



NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

CONVEYANCING COMMITTEE

KYC AND AML REQUIREMENTS OF CERTAIN FUNDS OPERATING IN THE IRISH MARKET

The Conveyancing Committee is receiving numerous queries from solicitors acting for the purchasers of properties where the property in sale is secured to a fund/lender that has its own requirements in relation to 'know your client' (KYC) and/or anti-money-laundering (AML) as part of the sale process.

The committee is of the view that there are a number of matters arising that are causing difficulty for the profession.

1. Letter confirming KYC and/or AML enquiries

Frequently, a letter was being sought from the solicitor acting for the purchaser that created certain obligations directly to the fund/lender in relation to KYC and AML enquiries (as well as obligations in relation to associated documentation procured) that had been carried out by the solicitor in respect of his/her client.

Following representations made by the committee, it has been assured by one such equity fund that this letter will only be used in exceptional cases, and will no longer be accepted in auction scenarios. Practitioners are referred to paragraph 2 below in relation to special conditions that are being insisted upon by certain funds/lenders.

If the parties (including their respective legal advisors) decide to proceed on the basis of such a letter, the form and content of such letter needs to be carefully considered. Practitioners are reminded of their obligations pursuant to the relevant legislation and to their client, which



are of paramount importance and should not be fettered by any such agreement with, and/or letter to, the fund/lender.

Any such letter must be carefully drafted to ensure that it does not in any way restrict the solicitor's obligations under the relevant legislation. The solicitor, when providing such a letter, also needs to ensure that his/her client has formally and irrevocably (in writing) consented to the provision of such a letter to the fund/lender and to the commitments and obligations created. Such obligations and commitments may continue beyond the solicitor/client relationship and may, at a later date, conflict with the wishes of the client.

2. Special conditions in contract for sale entitling vendor to retain deposit

Some contracts being used contain a special condition entitling the vendor (regardless of whether or not it is the owner of the property and/or the fund/lender) to retain deposits and rescind the contract for sale if the fund/lender is not satisfied that its AML/KYC

requirements have been met. This is usually a unilateral entitlement to retain the deposit, with no clear objectivity as to the information required from the purchaser. As such, it leaves the matter largely open to the fund/lender to decide whether or not the relevant information has been provided. It is the view of the committee that such a condition is unreasonable, and should be resisted.

Indeed, the provision itself may be, in certain appropriate cases, an unfair contract term.

3. AML requirements of a fund/lender on the redemption of a loan

It appears that a process has now crept into the redemption of loans, where a property is being sold and a loan repaid and the fund/lender, in some cases, is requiring KYC and/or AML details of the ultimate purchaser.

While it is accepted that the fund/lender would be entitled to complete the usual KYC and/or AML enquiries in respect of its customer (the borrower), to insist on the same information from an unrelated third-party purchaser

for value in an arm's-length transaction, where the funds are passing through a solicitor's client account before being remitted in redemption of the facility, is an unusual and extraordinary practice.

This practice may cause difficulties with borrowers disposing of assets in order to discharge his/her obligations to the fund/lender, and could potentially result in a loss of value of the asset and/or the creation of a 'clog on the equity of redemption'.

4. Summary

Solicitors practising in this jurisdiction are regulated and required, as a matter of law, to comply with the relevant money-laundering legislation in force.

As such, the committee is of the opinion that it is not appropriate for the fund/lender to seek and compel unrelated third parties (such as third-party purchasers for value), who are independently represented by solicitors with the balance purchase moneys flowing through their solicitors' client account, to produce personal and sensitive data to the fund/lender and/or to require a letter or other evidence in this regard. It is quite reasonable and understandable that an unrelated purchaser will not wish to provide such details to the fund/lender.

These practices being introduced are unusual and not customary in this jurisdiction. Such practices may deter purchasers, reducing the pool of potential buyers and adversely affect the price achievable.

These are not practices supported by the committee.