the Conveyancing Committee recommend that the Requisitions attached hereto be raised by way of pre-Contract Requisitions in relation to any building which may come within the meaning of a multi storey building as defined in the Act.

It is imperative that the Requisitions be raised before a Contract is signed as otherwise a Purchaser may be exposed to an enormous financial burden if they acquire a property which is a multi storey building and is a specified building which may require substantial work to be done to it to bring it up to a standard whereby it would come within the definition of robustness under the Act thereby enabling an Engineer to give the appropriate Certificate.

Whilst Engineers are in difficulty about giving Certificates other than to say that the building is not a specified building in the form of the Certificate as drafted in the present regulations it is hoped that in the near future the Certificates will be modified to an extent whereby the Engineers will be free to give the necessary Certificates. However in the interim it is recommended that the attached Requisitions be raised.

Pre-contract Requisitions
Local Government (Multi Storey Buildings) Act 1988

"The Act"

1. (a) Is the subject property or any part of the subject property a multi-storey building within the meaning of the Act or
   (b) Does it form part of a development in which there is a multi storey building with which it shares a common Management Company?
2. If the subject property is a building comprising five or more storeys (a basement being regarded as a storey for these purposes) but the entire building was constructed prior to the 1st day of January 1950 furnish now a Statutory Declaration by a person who can prove satisfactorily that the building was so constructed prior to the same date.
3. (a) If the answer to 1. above is in the affirmative, has a notice been served by the local authority under section 2(2) of the Act and if so, furnish a copy of same?
   (b) Whether or not such a notice has been served and the construction of the building was completed prior to the 14th November 1988 furnish now a

1. This Act no longer applies to new buildings commenced after 1st June 1992. See paragraph 9 of page 7.21 hereof.

LOCAL GOVERNMENT (MULTI STOREY BUILDINGS) ACT 1988

(Contd.)

certificate from a competent person in accordance with Section 3(a) or a declaration in accordance with Section 3(b) of the Act.

4. Where a Certificate has been submitted to the Local Authority pursuant to section 3 of the Act,
   (a) State whether or not the same is in accordance with one of the appropriate forms provided for in the Regulations made and enforced under the Act.
   (b) Furnish now a copy of the said Certificate.
5. Has any work been carried out to the building which might nullify the affect of a Certificate furnished in accordance with Section 3 and require a further certificate in accordance with Section 5 of the Act?
6. If the building is a multi-storey building the construction of which was not completed prior to the 14th of November 1988 furnish a certificate in the prescribed form submitted to the Local Authority pursuant to Section 4 of the Act.
7. Have any notices been served under the Act which have not yet been complied with?

Published as a supplement to Law Society Gazette, May 1990

MEMORIALS IN REGISTRY OF DEEDS

LIST OF QUERIES ARISING MOST FREQUENTLY

The percentage increase in the number of Memorials queries has risen from 30% to now 50% or so.

Discharging of queries is time consuming and entails at times the complete Comparison of Deed and Memorial a second time, this delays registration of Deeds and Memorials.

Hereunder a list of the more common queries on Memorials which may be of assistance in the proper memorialising of Deeds presented for registration.

1. Date in Deed and Memorial do not agree.
2. Party name in Deed and Memorial do not agree.
3. Habendum omitted from Deed and Memorial.
4. Schedule omitted from Memorial.
5. Description of premises incomplete in Memorial.
6. Situation of premises omitted from Deed and Memorial (i.e. Parish or City or Barony and County).
7. Setting out incorrect and incomplete (one or all parties not set out or addresses and occupations omitted).
8. Second witness omitted from memorial or address and occupation for second witness omitted.
9. Attestation in Memorial incorrect (should be signed and sealed).
10. Affidavit incorrect (viz.: Party name or deponent's name).
11. Deponent does not witness Deed.
12. Deponent does not sign Jurat.
13. Jurat date out of time.
14. Commissioner did not sign Jurat.
15. Jurisdiction of Commissioner.
16. Memorial not stamped.
17. Family Home Certificate omitted from Memorial.
18. Registration fees not required for Deed creating joint tenancy under Family Home Protection Act.
19. Query slip to be returned with Deed and Memorial.

Extract from circular issued with Law Society Gazette, December 1990

DERELICT SITES ACT 1990

Practitioners should be aware of the Derelict Sites Act 1990 which came into effect on the 27th of June 1990.

The Act provides a definition of a "derelict site" and imposes a general duty upon the owner or occupier of any land to take all reasonable steps to ensure that the land does not become or continue to be "a derelict site".

The Act goes on to provide that within one year after its commencement all local authorities shall compile and maintain a register of all derelict sites within their area. This register shall contain certain particulars of each derelict site such as the name of the owner or occupier (if they can be located), the exact location of the site, its market value and any action which the authority has envisaged in relation to it. Once such an entry is made in the register the owner or the occupier of the land shall be notified. The local authority may then serve a notice upon the owner or occupier of the derelict site obliging him to take whatever action is thought necessary in relation to it.

Among the powers given to local authorities under the Act is the power to enter upon land for the purposes of determining whether it should be entered on the register of Derelict Sites, and power to compulsorily acquire any derelict site.

Local authorities are obliged to levy and collect a charge to be known as a "derelict sites levy" from the owner of all derelict sites within their area. The Act provides that this levy, and interest on it, shall be a charge on the land to which it relates.

Once land which is entered on the Register of Derelict Sites is transferred from one person to another it shall be the duty of both transferor and transferee to notify the authority of the change of ownership within 4 weeks of it taking place. In the case of a transmission on death it shall be the duty of the person acquiring the land to notify the authority within 6 months of the transfer, and the duty of the personal representative to notify it within 2 months of the Grant of Representation issuing.

Practitioners acting for Purchasers of any lands capable of or likely to be affected by the Act should raise a Requisition on Title as to whether the lands are entered in the Register of Derelict Sites and, if so, should seek evidence as to the requirements of the local authority in relation to the lands, and evidence of the payment of any Derelict Sites Levies.

Published in Law Society Gazette, April 1991

HOTEL LICENCES

The purpose of this note is to draw the attention of the profession to the need to exercise extreme care in establishing exactly what type of Licence attaches to a Hotel.

If a Hotel was licensed prior to 1902 it has what is commonly known as a full Publicans Licence. If a Licence was granted for a Hotel after 1902 pursuant to paragraph (2) of Section 2 of the Licensing (Ireland) Act, 1902 it is not a full Seven Day Publicans Licence as such but is a restricted Publicans Licence. The Licence authorises the sale and supply of intoxicating liquors in a premises, which said premises must comply with the following definition contained in paragraph (2) of Section 2 of the Act 1902 as follows:-

1. The premises must contain at least ten, or, if situate in a County Borough or the Dublin Metropolitan District, twenty apartments set aside and used exclusively for the sleeping accommodation of travellers.
2. There must be no Public Bar on the premises for the sale of intoxicating Liquor.

Section 19 of the Intoxicating Liquor Act, 1960 did away with the prohibition against having a Public Bar on a Hotel premises by providing that where a Hotelier obtained the consent to the extinguishment of an "unrestricted" Publicans Licence anywhere in the State, he would be entitled to make an application to the Court for an Order permitting him to have a Public Bar on his Hotel premises.

The making of an Order pursuant to Section 19 of the Intoxicating Liquor Act, 1960 does not convert the restricted Publicans Licence (Hotel) Licence into an unrestricted full Seven Day Publicans On-Licence. A Hotelier who has successfully invoked Section 19 of the Act of 1960 must still ensure that his Hotel premises come within the definition of Paragraph (2) of Section 2 of the Act of 1902 as amended in that it must contain a requisite amount of bedrooms there required and specified.

Furthermore for those Hotels which were first licensed pursuant to the Tourist Traffic Act, 1952 (these are quite limited in number) and for those Hotels which first obtained a Hotel Licence after the enactment of the Intoxicating Liquor Act, 1960 it is necessary in order to obtain a renewal of the Licence to show that the Hotel is registered with Bord Failte. This requirement was introduced by Section 20 of the Intoxicating Liqour Act, 1960.

The effect of this is that if a Hotel ceases to maintain the required number of bedrooms, or ceases to be registered with Bord Failte, then the premises ceases to answer the definition of Hotel contained in paragraph (2) of Section 2 of the Act, of 1902 as amended and consequently is no longer entitled to operate as a Hotel and thereby has no licence whatever to operate a Bar on the premises or serve intoxicating liqour to anyone. Once a Hotel premises ceases to operate as a Hotel, the Hotel Licence ceases to be a protection to the Holder.

HOTEL LICENCES

(Contd.)

The actual Licence paper relating to the full Seven Day Publicans On-Licence and to the restricted (Hotel) Licence is one and the same; however; some years ago for the purposes of alerting people to the differences in these licences, the following note was inserted at the bottom of the Licence as follows:-

"This form of Licence is used for both (1) Public houses and (2) certain Hotels licensed under Section 2 (2) of the Licensing (Ireland) Act 1902. These Hotel Licences are subject to certain restrictions which do not apply to Public houses".

Unfortunately, it is not possible, from an examination of the statement, to establish whether this Licence relates to a Public House or a Hotel. The only way in which this can be done is to personally investigate the District Court Licensing Register relating to the actual premises as far back as records go and ascertain the jurisdictional section pursuant to which the Licence was first granted. If the Licence was first granted prior to 1902, then it will clearly not be a Hotel Licence as the Hotel Licence was only created in 1902.

There is a popular misconception that an Application in respect of Hotel premises pursuant to Section 19 of the Act, 1990 converts a "Hotel Licence" into a Publicans Licence. This is incorrect and it cannot be sufficiently stressed that a Section 19 Order merely does away with the prohibition against having a Public Bar on a Hotel premises.

Because of this popular misconception however, restricted Hotel Licences have in fact been renewed as Publicans Licences. Again this does not entitle the holder of a Hotel Licence, which he thought was a seven day publicans on-licence to hold a full publicans licence.

In order to protect himself or herself therefore, every solicitor when purchasing a licensed premises for a client, should personally and in detail inspect the District Court Licensing Register in respect of the premises in order to conclusively ascertain the type of Licence attaching to the said premises.

Published in Law Society Gazette, July/August 1991

HOTEL LICENCES

Further to the practice note which was published in the July/August edition of the Gazette, the Conveyancing Committee wish to draw attention to the fact that all relevant searches should be carried out prior to contract and in the event that the District Court register contains insufficient information, a further search should be carried out on the Circuit Court file.

Published in Law Society Gazette, October 1991

DIRECTORS DEALING WITH COMPANY

SECTION 29 COMPANIES ACT, 1990

Section 29 of the Companies Act, 1990 came into operation on 1st February 1991. As a result a company may not enter into an arrangement with:-

(a) a director of the company; or

(b) a director of its holding company, or

(c) a person connected with such director

without the arrangement having been first approved by resolution of the company in general meeting.

An arrangement for the purpose of the section is one whereby one or more non-cash assets are acquired by:-

(a) the company from a director;

(b) the company from a person connected with its director or a director of its holding company,

(c) a director or a person connected with him from the company or its holding company

Connected persons are defined in Section 26 of the Act as:-

(a) the director's spouse, parent, brother, sister or child;

(b) a person acting in his capacity as the trustee of a trust the principal beneficiaries of which are the director, his spouse or any of his children or any body corporate which he controls, or

(c) a partner of that director.

A body corporate is connected with a director if it is controlled by the director. Section 26 (3) contains detailed provisions defining control. It should also be noted that the definition of a director includes a shadow director as defined in section 27.

Transaction falling below the thresholds specified in section 29 (2) are not affected. The transaction must not exceed IR£1,000 in value. If it does, it will only be exempt from the provisions of the section where it is less than IR£50,000 in value and that value does not exceed 10% of the relevant assets of the company as defined in the subsection.

The Conveyancing Committee has considered the implication of Section 29 for conveyancing practice and has taken the opinion of Professor Wylie on the matter. As a result it has decided to issue the following practice note. In transactions between natural persons and bodies corporate and in transactions between bodies corporate a certificate should be included to show either that the parties are not connected with one another for the purposes of Section 29 or that they are connected with one another and the requisite resolution has been passed by one or more companies involved.

The Committee considers that the detail of the matter should not be one of title and that the certificates should do no more than certify the position. Accordingly, it is not sought to produce either the formal resolution of the company or other detail in the certificates which would put an investigator on notice of additional facts.

These certificates are not required in a transaction between two natural persons.

In these certificates the expression "A" should be replaced by a reference to either the vendor or the purchaser as appropriate. The expression "B" should be replaced by the name of the holding company of either the vendor or the purchaser as appropriate.

The first certificate deals with a transaction where the parties are connected.

The second certificate deals with a transaction where the vendor or the purchaser is a natural person dealing with a body corporate with which he/she is not connected.

The third certificate deals with a transaction where both the vendor and the purchaser are unconnected corporate bodies.

These certificates do not exhaust the situations which may arise and should be varied as appropriate.

The following points arising under the Companies Acts should be borne in mind:-

1. Where the Articles of Association of the company permit, the company may pass a resolution under section 141 (8) of the Companies Act, 1963. Such a resolution in writing, signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting is as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held.
2. "Holding company" is defined in Section 155 (4) of the Companies Act, 1963 as:- "a company shall be deemed to be another company's holding company if, but only if, that other is its subsidiary". The full definition of subsidiary is set out in Section 155 (1) of the Companies Act, 1963.
3. "Director" under provisions of Section 27 of the Companies Act, 1990 includes a shadow director. A shadow director is a person in accordance with whose direction or instructions the directors of a company are accustomed to act. The only exclusion is a person whose directions or instructions are given as advice in a professional capacity.

