



## SPECIAL CONDITIONS IN CONTRACTS FOR SALE

**T**he Conveyancing Committee is concerned about the growing tendency of including in contracts for sale special conditions which are unnecessary, badly drafted, unfair or unacceptable for some other reason. Some solicitors are using what might be termed “standard special conditions” in all contracts, including contracts for the sale of second hand houses.

### **Amendments to General Conditions**

The General Conditions of Sale of the Law Society as amended from time to time have been accepted by the profession for a considerable time as, on balance, reasonable to both parties. Where Special Conditions are inserted for the purpose of amending the General Conditions there should be a particular reason as to why the General Conditions cannot be adopted. The necessity for Special Conditions that conflict with the General Conditions should be capable of being explained to the solicitor for the purchaser unless this is obvious). Otherwise considerable time can be wasted in negotiating conditions which are not necessary.

For example, special conditions requiring the purchaser to accept the boundaries of the property etc. may be unnecessary if this is already adequately covered by General Condition 14 under the heading “Identity”.

Similarly, clauses providing that the purchaser buys with full knowledge of the state of repair of a second hand house is unnecessary as it is covered by the caveat emptor rule and only leads to queries as to why the special condition has been inserted.

### **Special Conditions re Title**

Special conditions are typically used to preclude a purchaser from insisting on something relating to the title to which he would be otherwise entitled. The special condition should be specific as to what is missing or excluded from the title and should not mislead. If there is a defect on the title a purchaser cannot be precluded from an investigation unless the condition contains a warning about the defect. It should not be stated that something is not known to the vendor if, in fact, it is.

### **Planning**

Similarly if there is any unauthorised development or other planning defect this should be disclosed by Special Condition and an indication given as to what extent and why the warranty in General Condition 36 is to be limited.

### **Drafting**

Inserting Special Conditions may not always have the intended effect and regard should be had to a number of aspects:



1. Bad drafting may turn out to be a problem for the vendor as any ambiguity will be construed in favour of the party whose rights are to be restricted. Usually this means that it will be construed against the party drafting the Special Condition.
2. The Law Society Conditions provide that the Special Conditions shall prevail in case of any conflict with the General Conditions.
3. In the case of new houses a term which is found to be unfair within the meaning of The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 will be unenforceable. Certain terms found by the High Court in December 2001 to be unfair within the meaning of the Regulations may not be included in a building agreement.
4. Some conditions are, in any event, prohibited by statute, such as
  - (a) a condition precluding a purchaser from objecting to title on the grounds of absence or insufficiency of stamps on any instrument executed after 16th May 1888 - Section 131 Stamp Duties Consolidation Act, 1999;
  - (b) a term designed to prevent the raising of Requisitions in relation to burdens generally or to any particular burden which, by virtue of Section 72 of the Registration of Title Act 1964 may affect registered land - Section 115 of the Act;
  - (c) a condition excluding a purchaser from raising Requisitions in relation to letting, sub-letting or sub-division of an agricultural holding - Land Act 1965 Section 12;
  - (d) a condition requiring one party to pay any of the legal fees incurred by the other party on the granting of a Lease - Section 32 Landlord and Tenant (Ground Rents) Act 1967;
  - (e) a condition requiring a purchaser, lessee or tenant to pay the fees of an auctioneer or house agent employed by the Vendor, Lessor or Landlord - Section 2 Auctioneer's and House Agents Act, 1973.

Practitioners are requested to give some thought to Special Conditions and not to include them merely because they have been seen in contracts prepared by other solicitors or because they find they can impose them on purchasers regardless of their suitability or necessity. The reputation of the profession depends on individual solicitors acting in a professional manner at all times.

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