
24. PRACTICE DIRECTIONS 1990

PREFACE

Under article 18(h) of the Articles of Association of the Society the Council is empowered to issue Practice Directions relating to the professional practice, conduct and discipline of solicitors. Article 6 provides that every solicitor shall be absolutely bound by all Practice Directions issued from time to time by the Society.

The Council has issued a number of Practice Directions. Some of the Directions are advisory only but some are mandatory, breach of which will be treated as professional misconduct in respect of which disciplinary action may be taken.

These Practice Directions replace all previous Directions made by the Council. They have been edited but there are no new Directions and no amendments of substance.

In a number of Directions reference is made to particular sums of money. These have been reviewed and some have been revised and are effective from the date of publication of this document.

Practice Directions which dealt with publicity have been repealed and a new Solicitors' Practice Promotion Code is published separately.

The date on which the original Direction came into effect is referred to in those Directions where it may be important to the obligations of solicitors before and after a particular date. Otherwise reference can be made to the table at Appendix 1.

January 1990

Note: These consolidated Practice Directions were first issued on 8 January 1990.

This revised print is current at 15 October 2001

A. CONVEYANCING

1. Attestation of documents
2. Sale of flats in uncompleted developments by way of grant or sale of sub-leases
3. Solicitors' Accounts Rules
4. Rule 5C of the Solicitors' Practice Rules - sale of flats in uncompleted developments
5. Management of buildings - deeds of mutual covenant
6. Standard provisions for payment of purchase money in Consent and Non-Consent Schemes
7. Sale and purchase of partitioned residential flats
8. Certified copies of title deeds.
9. Rule 5C(1) of the Solicitors' Practice Rules
- 9A. Rule 5C(1) of the Solicitors' Practice Rules - Home Ownership Scheme and Private Sector Participation Scheme Conveyancing Transactions
- 9B. Rule 5C(1) of the Solicitors' Practice Rules - Financial Secretary Incorporated Lease Extension Cases
10. Rule 5C(1) of the Solicitors' Practice Rules
11. Rule 5C(1) of the Solicitors' Practice Rules
12. Rule 5C of the Solicitors' Practice Rules
Approved Forms A1 and A2 (for Consent Scheme)
Approved Forms B1 and B2 (for non-Consent Scheme)

B. COSTS

1. Solicitors' bills of costs
2. Solicitors (General) Costs Rules - equitable mortgage and legal charge
3. Solicitors (General) Costs Rules - assignment between subsidiary / associate companies

C. CRIMINAL CASES

1. [Repealed]
2. [Repealed]
3. Steps to be taken in criminal matters
4. Video evidence of children

CIRCULAR 8/80

Sale & Purchase of Flats

Since the issue of Circular to Members No. 37/78 dated 10th April, 1978, the General Committee has received further representations from members. In view of this, a new Ad Hoc Committee was appointed with the following terms of reference:-

"To make recommendations as to affording better protection to purchasers of flats in uncompleted developments and to consider and make recommendations for improvements in the present conveyancing systems and practices relating thereto."

The Ad Hoc Committee has now recommended that as an alternative to separate legal representation, for the sale and purchase of flats or units in an uncompleted development where the Consent Scheme does not apply, a standard form of Agreement for Sale & Purchase (containing mandatory clauses) and Declaration which closely follow those for the Consent Scheme should be used by all members in order to provide additional protection for purchasers.

The General Committee has endorsed and accepted the Ad Hoc Committee's recommendations and they will be made the subject of a Practice Rule to implement the same which rule is due to be gazetted shortly. Copies of the standard form of Agreement for Sale & Purchase (which shows the mandatory clauses underlined) and Declaration are supplied to each firm under cover of this Circular. Members will be advised of the date of the coming into operation of the Practice Rule in due course.