DIRECTORS DEALING WITH COMPANY

SECTION 29 COMPANIES ACT, 1990

(Contd.)

Published in Law Society Gazette, December 1991

Certificates

1. [IT IS HEREBY CERTIFIED for the purposes of Section 29 of the Companies Act, 1990 that the transaction hereby effected has been approved by a resolution passed (at an Extraordinary General Meeting of the members of [A/B being the holding company of A]) or (as a written resolution of the members of [A/B being the holding company of A])]

   OR

2. [IT IS HEREBY CERTIFIED for the purposes of Section 29 of the Companies Act, 1990 that the [vendor/purchaser] is not a director or a person connected with a director of A or its holding company]

   OR

3. [IT IS HEREBY CERTIFIED for the purposes of section 29 of the Companies Act, 1990 that the vendor and the purchaser are not bodies corporate connected with one another in a manner which would require this transaction to be ratified by resolution of either]

AUTOMATIC RENEWAL OF INTOXICATING LIQUOR LICENCE

It is the view of this Committee that if you had been in the habit of attending to the renewal of your client's publicans' licences prior to the introduction of Section 41 (2) of the Courts (No. 2) Act, 1986 it would be prudent, even at this late stage, to write and advise your client of the consequences of failing to renew his licences. It should be pointed out to the client that he must renew his licence on an annual basis, otherwise he runs the risk of incurring the expense of applying to the Circuit Court for a new licence if he adverts to the fact that he has actually lost his licence through non-renewal provided that he does so within a period of five years. If he fails to apply to the Circuit Court for a new licence within a period of five years after the date when he last renewed it then he forfeits the right to a new licence absolutely.

Published in Law Society Gazette, January/February 1992

THE DOCTRINE OF CAVEAT EMPTOR WITH REGARD TO THE STRUCTURE OF A PROPERTY

It is the view of the Conveyancing Committee that every purchaser of a property should be advised in writing to have the structure of the building checked out either by a qualified engineer or architect. It would be prudent for solicitors not to recommend any one particular architect or engineer but rather that clients should find for themselves the person with the necessary qualifications to give them a satisfactory report. If solicitors fail to give clients such advice and it subsequently transpires that it costs the clients a lot of money to carry out work to the structure that they did not take into account when they decided to buy the house, they may issue proceedings for negligence.

Furthermore, if clients query the advice of solicitors to have the house checked out by an engineer or architect and make the point that the house will be inspected in any case on behalf of the Building Society, solicitors have an obligation to point out to them that Building Societies send out their valuers mainly to establish the value of the property in relation to the security which they are taking on it. The Building Societies' surveyors are contractually bound to the Building Society and not to the house purchasers. On the basis of existing Irish court decisions purchasers have no privity of contract with the Building Societies' surveyors and therefore cannot sue them.

There is no point in solicitors just verbally advising clients to get such a report done; it is important that it should be put in writing. Obviously, other areas of concern arise i.e. dry rot, dampness etc. but an architect or engineer who is properly qualified will advise that further experts be retained to advise on these areas should they become evident from an inspection. In addition to the actual structure any services relating to the house and, in particular, where there is a septic tank, should also be examined by the expert.

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CORT

The Conveyancing Committee of the Law Society is pleased to recommend to the profession the computerised requisitions on title software package - CORT - recently launched by the Dublin Solicitors Bar Association.

This software package will enable computerised solicitors acting for vendors to reply to the standard requisitions on title without the necessity to utilise the printed forms, carbon paper and typewriters.

To establish the introduction of the software package into the mainstream of conveyancing, the following recommendation is made by the Committee viz:-

The vendor's solicitor who intends using the CORT package should notify the purchaser's solicitor of this fact when submitting contracts, also advising the purchaser's solicitor that he proposes giving to the purchaser's solicitor a set of standard requisitions on title with replies thereto at the time of returning to the purchaser's solicitor his client's part of the contract for sale executed by the vendor.

When the purchaser's solicitor receives the requisitions on title with replies he can adopt such requisitions and replies and raise any other requisitions and/or objections which he considers necessary and appropriate to the transaction. The additional requisitions and/or objections should be raised by letter and, of course, will be replied to by letter.

The Committee believes that the advantage of the system will be to speed up the process of conveyancing, reduce the bulk of documentation sent between offices with a resulting reduction in postal and other charges and ease of production of documentation.

The CORT software package is available from £95.00 by contacting David Walley, 87 Amiens Street, Dublin 1 Tel: (01) 8363655.

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UPDATE: Practitioners should check with C.O.R.T. Limited, 54 Amiens Street, Dublin 1 (Telephone 01) (8363655; Fax 01) 8363610 for up to date information and costs.

RENEWAL OF LIQUOR LICENCES 1992 - TAX CLEARANCE CERTIFICATE

Section 242 of the Finance Act, 1992 introduced a new requirement whereby holders of the licences hereafter specified must obtain a Tax Clearance Certificate before their licence will be renewed at the annual licensing.

1. A spirit retailers on-licence (which shall include publican ordinary licences, hotel licences, railway refreshment room licences, publican six day licences, publican early closing licences, publican six day and early licences, special restaurant licences and theatre licences).
2. Spirit retailers off-licence.
3. Wine retailers on-licence.

The position is that if any person wishing to renew any of the aforesaid licences at the annual licensing in September has not already obtained an application for Tax Clearance Certificate from the Revenue Commissioners, he/she should do so immediately.

There does not appear to be any provision in the Act determining what is to happen in the event that the Clearance Certificate, although applied for, has not been issued by the date of the annual renewal. However, in the event that the Certificate has been refused on the date of the renewal of licences and an appeal had been lodged then where a licence has been granted in respect of the previous licensing year such licence would continue in force beyond its latest expiry date pending the final determination of the appeal. In the event that the Certificate is refused the aggrieved party has 30 days within which to lodge an appeal against the notification of refusal.

In the case where a licence has not been granted in the previous licensing year, a temporary licence will be issued and will remain in force pending the final determination of the appeal provided that the licence could have been issued but for the provisions relating to the Tax Clearance Certificate and provided that in all cases that the amount of duty that would have been payable on the granting of the licence is duly deposited with the proper collector of Customs & Excise. On final determination of an appeal where an appeal has failed, the temporary or continued licence shall expire not later than seven days after the determination of any appeal and any excess duty paid shall be refunded in such circumstances.

It is important to note that there are certain circumstances involving the transfer of a licence where a Tax Clearance Certificate will not be issued unless the tax affairs of the applicant and the tax affairs of the previous holder of the licence, in so far as they relate to the activities conducted under the licence, are up to date. These circumstances are:

Where the transfer took place after 24 April, 1992 (but not if the transfer was contracted before 24 April) *and* the transfer was one of the following:

RENEWAL OF LIQUOR LICENCES 1992 - TAX CLEARANCE CERTIFICATE

(Contd.)

Published in Law Society Gazette, September 1992

a) a company to an individual;
b) a company to a company;
c) a company to a partnership;
or
d) a partnership to a company;
and there is a connection between the parties.

When applying for the Tax Clearance Certificates in these circumstances, details of the connection between the parties should be given to the Revenue Commissioners.

LOCAL AUTHORITY SHARED OWNERSHIP SCHEME

Some practitioners have expressed concern about the Local Authority Shared Ownership Scheme recently introduced under the provisions of the Housing (Miscellaneous Provisions) Act, 1992. The Scheme provides that in respect of a purchaser who has been approved for eligibility under the Scheme,

(a) the Local Authority purchases the property,
(b) the purchaser pays £1,000 to the Local Authority by way of deposit,
(c) the Local Authority then grants a lease to the purchaser for 99 years with provision for payment of a rent calculated by reference to the Corporation's "equity" of the house (at present 5% of the value of the Corporation's share) which rent is index linked,
(d) At the same time the purchaser borrows the remainder of the value of the house from the Local Authority and enters into a mortgage for that amount, charging his interest as lessee for 99 years.

Practitioners will be aware that the solicitors for the Local Authority act in the purchase of the property, and the lease and mortgage submitted to the Purchaser for execution cannot be altered, and accordingly the purchaser's solicitor is not aware of the title acquired, nor can they seek to amend the documentation.

In the circumstances practitioners are left with no alternative save to advise clients on the nature of the Scheme and leave it to the client to decide whether or not they will proceed with the purchase. It will be appreciated that a purchaser in this situation has virtually no choice in the matter. If they want the house then they must buy it on the Local Authority's terms. Furthermore, the Local Authority charges a fee for its own legal services. At the point of completion, however, if the Law Agent deems it necessary, the matter may be referred again for independent legal advice, for instance, to advise on the Family Home Protection Act.

Published in Law Society Gazette, November 1993

FARM RETIREMENT SCHEME

In order to streamline the system for the Farm Retirement Scheme, the Conveyancing Committee has agreed a basic checklist with the Department of Agriculture of the legal documentation which must be filed with any application for the pension. Where particular situations are not covered by the checklist then practitioners should contact the Department for clarification of the requirements.

In relation to the Scheme itself where practitioners are unsure as to whether a particular farmer is eligible to join the Scheme the Department will accept submissions in advance and will advise as to whether or not on the facts a person is eligible.

When the Scheme was launched in January the Department issued the "Scheme of Early Retirement from Farming" which includes definitions and guidelines and the application form for the pension. They also issued a basic guideline booklet. Since these were issued the Department has been looking at the Scheme on an ongoing basis. This has resulted in certain changes to the Scheme itself and to requirements under the Scheme. Practitioners dealing with the Scheme, therefore, need to be in regular contact with their Farm Development Office in order to obtain current Department Practice in relation to the Scheme.

The Conveyancing Committee has had meetings both with the Department of Agriculture and the IFA in relation to the Scheme. One of the concerns of the IFA was the question of the knowledge which Solicitors had of the Scheme and the fees which were being charged.

In relation to fees it was pointed out to the IFA that in order to qualify for the pension, legal work, other than applying for the pension itself, had to be done in order to meet with the requirements. The legal fee would depend on what work had to be done. For example, there may be two farm transfers involved; a transfer and lease; two leases; title perfection where titles have not been kept up to date; and in certain instances Administration and Probates, Deed of Family Settlement, Deed of Appropriation and possibly Deed of Disclaimer. In cases where the transferee already has a holding there may be one less lease or one less conveyance to be done. The work done may also require the updating of wills. In that regard it was pointed out that Solicitors would be happy to detail their charges and other expenses to their client before commencing any work on the Scheme.

The Committee's advice to practitioners is that they should not undertake to do a Farm Retirement Scheme case unless they're prepared to fully familiarise themselves with the system. In certain instances any delay may result in a permanent loss to an applicant and Solicitors should be aware of this before undertaking the work.

Where co-ownership (either joint tenancies or tenancies in common), intestacies, and testacies are involved practitioners should check in advance with the Department of

FARM RETIREMENT SCHEME
(Contd.)

Agriculture as to how the Scheme will apply. In certain circumstances different options are available.

The Scheme entitles persons who are in joint management of the holding to apply for the pension. The Department will advise as to whether a person is in joint management.

While leases at full market value are stamped at 1% of the annual market rent, this is not so in the case of a nominal rent. Under Section 102 (ii) of the Finance Act 1992 stamp duty is payable on the premium value of the lease where the rent is less than the market value. In such cases there is no reduction in the stamp duty rate where the parties are related.

There are also Capital Acquisitions Tax implications where the rent reserved under the lease is less than the market rent. The lessee is deemed to get a gift each year. This gift is the difference between the market rent and the rent reserved.

The AIB in conjunction with the IFA and with the op-operation of the Conveyancing Committee have brought out a revised version of the Farming Master Lease. This is a lease drawn up to cover almost all situations pertaining to agricultural property and practitioners should, if they are using it, select the clauses appropriate to the particular case.

Guideline Conveyancing Checklist

1. Registered Land

(i) Where the transfer of title to Transferee has not yet been registered.

- Certified copy of Original Transfer (with Map) duly stamped by Revenue together with a copy of the relevant Folio/s (and File Plan if available) or Land Registry Search and a map of the holding.
- Dealing Number.
- Undertaking of Transferee to furnish certified copy of Folio/s as soon as registration is complete. If same is not submitted within one year, Department will review the matter).
- Confirmation of the areas transferred (as per title)

(ii) Where the transfer of title to Transferee has been registered

- Certified copy of the relevant Folio/s (and file plan if available) or Land Registry search and a map of the holding.

2. Unregistered Land

- Certified copy Deed/s of Assignment/Conveyance (and a map of the holding)

duly stamped by the Revenue and registered in the Registry of Deeds.

- Confirmation of the areas transferred as per title.

3. Leases

(i) For leased land to be reckoned as eligible under the Scheme, leases must:-

- have a residue of at least FIVE YEARS remaining at the date of the transferor's retirement or at the date of the enlargement, whichever is the later. Where necessary such residue should be extended to cover the period of the pension.
- be duly executed and stamped by Revenue. (There is no registration requirement). The lease should accompany the application.
- have Land Commission consent (Section 12) (Leasing Application Form).
- stipulate the Annual Rent and operative date.
- state the area, have map attached and give Folio Numbers where applicable.
- every lease submitted under the Scheme, whether it is from the Transferor or by way of enlargement must be "backed up" with copies of the relevant Folio/s (and file plan if available) or Land Registry Search and Map.
- indicate any restrictions as to land use.

(ii) Lessors of ANY AND ALL Leases entered into under the Scheme must be the registered owners of the lands in question or the legal personal representative of the said owner.

4. Land Commission Land

Certificate from the Land Commission confirming the status of the land in question. This will set out the full detail of the said lands.

5. General

It should be noted that the various Undertakings or Certificates may be embodied in the deeds or given separately given the particular circumstances ..... i.e. Family Home, Section 12, Compliance with the Scheme.

