

THE SOLICITORS PRACTICE REGULATIONS 1987 (AS AMENDED) Reg 8A & Schedules 1 & 2

- [8A(1)¹] In any case to which this regulation applies, for the purposes of Regulation 8(1) and without prejudice to the generality thereof, a solicitor shall comply with the Code of Practice and associated Forms set out in Schedule 1 and Schedule 2 to these regulations.
- (2) This regulation applies where a solicitor is acting in the purchase or sale of domestic property.
- (3) For purposes of this regulation:
- [a] "domestic property" means premises or part of premises primarily used or intended to be used for residential purposes, and not acquired or disposed of by the client in the course of a commercial business activity (including agriculture);
 - [b] the Code of Practice and associated Forms set out in Schedule 1 and Schedule 2 to these regulations may be cited as "The Home Charter Scheme".
 - [c] "the Committee" means the Home Charter Committee of the Council of the Law Society of Northern Ireland.
- (4) Regulation 18 of these Regulations shall not apply in any case to which this regulation applies.

"SCHEDULE 1 Regulation 8A

CODE OF PRACTICE

PART I

When acting for a vendor in a transaction to which Regulation 8A applies a solicitor shall:

1. so far as is practicable and consistent with the client's instructions make use of the General Conditions of Sale and other standard conveyancing documents published by the Society;
2. when taking instructions:
 - [a] record the information provided for in Form 1A in Schedule 2 or some other similar form;

¹ Regulations 8A-C inserted by the Solicitors Practice (Amendment) Regulations 2000

- [b] seek suitable evidence of the client's identity;
 - [c] seek information as to the identity of any persons who are or will be in occupation of the property and thereby affecting the rights of any mortgagee or purchaser;
 - [d] identify any special terms which may be appropriate for the contract including, inter alia, making enquiry to what provision is to be made with regard to fixtures, fitting and chattels;
 - [e] enquire about completing the Society's recommended form of Enquiries before Contract in so far as the same relate to the premises;
 - [f] enquire as to the position regarding the insurance of the premises against fire and other normal insurable risks and to advise the client, if appropriate, of any problem likely to arise from under-insurance or non-insurance.
3. Following receipt of instructions write to the client setting out terms of business including an estimate of costs and outlay in such manner as may be prescribed by the Society together with a leaflet in Form 2 in Schedule 2 or some other similar form or letter containing the same information.
 4. Before giving any undertaking to a bank or other financial institution, obtain the client's consent in writing and, in relation to any undertaking as to the payment of money, ensure that such undertaking is so qualified as to extend only to monies as and when they shall be received and in all cases where an undertaking is given, furnish a copy thereof to the client and ensure that the fact that the undertaking has been given is recorded on the file in a manner designed to attract attention and to be highly visible.
 5. In bespeaking any Property Certificates or searches referred to in the General Conditions of Sale or any regulation, direction or recommendation promulgated by the Society or the Council take care, in the case of any Local Council or competent Authority not using the forms negotiated between the Society and the Local Authorities Association, that the forms used by such Council contain similar questions and will provide the same information.
 6. Take due account of any peculiarities or problems revealed in the title documents in preparing the draft contract.
 7. In submitting a form of draft contract to the purchaser's solicitors, furnish with it:
 - [a] the title or copy title to the premises;

- [b] any searches which are being provided by the vendor in pursuance of any regulation direction or recommendation of the Society or of the Council;
 - [c] a form of Enquiries before Contract, as recommended by the Society, duly completed with replies to the various questions contained therein after consultation with the client.
8. In the event of the matter falling within the provisions of Regulation 19(2), write to both clients in the terms set out in Form 4A in Schedule 2 and, if a conflict of interest arises thereafter, observe the Society's requirements and write to both clients in the terms set out in Form 4B in Schedule 2.
 9. Take due care in obtaining information to deal with any additional enquiries or requisitions which may be raised by the purchaser or the purchasers solicitors.
 10. Consider any advice on any amendments which may have been proposed by the purchaser to the draft contract previously submitted.
 11. Submit complete contract as accepted by the vendor or submit a counter offer to the purchaser and, at the same time, seek to obtain such deposit as is provided for in the said complete contract or counter offer.
 12. Take due care in considering and approving any deed which may be drafted by the purchaser or the purchaser's solicitors in relation to the transaction.
 13. In so far as practicable, obtain redemption figures from any mortgagee at least two working weeks prior to the date of completion and advise the purchaser or the purchasers' solicitors accordingly.
 14. Arrange for the execution of the assurance to the purchaser in good time for completion and make suitable and satisfactory arrangements for the handing over of possession.
 15. Following completion submit the redemption cheque to the appropriate mortgagee together with the appropriate document for completion of the satisfaction of the mortgage forthwith.
 16. Seek duly executed satisfaction of mortgage by way of reminder if the same has not been returned by the mortgagee within 10 working days from the date the cheque was sent.
 17. (1) In Registry of Deeds transactions:
 - [a] register the satisfaction of the mortgage or in the alternative forward to the purchaser's solicitors the

