
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Practice Directions which dealt with publicity have been repealed and a new Solicitors' Practice Promotion Code is published separately.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 as at 3 May 2004

A. CONVEYANCING

1. [Repealed]
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. [Repealed]
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

- (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.04-123 on Guidelines for the drafting of Deeds of Mutual Covenant.

With immediate effect, the Guidelines shall apply to all developments where approval of the Deeds of Mutual Covenant is not required to be given by the Director of Lands.

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

Members who wish to deviate from the Guidelines must apply for a waiver setting out the grounds of the application.

6. [Repealed on 13 April 2004]

7. SALE AND PURCHASE OF PARTITIONED RESIDENTIAL FLATS

- (1) A solicitor may not act for both the vendor and the purchaser in the sale and purchase of partitioned residential flats unless the following requirements are complied with :-
 - (a) (i) plans for alteration of such flats have been duly approved by the Building Authority; or
 - (ii) an authorised person has certified that no alteration plans are required to be approved by the Building Authority;

- (b) where plans for alteration works have been approved by the Building Authority, an authorised person has certified that such alteration works have been carried out in accordance with the approved plans;
 - (c) there is no breach of the provisions of the relevant Crown Grant;
 - (d) there is no breach of the provisions of the relevant Deed of Mutual Covenant.
- (2) A solicitor for the purchaser is under an obligation to draw his client's attention to the above requirements. Where the purchaser persists in proceeding with the transaction despite the non-compliance with such requirements or any of them, his solicitor should obtain from him an acknowledgment in writing to the effect that the purchaser has been advised of the requirements and that notwithstanding such advice, the purchaser has decided to proceed with the transaction.
- (3) This Practice Direction does not apply to the sale and purchase of partitioned non-residential flats or units.

8. CERTIFIED COPIES OF TITLE DEEDS

- (1) It is unethical for a purchaser's solicitor to make certified copies of title deeds or certified copies thereof supplied by the vendor's solicitor unless such copies are made:-
- (a) with the express consent of the vendor's solicitors; or
 - (b) on the instructions and for the purpose of that purchaser who has already paid the vendor's solicitor for the certified copies supplied.
- (2) This Practice Direction came into effect on 1st May 1989 and was amended on 17 February 2003.

9. RULE 5C (1) OF THE SOLICITORS' PRACTICE RULES

- (1) In a conveyancing transaction to which rule 5C (1) of the Solicitors' Practice Rules applies a solicitor acting for one party, or any member of his firm, should not attest the signature of another party, who is not represented by that solicitor.
- (2) This Practice Direction came into effect on 17th April 1990.

9A. RULE 5C(1) OF THE SOLICITORS' PRACTICE RULES - HOME OWNERSHIP SCHEME ("HOS") AND PRIVATE SECTOR PARTICIPATION SCHEME ("PSP") CONVEYANCING TRANSACTIONS

- (1) Solicitors appointed by the Housing Authority to deal with HOS conveyancing transactions (i.e. initial sales, buy-backs and re-sales) and PSPS conveyancing transactions (i.e. buy-backs and re-sales) can attest the signature of the other party (i.e. purchasers in HOS initial sales and re-sales and PSPS re-sales and vendors in HOS and PSPS buy-backs) without representing that other party. In such event the solicitor must make it clear to that other party that the solicitor is acting only for the Housing Authority and not for that other party.