

WHO SHOULD CERTIFY COMPLIANCE IN 2010?

In future, the Conveyancing Committee feels that it is reasonable for solicitors to accept certificates of compliance or certificates of opinion from:

- Persons who are on the register of architects,
- Persons who have been in practice as architects or engineers on their own account for ten years,
- Qualified engineers practising in the construction industry,
- Qualified building surveyors practising in the construction industry,
- Persons from another jurisdiction in the European Union whose qualification is entitled to recognition in Ireland under the *Architects' Directive*.

If a query arises over the qualification of a person giving a certificate, the solicitor should take care to make it clear that he or she is not making the decision but is advising the purchaser, and that the final decision as to whether or not to accept the certificate proffered is the client's responsibility. Of course, if the solicitor is signing a cer-

tificate of title for a lender, the solicitor will have to make up his or her mind on the issue and advise the client of the implications of that advice because, in that event, the purchaser would have to have clearance from the lender. Most purchasers, particularly those borrowing, will tend to be cautious and accept their solicitor's advice, but some will take a commercial judgement and proceed despite what the solicitor perceives as a potential problem. Obviously, if a client decides to proceed despite the solicitor's concerns, it is best practice for the solicitor to confirm the advice in writing. Solicitors should also bear in mind that, while the committee will assist and advise its members in regard to best practice, none of this can absolve the individual solicitor from his or her responsibility to the client. Each solicitor must look at each individual case on its own merits.

The committee recognises that there may be exceptional cases, involving persons practising as architects whose competence is recognised in their own

locality and whose certificates may be generally acceptable in that locality, even though their qualifications or experience fail to meet one or some of the criteria mentioned above. Having said that, solicitors are cautioned that, on a resale of the property in question, it may be difficult to persuade potential purchasers to accept any departure from the foregoing guidelines.

The committee has consistently advised solicitors to exercise caution in relation to the qualifications of persons from whom they will advise clients to accept certificates of compliance. The reason for this is obvious. The committee takes the view that, if a solicitor advises a client to accept a certificate of compliance in relation to a development (such as a house or a house extension) from a person who is not adequately qualified, the client will have a problem in that the property may not be readily saleable.

When advising a client in the purchase of any property with a building thereon regarding any material point, such as whether

a certificate of compliance relative to a building or extension is in an acceptable form or is given by a person with an acceptable qualification, solicitors usually apply a threefold test:

- 1) In the solicitor's own opinion, is the particular matter in order and in accordance with good conveyancing practice?
- 2) Will it be acceptable under the rules or guidelines of the bank or building society from whom the client is borrowing?
- 3) Will it be acceptable to most other solicitors if the property were to be put up for sale again in the near future?

If the answer to any of these questions is in the negative, the solicitor will normally advise his or her client not to accept the point in question and advise the client not to proceed with the transaction unless the difficulty is resolved.

Lastly, for the avoidance of doubt, these practice notes are for the assistance of the profession and are not mandatory.

Conveyancing Committee

NEW LEASES TO BE IN FORM 111

Practitioners should note that, from 1 December 2009, all leases of registered land should be in the format set out in Form 111 of the *Land*

Registration Rules. This will require considerable adaptation of any precedent leases that practitioners have been using up to now.

The committee is in the process of revising its own precedent transfer for building estates, and the revised precedent will shortly be avail-

able in the precedent documentation section of the members' area of the Law Society's website.

Conveyancing Committee

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