

Solicitors' Practice (Amendment) Regulations 2018

The Council of the Law Society of Northern Ireland, in exercise of the powers conferred on them by Articles 26(1) and 75(1) of the Solicitors (Northern Ireland) Order 1976 and all other powers enabling them on that behalf, and with the concurrence of the Lord Chief Justice of Northern Ireland hereby make the following regulations for the purposes mentioned in Article 26(1) of the said Order.

- 1.(a) These Regulations may be cited as the Solicitors' Practice (Amendment) Regulations 2018.
- (b) These Regulations shall come into force on **1st January 2019**.
2. In these Regulations "the Principal Regulations" means the Solicitors' Practice Regulations 1987 and any reference to a Regulation by number is to the Regulation so numbered therein.
3. For Regulation 19 of the Principal Regulations there shall be substituted the following Regulation:-
 - "19 (1) Subject to Regulations 19(2), 19(3) and 19(4) below, a solicitor shall not act for both vendor and purchaser on a transfer of land for value at arm's length or for both lessor and lessee on the grant of a lease for value at arm's length.
 - (2) Provided no conflict of interest appears and the vendor and/or lessor is not a builder or developer selling or leasing as such this regulation shall not apply if:
 - (a) the parties are associated companies; or
 - (b) the parties are related by blood, adoption, marriage or civil partnership; or
 - (c) both parties are established clients; or
 - (d) on a transfer of land the consideration is less than £10,000; or
 - (e) one of the parties is the Northern Ireland Co-Ownership Housing Association;
 - (3) Where a solicitor is acting in circumstances to which Regulations 19(2)(a) – (d) apply then both parties must be informed in writing that:-
 - (a) the solicitor is acting for both parties; and
 - (b) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
 - (c) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction and shall not continue to so act.
 - (4) Where the vendor and/or lessor is a builder or developer this Regulation shall not apply if:
 - (a) no conflict of interest appears; and
 - (b) the purchaser or lessee is :-

- (i) an associated company of the vendor/lessor; or
- (ii) a director or partner of the vendor/lessor; or
- (iii) a person related by blood, adoption, marriage or civil partnership to such director or partner; or
- (iv) the solicitor himself; or
- (v) an employee or partner of the solicitor or his firm and

(c) both parties have been informed in writing that:-

- (i) the solicitor is acting for both parties; and
- (ii) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
- (iii) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction.

(5) Notwithstanding the provisions of Regulations 19(2), 19(3) and 19(4) a solicitor shall not in any circumstances act for the purchaser on the transfer of land for value at arm's length or for the lessee on a grant of lease for value at arm's length where he or a solicitor practising with him is instructed as an estate agent to negotiate the sale of the property concerned."

4. For Regulation 20 of the Principal Regulations there shall be substituted the following Regulations:-

- "20
- (1) A solicitor shall not act for both a lending institution and borrower in the preparation and execution of a mortgage, charge or other security except that, provided no conflict of interest arises, it shall be permissible for a solicitor to act for a purchaser/borrower and a lending institution (or the Northern Ireland Housing Executive acting as a lending institution) in a transaction where:
 - (a) the solicitor is retained by the purchaser/borrower before he receives instructions from the lending institution; and
 - (b) where the terms of the security documents are standard and not subject to alteration by negotiation; and
 - (c) the Certificate of Title provided by the solicitor to the lending institution is the most recent version of the Certificate of Title approved by the Council of the Society from time to time and appropriate for that lending institution.
 - (2) It shall also be permissible for a solicitor to act for both a lender and borrower in relation to a further charge.
 - (3) For the purposes of this Regulation 20 and 20(A), a "lending institution" shall be defined as any lending institution regulated by a statutory authority.
- 20(A) (1) Subject to Regulation 20(A)(2), a solicitor shall not act for both mortgagor / chargor and mortgagee / chargee in the preparation and execution of a

mortgage, charge or other security provided always that this Regulation 20(A) shall not apply to any mortgage, charge or other security given to a lending institution on the terms set out and as defined in Regulation 20.

(2) Provided no conflict of interest appears this Regulation shall not apply if:

- (a) the parties are associated companies; or
- (b) the parties are related by blood, adoption, marriage or civil partnership; or
- (c) both parties are established clients

Where a solicitor is acting pursuant to Regulations 20(A)(2)(a) –

(c) above then both parties must be informed in writing that:-

- (i) the solicitor is acting for both parties; and
- (ii) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
- (iii) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction.”

The Society is keen to receive any comments from the profession on the operation of the new Certificates. Any issues arising should be sent to Andrew Kirkpatrick, Head of Non Contentious Business at: andrew.kirkpatrick@lawsoc-ni.org.