

Legal Review



CONDITIONS OF SALE - TEN YEARS ON

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It is now ten years since the introduction of the standard form Conditions of Sale (or contract) for the sale of property prepared by the Guernsey Bar in consultation with local estate agents.

The standard form was introduced for a number of reasons one of which was to avoid the need for minor drafting amendments to be made depending upon the particular idiosyncracies of the advocates concerned. The standard form also introduced a simpler method of entering into a conditional contract for the sale and purchase of property. A purchaser whose vendor is willing to co-operate can therefore secure a binding contract whilst being able to withdraw and recover his deposit if certain pre-conditions (e.g. survey, finance, legal searches) are not satisfied.

As is the case with any standard contract the passage of time will result in the need for amendments to be considered, both because the existing wording is not clear and due to a change in circumstances.

The following issues have been raised by advocates and estate agents with regard to the present standard form:

1. Deposit

At present the Conditions provide that a deposit must be paid to the Vendor's Agents in order for a binding contract to be formed. The question has arisen as to what is meant by "paid". More often than not the deposit is paid by means of a cheque. In such circumstances is the deposit paid upon the cheque being tendered or when it has been honoured? Some agents are not happy to sign the deposit receipt clause in the Conditions when a cheque has been tendered until either the cheque is cleared or the wording is modified to refer to receipt of a cheque in payment of the deposit rather than the deposit itself.

It is proposed that the Conditions should be amended to refer to the contract being binding once cleared funds have been received unless the parties agree otherwise.

2. Vacant Possession

Two issues have arisen:

- 2.1 the Conditions do not specify the time on the completion date by which vacant possession must be given; and
- 2.2 what is actually meant by "vacant possession"? Often whilst the Vendor may have personally vacated the premises he may have left belongings of which he has not seen fit to dispose.

My personal view is that it is not a good idea to specify a time on the completion date when vacant possession must be given as this may encourage a Purchaser to claim damages for breach of contract in circumstances where

a Vendor has substantially vacated the premises by the relevant time and will clearly do so by the end of the day. It is far better for the parties to agree between them when the Vendor will have vacated to enable the Purchaser to move in and for there to be some flexibility.

Similarly I do not consider that there is any merit in a definition of "vacant possession" being used. Clearly if the Vendor, or for example a tenant, is still in occupation of the property at the end of the completion date there is a clear breach. However where a limited amount of the Vendor's belongings have been left behind there is no reason to imperil the whole transaction.

The conditions could be improved by incorporating a provision that the Vendor will be responsible for the cost of clearing any belongings not being sold to the Purchaser.

3. Pre-Conditions

If a conditional contract is signed the Purchaser can withdraw by giving written notice to the Vendor's Agents before a stipulated time and date. However there is no requirement for the Purchaser to give reasons why he is withdrawing. Therefore he may choose to withdraw for a reason totally unconnected with the particular condition (e.g. survey, finance, legal searches) referred to in the Conditions.

It has been suggested that written reasons should be given for withdrawal. It follows that if this proposal is adopted those reasons should be meritorious.

Once again I think it would be imprudent to introduce wording in the Conditions to deal with this issue. Whilst a Purchaser may be able to withdraw for reasons not connected with the particular condition, the alternative would be to encourage disputes over whether or not the reason for withdrawal was merited. It has to be accepted that most Purchasers who have undergone the process of negotiating a purchase to the point where Conditions have been signed, would not seek to withdraw for spurious reasons.

The above points are not exhaustive of issues that have been raised. It will also be necessary to amend the Conditions as a result of legislation being introduced. For example the new Inheritance Reform Law will abolish reitrait lignager (the right of relatives of a Vendor to re-purchase the property). The present clause in the Standard Conditions will therefore need to be removed.

A 2007 edition of the Conditions should therefore be produced in the not too distant future. Doubtless its precise content will be the subject of much discussion amongst both legal and estate agency professions!

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