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SALE BY A RECEIVER

As the Receiver's authority to sell depends on the continuing existence of the charge under which he was appointed, it is important to ensure that any discharge of a charge in favour of the appointor of the Receiver is dated subsequent to any assurance under which the Receiver purports to sell the property.

This note is an addendum to the Practice Note titled "Purchasing From Liquidator or Receiver" published in the Law Society's Newsletter dated September 1986.

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UPDATE: See also the Practice Notes at page 13.11 and page 13.17 hereof.

CLOSING SALES BY BANK DRAFTS

Following the longstanding recommendation of the Conveyancing Committee, the general practice of requiring payment of the balance of the proceeds of sale to be made by means of either Bank Drafts or cheques issued by Lending Institutions on the completion of the purchase of properties has become well accepted and established.

However it has come to the notice of the Committee that there is an increasing tendency to depart from this practice by reverting to the previous practice of Purchasers' solicitors tendering their own client account cheques for payment of balance of proceeds of sale on completion of purchases. The Committee emphatically disapproves of such a tendency as it considered it to be not in accordance with good conveyancing practice and highly undesirable as it exposes Vendors' Solicitors to potential claims for negligence in the event of payment on foot of such cheques not being honoured on the instructions of Purchasers or otherwise.

In expressing the foregoing view, the Committee is conscious of the expanding practice which, as a matter of necessity, has developed in respect of three-way closings of sales, of Lenders' Solicitors' cheques being utilised to discharge payment of balance of proceeds of sale where Purchasers' loan cheques are split to facilitate the redemption of Vendors' Mortgages on such closings.

However as this latter procedure does vary from the recommended practice, the Committee considers that, as a matter of prudence, Vendors' Solicitors, to avoid potential claims for negligence, only should avail of such procedures on the express written instruction of their clients.

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PARTICULARS DELIVERED (P.D.) FORMS

All solicitors' offices recently have been furnished by the Revenue Commissioners with a specimen supply of the new Particulars Delivered (P.D.) forms which will come into operation on 1st September 1995 together with a helpful explanatory memorandum. It is hoped that practitioners will find the new forms convenient and user-friendly.

The Conveyancing Committee strongly recommends that henceforth practitioners themselves should not complete the new P.D. forms which, inter alia, require details of tax reference numbers of the parties involved in conveyancing transactions to be furnished but should ensure that the forms are signed by the parties themselves. It is the unanimous view of the Committee that, in their own interests, practitioners should not assume the responsibility of completing the new Particulars Delivered Forms.

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SALE OF LICENSED PREMISES

TAX CLEARANCE CERTIFICATES

In situations where the owner of a licensed premises owes monies to the Revenue authorities and is unable to pay those monies in full, the Revenue are prepared, in some cases, to enter into arrangement with the tax payer for the payment of the monies due to the Revenue by instalments over a period of years.

Where the premises are put up for sale and the vendor requires a tax clearance certificate the Revenue will, in some cases, issue a Tax Clearance on getting an undertaking from the solicitor having carriage of sale of the premises that in the event of a successful sale the full amount due to the Revenue will be discharged by the solicitor subject only to the payment of prior mortgages and the costs of sale.

The Conveyancing Committee have negotiated a standard form of undertaking with the Revenue solicitor which is printed below.

Before giving the Undertaking a solicitor should ensure that he has all necessary authorities and consents and that he has the title documents in his possession in accordance with the Undertaking. Also, up-to-date searches will have to be obtained by the solicitor identifying all encumbrances existing at the date of the Undertaking, before he can give the Undertaking.

Form of Undertaking

TO/
Collector General, Tax Clearance Section, Sarsfield House, Limerick.

I/We confirm that I/We act on behalf of ..... I/We understand that our client has outstanding arrears of Tax and Interest which currently amount to IR£ .....

My/Our client has informed me/us that he/she proposes to enter into an instalment arrangement with the Collector General to clear outstanding arrears of Tax and Interest over a period of ..... months commencing on ..... and I/we am/are aware that the amount of arrears currently outstanding is IR£ .....

I/We have been instructed by my/our client to act in the forthcoming sale of his/her licensed premises situate at ..... and I/we have in my/our custody the title documents to the said licensed premises being an accountable receipt from .....

I/We am/are obliged under the terms of the accountable receipt to return the documents to ..... on demand. The return of the documents to ..... will end my/our obligations and this Undertaking will cease to have effect.

SALE OF LICENSED PREMISES

TAX CLEARANCE CERTIFICATES

(Contd.)

I/We have caused searches to be made to ascertain what encumbrances there are affecting this property, and the results of my searches show the following encumbrances:-

[In consideration of the Collector General issuing a Tax Clearance Certificate to my client, and subject to the receipt of the balance of the purchase money on the successful completion of this sale by this firm (or by me), I/we undertake to remit to the Collector General the net proceeds of the sale of the premises or such sum as is sufficient to discharge my client's outstanding Tax liability, whichever is the lesser].

or

[In consideration of the Collector General confirming the said instalment arrangement, issuing the Tax Clearance Certificate, and subject to the receipt of the balance of the purchase money on the successful completion of this sale by this firm (or by me), I/we undertake to remit to the Collector General the net proceeds of the sale of the premises or such sum as is sufficient to discharge my client's outstanding Tax liabilities, whichever is the lesser.]

The net proceeds shall mean the amount remaining of the purchase money for the premises after the discharge of all encumbrances on the said property and of all auctioneer's fees and expenses and all solicitor's fees and expenses and VAT on auctioneer's and solicitor's fees in connection with the said sale.

I/We confirm that I/we will not act in the creation of any charge on the premises subsequent to the date of this undertaking.

I/We confirm that I/we have my/our client's irrevocable authority to give the above Undertaking, as evidenced by his/her signature hereunder (and where appropriate that my/our client's spouse has given his/her prior written consent to the giving of this Undertaking).

.....
Solicitor

.....
Client

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CONVEYANCING EXPERT WITNESSES

THESE GUIDELINES HAVE BEEN COMPILED BY MEMBERS OF THE CONVEYANCING COMMITTEE WHO HAVE CONSIDERABLE EXPERIENCE OF ACTING AS EXPERT WITNESSES. THE GUIDELINES HAVE BEEN APPROVED BY THE CONVEYANCING COMMITTEE.

The Conveyancing Committee receives a regular stream of requests to provide expert witnesses in litigation cases involving conveyancing practice. While the Committee endeavours to meet such requests it is concerned that on many occasions insufficient notice is being given to the Committee and the following practice note was issued to the profession in the August/September 1996 issue of the Gazette.

1. An expert witness should be instructed before the statement of claim or defence stages as appropriate.
2. The expert should be given proper instructions i.e. a proper case to advise, not undigested correspondence files and shoals of documents.
3. A consultation should be held with the expert witness as soon as he has given his advice. Occasionally a consultation may be necessary before the expert gives his advice.
4. An expert should not be asked to give evidence on issues of law but only on matters of conveyancing practice.
5. An expert witness is not a "hired gun" and should not be expected to be an advocate of the party who calls him as a witness. Indeed a solicitor has an obligation to the Court to give balanced evidence.
6. An expert witness should not be expected to appear on a contingency fee basis.
7. Solicitors should endeavour to engage their own expert witnesses and not rely automatically on the Conveyancing Committee. The choice should not be confined to members of the Committee. Counsel do tend to direct that the expert witness should be sought from the Conveyancing Committee but the vast majority of experienced conveyancers are obviously not members of the Committee and should not be excluded on that account.
8. Solicitors who have already embarked on cases in which they will require expert witnesses should engage those witnesses now and not wait for Counsel's advice on proofs.

THE FOREGOING GUIDELINES ARE AIMED MORE AT USERS OF THE EXPERT WITNESSES RATHER THAN THE EXPERT WITNESSES THEMSELVES. THE FOLLOWING GUIDELINES ARE INTENDED FOR THE ASSISTANCE OF EXPERT WITNESSES OR POTENTIAL EXPERT WITNESSES.

When asked to act as an expert witness: -

1. Check for conflicts.

CONVEYANCING EXPERT WITNESSES

(Contd.)

2. Unless it is obvious that you have the relevant experience to give your evidence the necessary weight, think carefully before agreeing to act. You may be a very experienced conveyancer but not have much experience in relation to the type of matter the subject of the particular dispute. In such event you should consider suggesting to the parties that they get someone who has more experience of the particular type of transaction. Remember you may be cross-examined for an hour or so on your opinions and the experience upon which they are based. Do not allow your willingness to help a colleague to become the cause of a major embarrassment to yourself.

3. If you have agreed to act as an expert witness:-

   (a) If at all possible insist on a preliminary meeting at which the particular point at issue is explained to you by someone who understands it fully. Otherwise you may find yourself having to wade through a cubic foot of paper trying to understand what the dispute is all about. You will be furnished with copy deeds and copy contracts with maps attached and as often as not you will find that the maps are not coloured and are accordingly impossible to understand. You may of course still have to read through all the documentation, but from experience, we can tell you that it is far easier to read through it with a clear picture in your mind as to what the actual problem is.

   (b) Many litigation solicitors tend to run property disputes in the same way as running down actions and will often propose to have a consultation with Counsel on the morning of the Court. We believe that this is completely unsatisfactory for cases involving property disputes. They may feel that there is no great mystery to conveyancing but we know from experience that new angles frequently arise at a consultation which need further research or checking. You should insist on a consultation well in advance of the hearing.

   (c) Consider the duties and responsibilities of expert witnesses: These were reviewed by the High Court in England in connection with a case known as "The Ikarian Reefer" and were stated as follows:-

      (i) expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation (Whitehouse -v- Jordan, [1981] 1 W.L.R. 246 at p. 256, per Lord Wilberforce);

      (ii) an expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise (see Polivitte Ltd -v- Commercial Union Assurance Co. Plc., [1987] 1 Lloyd's Rep. 379 at p. 386 per Mr Justice Garland and Re J. [1990] F.C. R. 193 per Mr Justice Cazalet). An expert witness in the High Court should never assume the role of an advocate;

      (iii) an expert witness should state the facts or assumption upon which his

CONVEYANCING EXPERT WITNESSES

(Contd.)

opinion is based. He should not omit to consider material facts which could detract from his concluded opinion (re J. sup.);

(iv) an expert witness should make it clear when a particular question or issue falls outside his expertise;

(v) if an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one (Re J. sup.). In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report (Derby & Co. Ltd and Others -v- Weldon and Others, The Times, Nov. 9, 1990 per Lord Justice Staughton);

(vi) if, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and, when appropriate, to the Court; and

(vii) where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports (see 15.5 of the Guide to Commercial Court Practice).

(d) Do put your views on the matter in writing. Normally the instructing solicitor will ask you to do this anyway. Doing this in the form of a letter should be perfectly satisfactory in most cases. Doing a written report will take a surprising amount of time because you need to spell out your thinking and particularly so knowing that it is going to be used by Counsel to review your evidence. It will almost certainly be used as the basis for your direct examination in due course. Counsel prefer if you assume that they know nothing about conveyancing, planning or landlord and tenant practice. Also please remember even those Counsel who have an expert knowledge of the legislation do not necessarily know what happens in practice.

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POSTAL CLOSINGS

As 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

(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.

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Lost deeds

A solicitor has asked the Committee to indicate in what circumstances it is reasonable for the solicitor for a purchaser or a solicitor for a lender to require an insurance company bond in relation to the non-availability of a deed or deeds, which are lost.

The Committee feels that the following are reasonable guidelines. Obviously these guidelines have no relevance in relation to registered land.

A bond may be necessary in addition to the usual declaration explaining the circumstances of the non-availability of the missing deed or deeds.

1. Practitioners must distinguish between the loss of all the deeds and the loss of a document. The kernel of the matter is whether whatever is lost is sufficient to take by way of equitable mortgage. What a purchaser or lender is trying to guard against is some type of mortgage, lien or pledge having been created with the missing documents which would gain priority to his deed or mortgage. If the documentation missing would not be sufficient to create such a mortgage, lien or pledge, then it would be unreasonable to insist on an insurance company bond.
2. In all cases, it is reasonable to ask for a declaration accounting for the disappearance of the deeds and, where at all possible, this should be supplemented by declarations from each subsequent owner on title confirming that no claim had been made, and that the document had not come into his possession since. Normally a confirmatory declaration or letter from the owner's bank is also furnished.
3. If a solicitor is able to make a positive declaration that a deed or deeds had been lost in his or her office and excluding the possibility of the missing documents having been given to the client, then it would be reasonable for the purchaser's solicitor to accept this without an insurance company bond. Such a declaration should be supported by a declaration by the client.
4. In furnishing a bond in connection with a mortgage, the amount of the bond should be the amount of the loan. In a sale there are differing views. Prima facie, the Committee feels that a bond should at least be for the amount of the sale price. Given the ever-present reality of inflation, its inconstant nature and other relevant factors, it is inevitable that in most instances, a figure in excess of the sale price should be sought, but the question does arise as to who should bear the cost of that part of the premium as is referable to such excess. In this context, the circumstances of each individual case will have to be examined, but logic should prevail. It is suggested that, where the potential increase in value is triggered by outside factors – as, for example, by inflation per se – the resultant enhancement over, say, the succeeding five years should be estimated with the bond (at the cost of the vendor)

INSURANCE COMPANY BONDS IN RELATION TO LOST DOCUMENTS AND DEFECTS ON TITLE

(Contd.)

covering same in addition to the purchase price. On the other hand, where the potential for enhancement is due to the activity of the purchaser (as in the exploitation of development potential), it is very difficult to lay down any hard and fast rules. Much will depend on the underlying circumstances, with particular reference to the price being paid and the proportion of same attributable to the (development or other relevant) potential. There may conceivably be an argument for the apportionment of premium(s) between the respective parties.

