



STATUTORY INSTRUMENTS

S.I. No. 211 of 2009

SOLICITORS (PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE — SECURED LOAN TRANSACTIONS) REGULATIONS 2009

(Prn. A9/0775)

SOLICITORS (PROFESSIONAL PRACTICE, CONDUCT AND
DISCIPLINE — SECURED LOAN TRANSACTIONS) REGULATIONS
2009

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 Regulations:

Citation and Commencement

1. (a) These Regulations may be cited as the Solicitors (Professional Practice, Conduct and Discipline — Secured Loan Transactions) Regulations 2009.
- (b) These Regulations shall come into force on the 1st day of September 2009.

Definitions

2. (a) In these Regulations—

“Acts” means the Solicitors Acts 1954 to 2008;

“bank” means a bank, credit union or other financial institution or person;

“*beneficial interest*” in relation to a solicitor to whom Regulation 3 applies includes an interest of

- (i) a company controlled by him or her or a connected person; or
- (ii) a partnership or co-ownership arrangement in which he or she or a connected person is a partner or co-owner as the case may be; or
- (iii) a trust in which he or she or a connected person is a beneficiary,

in property the subject of a secured loan transaction provided that a beneficial interest shall not be deemed to exist in relation to such solicitor where the value of the interest attributable, directly or indirectly, to the solicitor and his or her connected persons in aggregate represents less than 25% of the total value of all interests in the relevant property.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 12th June, 2009.*

For the purposes of this Regulation a solicitor shall be deemed to control a company if, but only if, he or she is, alone or together with any connected person, interested in one-half or more of the equity share capital of that company or entitled to exercise or control the exercise of one-half or more of the voting power at any general meeting of that company;

“*connected person*” in relation to a solicitor to whom Regulation 3 applies means—

- (i) a spouse of that solicitor, and/or
- (ii) another solicitor who is a sole principal or a partner in the firm in which that solicitor is engaged (whether full time or part-time), and/or
- (iii) a person who is cohabitating with that solicitor in domestic circumstances comparable to that of husband and wife for a continuous period of not less than three years, and who is not married to that solicitor, and/or
- (iv) a person to whom that solicitor is engaged to be married;

“*firm*” means a sole principal who employs one or more solicitors or a partnership of two or more solicitors;

“*legal practice*” means practice as a solicitor engaged in by a solicitor either as a sole principal or as a partner;

“*property*” means any real or personal property;

“*Regulation*” means a regulation in these Regulations;

“*secured loan transaction*” means a transaction involving an interest in property which is being funded, or proposed to be funded, in whole or in part by a mortgage or re-mortgage (legal or equitable) or lien or other charge in favour of a bank;

“*undertaking*” means any unequivocal declaration of intention addressed to a bank which reasonably places reliance on it which is made by a solicitor in the course of his or her practice, either personally or by a member of the solicitor’s staff, whereby the solicitor, or in the case of a member of his or her staff, his or her employer, becomes personally bound, in relation to:

- (i) the existence, or acquisition, of good marketable title to the property; or
- (ii) the execution and/or confirmation of a mortgage/charge over the property (or other collateral security such as a guarantee required by the bank); or

- (iii) the redemption of any existing charge over the property or any other property required by way of collateral security by the bank as part of the secured loan transaction; or
 - (iv) being in funds to discharge all stamp duty and/or registration fees in respect of the acquisition of the property; or
 - (v) holding the loan proceeds in trust for the bank; or
 - (vi) lodging the purchase deed/transfer for stamping and dealing with all related queries raised by the Revenue Commissioners; or
 - (vii) the registration of the purchase deed/transfer and the bank's mortgage/charge over the property and dealing with all related queries raised by the Property Registration Authority; or
 - (viii) the furnishing of a certificate of title to the bank; or
 - (ix) any other act(s) necessary to perfect the security of the bank in respect of the property or any other collateral security required by the bank as part of the secured loan transaction.
- (b) Other words and phrases in these Regulations shall have the meanings assigned to them by the Acts.
- (c) The Interpretation Act 2005 shall apply for the purposes of the interpretation of these Regulations, as it applies for the purposes of the interpretation of an Act of the Oireachtas, except insofar as it may be inconsistent with the Acts or these Regulations.

Prohibition on solicitors with beneficial interest giving undertakings in secured loan transactions

3. (a) A solicitor shall not give an undertaking to, or for the benefit of, a bank in relation to a secured loan transaction in which the solicitor or a connected person of that solicitor has a beneficial interest in the underlying property or properties used to secure the loan, unless the solicitor has given notice in writing to the bank of the beneficial interest of the solicitor or the connected person in the secured loan transaction and the bank has, in writing, both acknowledged receipt of such notice and consented to the solicitor providing the undertaking.
- (b) Clause (a) of this Regulation shall not apply—
- (i) to an undertaking given by a solicitor, in relation to a secured loan transaction in which the solicitor has a beneficial interest, prior to the coming into force of these Regulations which remains to be honoured in whole or in part after the coming into force of these Regulations, or

- (ii) to a statement of fact or declaration of intention made by a person who is a solicitor as a necessary requirement of that person's application to a bank as part of a secured loan transaction in which that person has a beneficial interest, provided that the making of such a statement of fact or declaration of intention would be a similar requirement for another applicant who is not a solicitor and that that person in doing so is not acting as a solicitor in the course of his or her legal practice.
- (c) For the avoidance of doubt, clause (a) of this Regulation shall not apply in respect of an undertaking given by a solicitor who is a sole principal or a partner in a firm in relation to a secured loan transaction in which another solicitor, who is not a partner but who is engaged in that firm (whether full-time or part-time), has a beneficial interest but where neither the solicitor giving the undertaking nor a connected person has a beneficial interest.

Solicitors' obligations to honour undertakings

4. Nothing in these Regulations shall be construed as lessening the obligations of

- (i) solicitors to honour undertakings given by them, and
- (ii) banks engaged in the funding of secured loan transactions to engage in appropriate due diligence before placing reliance on undertakings.

Misconduct

5. Any breach of these Regulations may, upon due inquiry by the Disciplinary Tribunal pursuant to the Acts, be found by the Disciplinary Tribunal to be misconduct within the meaning of the Acts.



5 June 2009

SIGNED on behalf of the Law Society of Ireland pursuant to section 79 of the Solicitors Act 1954.

JOHN D. SHAW,
President of the Law Society of Ireland.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The principal purpose of the Instrument is to provide for—

- A solicitor not giving an undertaking to, or for the benefit of, a bank, credit union or other financial institution or person in relation to a secured loan transaction in which the solicitor or a connected person has a beneficial interest, unless the solicitor has given specified notice and the bank, credit union or other financial institution or person has both acknowledged receipt of such notice and consented to the solicitor providing the undertaking.
- Definitions of “beneficial interest”, “connected person”, “secured loan transaction”, “undertaking” and other relevant words and phrases.
- Circumstances to which the Instrument does not apply.

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