- vacated mortgage with the appropriate registration fee immediately the same is received;
- [b] furnish to the purchaser's solicitors the duly registered satisfaction of mortgage immediately the same has been noted by the Registry;
- (2) In Land Registry transactions:-
- [a] furnish the satisfaction of the charge together with the appropriate fee to the purchaser's solicitors immediately the satisfaction is received from the chargee.
18. Within 5 working days after completion advise, either directly or indirectly, the Rates Collection Agency and, where appropriate, the Ground Landlord or his Agent, of the change of ownership and the date thereof.
19. Account to the client for all monies received and expended including any interest on money in lieu thereof as early as practicable after completion.
20. Present regular reports to the client and in particular report at the following stages:
- (1) on sending draft contracts and other papers to the purchaser's solicitors;
 - (2) following final acceptance of contract and obtaining a deposit;
 - (3) following the obtaining of redemption figures from any mortgagee
when arrangements should be made for the execution of the deed,
obtaining the keys and generally completing the legal formalities;
 - (4) after completion with a statement of account and report on proceeds of sale.

PART II

When acting for a purchaser in a transaction to which Regulation 8A applies a solicitor shall:

- [a] when taking instructions record the information provided for in **Form 1B** set out in Schedule 2 or some other similar form and seek suitable evidence of the client's identity and information as to the identity of any persons who are or will be in occupation of the property and thereby affecting the rights of any mortgagee or

purchaser;

- [b] following receipt of instructions to act in a transaction to write to the client setting out terms of business including estimate of costs as specified in any Practice Direction of the Committee together with **Form 2** provided for in the Schedule, or in such other similar form;
- [c] in the event of any investment business being necessary involving an outside independent financial adviser to be recommended or arranged, make the necessary arrangements with the relevant independent financial adviser as early as practicable after the date of instructions;
- [d] in the event of any undertaking being required to a bank or other financial institution, seek the clients instructions before giving same and, if so instructed, give same in the form approved by the Council of the Society from time to time or, in the event of there being no such form, or no suitable form, ensure that any undertaking given extends only to acts which can be performed by the firm itself: and, where any undertaking is given in relation to the payment of money, ensure that such undertaking is so qualified as to extend only to monies as and when they shall be received by the firm. (Suggested forms of undertaking are provided at **Form 3(A)(B)(C) and (D)** of Schedule 2);
- [e] in the event of an undertaking being given to a bank or other financial institution, furnish a copy thereof to the client and ensure that the fact that such an undertaking has been given is noted on the file in a manner designed to attract attention and to be highly visible;
- [f] in the event of any client seeking to instruct a firm in the sale of the same property, then give consideration to the matter of conflict of interest. If any such conflict of interest crystallises then the firm shall inform both clients accordingly and shall require them to seek alternative advice. If no such conflict appears, and if the circumstances provided for in Regulation (19) of the Solicitors' Practice Regulations 1987 apply, then the firm shall write to both clients in terms similar to the letter set out in **Form 4(A)** of Schedule 2.
If a conflict of interest arises thereafter the firm shall observe the Society's requirements and shall write to both clients in terms similar to the letter set out in **Form 4(B)** of Schedule 2;
- [g] where a map of the premises is available, provide a copy for the client at the earliest possible opportunity for information purposes and to enable the client to comment on the boundaries of the property;

- [h] advise the purchaser of the amount of and need for the deposit prior to returning the offer to purchase to the vendor's solicitors;
- [i] investigate the title with due professional skill and, in particular, advise the purchaser of any potential challenge to ownership which might be mounted under the current insolvency law and advise the purchaser to take appropriate measures to safeguard his interest in the property;
- [j] subject to Clause 3(h) and to receipt of cleared funds from the client, furnish payment of any deposit offered within 5 working days following receipt of notice of acceptance of contract;
- [k] forward report on title to the mortgagee within the time specified in instructions or, if the time limit is for any reason missed, use all proper endeavours to ensure that funds will be available for completion from either the mortgagee or another source;
- [l] advise the client, in writing of the consequences of the mortgage involved. (A suggested form of letter is included in **Form 5** of Schedule 2);
- [m] seek to obtain from the client, by way of the form of letter set out in **Form 6** of Schedule 2 or some similar form, in adequate time for completion, all funds necessary to complete including any monies required to cover outlay including stamp duty, Land Registry fees and costs;
- [n] obtain such searches as the Committee may from time to time prescribe by Practice Direction;
- [o] forward draft Deed in good time for approval, engrossment and execution to take place prior to completion;
- [p] lodge the assurance in accordance with Inland Revenue requirements in the Stamp Office with the appropriate duty as soon as practicable after completion and in any event within 30 days;
- [q] lodge the assurance, and all other documents required for registration, in the appropriate Registry as soon as practicable after any required satisfaction of mortgage is received or, in the alternative, as early as practicable after the assurance has been received back from the Stamp Office whichever may be appropriate;
- [r] as soon as the assurance has been registered in the Registry of Deeds update the Registry of Deeds search provided;
- [s] provide a Cash Statement to the client;