It will be appreciated that it is virtually impossible to give meaningful guidance in the abstract on the amount of the bond. Hopefully, the foregoing observations will be of some basic assistance, but each case should be considered on its own merits and from a practical perspective. If a property which was sold with the benefit of a bond is being re-sold at a higher price, the current vendor might reasonably be required to furnish a top-up bond.

Title defects

Difficulties posed by some title defects or deficiencies (usually of such a nature as to be curable by the passage of time) can, on occasion, be met by bonds. The latter and the procedures attending same will usually be in vein somewhat similar to bonds covering lost documents. As a pre-requisite to the issue of such a bond, the insurance company will invariably require the submission of a statutory declaration detailing all the relevant features, and perhaps an Opinion from Counsel on the legal issues arising. Duplicates or certified copies of these should, of course, be retained with the bond itself and the muniments of title.

Bonds in the last mentioned category will more than likely only be of relevance in exceptional circumstances. Many of the defects encountered on title are capable of being remedied by getting in outstanding interests. However, it may be desirable to secure a bond where the owners of such interests cannot be identified or located, as can occur in, say, the tracing of parties entitled to undivided shares arising on the distribution of estates or in dealing with missing leasehold terms where there are still a number of years to run.

General

All such bonds as those mentioned above and any further bonds dealing with problematical aspects of a particular property should be so drawn as to enure for the benefit of all relevant successors in title (including mortgagees). This is an important point, which should be checked meticulously, as there have been cases where, on the wording thereof, the cover extended only to the applicant or to his immediate purchaser/mortgagee.

The protection in monetary terms to be provided by the bond should be considered with care. Reference is made above to the positions with regard to lost documents in the respective circumstances of mortgages and sales. Special and, perhaps, different criteria may have to be applied in approaching the financial aspects of cases involving defects on title.

Thought should also be devoted to the life span of the bond. Its practical effectiveness should not be diminished by the imposition of inappropriate time limitations.

Published in Law Society Gazette, July 1997

DISCLAIMERS ON INTESTACY

Practitioners should note the provisions of section 6 of the Family Law (Miscellaneous Provisions) Act, 1997 in relation to the distribution of a disclaimed estate or part of an estate, on intestacy. Section 6 of the Act (enacted 5/5/97) inserts a new s72A into the Succession Act, 1965, as follows: 72A - Where the estate, or part of the estate, as to which a person dies intestate is disclaimed after the passing of the Family Law (Miscellaneous Provisions) Act, 1997 (otherwise than under section 73 of this Act), the estate or part, as the case may be, shall be distributed in accordance with this part –

a) As if the person disclaiming had died immediately before the death of the intestate, and

b) If that person is not the spouse or a direct lineal ancestor of the intestate, as if that person had died without leaving issue.

A word of warning

This legislative change affords only limited scope in terms of tax planning. It is effective in typical circumstances where the deceased's estate on intestacy is intended to go to one or only a few of the deceased's children or where the entire estate is to vest in their surviving parent.

However, extreme care is warranted. For instance, if on the death of a surviving parent all the children disclaim, the estate will not pass to the grandchildren but rather to the deceased's brothers and sisters.

Likewise, where the deceased is survived by brothers and sisters and they all disclaim, the estate does not pass to their children but to uncles and aunts of the deceased and, if none, to first cousins.

Practitioners are also reminded:

a) If a beneficiary disclaims for a consideration, this consideration is deemed to be inherited from the deceased, and

b) It is not possible to disclaim in favour of another (an assignment with attendant stamp duty and gift tax may be unavoidable).

The Taxation Committee

Published in Law Society Gazette, August/September 1997

ASSENTS AND THE DECISION IN MOHAN V ROCHE

The Conveyancing Committee has received a number of enquiries as to whether the principle enunciated in the Mohan v Roche decision [(1991) 1 IR 560] alters the general practice of obtaining assents to the vesting of land forming part of a deceased's estate. The answer to this is clearly in the negative. The procedures with regard to assents as laid down in the Succession Act, 1965 should, in the vast majority of cases be followed and, if pursued, should operate for the benefit of all parties concerned.

There will, however, be a limited number of cases where the Mohan v Roche doctrine could prove to be useful. These must be approached with care, and would seem to be limited to the following, the pertinent features of which will in each instance have to be substantiated:

i) Where the administrator alone is beneficially entitled to the estate of an intestate deceased and evidence is forthcoming that all the liabilities of the estate have been discharged or have become statute-barred.

ii) Where the executor alone is beneficially entitled to the unadministered part of the estate of a testate deceased and evidence is forthcoming that all the liabilities of the estate have been discharged or have become statute-barred and that all legacies, devises and bequests have been satisfied in full.

In certain circumstances, and provided that the appropriate proofs are made available, the doctrine laid down in Mohan v Roche can be helpful and may, in future dealings with the estate, obviate the necessity of seeking a de bonis non grant in the absence of an assent. However, as mentioned, it will in the majority of cases be far more satisfactory to have a formal assent completed.

Published in Law Society Gazette, December 1997

OBLIGATIONS OF VENDOR'S SOLICITOR IN RELATION TO THE EXPLANATION OF NON-MONETARY BURDENS WHICH APPEAR ON FOLIOS OR APPEAR AS 'ACTS' ON REGISTRY OF DEEDS SEARCHES

It would appear that a vendor's duty in respect of prior burdens affecting registered land is the same as the vendor's duty would be in respect of prior acts appearing on searches in the Registry of Deeds against unregistered land. The simplistic explanation 'does not affect' would not be acceptable in relation to unregistered land and a similar explanation should equally be unacceptable for registered land.

Land Registry

From time to time, especially in regard to housing estates, there appears a burden registered such as the following:

'The property is subject to such of the conditions relating to the use and enjoyment thereof contained in deeds of transfer made between AB of the one part and the registered owners of this and other property formerly part of the folio x of the other part'.

Difficulties arise in practice in that the vendor's solicitors are reluctant to furnish the instrument creating the burden and further because there is none with the title they are not prepared to certify that it does not adversely affect. In most cases the instrument is the transfer lodged with the application to have the transferee registered as the first registered owner. The transfer contains the usual covenants, conditions, exceptions, grants and reservations applicable to such an estate. In order to avoid such difficulties, it is suggested that the better practice should be that the transferee should retain a copy of the completed transfer with the title documents and this could then be furnished with the other documents when furnishing title on a sale of the property. However, if a copy was not retained, the vendor's solicitor should obtain a copy from the Land Registry.

If there are similar burdens on the original grantor's/transferor's title, a copy of the instrument should be with the prior title and is usually contained in a booklet of title with a written explanation of the burden.

There are, however, other cases where the burden is not as informative as the above – for example:
AB became registered with a covenant in the instrument of registration in the following terms: 'AB hereby covenants with CD not without the prior consent in writing of CD to transfer during the lifetime of the said CD the lands hereby transferred or any part thereof'.

However, the burden appearing on the folio showed only the following: 'The covenants specified in instrument X relating to the use and enjoyment of the property'.

This is not very satisfactory and, despite an exchange of correspondence with the Land Registry, the Land Registry have stated: 'Please note that it is generally our practice to

register covenants by reference to the instrument (see Rule 105 of the Land Registration Rules 1992 in this regard)'.

However, Rule 105 sets out two options as to how the burden may be recorded:

1. By reference to the instrument; or
2. By setting out an extract therefrom or the affect thereof.

It is submitted that it would be far preferable for the extract itself to be registered rather than a mere reference to the instrument which a third party looking at the folio must then take up. There is, of course, the added difficulty that there is no entitlement on anybody's part to take up the instrument without the consent of the registered owner (see Rule 188). However, it is the stated policy of the Land Registry to register only by reference to the instrument, the purpose being to reduce the drafting and engrossing times and increase productivity in the Land Registry and that such a policy shall continue until the arrears of dealings have been significantly cleared after which time it may be reviewed.

It would appear, therefore, that the only satisfactory solution for the time being is for the vendor to include, by way of title, copies of all instruments appearing on the folio.

It is the intention of the Conveyancing Committee to keep the matter under review and to keep it on the agenda for any future meetings with the Land Registry.

Registry of Deeds

With regard to acts appearing on Registry of Deeds searches, the explanation where applicable 'does not affect' is not acceptable. The vendor's solicitor should check the relevant documentation to ensure that the 'act' does not, in fact, affect the property in sale. Unless the vendor's solicitor has personal knowledge of the particular transaction, the fact that an 'act' refers to particular lands such as 'Site 7 Black Acre' does not entitle the vendor's solicitor to assume that 'it does not affect', for example, Site 2 Black Acre and **enquiries should be made.**

When it is established that the act does not affect the property in sale, the explanation should read 'affects only Site 7 Black Acre; does not affect Site 2 Black Acre'.

It is not unknown for such acts to affect other property – and it may be necessary to inspect the relevant memorial.

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VOLUNTARY DISPOSITIONS/ BANKRUPTCY

Requisition 15 of the 1996 edition of Requisitions on title bears the above heading.

The Conveyancing Committee has decided in the light of opinions received that requisition 15 be amended by the deletion of 15c for the reasons set out in this practice note. Accordingly, it should no longer be necessary to furnish a bond if the requirements below are fulfilled.

Requisition 15c at present states '... if the disposition was made within the past two years, an insurance bond equal to value of the property' should be furnished. The present wording was arrived at because it was felt in the opinion of the Committee to be desirable in the light of section 59(1)(a) of the Bankruptcy Act, 1988 which states as follows:

> 'Any settlement of property, not being a settlement made before and in consideration of marriage or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration shall:
>
> a) If the settlor is adjudicated bankrupt within two years after the date of the settlement be void as against the Official Assignee and ...'.

The section says 'void' and further does not contain an express provision giving protection to purchaser for value without notice whereas there is such protection given under section 59(1)(b) '... if the settlor is adjudicated bankrupt at any subsequent time within five years after the date of the settlement ...'.

As stated, it was thought that the Bankruptcy Act, 1988 had changed the earlier Bankruptcy (Ireland) Amend-ment Act 1872 as amended. It has, however, long been accepted that the use of the word 'void' in fact means 'voidable' and why the opportunity was not taken in the 1988 Act to clarify this is not entirely clear. The courts have always accepted that in this context 'void' means 'voidable' and that anyone who claims under a settlement who is a purchaser for valuable consideration without notice has a good title which indeed can be forced on a purchaser (re: Carter and Kenderdines Contract [1897] 1 CH776).

The net issue would appear to be that if the settlor was made a bankrupt within two years of the date of the settlement and the Official Assignee in bankruptcy availed of section 59(1)(a) in order to set aside the voluntary conveyance by the settlor, would this have the effect of depriving a purchaser of a good title to the property? Secondly, if the setting aside of the settlement would not prevent a purchaser getting a good title because he is a bona fide purchaser for value without notice, what criteria must the purchaser satisfy in order to come within the terms of the definition?

The essential elements therefore are valuable consideration, good faith and the absence of notice whether actual or constructive. Accordingly, therefore, section 59(1)(a) did not change the law which has existed since 1883 which is that a voluntary settlement would not be void against the settlor's trustee in bankruptcy from its date but could only be void against the trustee from the date on which the trustee's title accrues. Up to that point, the disponee of the voluntary settlement would have a voidable (not a void) title and if the property comprised in the settlement were sold to a bona fide purchaser for value without notice the title of the purchaser would be good as against the trustee.

The donee will be acting in good faith if he has no notice of any fraud or fraudulent preference being intended even if such was the intention of the settlor at the time.

The onus of proof of a lack of good faith and a lack of valuable consideration is on the Official Assignee. The person taking under or relying on a gift must at all times have acted bona fide, which means in the absence of any dishonesty or any attempt to defraud another person.

In effect such person must have no notice of any fraud or fraudulent preference being intended by the settlor. What is therefore necessary when dealing with a voluntary conveyance is to obtain the information necessary to show that at the time of the disposition the settlor was in a position to discharge any debts that he or she might have had. It is the long-established practice of taking a declaration of solvency. It is necessary that the assets of the settlor be sufficient to discharge all his debts without recourse to the property comprised in the settlement.

For a definition of what constitutes a purchaser for value without notice, one should look at section 3(1), Conveyancing Act 1882 which states that a purchaser will not be affected by notice of any instrument, fact or thing unless inter alia it would have come to the knowledge of his solicitor had such enquiries and inspections been made as ought reasonably had been made by the solicitor. What the appropriate enquiries and inspections are will of course depend on the circumstances of each case.

The other Act which is relevant in this regard is the Conveyancing Act (Ireland) 1634 and sections 10 and 14 thereof which deal with dispositions intended to delay, hinder or defraud creditors. Such dispositions are void save where made bona fide for good consideration and in this regard see requisition 15a. Accordingly, it is suggested to amend requisition 15 to read as follows:

15. Voluntary disposition/bankruptcy

If there is a voluntary disposition on title furnish now in respect of each such disposition:

VOLUNTARY DISPOSITIONS/ BANKRUPTCY
(Contd.)

a) A statutory declaration from the disponer that the disposition was made bona fide for the purpose of benefiting the disponee and without intent to delay, hinder or defraud creditors or others or, if this is not within the reasonable procurement of the vendor, confirmation that the vendor was not aware of any such fraudulent intent

b) If the disposition was made within the past five years, evidence by way of statutory declaration of the disponer that at the date of the disposition the disponer was solvent and able to meet his/her debts and liabilities without recourse to the property disposed of

c) A bankruptcy search against the disponer.

