



1st September, 1995

Dear Colleague,

As Chairman of the Law Society Conveyancing Committee, I am writing to you and to every Principal/Managing Partner of a solicitor's practice in the State to announce the completion of a comprehensive revision of the Society's standard conveyancing contract the 'General Conditions of Sale - Particulars and Conditions of Sale by Private Treaty or by Auction'.

This new 1995 edition replaces the 1991 edition and incorporates many amendments required by changes in the law and in conveyancing practice together with some other improvements. I am pleased to enclose a specimen copy of the new (1995) edition together with an explanatory memorandum¹ drawing your attention to the changes made which the Committee trusts practitioners will find both instructive and helpful.

The 1995 edition is now available for purchase from the Society (contact Linda Dolan - price £20 for 50). Production of the 1991 edition has been discontinued.

In a conscious effort to restore the status of the General Conditions of Sale, the Committee has upgraded the quality and layout of this new edition and hopes that the profession will find it more clear and user-friendly.

The Committee is concerned at the increasingly prevalent practice on the part of some practitioners of using a shortened form of contract containing a provision purporting to incorporate the standard general conditions without actually setting them out. The Committee disapproves strongly of this practice which it considers to be not only contrary to good conveyancing practice but also potentially hazardous for practitioners.

The Committee emphatically recommends that henceforth the entire General Conditions of Sale should be used by practitioners to avoid possible difficulties with the interpretation of contracts.

The Committee has also been engaged in revising and updating the current edition of the Standard Requisitions on Title to meet the requirements of the profession. This revision has reached an advanced stage and it is hoped to have the new edition of the Requisitions on Title available for use by the profession in the near future.

Yours sincerely,

COLM PRICE
CHAIRMAN OF THE CONVEYANCING COMMITTEE

**NEW GENERAL
CONDITIONS OF
SALE**

1995 EDITION

*1. Reproduced at pages
12.18 to 12.20 hereof*



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(Contd.)

GENERAL CONDITIONS OF SALE

(1995 EDITION)

Explanatory Memorandum

The Law Society Standard General Conditions of Sale have been revised, and the new (1995) Edition will be available from the Society from September of this year.

The Conditions of Sale have been considered in the light of legislative and other changes, and also submissions and recommendations made to the Society. To the extent that some items are not reflected in the 1995 conditions, it was felt that they were either not of sufficient general significance or were deemed to be more suited for introduction by way of Special Condition.

The following are the changes, and are identified by reference to the General Conditions as numbered in the revised Edition.

2. The definition of “working day” has been refined to exclude the seven days immediately succeeding Christmas Day and also Bank Holidays.
5. (b) Provides that the recipient of any part of the deposit, if nominated by the Vendor, will be deemed to be a stakeholder thereof.
8. (b) Has been introduced as a result of the introduction of Section 146, Finance Act, 1994. This will also serve as a reminder of the important consequences of this Section.
8. (c) This provision has been introduced as a result of doubts raised as to whether a Purchaser takes “free from encumbrances”. Unless otherwise stipulated, the Vendor is to be obliged to discharge all mortgages and charges for the payment of money affecting the property. If this is not to be the case, or if, on the other hand, there are other matters in the nature of encumbrances which are to be dealt with by the Vendor prior to completion, same should be covered specifically by way of Special Condition. In the ordinary course General Condition 16 will apply.
11. (b) This provision is new and has been designed to meet difficulties on the investigation of registered titles in the areas of Capital Acquisitions Taxes and Voluntary Dispositions.
13. (g) This provision requires the Vendor to redeem any Land Purchase Annuity affecting the property.
15. The disclosure requirement has been extended to reservations and taxes affecting the property.
20. The requirement of legislation on Residential Property Tax have now been included together with Capital Gains Tax.



25. (a) This provides the Vendor with the right to take the rents and profits of the property up to the date of completion in addition to the right to claim interest in the event of the purchaser's default.
25. (b) Requires a defaulting Vendor to give to his Purchaser five working days notice of his ultimate ability to complete.
27. (f) Provides for the apportionment of excise duties on sales of properties with bar licences.
33. Has been substantially restructured, and removes certain rights (believed to have been superficial) previously afforded to Vendors.
36. This section has been expanded considerably to allow for changes in the legislation, and should be read with care. It contains an important marginal note, which, in substance, reflects the recommendation published in the Gazette of September, 1993.
51. The arbitration provision has been amended - consequentially upon other changes, and also to meet questions arising on the issue of interest.

The following points should be mentioned:

- (a) The Professional Purposes Committee has already expressed the view that, when a Vendor's Solicitor furnishes a Contract to a Purchaser's Solicitor, he must expect that no amendments will have been made to the Contract or to any Map attached thereto, unless such are clearly disclosed by the Purchaser's Solicitor when returning the Contract. Failure so to disclose and thus to alert the Vendor could be regarded as a breach of professional etiquette.
- (b) It has come to the attention of the Society that some members have adopted the practice of utilising a limited form of Contract, which incorporates a provision purporting to adopt the Standard General Conditions without setting same out. This course is regarded as being potentially hazardous, and it is recommended that all Contracts should contain physically a full set of the Standard General Conditions.
- (c) Any variation in the General Conditions should be dealt with by way of Special Condition.
- (d) The numbering system previously obtaining has, to a certain extent, become established amongst practitioners, and same has, accordingly, been maintained substantially.
- (e) Likewise, the basic format of the Conditions has been retained, as also have the first three Special Conditions. The third of these deals with Value-Added Tax implications, and each case should be considered carefully in this particular context.
- (f) General Condition 24 (b) provides, as heretofore, that completion is to take place at the Office of the Vendor's Solicitor. The Conveyancing Committee is aware of the fact that lending Institutions frequently appoint Solicitors practising in suburban areas to represent their interests, and that, in turn the latter may require transactions

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- to be completed at their offices. The resultant anomaly between this and 24 (b) should be faced in each individual case and agreement reached between the parties as to the actual place of completion.
- (g) Section 76, Finance Act, 1995, in effect, places an obligation on a person acquiring an asset (in a non - monetary situation), not only to notify the Revenue Commissioners of the transaction, but also to “pay to the Collector-General an amount of Capital Gains Tax equal to 15% of the market value of the consideration”. While such a case is not within the normal contemplation of the Standard Conditions, it is important to note that, should same arise, provision should be made by way of Special Condition to enable the acquiring party to collect from the disponent a sum corresponding to that required to be paid over to the Collector-General.
- (h) As ever, the Conveyancing Committee recommends that Members would view with care the warranty embraced by General Condition 36. There have indeed been suggestions that this should be abolished completely, and it has also been mentioned that same might be qualified so as not to extend to matters disclosed expressly by the Vendor to the Purchaser prior to the sale and whether in response to pre-Contract enquiries or otherwise. It was, however, felt that these were issues which should be addressed by way of Special Condition.
- (i) The General Conditions do not deal with whether roads or services are in charge of the Local Authority. If appropriate, this should be dealt with by way of Special Conditions.
- (j) Exchange Control requirements, environmental issues and the implications of a variety of enactments (as, for example, those dealing with Mergers and Monopolies, Multi - storey Buildings etc) should be approached either by pre-Contract Enquiry or through the medium of Special Conditions.