



BUILDING

CONTRACT FOR

“ONCE-OFF”

HOUSES

The Conveyancing Committee had considered preparing a standard building contract for “once-off” houses but decided that the existing building contract with amendments is sufficient to deal with the “once-off” house.

The Committee suggests that the contract be amended by attaching a separate page to the existing document in the following form:-

1. The provisions of Condition 6 herein and Condition 10 herein shall not apply to this contract.
2. If notice has been served on the Contractor by the employer pursuant to Condition 5 hereof, then and in any such case, the following provisions shall take effect, without prejudice to any other remedies the employer may have against the Contractor pursuant to the terms of this agreement, at Common Law, or by statute:-
 - a. the employer may employ and pay any workman or other person or persons to carry out and complete the works and to use all materials, temporary buildings and plant then at the works necessary for the purpose;
 - b. the Contractor shall if so required by the employer assign to the employer, without payment, the benefit of any contract or contracts he may have made with any person or persons firm or corporation for the supply of any materials or for the execution of any of the works.
3. The following special conditions shall also apply to this contract:-

Care should be taken by solicitors acting for the employer to ensure that the matters here have been carefully considered before the contract is entered into.

1. *Plans and Specification*

Plans in this context mean at least a house plan and a site layout plan. They should include sections and elevations as well. The specification should set out in writing in exact detail what materials, fittings and standards the builder is to use in the construction of the house. Plans and specification of a very general nature are not suitable for a once-off house. The sort of items that require to be detailed include:-

- (a) finishes;
- (b) allowances for wallpaper, sanitary ware and fireplaces;
- (c) extent of tiling in bathroom and kitchen;
- (d) boundary wall, fences, site works;
- (e) central heating or back boiler;
- (f) immersion heater;
- (g) insulation;
- (h) septic tank/soak pit.

The plans and specification should be in duplicate. Both should be dated, signed and initialled by both parties for the purposes of identification. One



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(Contd.)

- copy of each is then retained by each party. If plans and/or specification are not in order and the facilities to have the plans revised or the specification redone are not readily available then the best way of dealing with the matter is to add a list of the points giving as clear and accurate a description of the corrections as is possible and this note should be signed or initialled by both parties.
2. It must be clearly specified who is responsible for seeing that the site layout and the position of the dwelling and septic tank are in accordance with the plans approved by the Planning Authority. A standard requirement on any mortgage or house purchase is a certificate from an architect or engineer that the house has been built in accordance with the planning permission. Some banks and buildings societies also have special requirements that a suitably qualified architect or engineer must check the house in the course of construction at certain crucial stages. For example they require that the foundations be checked before the concrete is poured etc. It must not be assumed that all architects or engineers will automatically give these certificates. The form the building society requires should be obtained and a copy given to the architect or engineer before work starts to make sure he or she is willing to undertake this commitment.
 3. If the builder is arranging for the planning permission (and if relevant the building bye laws approval) then it would be normal for him to procure a certificate of compliance with the planning permission and to furnish the necessary certificate after completion.
 4. *Possession*
Condition 1 of the agreement provides that the employer will give the contractor possession of the site. It is vitally important than an employer should not commit himself in an agreement to do this unless he is already the owner of the property.
 5. *Site Conditions*
It must be clear what site works the contract price includes. If a lot of earth removal has to take place before building can commence is this included in the price? If the contractor encounters unexpectedly difficult ground conditions such as a soft spot and has to go down seven foot into the ground for foundations it should be clear who is to pay for the extra cost of this work. Contractors, particularly those who construct a large proportion of the building off site, frequently give a quotation without inspecting the site on the basis of a site being reasonably level and soil conditions being normal. Both parties to a building agreement should take great care that the position in relation to the costs of such works is clearly set out in writing.
 6. It frequently arises in relation to once-off houses that the parties agree that



the employer will arrange to have certain parts of the completion of the house, such as the wiring or plumbing carried out by himself or some other contractor on his behalf. If such an arrangement is made the terms of it should be confirmed either in the agreement or by letter. In particular, it should provide that the contractor shall be entitled to give the employer written notice if the failure to complete any work is causing delay and should provide who is to be responsible for any loss as a result of any such delay.

7. *Payment*

Practices vary as to how payment for the contract is to be made. All that is essential is that whatever payment schedule is agreed between the parties be clearly set out in the schedule of the agreement. Provisions should be made for interest on late payments and for a retention to cover defects appearing after completion.

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The inclusion of special conditions in building contracts which limit a purchaser's rights may result in the purchaser's solicitor being unable to certify for a lending institution. Many loan approvals contain a condition that only the standard form of building contract may be used. Accordingly, members are advised to check all amendments to the standard building contract to ensure that they do not prevent them issuing a certificate of title in accordance with the lending institutions' requirements.

It has also come to the notice of the Committee that certain contracts are being produced on word processors which claim to be the standard contract but do not include all the clauses.

Where a solicitor has obtained the necessary consent from the Law Society either to reproduce the building contract or to prepare a document which refers to the building contract as being incorporated therein, the following clause must be used in the contract:-

“This contract shall be read as if it contained unamended all the terms and conditions of the Building Agreement issued jointly by the Incorporated Law Society of Ireland and the Construction Industry Federation in so far as said terms or conditions are not hereinafter altered or varied”.

BUILDING CONTRACTS

LENDING INSTITUTIONS' REQUIREMENTS

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