



**CERTIFICATES OF
TITLE IN
COMMERCIAL
LENDING**

Some lending institutions require certificates of title in commercial lending cases from borrowers' solicitors. The solicitor's packages supplied in most of such cases contain the lenders' own forms of undertaking, certificate of title and guidelines. It has been brought to the notice of the Conveyancing Committee that some of these documents contain a paragraph concerning the definition of "good marketable title" which refers to the standards of good conveyancing practice prevailing in this jurisdiction as entailing the use of the standard Law Society contract for sale, building agreement and requisitions on title as appropriate and/or a paragraph providing for the referral of disputes as to the quality of any title for a ruling by the Conveyancing Committee of the Law Society.

It appears to the committee that the use of the name of the Law Society and/or the Conveyancing Committee in these documents gives the misleading impression to some practitioners that the Society or the committee has approved the use of these certificate of title documents or has approved the content of the documents.

For the avoidance of doubt, the Conveyancing Committee wishes to bring the following to the notice of practitioners

- (a) there is no certificate of title system for commercial lending agreed between the lenders and the Conveyancing Committee of the Law Society
- (b) the committee has not approved the use of or the content of any commercial certificate of title documentation with any lender
- (c) use of the name of the committee or the Law Society in the body of such documentation does not mean the documents have been approved by the committee or the Society
- (d) if individual solicitors agree to give certificates of title in commercial cases they should be aware that
 - the documents used will usually be significantly different to those agreed under the certificate of title system for residential mortgage lending
 - the documents agreed under the certificate of title system for residential mortgage lending will usually not be appropriate for use in relation to a commercial loan transaction
 - the basis on which they give a certificate of title to a lender, in terms of legal liability, may not be the same as that which has been agreed between the lenders and the Society in residential mortgage lending certificate of title cases.

In addition, the committee would encourage practitioners to carefully review the terms of any non-residential mortgage certificate of title documentation presented to them for completion and, in particular, would encourage practitioners to negotiate the terms of same with the lender. The solicitor will not be in a position in every case to certify every item listed in the documentation and some documentation includes matters that are more



properly for members of other disciplines, such as engineers or architects, to certify.

NOTE:

The committee has recently established a working group to explore the possibility of drafting a standard certificate of title for use in commercial conveyancing. The discussions are at an early stage and are expected to take some time. The committee will advise the profession of the outcome of the discussions in due course.

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