



STATUTORY INSTRUMENTS.

S.I. No. 375 of 2012

SOLICITORS (PROFESSIONAL PRACTICE, CONDUCT AND
DISCIPLINE — CONVEYANCING CONFLICT OF INTEREST)
REGULATION 2012

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THE LAW SOCIETY OF IRELAND, in exercise of the powers conferred on them by section 5 of the Solicitors Act 1954 and section 71 (as amended by section 69 of the Solicitors (Amendment) Act 1994 and section 4 of the Solicitors (Amendment) Act 2002) of the Solicitors Act 1954, hereby make the following Regulation —

1. This Regulation may be cited as the Solicitors (Professional Practice, Conduct and Discipline — Conveyancing Conflict of Interest) Regulation 2012.

2. Definitions and Interpretation

2.1 In this Regulation the following words and expressions shall have or, where the context requires, shall include, the following meanings:

“Associated Company”, the meaning ascribed to that expression by Section 432 of the Taxes Consolidation Act 1997, save that the words “or at any time within one year previously” shall be deemed omitted from sub-section (1) thereof for the purposes of this Regulation;

“Civil Partner”, the meaning ascribed to that expression by Section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“Conveyancing Transaction”, the transfer of any Property, whether by sale, lease, voluntary transfer, conveyance, licence, assignment, surrender or grant of an easement or option or otherwise, excluding a transfer upon the grant or release of a mortgage or charge (but including a lifetime mortgage and a home reversion agreement), and excluding the execution and registration of an assent by a personal representative;

“Family Home”, the meaning ascribed to that expression by Section 2 of the Family Home Protection Act 1976;

“Home Reversion Agreement”, the meaning ascribed to that expression in Part V of the Central Bank Act 1997 as amended by Section 19 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007;

“Lifetime Mortgage”, a loan secured on a borrower’s home where:

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 5th October, 2012.*

- a) interest payments are rolled up on top of the capital throughout the term of the loan;
- b) the loan is paid from the proceeds of the sale of the Property; and
- c) the borrower retains ownership of their home whilst living in it;

“Property”, any interest in land situate in Ireland;

“Purchaser”, any transferee or recipient of an interest in Property pursuant to a Conveyancing Transaction, whether or not for value;

“Qualified Party”, an entity which is either:

- (a) a qualified party by virtue of meeting the criteria in either paragraph (c) or paragraph (d) of the definition of “qualified investors” in Regulation 2 of the Prospectus Directive (2003/71/EC) Regulations 2005 (Statutory Instrument 324 of 2005) (as the same may be amended or re-enacted from time to time); or
- (b) a company which is an Associated Company of an entity meeting the criteria referred to in paragraph (a) of this definition;

“Shared Home”, the meaning ascribed to that expression by Section 27 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“Solicitor”, the meaning assigned to it in Section 3 of the Solicitors (Amendment) Act 1994 and includes two or more solicitors acting in partnership or association; save that for the purposes of implementing the measures in Clause 4, “solicitor” shall mean an individual person;

“Vendor”, any transferor of an interest in Property pursuant to a Conveyancing Transaction, whether or not for value.

- 2.2 For the purposes of this Regulation (a) an individual person or individual persons shall be treated as Associated with a company, and the company shall be treated as Associated with him or them if such individual(s) own(s) (directly or indirectly through other companies) the entire issued equity share capital of such company and (b) references to a “party” to a Conveyancing Transaction shall mean either the Vendor or the Purchaser (taken collectively in each case where there is more than one person or entity comprised therein).
- 3. A Solicitor may not act for both Vendor and Purchaser in a Conveyancing Transaction except:
 - 3.1 a Conveyancing Transaction comprising only the voluntary transfer of Property which is a Family Home or a Shared Home either (a)

from its owner to the joint tenancy of the owner and his/her spouse or Civil Partner or (b) (where the Property is owned by spouses or Civil Partners otherwise than as joint tenants) from the owners to themselves as joint tenants;

- 3.2 a Conveyancing Transaction in which the Vendor and the Purchaser are Associated Companies or, in a case in which one such party comprises one or more individual persons and the other is/are a company or companies, in which the parties are Associated in accordance with Clause 2.2;
- 3.3 a Conveyancing Transaction where the Property being transferred is held under a bare trust and —
 - 3.3.1 is being transferred by existing trustees to new trustees; or
 - 3.3.2 is being transferred by trustees to a beneficiary;
- 3.4 a Conveyancing Transaction for value in which both the Vendor and the Purchaser are Qualified Parties and:
 - 3.4.1 the Solicitors' firm concerned has requested the Vendor and the Purchaser to consent to its representing both of them and has notified them in writing that it may have to give them conflicting advice and of the measures it proposes to implement in relation to such representation. Such notification shall include a statement that if a dispute shall arise between the Vendor and the Purchaser during or after the Conveyancing Transaction which is likely to result in litigation or threatened litigation (including arbitration) between them concerning the Conveyancing Transaction, the Solicitors' firm will not act for either party in such dispute or litigation and will cease to act for both of them in the Conveyancing Transaction; and
 - 3.4.2 following receipt of the notification at Clause 3.4.1, both Vendor and Purchaser have consented in writing to the Solicitors' firm representing both of them on the basis specified in such notification.
4. Each Solicitors' firm relying upon the exception in Clause 3.4 shall establish, maintain and observe measures appropriate for the circumstances of the firm as well as those of the Conveyancing Transaction and the clients in question, which shall include measures to ensure that:
 - 4.1.1 the Vendor and the Purchaser shall be represented by separate individual solicitors within the firm, neither of whom may be supervised by the other and who may not both be supervised by the same person; and
 - 4.1.2 communications between the solicitors shall be conducted in all respects as if they were members of different Solicitors' firms.

Detailed records and notes shall be maintained by both solicitors of all correspondence, discussions and meetings between them.

5. Any breach of this Regulation may, upon due inquiry by the Solicitors Disciplinary Tribunal pursuant to Section 7 (as amended by Section 17 of the Solicitors (Amendment) Act 1994 and by Section 9 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1960, be found by the Solicitors Disciplinary Tribunal to be misconduct within the meaning of Section 3 (as amended by section 24 of the Solicitors (Amendment) Act 1994 and by Section 7 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1960.
6. This Regulation shall come into operation on the 1st day of January 2013.

Dated this 28th day of September 2012.

Signed on behalf of the Law Society of Ireland pursuant to Section 79 of the Solicitors Act 1954.

**DONALD PATRICK BINCHY,
President of the Law Society of Ireland.**

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