Please note in paragraph (b) above that, in accordance with the Bankruptcy Act, 1988, ten years has been changed to five years.

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DISCLAIMERS ON INTESTACY

Practitioners will have noted the practice note from the Taxation Committee in the Gazette of August/September 1997 arising from section 72A of the Succession Act, 1965 (as inserted by section 6 of the Family Law (Miscellaneous Provisions) Act, 1997).

A precedent disclaimer on intestacy as drafted by the Conveyancing Committee appears below. A number of points should be noted in relation to the execution of such a disclaimer:

1. It is desirable that the person disclaiming should be advised by an independent solicitor which will usually mean a solicitor who is not acting for either the personal representative or any person who will benefit from the execution of the disclaimer. Such solicitor, should, if possible, witness the execution of the disclaimer
2. The independent solicitor should explain the implications of the disclaimer and, ideally, should confirm his advice in writing. This will involve inquiries being made by the solicitor as to the assets and next of kin of the deceased. The person disclaiming should be made aware of:
   a) The share of the estate to which he is entitled
   b) The assets owned by the deceased, an estimate of their value and the approximate value of the share being disclaimed
   c) Any relevant tax liabilities which might arise if the disclaimer was not signed
   d) The effect of signing the disclaimer (and, in particular, to whom the disclaimed share will pass pursuant to section 72A)

It should be noted that apart from losing an entitlement to a share of the estate, the person disclaiming will also lose any right he may have to extract a grant of representation to the estate of the deceased in accordance with rule 79(5) RSC 1986 – unless a grant has been extracted before the disclaimer is signed. In the event of a disclaimer being signed after the person disclaiming has applied for a grant but before the grant has issued, the application should be withdrawn as the applicant would no longer be one of 'the persons having a beneficial interest' as provided for in rule 79(5).

It should also be noted that if an applicant's right to a grant arises from a disclaimer having been signed by a person who had a prior right, then the original of such disclaimer must be exhibited with the oath for administrator and lodged in the Probate Office.

If a husband, separated from his wife, does not wish to benefit from her estate, and there being no issue, he should sign a disclaimer which should be exhibited in the Oath for Administrator and lodged in the Probate Office who can then proceed on the basis that he predeceased his wife. (They could not proceed on that basis if only a renunciation was filed: in this example, there would then be no person next in order of priority to extract a grant.) It would not be necessary to refer to a disclaimer if the person disclaiming had an equal right, rather than a prior right, to apply for a grant – being one of a number of children, for example.

DISCLAIMERS ON INTESTACY

(Contd.)

If an original disclaimer is required for some other purpose, it would be desirable to have the disclaimer executed in duplicate.

As a person disclaiming is probably doing so to benefit another person, it is important to read section 72A carefully. (It would be a mistake, for example, for the brother of a deceased person to think he could benefit his own children by disclaiming a benefit to which he is entitled under the deceased's intestacy.)

DISCLAIMER OF AB[1] ON DEATH INTESTATE OF CD

Obit ..... day of ..... 19 .....

This **deed of disclaimer** is made this ..... day of ..... 19 ..... by me AB **(occupation)** of ..... in the County of .....

WHEREAS:

1 CD ..... late of ..... (hereinafter called 'the deceased') died on the ..... day of ..... 19 ..... having died intestate as to the interest hereby disclaimed.

2 The deceased was **(marital status)** and **(occupation)** and was survived by (state if survived by, for example, a spouse and two children or as the case may be).

3 I was a **(relationship)** of the deceased and, as such, I am entitled to a (for example, one sixth or as the case may be) share of the deceased's estate (or of that part of the deceased's estate as to which he died intestate) (hereinafter called 'the said share') under the rules for distribution on intestacy set out in the Succession Act, 1965.

4 I have not accepted the said share from the personal representative of the deceased or otherwise nor have I exercised any degree of beneficial ownership, control or possession in respect of the said share.

Now it is hereby witnessed that I **hereby irrevocably disclaim** absolutely all my right to the said share

(Insert the following paragraph unless a grant has already issued to person disclaiming or he has already signed a renunciation.)

And I hereby acknowledge that on the execution by me of this disclaimer I will lose any right I may have (by virtue of my entitlement to the said share) to extract a grant of administration to the estate of the deceased.

In witness whereof I have hereunto set my hand and affixed my seal the day and year first above written.

Signed, sealed and delivered
by the said AB in the presence of:

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1. See page 13.92 hereof for precedent disclaimer by several beneficiaries.

REVISION OF LAW SOCIETY REQUISITIONS ON TITLE - 1996 EDITION

The Conveyancing Committee has made the following revisions to the 1996 edition of the Law Society's Objections and requisitions on title and same will be incorporated in the next reprint of the Requisitions which is due shortly.

1. Front page of the Requisitions:

a) The words 'RSI No:' have been added under both 'Vendor' and 'Purchaser' on the front page. (Please note that this amendment will also be incorporated in the next reprint of the Conditions of Sale)

b) At the foot of the page the word '(Revised)' has been inserted after the word 'Edition'.

2. Requisition 15 Voluntary dispositions/bankruptcy:

The old paragraph c has been deleted and the old paragraph d has been renumbered as 'c'.

3. Requisition 16.7 and 16.9:

The figure of £100,000 has been changed to £150,000 in both paragraphs.

4. Requisition 27.6.b:

The old sub-paragraph b has been deleted and replaced with a new sub-paragraph b as follows:

'(Save where the retention permission relates only to a change of use and there were no conditions attached to said permission or was granted in respect of a private house more than ten years ago) satisfactory evidence from an architect/engineer that the drawings submitted on the application for retention correctly shows the structure(s) as built and that the conditions (if any) attached to the retention permission have been complied with'.

5. Requisition 30.1:

The word 'commencement' in the fifth line has been replaced with the word 'construction'.

Practitioners are recommended to make a note of these revisions and incorporate same when raising requisitions on title, including those practitioners who use the CORT computerised version of the Requisitions.

UPDATE: Practitioners should bear in mind that there may be further amendments in subsequent editions of the Requisitions on Title or in subsequent practice notes.

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ENDURING POWERS OF ATTORNEY

A situation has been brought to the attention of the Conveyancing Committee whereby a donee of an enduring power of attorney which had not been registered sought to sell the property of the donor at auction. The special conditions in the contract provided that the closing date would be seven working days after the registration of the enduring power of attorney. No application had been made to the court for an order to effect the sale pre-registration. The committee was asked to consider whether this was good conveyancing practice.

The committee noted that until such time as an enduring power of attorney is registered, the power has not come into force. Therefore, the donee would have no power to execute a valid contract for the sale of the donor's property. In the above circumstance, the committee concluded that the course of action proposed by the donee of the enduring power was not in fact good conveyancing practice.

The committee wishes to point out to the profession, however, that, in an emergency, the donee can apply to the court for an order under section 8 of the Powers of Attorney Act for the exercise of the power by the court pending registration of the enduring power of attorney, and practitioners are recommended to consult the legislation before applying for such an order in appropriate cases.

Published in Law Society Gazette, November 1999

JOINT CARRIAGE OF SALE

The 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
(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.

JOINT CARRIAGE OF SALE

(Contd.)

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.

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INSURANCE ON APARTMENTS OR QUASI-APARTMENTS

Many modern commercial developments comprising one structure are intended to end up in different ownerships. The best practice in relation to fire insurance in such cases is that the entire structure is in the name of one entity and the contributions for the different units forming part of this are contributed by way of service charge. The entity is usually a management company but sometimes a major commercial company takes on the role. The reason for this is simple. In the event of a fire involving total destruction it is impractical to have a number of different owners involved in re-planning and rebuilding.

The Conveyancing Committee is alarmed to hear that some developers are ignoring such fundamental points in arranging the legal structures in new building developments.

The committee finds it surprising that insurance companies seem to happily insure an upper floor apartment which in the event of the total destruction of the entire block of which it forms part could not be rebuilt without the co-operation of others who would have their own vested interests and agendas.

Two examples are worth considering

EXAMPLE 1

A new block is being developed comprising retail units on the ground floor and basement with several stories of apartments above. The apartments were all insured in one block policy and this policy was a typical apartment insurance policy as if the apartment block was standing on its own foundations and ground. The individual retail units were left to arrange their own insurance. The legal documentation gave no rights to the apartment owners to enter on the retail area to rebuild the foundations in the event of total destruction of the entire. Such problems were just ignored.

The best practice in such matters would be to have one management company which would insure the entire structure recovering the insurance by way of service charge. Such arrangements may be somewhat more complicated in that two management companies are sometimes necessary and considerable care is needed in relation to the control thereof. There is a tendency to give the commercial owners (whose units are likely to be much more valuable) a greater say in the management of the company in the hope that their business experience is more likely to have the insurance reviewed on an ongoing basis which is sometimes neglected by management companies which may be run by people who have little or no experience of business.

EXAMPLE 2

A builder is selling apartments/duplex units comprising three storey building. This comprises an apartment on the ground floor and a two storey duplex unit above. Each are self contained (with their own entrance). The developer does not arrange a block insurance but leaves it to the owner of each unit to arrange their own insurance. In some cases they also fix the owner of the ground floor apartment with responsibility for the foundations and the owner of the duplex unit with responsibility for the roof.

The best practice in such matters in the view of the committee is to treat such a development like any apartment block. The structure should be owned by a management company which should inure the entire and be responsible for repairs of the foundations, structural fabric and roof and the common areas (although in the case of a duplex unit the only common areas would probably be water tanks in the roof space).

Published in Law Society Gazette, May 2000

FOREIGN LAWYER'S OPINION

It is becoming increasingly common in property transactions to find that you are dealing with a company which is not incorporated in Ireland. A foreign company may be selling property, taking a lease, giving a guarantee or issuing security for an advance. In those circumstances the Conveyancing Committee recommends that you should ask the solicitors representing the foreign company to provide to your client on closing an opinion from a lawyer based in the jurisdiction where the company was incorporated to cover the following points:-

1. that the company was properly incorporated, is still in existence and has power to enter into the transaction in question;
2. that the deed, as executed by the company, has been correctly executed by it and that the document binds the company and is enforceable against it;
3. that any corporate or statutory procedures required in the jurisdiction in which the company was incorporated (required in relation to the execution of the deed) have been attended to; and
4. that there are no charges or other incumbrances registered against the company which affect it or which are capable of affecting the property involved in the transaction.

A precedent of an opinion is set out below and this could be adapted for use. It is not uncommon for foreign lawyers when giving these opinions to choose to use an opinion in a form which they feel comfortable with and clearly this is acceptable provided the relevant points are covered in that opinion. There are a couple of points worth noting:-

1. The practice of issuing these letters of opinion has carried forward from commercial transactions and the party giving the opinion will often try and put in numerous exclusions which can have the affect of watering down the letter so that it is of little value. The most frequent clause that foreign lawyers tend to insert in these opinion letters is one limiting the reliance on the opinion to the person to whom it is addressed. It would be preferable that the opinion letter should not be limited in this way. In a case where this becomes a sticking point the letter could be limited so that it can be relied upon by the parties who it could be reasonably anticipated will need to rely on the letter.
2. There is a tendency for lawyers in certain tax havens to seek very substantial fees to issue these letters.

It is therefore strongly recommended that you clarify the question of the cost in advance of obtaining the letter. It is the view of the Committee that the cost of obtaining the opinion should be borne by the foreign company.

PRECEDENT OPINION

Draft [ ]

[Date]

[Your Ref.]

[Ref./Matter No.]

To: [Your Client]

Dear Sirs

We have acted on behalf of [the company] who has requested us to give you this opinion in connection with [specify transaction].

1 We have examined:

1.1 [specify document] ("the Agreement"), and[1]

1.2 [specify ancillary documents];

and such other documents as we have considered necessary or desirable to examine in order that we may give this opinion.

[Terms defined in the [specify document] shall have the same meaning herein].[2]

2 For the purpose of giving this opinion we have assumed:

2.1 the conformity to the originals of all copies of all documents of any kind furnished to us by [company/company's Irish solicitors];

2.2 that the certified copies produced to us of minutes of meetings and/or of resolutions are true copies and correctly record the proceedings of such meetings and/or the subject matter which they propose to record and that the resolutions contained in the minutes remain in full force and effect;

2.3 the genuineness of the signatures and seals on all original or copy documents which we have examined;

2.4 that the certified up to date Memorandum and Articles of Association of [the company] or other constitutional documents furnished to us by [the company] are correct and up to date;

2.5 without having made any investigation, that the terms of [the Agreements] are in all respects lawful and enforceable under Irish law;

2.6 the accuracy and completeness of all information appearing on public records.

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1. Depending on the nature of the case it may be simpler to refer here to "the Conveyance", "Mortgage" etc as appropriate.

2. This clause is helpful in a complicated transaction but otherwise it may be sufficient to simply define the Company and the property.

FOREIGN LAWYER'S OPINION (Contd.)

3 We express no opinion as to any matters falling to be determined other than under the laws of [specify jurisdiction in which the company is incorporated]. Subject to that qualification and to the other qualifications set out herein we are of the opinion that:

3.1 [the company] is a company duly incorporated under the laws of [specify jurisdiction], is a separate legal entity, subject to suit in its own name. It is validly existing under the laws of [specify jurisdiction] and no steps have been taken or are being taken to appoint a receiver, examiner, liquidator or similar officer over or to wind it up.

3.2 [the company] has the necessary power and authority and all necessary corporate and other actions has been taken to enable it to sign, deliver and perform the obligations undertaken by it under the Agreement and implementation by [the company] of the foregoing will not cause:-

3.2.1 any limit on [the company] or its Directors (whether imposed by the documents constituting them, state or regulation) to be exceeded; or

3.2.2 any law or order to be contravened.