As mentioned in paragraph 8 of Land Office Circular Memorandum No.57, if it is found that adequate protection is not afforded to purchasers of flats or units under the Non-Consent Scheme, the Government will step in and introduce further legislative protection. It is appreciated that certain developments will have been partially sold at the date when the Practice Rule becomes operative. The Committee would be prepared to entertain applications for waiver under rule 6 of the Solicitors' Practice Rules in such cases.

3. SOLICITORS' ACCOUNTS RULES

(1) Solicitors who act as stakeholders in respect of funds received from purchasers where the Sale and Purchase Agreement is subject to either:-

- (a) the prior consent of the Director of Lands (previously the Registrar General (Land Officer)) pursuant to the special conditions under which the land is held; or
- (b) where the Sale and Purchase Agreement is entered into in accordance with the requirements of the Non-Consent Scheme,

may deposit such funds either in a bank in accordance with rule 3 of the Solicitors' Accounts Rules, or alternatively, provided the following conditions are fulfilled, with a licensed (but not a registered) Deposit Taking Company.

(2) The conditions are that the Sale and Purchase Agreement:-

- (a) contains an express instruction to the solicitor to hold the funds with a licensed Deposit Taking Company; and
- (b) identifies by name the licensed Deposit Taking Company with whom the funds are to be held.

(3) Except as stated above, clients' funds must be deposited with a licensed bank.

4. RULE 5C OF THE SOLICITORS' PRACTICE RULES - SALE OF FLATS IN UNCOMPLETED DEVELOPMENTS

- (1) This Practice Direction is to be read in conjunction with rule 5C of the Solicitors' Practice Rules. It applies to the situation that arises where the vendor offers for sale property in an uncompleted development in circumstances where rule 5C applies and the vendor and the purchaser are separately represented.
- (2) A solicitor may not directly or indirectly permit the vendor or any servant or agent of the vendor, to solicit business on his behalf. A solicitor must be satisfied before accepting instructions from a purchaser that the purchaser has not been improperly induced to give instructions to his firm.
- (3) Where a solicitor accepts instructions from such a purchaser in respect of a flat in an uncompleted development, he must make a detailed comparison between the proposed form of Sale and Purchase Agreement drafted by the vendor and the clauses required by the Council for mandatory inclusion in such an agreement where the solicitor acts for both the vendor and the purchaser.
- (4) The solicitor acting for the purchaser must give the purchaser written advice stating, if such be the case, that the proposed agreement does not contain all the mandatory clauses required by the Law Society in Sale and Purchase Agreements of uncompleted developments and giving details with full particulars of the omissions / variations (if any). The written advice must make it clear to the purchaser the extent to which he may be prejudiced by the omissions / variations in whole or in part of such mandatory clauses.
- (5) Save in exceptional circumstances a period of not less than 48 hours must elapse between the delivery to the purchaser of written advice complying with paragraph (4) above and the execution by the purchaser of the Sale and Purchase Agreement.
- (6) Solicitors are reminded of their duty to approach the vendor's solicitors with appropriate amendments to the Sale and Purchase Agreement with a view to including the contents of the mandatory clauses before allowing their purchaser client to sign it.
- (7) This Practice Direction came into effect on 1st March 1983.

5. MANAGEMENT OF BUILDINGS - DEEDS OF MUTUAL COVENANT

Reference is made to the Society's Circular No. 99-323 on Guidelines for the drafting of Deeds of Mutual Covenant. The Guidelines apply to the following developments with effect from 20 December 1999:-

- (a) all uncompleted developments under the Non-Consent Scheme; and
- (b) all completed developments in respect of which no Deeds of Mutual Covenant have been entered into.

Notwithstanding the above the Guidelines do not apply to an uncompleted development under the Non-Consent Scheme where a statutory declaration to which (inter alia) a draft Deed of Mutual Covenant was annexed had been registered in the Land Registry or the appropriate District Land Registry before 20 December 1999.

Subsequent amendments to the Guidelines shall be notified in Circulars and shall apply with effect from the date as stated in the relevant circulars.