- [t] report to the client from time to time as may be required and, in particular, report to the client;
 - (i) when title is received to provide client with details of premises, easements, onerous covenants, etc., and to enclose copy map of premises;
 - (ii) when the offer to purchase is furnished to the Vendor's solicitors;
 - (iii) when the accepted offer or a counter offer is received;
 - (iv) when the mortgage instructions are received;
 - (v) prior to completion, when the report on title and request for cheque has been forwarded, arrange for finance and remind client of completion details including dealing with services etc;
 - (vi) following completion when the assurance is lodged in the Registry of Deeds or Land Registry when a cash statement can be furnished.

PART III

When acting for both borrower and lender in the creation of a mortgage or charge in a transaction to which Regulation 8A applies, a solicitor shall:

- [a] after receipt of instructions from the lending institution and no later than the execution of the mortgage documents seek an interview with the client for the purpose of discussing those instructions;
- [b] in the course of such interview discuss with the client;
 - (i) any valuation of the property carried out on behalf of the lending institution of which the client may be aware with particular regard to the rights, duties and liabilities (or lack thereof) attaching thereto;
 - (ii) the requirements and proposals of the lending institution in relation to any collateral security which may be sought or made;
 - (iii) the requirements and proposals of the lending institution in relation to any insurance of the premises or contents which may have been sought or made;
 - (iv) the effect of any "all monies" requirement imposed by the lending institution;

- (v) the position under any building standards indemnity guarantee scheme or, in the event of the premises not being covered by such a Scheme, any substitute therefore;
 - (vi) the fact that a Mortgage Guarantee Premium or other fee may be deducted from the Advance or otherwise payable;
- [c] check the instructions and requirements of the lending institution against the title to ensure that the particular requirements of the lending institution are met or are capable of being met;
 - [d] immediately after completion, or immediately after the assurance to the purchaser has been stamped, lodge, with the assurance, any mortgage deed in the Registry of Deeds or the Land Registry;
 - [e] in any Land Registry transaction forward to the lending institution on request a copy of the Land Registry receipt card and advise such lending institution in the event of the document being returned to the solicitor and not relodged promptly;
 - [f] on completion of the matter and on receipt of the duly registered documents either from the Registry of Deeds or the Land Registry, furnish the documents of title to the lending institutions.

PART IV

When acting in any transaction to which Regulation 8A supplies, a solicitor shall:

- [a] in all cases respond to any request for information by the client within 3 working days from receiving same;
- [b] in all cases respond to telephone calls from the client or any professional colleague no later than the next working day;
- [c] in all cases seek to arrange appointments taking due account of any particular difficulties which the client may have and honour all such appointments as and when made unless prevented by force majeure;
- [d] comply with any Practice Directions of the Committee approved by the Council of the Society as interpretative or ancillary to these Rules.

SCHEDULE 2

HOME CHARTER SCHEME

FORM 1A

INSTRUCTIONS SHEET

SALE

Client

Name: _____

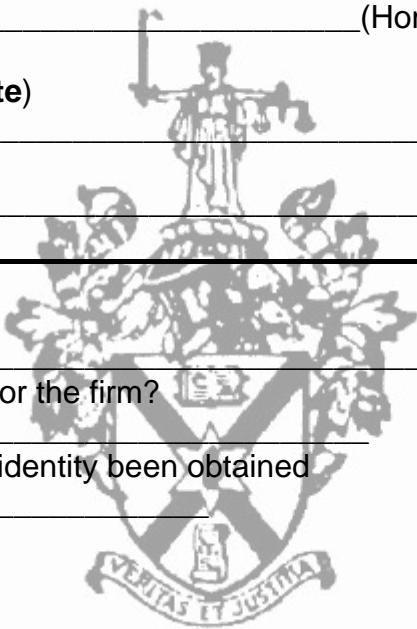
Address: _____

Telephone
(Business) _____ (Home) _____

Joint Client (if appropriate)

Name: _____

Address: _____



Telephone (Business) _____

Is the Client known to you or the firm? _____

If not has any evidence of identity been obtained

Selling

Premises (Address)

Sale Price _____

Additional Items to be sold/purchased and price

Purchaser (if known)

Name

Solicitors

Details

Any persons resident on premises?

Proposed Completion date (if known)

Reasons/requirements for Completion date

Estate Agents

Address:

Telephone No.

Situation of Deeds

Building Society Roll Number if known or Branch

Other Existing Mortgages or
Charges _____

Any collateral security to be receipted discharged

Client's Bank

Any undertaking required? (if so NOTE ON FILE)

Name of ground landlord/agent collecting ground rent/any land purchase
annuity? _____

Further information

(Standing Orders to be cancelled? Capital Gains Tax implications?).

Property Enquiries/Questionnaire completed?