3.3 The Agreement has been duly executed and delivered on behalf of [the company] and the obligations on the part of [the company] are valid and legally binding on and are in a form capable of enforcement against [the company] under the laws of [specify jurisdiction] in the Courts of [specify jurisdiction] in accordance with their respective terms.

3.4 All authorisations, approvals, licences, exemptions and consents of governmental or regulatory authorities required in [specify jurisdiction] with respect to the Agreement have been obtained.

3.5 Under the laws of [specify jurisdiction] in force at the date hereof [the company] will not be required to make any deduction or withholding from any payment it may make under the Agreement.

3.6 Under the laws of [specify jurisdiction] in force at the date hereof the claims of [your client] against [the company] will rank at least pari passu with the claims of all other unsecured creditors except claims which rank at law as preferential claims in a winding up or receivership [save for a claim of [your client] against [the company] under the [security document] which will rank in priority to the claims of any other creditor].[3]

3.7 It is not necessary or desirable under the laws of [specify jurisdiction] in order to ensure the validity, enforceability and priority of the obligations and rights of [your client] under the Agreement that it be filed, registered, or notarised in any

3. This is usually only required where the opinion relates to a lending transaction.

public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded.[4]

3.8 In any proceedings taken in [specify jurisdiction] for the enforcement of the Agreement the choice of Irish law as the governing law of the Agreements would be upheld by the [specify jurisdiction] courts.

3.9 The submission by the parties to the [exclusive or non-exclusive] jurisdiction of the Irish Courts will be upheld by the [specify jurisdiction] courts.[5]

3.10 It is not necessary under the laws of [specify jurisdiction] (a) in order to enable [your client] to enforce its rights under the Agreement or (b) by reason of the execution of the Agreement that it should be licensed, qualified or otherwise entitled to carry on business in [specify jurisdiction].

3.11 The Agreement will not be liable to ad valorem stamp duty , registration tax, or other similar tax or duty in [specify jurisdiction].

3.12 Based solely on searches which we have carried out on [date of search] in [details of search carried out] there are no charges registered against the assets of the Company.

4. This opinion is addressed to [your client] and may be relied upon by [your client] for its benefit in connection with the transaction contemplated. it may also be relied on by all assignees of the interest of [your client] under the Agreement but not by any other person.[6]

Yours faithfully

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4. The reference to priority in this clause is usually only required in a lending transaction.

5. This clause will usually be amended but it is helpful and more cost effective if the overseas lawyers carry out basic searches which can be supplemented with the purchasers own searches here. This is mainly because the external register in the Companies Office may not show the full position.

6. Overseas lawyers will usually try and limit the opinion so as to limit their liability. Ideally this limitation would not appear in the opinion letter.

Published in Law Society Gazette, March 2001

CONVEYANCING IN EURO

In order to assist conveyancing practitioners with the conversion to Euro on 1st January 2002 the Conveyancing Committee would like to publish the following information on how some frequently used 'tables' will be treated for Euro purposes. This synopsis has been extracted from the Euro Changeover (Amounts) Act, 2001 and the Finance Act, 2001, section 240(2) (h) and schedule 5 part 6, and has been assembled as a guideline only for practitioners. It is not, and was not intended to be, a statutory table or a statutory or other interpretation of the relevant legislation. If in doubt about a Euro amount or about what is covered under any particular heading in this practice note please ensure that you consult the relevant legislation.

LAND REGISTRY FEES

1. Fee scale for Transfers on sale:

Value			**Fee**
€1	-	€13,000	€125
€13,001	-	€26,000	€190
€26,001	-	€51,000	€250
€51,001	-	€255,000	€375
€255,001	-	€385,000	€500
€385,001	-		€625

2. Other Registrations Affecting Registered Land

(a)	Voluntary Transfer	€85
(b)	Opening of a new Folio on subdivision of parent folio	€60
(c)	Charge	€125
(d)	Transfer Order	€85
(e)	Registration of a Lease as a Burden and Opening New Leasehold Folio	€85
(f)	Transmission on Death	€85
(g)	Section 49 Application	€85
(h)	First Registration	€85
(i)	All other Registrations	€25

3. Other Services

(a)	Certified copy map with rights of way or other Special Features	€60
(b)	Copy Folio with file plan (sealed and certified)	€25
(c)	Copy Folio (sealed and certified)	€6
(d)	Copy Instrument, affidavit, order or ruling	€25
(e)	Land Certificate	€25

	(f)	Certificate of Charge (Item 21)	€6
	(g)	Official Search (Rule 190)	€6
	(h)	Priority Search (Rule 191)	€6
	(i)	Telephone Search (Rule 196)	€6
	(j)	Names Index Search	€2.50
	(k)	Lands Index Search	€2.50
	(l)	Inspection of each Folio, Map, Instrument or Record	€2.50
	(m)	Approval of Scheme Map	€310
	(n)	Approval of Revision of Scheme Map not exceeding 20 Sites in scheme	€625
	(o)	Approval of Revision of Scheme Map exceeding 20 Sites in scheme	€1,250
	(p)	Attendance of Officer to produce document in Court	€60 per day + expenses
4.	**Miscellaneous**		
	(a)	Administration fee on Refused, Abandoned, Withdrawn Dealings	€60 or lesser fee lodged
	(b)	Administration fee on refund of excess fees	€25 or lesser excess
	(c)	Fee for making any note or entry or providing any service where no fee is prescribed	€6

5. Notes

(a) Fees are charged on a per item basis, no maximum fee.

(b) This summary is merely a guideline and does not purport to be a legal interpretation.

CONVEYANCING IN EURO

(Contd.)

REGISTRY OF DEEDS FEES

1.	**Registration of Memorials**		
	In respect of every memorial registered		€44.00
2.	**Comparison**		
	(a)	In respect of first submission of deed and memorial for comparison	Nil
	(b)	In respect of each subsequent submission of deed and memorial for comparison	€12.00
3.	**Certificates of Registration**		
	(a)	In respect of every certificate of registration beyond the first or special certificate of registration if presented with original memorial	€12.00
	(b)	In respect of every certificate of registration beyond the first or special certificate of registration if presented subsequent to registration of original memorial	€44.00
4.	**Common Search**		
	In respect of a common search upon names made by office under a requisition in respect of each name, for each county, for each period of ten years or part thereof		€6.00
5.	**Continuation of a Common Search**		
	Continuation of a common search, in respect of each name, for each county, for each period of ten years or part thereof		€6.00
6.	**Negative Search**		
	Negative search upon names made by office under a requisition in respect of each name, for each county in respect of each period of ten years or part thereof		€12.00
7.	**Continuation or Closing of Negative Search**		
	In respect of the continuation or closing of a negative search for each name, for each county, for each period of ten years or part thereof		€12.00
8.	**Search by Members of Public**		
	Search by members of the public in respect of each name, for each county, for each period of ten years or part thereof		€1.25

9.	**Copies**	
	For every certified copy of a memorial	€12.00
	Plain copy of microfilm of a memorial	€ 0.60 per page
10.	**Entry of Satisfaction of Mortgage**	
	(a) In respect of entry of certificate of satisfaction of a judgement mortgage	€12.00
	(b) In respect of entering satisfaction of mortgage on record and granting certificate to like effect pursuant to section 84 of the Building Societies Act, 1976 (No. 38 of 1976), or section 18 of the Housing Act, 1988 (No. 28 of 1988)	€12.00
11.	**Inspection of Original Memorial or Affidavit**	
	For every original memorial or affidavit produced for inspection in the Office	€12.00
12.	**For Attendance of Officer to Produce Memorial or Other Document in Court**	
	For attendance of officer to produce memorial or other document in Court **(per day + expenses)*	€60.00*
13.	**General Search**	
	General search without limitation, each day, by each member of the public against all indexes prior to 1950	€6.00
14.	**Other Services**	
	Providing any service for which no other fee is prescribed	€6.00

LANDLORD & TENANT (GROUND RENTS) (AMENDMENT) ACT, 1984

1.	Issuing of a vesting certificate (in occupation)	€30
2.	Arbitration (in occupation).	€75

LANDLORD AND TENANT (GROUND RENTS) (No. 2) ACT, 1978 (FEES) ORDER 1984

1.	Inspection of a register	60c
2.	Copy of an entry in a register	€3
3.	Issuing of a vesting certificate (not in occupation).	€65
4.	Arbitration (not in occupation)	€130

CONVEYANCING IN EURO

(Contd.)

STAMP DUTIES

RESIDENTIAL PROPERTY:

Market Value		First Time Buyers	Other Owner Occupiers	Investors New houses / apartments*	Investors 2nd hand houses / apartments
Up to	€127,000	Exempt	Exempt	3.00%	9.00%
€127,001	€190,500	Exempt	3.00%	3.00%	9.00%
€190,501	€254,000	3.00%	4.00%	4.00%	9.00%
€254,001	€317,500	3.75%	5.00%	5.00%	9.00%
€317,501	€381,000	4.50%	6.00%	6.00%	9.00%
€381,001	€635,000	7.50%	7.50%	7.50%	9.00%
Over €635,000		9.00%	9.00%	9.00%	9.00%

These rates are progressive, not cumulative

* For instruments executed on/after 27.02.01

NON RESIDENTIAL PROPERTY:

Market Value		
Up to	€6,350	Exempt
€6,351	€12,700	1%
€12,701	€19,050	2%
€19,051	€31,750	3%
€31,751	€63,500	4%
€63,501	€76,200	5%
Over €76,200		6%

These rates are progressive, not cumulative

NOTE:

- Transaction certificate amounts are listed in the shaded columns.
- Amounts of stamp duty are calculated rounded down to the nearest Euro.

Published in Law Society Gazette, November 2001

NOTE: The above practice note incorporates the corrections published in the December 2001 issue of the Gazette.

LAW SOCIETY REQUISITIONS ON TITLE

2001 EDITION

EXPLANATORY MEMORANDUM

Certain Requisitions have been revised and only those Requisitions which have been updated or changed in some way are commented on in this note.

Requisition No.s
New

2 **Services**

2.1.a.(i) This is new for the purpose of establishing the type of drainage.

3 **Easements and Rights**

3.2.a This has been expanded to include turbary rights or other profit a prendre.

16 **Taxation**

16.7 The figure of £100,000 has been replaced with the words "the Capital Gains Tax threshold current at the date of this contract".

16.9 The figure of £100,000 has been replaced with the words "the Capital Gains Tax threshold current at the date of this contract".

16.11 The words "current at the date of this contract:" have been added to the end of the first paragraph.

This Requisition has also been changed by the addition of paragraphs a. and b. pursuant to Section 135 of Part 5 of the Finance Act, 2000. No Residential Property Tax Clearance Certificate needed (even if property exceeds threshold) provided the property was previously sold for full consideration post 5/4/1996.

16.13 This is new to cover transactions which involve a non-residential element together with a residential element where the consideration is required to be apportioned for stamp duty purposes.

16A **Value Added Tax**

16A.1. to 5.These requisitions on VAT are new. For a more detailed explanation of them please see the explanatory memorandum which was published when the new VAT requisitions were first circulated in October, 2000 and which was re-published in the first update to the Conveyancing Handbook in February, 2001 at pages 8.9 to 8.14.

22 **Registered Property**

22.2.d This has been expanded so that the Undertaking will also cover the payment of

LAW SOCIETY REQUISITIONS ON TITLE

2001 EDITION

EXPLANATORY MEMORANDUM

(Contd.)

Land Registry Mapping Fees.

This has also been amended to provide that the Undertaking will be given by the Vendor (and not by the Vendor's solicitor as has been the practice until now).

22.2.f This Requisition has been expanded to provide that the Section 72 Declaration should contain an additional paragraph, so that the Vendor declares that there have been no deaths or voluntary dispositions on title within the previous twelve years. This is in accordance with the Law Society Conveyance Committee Practice Note published in July/August 1993 Gazette.

24 **Family Home Protection Act 1976, Family Law Act 1995 and Family Law (Divorce) Act 1996.**
Note additional reference to Family Law (Divorce) Act, 1996.

26 **Judicial Separation and Family Law Reform Act 1989, Family Law Act 1995 and Family Law (Divorce) Act 1996.**
Note additional reference to Family Law (Divorce) Act, 1996.

36 **New Flats / New Managed Properties**

36.12.a This has been amended to provide that the Undertaking will be given by the Vendor (and not by the Vendor's solicitor as has been the practice until now).

37 **Second Hand Flats / Second Hand Managed Properties**

37.2.d This has been amended to provide that the Undertaking will be given by the Vendor (and not by the developer's solicitor's as has been the practice until now).

39 **Milk Quotas**

These requisitions are new. They refer to the 2000 Regulations and they replace the previous requisitions which referred to the 1995 Regulations. For a more detailed explanation please see the updated commentary at Pages 6.1 to 6.7 of the Conveyancing Handbook as circulated in February, 2001.

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

UPDATE: Practitioners should bear in mind that there may be further amendments in subsequent editions of the Requisitions on Title or in subsequent practice notes.

VOLUNTARY TRANSFERS

The inherent dangers and legal complexities which arise when a solicitor acts for both parties in a voluntary transfer were spelt out with great clarity by the Supreme Court in its decision in Carroll –v- Carroll, Supreme Court, 21st July, 1999. Those complexities create dangers not just for the parties but for the practitioner who acts for both parties. The Law Society has not decided to prohibit acting for both sides but great care must be taken. There are certain cases where a solicitor may not act for both donor and donee and it is incumbent on the practitioner to appraise him/herself of all the circumstances and then make the decision as to whether he/she can properly and professionally continue to act for both parties.

The Conveyancing Committee has prepared this practice note to assist those solicitors who may wish to act for donor and donee in a voluntary transfer and to assist them in reaching the decision as to whether they can properly do so.

