



The Conveyancing Committee of the Dublin Bar Association has for some time been considering the problems arising from the increasingly common insertion into Contracts for the sale of properties of a clause to the effect that “on closing the purchaser will accept the vendor’s Solicitor’s undertaking to discharge out of the proceeds of the sale the mortgage in favour of the Building Society”.

While appreciating the practical reasons which give rise to such a clause, the Committee feel that the practice of inserting such clauses in Contracts is not desirable.

The Committee recommends instead, that a clause to the following effect would deal with the difficulties which arise in paying off mortgages where sales are being closed and would avoid the undesirable consequences of the clause above mentioned:

“When furnishing the Apportionment Account for the closing of the sale, the vendor’s Solicitors will furnish to the purchaser’s Solicitors a statement from the Vendor’s Mortgagees setting out the amount required to redeem the mortgage as at the closing date together with the accruing daily rate of interest thereafter and, on closing, the purchaser will furnish to the vendor separate Bank Drafts for the amount required to redeem the mortgage and for the balance of the purchase monies respectively and the vendor will forthwith discharge the mortgage debt to the vendor’s Mortgagees and will furnish to the purchaser proper evidence of such discharge and will furnish to the purchaser such release of the mortgage as may be appropriate”.

UPDATE: Difficulties are arising with regard to obtaining redemption figures from lenders. It is of the utmost importance that

- 1. the request for such redemption figures should be in writing. In this regard one should never rely on obtaining redemption figures over the telephone.**
- 2. the request in writing should ask for the redemption figures for all loans that the client may have with the particular lender.**

There have been instances where Solicitors have requested redemption figures with regard to the original loan only whereas the client had a number of other loans which were secured by way of a deed of further charge or an equitable deposit of title deeds. The vendor’s solicitor, having redeemed the original loan in accordance with the written figures obtained from the lender, gave an undertaking to the Solicitor for the purchaser but when the vacated mortgage was sought from the lender the vendor’s solicitor was informed that there were other loans outstanding and the mortgage could not be handed over vacated. The vendor’s solicitor, having closed the sale and disposed of the monies on hand, was then in difficulty because he could not honour his undertaking unless he discharged the additional monies due to the lender which may ultimately have to come out of his own pocket unless his client acknowledged that he owed the monies and put the solicitor in funds to discharge same.

The Committee understands that the problem is arising more with building societies than with banks and accordingly, as indicated, it is of the utmost importance when requesting redemption figures that the request be made in respect of *all* loans affecting the property. If it should transpire that the lender did not furnish redemption figures in respect of all loans but only in regard to the original loan, it is submitted that the lender would be estopped from denying that all of the loans had been redeemed where it had furnished redemption figures in respect of only one of the loans.

DISCHARGE OF MORTGAGES OUT OF PROCEEDS OF SALE