



UNDERTAKINGS

**D**espite regular Practice Notes in Newsletters and the Gazette dealing with Undertakings (including the Health Warning on the inside of the red cover of the Law Society printed forms of Undertaking) the Registrar's Committee is still constantly having to deal with failure by Solicitors to comply with their Undertakings. In most of these cases the Solicitor is in difficulty for one or two reasons.

1. He should never have given the Undertaking in the first place.
2. He had not received proper authorisation to give the Undertaking.

What has become clear to the Registrar's Committee is that there are various Undertakings which should never be given and there are other Undertakings which, if given, should be clearly expressed to be conditional.

If a solicitor is Undertaking only to use his best endeavour to procure something this should be clearly stated.

Problems arise when a Client wants his Undertaking so as to get money to complete some other transaction and the Solicitor is put on the spot. Unfortunately, all too often, it is easier to give an Undertaking and hope that everything will go right rather than trying to explain the intricacies of Undertakings to a client who does not want to hear.

In practice most Undertakings which should not have been given in the first place still sort themselves out. (This creates further pressure on the Solicitor when the Bank Manager tells your client that your colleague down the road gave an Undertaking in similar circumstances).

Hereunder are some of the pitfalls which can arise.

1. Unconditional Undertaking to hand over the proceeds of sale of a property subject to a mortgage in favour of a lending institution.  
All is well if the sale goes ahead. If the sale breaks down and repayments are not being made and the Lending Institution gets an order for sale, the solicitor will be in difficulty.
2. Undertaking to pay a beneficiary a share in an intestacy.  
Even with the authority of the beneficiary and the proposed Administrator if a Solicitor gives an Undertaking prior to the issue of a Grant of Administration and if the Administrator dies he will be left without control of the matter. In certain circumstances similar problems may arise where there is an Undertaking in relation to the payment of a legacy.
3. Undertakings to furnish client's statutory declarations. If Declarations are in existence they can be handed over. If they are not in existence the Solicitor should not undertake since he cannot ensure their completion.



4. Undertakings given before the commencement of a transaction. If a Solicitor gives an Undertaking before the transaction commences and before he has got the control of matters he finds that his client goes to another Solicitor who is totally unaware of your Undertaking. There may be a second Undertaking to a second Bank!
5. Allied Irish Banks Home Loan System. Under the A.I.B. Home Loan system a Solicitor gives his Undertaking before any of the documents are signed. The Solicitor must ensure that he does not negotiate the loan cheque until all transfers, mortgages and other documents required by the Bank are executed by the Borrower.
6. Undertakings to furnish Capital Acquisitions Tax Act Clearance Certificates.
  - (a) In circumstances where the property has qualified for Agricultural Relief under the C.A.T. Acts which is lost by virtue of the sale but which will be regained if there is a re-investment within a year pursuant to Section 19 of the 1976 Act, has the Vendor's Solicitor retained sufficient funds to cover the possibility that the Vendor did not re-invest the proceeds?
  - (b) If a Special Condition in the Contract provides "on closing the purchaser shall accept an Undertaking from the Vendor's Solicitor to furnish a Certificate of Discharge from Capital Acquisitions Tax in respect of the death of the deceased registered owner". Before the closing of the sale the Solicitor must ensure that he has the necessary authority from his client to give the Undertaking to the Purchaser's Solicitors and further he must have the authority to retain sufficient funds to discharge the outstanding tax.
7. Deeds on Accountable Receipt from the Bank. In Family Transfer situations solicitors obtain Deeds on Accountable Receipt from the Bank for the purposes of the transfer from father to son. By completing the Accountable Receipt form the solicitor is giving an Undertaking to return the Deeds in the son's name. The son's authority is therefore needed before the Accountable receipt is signed.
8. Did the Wording of your Undertaking Protect your Lien for Costs? If not, collect your costs before giving the Undertaking.

**Think before you give the next Undertaking.** (Unless you are quite happy to discharge your obligations from your own personal funds).

## UNDERTAKINGS

(Contd.)