The presumption of undue influence is the first hurdle that must be overcome. The Supreme Court in its decision held that where the presumption of undue influence exists the onus lies on the donee to establish that the gift resulted from the "free exercise of the donor's will": as the presumption is a rebuttable one and is a rule of evidence the donee must adduce the evidence necessary to rebut it. While the courts have declined to limit the categories of relationship in which the presumption will arise, the more obvious ones are solicitor and client, doctor and patient, religious adviser and pupil, trustee and beneficiary as well as intra-family relationships.

It goes without saying that undue influence may actually exist in an individual case: care must be taken to ensure that this does not arise.

To assist in reaching the necessary conclusions on aspects such as undue influence the following should be borne in mind:-

1. Clients should be seen separately.

2. Should either the donor or donee be independently advised? A solicitor who has previously acted for a member of a family and who is asked to act for the first time for a prospective donor would do well to have the donor separately advised. Equally a solicitor who has previously acted for the donor should consider advising the donee, in a situation where the transfer will impose obligations on the donee, to be independently advised.

3. Full instructions must be taken of all relevant family circumstances and family relationships.

VOLUNTARY TRANSFERS

(Contd.)

4. Full details of the donor's other assets must be obtained to decide whether the donor is in a financial position to carry into effect his/her desire.

5. A decision on the donor's mental capacity must be taken. Should medical opinion be sought?

6. Is the proposal a free exercise of the donor's will?

7. Does the donor's physical situation allow the gift to be made? What are his/her future requirements? What will his/her future accommodation be? Does the proposal put in jeopardy his/her financial independence? Does he/she appreciate the situation?

8. Does the proposal imperil the financial independence of other members of the family? Have other members of the family been made promises or relied on arrangements which will be affected by what is proposed? Do the proposals contradict any previously drawn wills or other documents?

9. Is the solicitor aware from dealings with other members of the family that this proposal will surprise other family members?

10. Even if independent advice is not required care must be taken in explaining the consequences of the proposed action to both donor and donee. Professional skill and judgement is required in advising both parties. This is not fulfilled by simply following instructions without considering the appropriateness of what is being undertaken.

11. A solicitor acting for both cannot be independent of the donee.

12. Careful notes of all attendances on the parties must be kept. Full written advice to the parties must be given on all aspects of the transaction. Any documents requiring execution must be given to the parties in advance for perusal and must be read and explained to them.

Published in Law Society Gazette, December 2001

NEW FORM C1 REPLACES FORM 47 FOR REGISTRATION OF MORTGAGES / CHARGES IN THE COMPANIES OFFICE

Practitioners are reminded that a new form C1 replaced form 47 with effect from 23rd October 2001. Details of certain mortgages / charges created by a company must be delivered to the Companies Registration Office on form C1 (form 8E for an external company) within 21 days of the date of creation of the charge. The filing fee on form C1 is €30-00 with effect from 1st January, 2002.

Form 47 is no longer the appropriate form for registration of charges and will be rejected if submitted.

A copy of the new form C1 and information on completion thereof can be obtained from the Companies Office Website www.cro.ie.

Published in Law Society Gazette,
January / February 2002

FOREIGN LAWYERS' OPINIONS – AN UPDATE

The Conveyancing Committee wishes to clarify that the practice note published in the March 2001 edition of the Law Society Gazette was not intended to make the provision of a foreign lawyer's opinion mandatory in all transactions involving foreign companies. The committee recommends that practitioners should use their discretion as to whether an opinion is in fact necessary or justified in any transaction involving a foreign company. In exercising that discretion practitioners are advised to have regard to the nature, value and importance of the transaction, the similarity of the law of the foreign jurisdiction on the subject matter of the transaction, the likelihood of ever having to rely on the opinion and the likely requirements of the Land Registry or Registry of Deeds (if relevant). This position is reflected in Condition 9 of the 2001 edition of the General Conditions of Sale, which only requires the vendor to disclose the fact of its foreign incorporation (leaving the parties then to agree by special condition as to whether an opinion is required).

Published in Law Society Gazette, May 2003

PROPOSED ORDNANCE SURVEY ANNUAL LICENCE FEE

It is noted that the Ordnance Survey Office has in the course of the past few weeks issued application forms for annual copyright licences to solicitors' firms throughout the country.

The Conveyancing Committee was contacted some time ago by the Ordnance Survey Office concerning the O.S. proposal to introduce an annual copyright licence fee for users of the O.S. service, including solicitors. The committee sought the views of practitioners who already used the existing licence at a cost of £300 per annum and the view expressed was that the service was over-priced. Following correspondence with the O.S. office and several meetings with O.S. personnel, the Conveyancing Committee made a submission to the Ordnance Survey office on behalf of practitioners in the following general terms.

The committee submitted that it is opposed in principle to payment of a licence fee by solicitors. It distinguished the use of ordnance survey maps and Land Registry filed plans by solicitors from the use of such maps by other professionals such as auctioneers or architects. Architects require the ordnance survey map as a template for their work and in that regard it can be expected that the architect might require several copies of a map in connection with a project. Similarly auctioneers require an O.S. map in order to make multiple photocopies for advertising purposes, brochures etc. In the case of unregistered conveyancing, properties are usually described by words and if reference is made to a map, this would either be to a map on an earlier deed or else to a map prepared specially by an architect or engineer acting for the client who would have already paid the licence fee to the O.S. office. Conveyancing of registered land is processed through the Land Registry and the Land Registry is, effectively, a reseller of O.S. maps. The Land Registry charges €25 for a filed plan and €60 for a map with any special features marked on it. These are substantial charges. The O.S. pointed out that copying a Land Registry filed plan is a breach of O.S. copyright. The committee sees a profound distinction between the use made of Land Registry maps by solicitors and the use of O.S. maps by other professionals and it submitted that the fee paid to the Land Registry should include the making of up to five photocopies of the map by the solicitor.

The committee submitted that it is happy to acknowledge the copyright of the Government of Ireland and the Ordnance Survey Office in ordnance survey maps and that the Law Society would advise its members not to breach this copyright. The O.S. office was also advised that the thinking of the committee was that, if the O.S. office imposes a licence requirement and/or a new fee structure for obtaining O.S. maps, it should advise its members to have sub-division maps purchased and prepared by architects or engineers.

In light of the submission outlined above, the committee is disappointed to note that its views have not been taken on board by the Ordnance Survey Office and it intends to revisit the issue with that office again.[1]

Published in Committee Reports section of Law Society Gazette, July/August 2002

1. Despite the efforts of the committee, no concessions were made for solicitors.

THE PRESUMPTION OF UNDUE INFLUENCE

The Presumption

Many practitioners are unaware that in the voluntary transfer situation, there may be a presumption of undue influence in relation to the transaction.

What this means is that if the transaction is challenged, it fails unless the donee is in a position to rebut the presumption of undue influence. In itself, the fact that there was no undue influence is not sufficient. The presumption must be rebutted.

Where a solicitor acts on both sides of a voluntary transfer, it has been held that, as he is not independent of either party, he can not give evidence which will rebut the presumption.

In order to rebut the presumption, independent advice, usually, but not necessarily, independent legal advice, must be obtained.

Signed Acknowledgements

Some solicitors get the transferor to sign an acknowledgement that the transferor has been offered independent advice but has declined the offer. This is not sufficient, as it does nothing to rebut the presumption of undue influence.

From the point of view of professional negligence, the solicitor is at risk if he has not ensured that he is in a position to rebut the presumption of undue influence. He is unlikely to be at risk in so far as the transferor is concerned. If a transferor gets back a farm he had transferred, he is not at a loss. However, the same cannot be said in relation to the transferee. If a transferee loses because the solicitor has not taken the necessary steps to rebut the presumption of undue influence, then the transferee will have his remedy against the solicitor.

Setting up the Independent Advice

When organising the independent advice, it is good practice to do a letter to the person giving the independent advice setting out all the facts relative to the transfer. In particular the letter should set out details of the property being transferred (market value, which should be based on a professional valuation, etc.), details of the transferor's other assets and full details of the family situation identifying the educational and financial circumstances of each family member. When giving independent advice, a full attendance should be done and this attendance should be returned to the solicitor doing the transfer so that it can be stored on the main transfer file. (By doing this the transferor's solicitor is setting out that he has knowledge of all the facts and it also shows that the person giving the independent advice has been made aware of these facts.)

THE PRESUMPTION OF UNDUE INFLUENCE

(Contd.)

Wills

This presumption does not apply to wills. Where a will is challenged on the basis of undue influence, then, in every case, that undue influence must be proved.

Actual Undue Influence

Actual undue influence is outside the scope of this practice note. However, in doing a voluntary transaction a solicitor should take all steps necessary to minimise the risk of actual undue influence. For example, the transferee should not be present when the transferor is instructing the solicitor in relation to the proposed transaction.

Published in Law Society Gazette, November 2003

DEEDS VESTING COMMON AREAS IN MANAGEMENT COMPANIES

When closing sales of apartments or other property in complexes or estates in which the common areas are to be ultimately vested in a management company the current practice is to take an undertaking from the vendor to furnish a copy of the vesting deed to the purchaser's solicitor in due course. This entails the purchaser's solicitor keeping the purchase file open for a considerable time, sometimes for years, pending the furnishing of the copy vesting deed in accordance with the undertaking given. It becomes a matter of urgency when the property is being re-sold. If, at that time, the deed is not available because it has not yet been executed or for any other reason the sale, of necessity, proceeds with an undertaking by the second vendor's solicitor to the solicitor for the second purchaser to furnish the vesting deed as soon as received from the original vendor. In such circumstances two solicitors now have files open awaiting a copy vesting deed which may not come to hand for a considerable time.

It is recommended by the Conveyancing Committee that in such transactions involving management companies the contract should provide that the initial sale of the property will be closed on foot of

(a) an undertaking by the vendor to the purchaser to furnish the vesting deed to the management company, and

(b) an undertaking by the management company to the purchaser to furnish a certified copy of the vesting deed to the purchaser on request by or on behalf of the purchaser or his successor in title.

The undertaking at (a) will merely reflect what is required in any case in the contract for sale of the common areas between the vendor and the management company, but it will be an acknowledgment that the purchaser has an interest in the deed being furnished. Ideally, the contract between the developer and the management company should stipulate who is responsible for stamping and registering the deed.

The undertaking at (b) may be considered unnecessary having regard to the fact that the purchasers themselves will control the management company and will be in a position to obtain a certified copy of the vesting deed in any case. The undertaking by the management company will, however, cover any period between the completion of the development and the furnishing of the vesting deed to the management company and will, in any case, provide the purchaser with a clear basis for requesting the certified copy vesting deed regardless of when this is done. In practice it is envisaged that the question of taking up the copy vesting deed will arise usually when the property is being re-sold. At that time, assuming the development has been completed, it should be readily available from the management company. In the meantime the purchaser's solicitor can close the file.

Published in Law Society Gazette, December 2003

DISCLAIMERS ON INTESTACY

It has come to the attention of the Conveyancing Committee both from practitioners and from recent articles in the Gazette that the precedent disclaimer on intestacy which appears at page 13.66 of the Conveyancing Handbook may not be adequate for a situation in which a number of beneficiaries have agreed to execute a disclaimer, on condition that all of them do so, for the purpose of benefiting a particular person. If all of them disclaim except one, for example, the desired result will not be achieved and the one who has not signed may become entitled to the property. It is considered best practice to have one disclaimer signed by all of them, where this is reasonably practicable, and to provide that it will take effect only when it is signed by all of them and from the date on which it is signed by the last person to sign.

A precedent taking account of the above is printed with this practice note. It should be used where possible to avoid having to deal with the consequences of a broken agreement which might have to be resolved by the court. It may be helpful to note that a disclaimer, once made, can be retracted, but only if it has not been acted on, and no other party has changed their position in reliance on it and if no consideration has been given for the disclaimer.

DISCLAIMER ON INTESTACY FOR EXECUTION BY A NUMBER OF BENEFICIARIES

DISCLAIMER OF AB,CD AND EF ON DEATH INTESTATE OF XY

Obit ..... day of ..... 20 .....

This Deed of Disclaimer is made this ..... day of ..... 20 ..... by AB **(occupation)** of……. in the County of .....……, CD **(occupation)** of …… in the County of .....and DE **(occupation)** of ……. in the County of .....…..

WHEREAS:

1 XY late of .....….. (hereinafter called 'the deceased') died on the ..... day of ..... 20 ..... having died intestate as to the interests hereby disclaimed.

2 The deceased was **(marital status)** and **(occupation)** and was survived by (state if survived by, for example, a spouse and two children or as the case may be).

3 We are all children of the deceased *(or as the case may be)* and, as such, we are each entitled to a one twelfth (i.e. one quarter of a third) share of the deceased's estate (or of that part of the deceased's estate as to which he died intestate) (hereinafter called

'the said share' and collectively as 'the said shares') under the rules for distribution on intestacy set out in the Succession Act, 1965. *(Vary the shares in proportion to the number of beneficiaries and their entitlement).*

4 None of us has accepted the said share from the personal representative of the deceased or otherwise nor have any of us exercised any degree of beneficial ownership, control or possession in respect of the said share.

Now it is hereby witnessed that each of us **hereby irrevocably disclaims** absolutely all our respective rights to the said shares and we hereby acknowledge that on the execution by each of us of this disclaimer we will each lose any right we may respectively have (by virtue of our respective entitlement to the said shares) to extract a grant of administration to the estate of the deceased.

And it is hereby further witnessed that this Deed shall:

(1) not become effective (as against all or any of the parties hereto) until it is executed by all parties hereto and

(2) be deemed to operate with effect from the date upon which it is executed by the last of the parties hereto to execute it.

