



9th March 1999

Dear Colleague,

The Conveyancing Committee in conjunction with the Legal Advisers of the undermentioned Financial Institutions is pleased to inform you that agreement has been reached on revised standard forms of Solicitor's Undertaking, Certificate of Title and Approved Guidelines ("the agreed documents") for future use in residential property mortgage transactions.

Specimen copies of the agreed documents are enclosed. It is proposed that the agreed documents be used for all residential property mortgage loan transactions approved on or after **1st April 1999**.

The Committee unhesitatingly recommends practitioners to utilise the agreed documents for all residential mortgage loans approved after **1st April 1999**. **No alternative documentation should be used.** This recommendation is endorsed by the Solicitors Mutual Defence Fund Limited and Solicitors are advised that failure to utilise the agreed documents may engender difficulty with their Professional Indemnity Insurance Cover. Henceforth any alterations to or revisions of the agreed documents necessitated either by future legislation or changes in conveyancing practice shall be introduced only by the Committee in consultation with the Lending Institutions.

The revisions of and the alterations to the existing Certificate of Title documentation were sought by the Committee in the light of the terms of Opinions procured by the Committee from two eminent Senior Conveyancing Counsel, both of whom advised that it was highly desirable that the respective roles and responsibilities of Borrowers' Solicitors and Lenders should be re-stated and clarified so as to

- (a) define and absolutely limit the responsibility of certifying solicitors to matters of title only and
- (b) establish that Borrowers' Solicitors do not act for Lenders.

All matters which are not related to title, such as credit worthiness of Borrowers, loan repayment arrangements, property valuations and all insurance matters shall be the responsibility of the Lenders and not of Borrowers' Solicitors save as directed by the Approved Guidelines. While the Approved Guidelines acknowledge that the Borrowers' Solicitors has no responsibility to the Lender to explain the conditions of the Facility Letter to the Borrower this does not affect the Solicitor's duty to his/her client in that regard.

In general terms, the agreed documents require that certifying Solicitors will carry out proper

THE SOCIETY'S CERTIFICATE OF TITLE SYSTEM (1999 EDITION)

**THE SOCIETY'S
CERTIFICATE
OF TITLE
SYSTEM
(1999 EDITION)**

(Contd.)

investigation of title to the Borrower's property, attend to the execution of the relevant purchase and mortgage documentation including, where applicable, guarantees and assignments of Life Policies and stamp and register the Borrower's deeds of purchase and mortgage prior to furnishing to the Lending Institution a properly completed Certificate of Title together with all relevant documents as soon as practicable.

Practitioners are earnestly advised to read the Approved Guidelines carefully as they set out requirements, inter alia, in relation to non-owning spouses, Deeds of Confirmation and Rights of Residence. Practitioners particularly should note that because of the nature of an exclusive right of residence, a Deed of Release will be required.

When utilising the agreed documents, practitioners should ensure compliance with the following practice recommendations viz:

- (a) all security documents should be signed in the presence of and witnessed by a Solicitor.
- (b) all Solicitor's Undertakings should be signed either by a partner or principal or a Solicitor duly authorised in writing by a partner or principal for that purpose. (Note: The foregoing has been specifically agreed with the Lenders to facilitate instances where the Partner or Principal is unavailable).
- (c) before signing Undertakings, Borrowers' Solicitors should ensure that their clients sign the Form of Retainer and Authority endorsed on such Undertakings and obtain a spouse's prior consent to the giving of the Retainer and Authority and Undertaking when applicable.
- (d) all intended qualifications to the Certificate of Title must be previously agreed in writing with the Lender and should be set out in the Schedule to the Solicitor's Undertaking.
- (e) before negotiating the loan cheque Borrower's Solicitors should ensure that all security documents have been executed and should be in funds to discharge all stamp duty and registration outlays in connection with the purchase and mortgage transaction.



- (f) all Certificates of Title should be signed by a partner or principal. Practitioners particularly should note that the Documents Schedules comprised in their Certificates of Title should be properly completed.

It should be noted that some Lenders may offer an Electronic Funds Transfer Facility for payments of the loan funds. In such cases the Lender will include the approved wording in the Letter of Undertaking requiring the insertion of the relevant Solicitor's client account details.

In relation to transactions involving stage payment purchases of new houses, practitioners are reminded of the terms of the various practice notices issued by the Committee expressing its disapproval of such form of house purchases and warning Solicitors of the potential risks both for their clients and themselves in allowing their clients to enter into such transactions.

The following Lending Institutions participated in negotiations with the Committee in reaching agreement on the enclosed agreed documents viz:

| | |
|----------------------|-----------------------------------|
| A.I.B. Bank | ICS Building Society |
| Irish Permanent plc | Irish Life Homeloans |
| Bank of Ireland | Irish Nationwide Building Society |
| EBS Building Society | National Irish Bank |
| ACC Bank | TSB Bank |
| AIB Finance | Ulster Bank Limited |
| First Active plc | |

The negotiations which led to agreement being reached on the enclosed documentation were very protracted and time consuming and, on behalf of the Profession, the Committee wishes to record its sincere appreciation of the huge commitment of time and effort contributed by the Members of its own Task Force and of the Lenders' Legal Advisers which resulted in the creation of the enclosed documentation which the Committee genuinely believes will be in the best interests of practitioners, their clients and the Lenders.

THE CONVEYANCING COMMITTEE

THE SOCIETY'S CERTIFICATE OF TITLE SYSTEM (1999 EDITION)

(Contd.)

NOTE (2006): Some of these lending institutions have had a change of name since the Law Society's Certificate of Title System was launched in 1999. In addition, some new lenders have entered the market and have received permission to use the Society's certificate of title documentation on the basis that they accept the terms of the system. Practitioners can check with the Conveyancing Committee to find out if a particular lending institution has received permission to use the documentation.