



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

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(Contd.)

lending institution and obtaining a discharge of the undertaking. The deeds can then be taken up in the usual 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.