(Insert the following paragraph unless a grant has already issued to one or more persons disclaiming or the parties have already signed a renunciation).

And we hereby acknowledge that on the execution by us of this disclaimer we will each lose any right we may have (by virtue of our respective entitlements to the said share) to extract a grant of administration to the estate of the deceased.

In witness whereof the parties hereto have hereunto set their respective hands and affixed their respective seals the day and year first above written.

SIGNED SEALED AND DELIVERED
by the said AB in the presence of:

SIGNED SEALED AND DELIVERED
by the said CD in the presence of:

SIGNED SEALED AND DELIVERED
by the said EF in the presence of:

Published in Law Society Gazette, December 2003

"SECTION 23" TYPE PROPERTIES

The Conveyancing Committee has received a number of queries in relation to the respective obligations of the developer and the purchaser in Section 23 type properties.

It was suggested to the committee that the developers should agree in the contract to provide all necessary documents to evidence the availability of tax breaks, and that refusal to do so would be unreasonable, as the tax breaks are usually the principal reason why purchasers acquire such properties.

The committee considers that the foregoing is too broad a statement of the position, and considers that the following represents appropriate practice in the purchase of such properties.

Despite curtailments in recent budgets, the numbers of such schemes, and the particular requirements of each, make it impossible to give more than general guidance.

1. The availability of tax breaks may often depend on the purchaser's own circumstances and therefore it is unreasonable to expect a clause to be inserted by the developer guaranteeing the availability of any, or any particular tax relief.
2. When acting for a purchaser, a practitioner should ascertain the particular relief which the purchaser hopes to achieve, and advise them to take specialist tax advice in relation to the availability of such relief, and what documentation will be required by the Revenue Commissioners to grant such relief.
3. Where the documentation necessary to obtain the relief is wholly within the procurement of the developer e.g. a certificate of building cost, then it is reasonable that a condition requiring the furnishing of such documentation is inserted in the contract, specifying as appropriate any monetary amounts or a minimum figure or percentage.
4. Where the obtainment of the tax relief requires the issue of certificates by statutory bodies such as local authorities or the Department of the Environment, it is reasonable that the developer's solicitor insert a condition requiring his client to use his best endeavours to obtain such certification and in such circumstances, the purchaser's solicitor should advise his client of the possibility that for any reason such documentation may not be available. As with any such advice, it should be in writing to the client, pre-contract.
5. A purchaser should consider pre-contract what is to happen if the expected relief is not available for any reason, and should deal with the matter in the contract.

Published in
Law Society Gazette,
June 2004

REGISTRY OF DEEDS : REQUIREMENT FOR COUNTY TO BE INCLUDED IN DEED AND MEMORIAL

It has been brought to the attention of the committee that considerable difficulty is caused arising out of the failure of colleagues when drafting deeds and memorials to include in the description of the property the county in which the property is situated. Deeds that do not have a county indicated in the description of the property being assured are filed by the Registry of Deeds under a category "NS" which means "not specified". This categorisation will result in solicitors obtaining search results that are based on incomplete records.

The committee strongly recommends to practitioners that it is essential when drafting deeds and memorials to ensure that a correct and adequate description, including in particular the county in which the property is situated, is included in the description of the property in the deed and memorial. It should be noted that inclusion of the county in the memorial alone will not suffice as, under present Registry of Deeds legislation, this information must be in the deed before it can be accepted as part of the memorial.

Published in
Law Society Gazette,
November 2004

ENDORSEMENT OF CHEQUES

The exigencies of current conveyancing practice often require that cheques made out to clients are endorsed and passed on, without being lodged to the solicitor's client account.

Any such endorsement should be made, preferably, with the written authorisation of the client or, in exceptional circumstances, on the client's oral instruction, if the prompt dispatch of the client's business requires it. A copy of the cheque and its endorsement should be given to the client without delay and, in the case of an oral instruction, a letter should be written confirming that the cheque was endorsed in accordance with such instruction.

Practitioners should also note that the provisions of the Solicitors' Accounts Regulations (and money-laundering legislation) require that a copy of such endorsed instrument be kept on the solicitor's file.

Published in
Law Society Gazette,
June 2005

ELECTRONIC SEARCHES IN LAND REGISTRY

Practitioners are warned to be very careful if carrying out Land Registry searches electronically over the internet.

It is not sufficient to think that you are in the clear by simply clicking on the information dealing with the folio only. Bespeaking a copy of the folio from the Land Registry electronically will not show dealings pending and it is important that you click on that section marked under that heading in order to ascertain the dealings pending.

Enquiries should also be made from Law Searchers as to whether they are doing a full search or not.

Practitioners should also note that when searching and bespeaking up to date folios, at the moment the Land Registry will, in many instances, only show the registration of the last registered owner, and consequently the history of the folio will not be available unless you ask for the folio from its inception.

Although you can get a copy of the file plan over the internet, the Conveyancing Committee recommends that a purchaser at all times is entitled to a Land Registry Certified Copy folio and file plan. It is not sufficient to bespeak a copy of the folio and then add on an old or previously obtained original file plan because the file plan could have been subject to a change since originally printed.

Published in
Law Society Gazette,
July 2005

PROPOSED CHANGES TO LAW ON ADVERSE POSSESSION

In the draft Land and Conveyancing Bill 2005 published in the Law Reform Commission's latest Report on the Reform and Modernisation of Land Law and Conveyancing Law, it is proposed at Section 129 that applicants for registration based on adverse possession will, in future, have to make such an **application in Court** instead of by way of Section 49 application to the Registrar of Titles as is currently the case.

It is also proposed that legal title will not vest in the applicant who obtains a Court Order until it is registered in the Land Registry and, until so registered, it will vest only an equitable interest in the applicant. This applies in respect of both registered and unregistered title.

Section 130 of the draft Bill provides that the Vesting Order shall be made only if the Court is satisfied that certain criteria are met and subject, if the Court thinks fit, to payment by the applicant of a sum of money to the owner by way of **compensation** for loss, defrayment of costs and expenses or otherwise.

Practitioners with any pending S.49 applications (or any adverse possession claims in relation to unregistered land) may wish to take steps to expedite same in advance of the introduction of any new law or procedures in this area.

The proposed new requirement for a court application and the possibility of being required to pay compensation will radically change the nature of adverse possession claims and the Conveyancing Committee would be greatly interested in hearing from practitioners with their views on these new proposals. Practitioners may also wish to make submissions to the Minister for Justice, Equality and Law Reform and/or to the Law Reform Commission.

Published in Law Society Gazette, December 2005

DRAFT LAND AND CONVEYANCING BILL 2005 - ADVERSE POSSESSION

Readers may recall from the December issue [of the Gazette] that the Conveyancing Committee proposed lodging a submission on the above topic with the Minister for Justice Equality and Law Reform. The committee's first submission, arguing against the proposed changes in the law on adverse possession contained in the draft Bill, was duly lodged on 21st December 2005 and was followed by a supplemental submission on 31st January 2006. (Both submissions can be accessed on www.lawsociety.ie by logging in to the Members' area and clicking in turn on Society Committees, Conveyancing Committee and Submissions.)

The committee has received a letter dated 21st February, 2006 from the Private Secretary to the Minister for Justice Equality and Law Reform replying on behalf of the Minister to the committee's submissions. The reply confirms

> *"The position is that the provisions relating to adverse possession of land in the draft Land and Conveyancing Bill published by the Law Reform Commission sought to take account of the European Court of Human Rights judgment in the case of JA Pye (Oxford) Ltd v UK. The UK authorities have now sought to appeal this judgment to the ECHR's Grand Chamber and if this request is successful, a new judgment will follow in due course. In the meantime, it is not intended to proceed with changes in existing statutory provisions relating to adverse possession. However, the points set out in your submissions will be taken into account in the context of any such future changes.*
> *Yours sincerely"*

The committee is pleased to note that the proposed changes will not now proceed and if a review becomes necessary at any stage the committee's submissions will be taken into account. The committee will continue to monitor the situation. Thanks to all practitioners who wrote to the committee and to the Department on this topic and it was noted that the vast majority of you supported the committee's views on the matter.

Published in Committee Notes section of Law Society Gazette, May 2006

TRANSFER OF CONVEYANCING FILE TO NEW SOLICITOR WHERE CLIENT'S TITLE IS NOT YET REGISTERED

An increasing number of queries are being received by the Conveyancing Committee as to what practitioners should do where they are instructed by clients who wish to mortgage or otherwise deal with their property where the client is not yet registered as owner and another solicitor is entitled to return of the title deeds after registration by virtue of being the solicitor who lodged them for registration. In the experience of the committee to date these queries arise mostly in relation to Land Registry title and particularly in relation to transfers of part of a folio where the client has purchased a newly constructed house within the past two to three years. Typically the client wishes to sell on or to take out a top-up loan and also wishes to instruct a different solicitor to the one who acted in the original transaction. In the vast majority of cases the first solicitor will have given the standard form of undertaking to a lending institution to register title and lodge the registered deeds and mortgage with the lender.

It is the view of the committee that a prudent solicitor instructed in the second transaction should not take over responsibility for the registration of the client's title where that solicitor has not examined the title and satisfied him/herself that same is in order and that the transfer and mortgage documentation, family law declarations, mapping of documents, rights of way, etc and fees lodged, including mapping fees, will lead to registration of the client as owner of the property without any Land Registry requisitions. Because inspection of the Land Registry dealing will be impractical in most cases it is the view of the committee that the new solicitor should await completion of the client's registration before commencing the second transaction. The new solicitor should therefore not give an undertaking to a lender to take over the registration of the client's title and the lender's first mortgage.

Under no circumstances should the file or authority to take up the dealing be handed over by the first solicitor to a new solicitor without the consent of any lending institution involved and without the first solicitor securing a discharge of any undertaking given to the lender.

A request for the application for registration to be expedited should be lodged immediately with the Land Registry by any one of the first solicitor, the client or the new solicitor. It has been confirmed by the Land Registry that requests for expedition will be treated with urgency where:-

1. there is a sale or other dealing with the property,
2. there is a top-up or new loan ,
3. the power of sale under the mortgage is being exercised,
4. there is a change of solicitor.

The completed dealing will be returned to the first (lodging) solicitor who can then discharge his/her undertaking to the lender by lodging the deeds in the usual way with the

lending institution and obtaining a discharge of the undertaking. The deeds can then be taken up in the ususal way from the lender by the new solicitor for the purpose of completing the second transaction.

The Land Registry has asked practitioners generally to use requests for expedites sparingly.

TRANSFER OF CONVEYANCING FILE TO NEW SOLICITOR WHERE CLIENT'S TITLE IS NOT YET REGISTERED

(Contd.)

The Conveyancing Committee
Published in
Law Society Gazette,
November 2001

NON-PERSONAL CLOSING

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:

NON-PERSONAL CLOSING

(Contd.)

(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 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.

NOTE: 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 any changes made by subsequent editions of the Conditions of Sale.

Published in Law Society Gazette, July 2006

LAND REGISTRY BOOKLETS OF TITLE ON CD-ROM FOR NEW HOUSES

It has come to the notice of both the Technology and Conveyancing Committees that the issue of booklets of title by builders' solicitors on CD ROM / DVD is starting to become prevalent. Both committees agree that the procedure should only be used to issue documentation where the title is Land Registry and relates to new housing estates only.

This practice note is accordingly being issued by the Conveyancing and Technology Committees so that practitioners are aware of the practice recommended by both committees and that the matter is receiving the continuing attention of both committees.

It should be emphasised that given the speed of the development of technology and the current e-conveyancing initiative being carried out by the Law Reform Commission, it is likely that the comments in this practice note may not represent the views of the Committees for more than the short term.

The following is a summary of the committees' views on the matter.

1. While the committees are not endorsing the practice, they are aware that it is occurring, and, if it is being adopted, the following matters are considered by the committees to be good practice:
   - The purchasers' solicitors are entitled to obtain the documentation in hard copy at any time.
   - All closing documents must be in hard copy.
   - The procedure is only appropriate to Land Registry cases and particularly new developments.
   - The furnishing of documentation by this method should be by agreement only and should not be imposed.
   - When issuing a booklet of title on CD ROM the vendor's solicitor's initial letter should contain the following sentence “You are entitled to receive a hard copy of this booklet of title immediately on request”.

2. It must be borne in mind that even if there is agreement between the builder's solicitor and the purchaser's solicitor in the matter, such agreement may not necessarily extend to the lending institution or a subsequent purchaser's solicitor. It should further be borne in mind that the standard certificate of title envisages the delivery of hard copies of the documentation to the lending institution.

3. The matter remains under review.

Where a booklet of title is being provided on CD ROM/DVD, the following procedures should be observed:

LAND REGISTRY BOOKLETS OF TITLE ON CD-ROM FOR NEW HOUSES

(Contd.)

- The materials should be accessible in an openly readable format, e.g. Adobe Acrobat.
- The format should also preserve the security of the original documents.
- All materials should be clearly indexed (by way of page number) and the index of documents should comprise the first page of the materials on the CD ROM / DVD. All pages should be numbered.
- The index should indicate the date on which the materials were complied.
- The CD ROM/DVD itself should be physically marked or labelled to generally indicate its contents and the date of its production.
- All materials should be easily printable in their entirety and clearly readable in their printed form.

Practitioners are also reminded of the issues dealt with in the practice note on the storage of documents in electronic format which deals with similar matters (published in the April 2005 issue of the Gazette, p37, and on the Law Society's website at www.lawsociety.ie/newsite/documents/committees/retention.pdf).

Published jointly by the Technology Committee and the Conveyancing Committee in Law Society Gazette, July 2006