



STATUTORY INSTRUMENTS.

S.I. No. 366 of 2010

SOLICITORS (PROFESSIONAL PRACTICE, CONDUCT AND
DISCIPLINE — COMMERCIAL PROPERTY TRANSACTIONS)
REGULATIONS 2010

(Prn. A10/1095)

SOLICITORS (PROFESSIONAL PRACTICE, CONDUCT AND
DISCIPLINE — COMMERCIAL PROPERTY TRANSACTIONS)
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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 Regulations:-

Citation and Commencement

1. (a) These Regulations may be cited as the Solicitors (Professional Practice, Conduct and Discipline — Commercial Property Transactions) Regulations 2010.
- (b) These Regulations shall come into operation on the 1st day of December 2010.

Definitions

2. (a) In these Regulations, the following terms shall have the following meanings:—

“1995 Act” means the Consumer Credit Act 1995 (as amended);

“1997 Act” means the Central Bank Act 1997 (as amended);

“Accountable Trust Receipt” means an Undertaking to hold title deeds to any land or buildings on behalf of a Financial Institution and either to return such title deeds to the Financial Institution on demand in the same condition as they were received by the Solicitor or to discharge or procure the discharge of a mortgage or other security on, or a loan advanced on security of, such land or buildings;

“Acts” means the Solicitors Acts 1954 to 2008;

“Certificate of Title” means a certificate or report by a Solicitor which certifies the nature and/or quality of the title of any person to any land or buildings;

“Commercial Development” means the development (whether by construction or renovation) of any land, building, or part of a building:—

- (i) for use for or in connection with any trade, industry, retail or other business undertaking or the production or supply of goods or services;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 27th July, 2010.*

- (ii) with a view to the earning of rental income; or
- (iii) with a view to the construction thereon or therein of multiple residential units;

“Commercial Property Transaction” means any property transaction (including a mortgage) other than a Residential Property Transaction and includes, but is not limited to, the following:—

- (i) the acquisition or refinancing of any land, building, or part of a building, which is used, or set aside to be used, wholly or exclusively for, or in connection with:
 - (1) any trade, industry, retail or other business undertaking;
 - (2) the production or supply of goods or services;
- (ii) the acquisition or refinancing of any land, building, or part of a building, exclusively with a view to earning rental income or for capital appreciation or both;
- (iii) the acquisition or refinancing of any land, building, or part of a building, which is in all the circumstances reasonably likely at the time of such acquisition to be used for, or in connection with Commercial Development;

“Constitution” means the Constitution of Ireland enacted by the people on 1 July 1937, as amended;

“Financial Institution” means any of the following:—

- (i) a credit institution as defined in section 2(1) of the 1995 Act;
- (ii) a credit institution that is the holder of an authorisation for the purposes of Article 4(1) of Directive 2006/48/EC;
- (iii) a retail credit firm authorised pursuant to section 31 of the 1997 Act;
- (iv) a home reversion firm authorised pursuant to section 31 of the 1997 Act;
- (v) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person;
- (vi) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA,

but, for the avoidance of doubt, does not include a Minister of the Government in the exercise of the functions, powers or duties of his office;

“Government” means the Government mentioned in Article 28 of the Constitution;

“Minister of the Government” means a member of the Government having charge of a Department of State;

“NAMA” means the National Asset Management Agency;

“Obligor” means a borrower, guarantor, indemnifier or security provider;

“Regulation” means a regulation in these Regulations;

“Relevant Person” means any person, whether acting in that person’s own right or as a personal representative, trustee, agent, attorney, committee of a ward of court or otherwise. For the purposes of this definition, a person shall include any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

“Relevant Undertaking” means an Undertaking to:—

- (i) discharge or procure the discharge of a mortgage or other security over, or a loan advanced on the security of, any land or buildings the subject of a Commercial Property Transaction; or
- (ii) furnish or to procure the furnishing of a Certificate of Title relating to any land or buildings the subject of a Commercial Property Transaction to the relevant Financial Institution or to any of its Representatives; or
- (iii) furnish or to procure the furnishing of title deeds to any land or buildings the subject of a Commercial Property Transaction to the relevant Financial Institution or to any of its Representatives;
- (iv) pay or procure the payment of any stamp duty accruing due in connection with any land or buildings the subject of a Commercial Property Transaction;
- (v) register or procure the registration of title to any land or buildings the subject of a Commercial Property Transaction;
- (vi) register or procure the registration of a mortgage or other security over any land or buildings the subject of a Commercial Property Transaction,

but does not include an Accountable Trust Receipt;

“Representative” means any director, officer, employee, agent or advisor of a Financial Institution;

“Residential Property” means:—

- (i) a building, or part of a building, which at the date of the Residential Property Transaction is intended to be used as a private dwelling, including for the avoidance of doubt, a building or part of a building occupied or intended to be occupied as a private dwelling on an occasional basis, whether as a holiday home or otherwise; or
- (ii) an area of land on which, at the date of the Residential Property Transaction, it is intended to construct a private dwelling, including for the avoidance of doubt, a building or part of a building to be occupied on an occasional basis, whether as a holiday home or otherwise; and
- (iii) land which is incidental to the enjoyment of the private dwelling or the intended private dwelling and which is used, or is intended to be used, for non-business purposes;

“Residential Property Transaction” means any transaction (including a mortgage) carried out by a Relevant Person in connection with Residential Property for non-business purposes provided that a Residential Property Transaction excludes any transaction whereby it is intended to use the Residential Property exclusively to earn rental income;

"Solicitor" has 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; and

“Undertaking” means any unequivocal declaration of intention addressed to a person who 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.

- (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 the Acts of the Oireachtas, except insofar as it may be inconsistent with the Acts or these Regulations.

Prohibition on Solicitors acting for an Obligor and a Financial Institution in a Commercial Property Transaction

3. At any time on or after 1 December 2010, a Solicitor shall not act for both an Obligor and a Financial Institution in connection with a Commercial Property Transaction where the Financial Institution provides financial accommodation in connection with the relevant Commercial Property Transaction.

Prohibition on the provision by Solicitors of Relevant Undertakings

4. (a) At any time on or after 1 December 2010, a Solicitor shall not give a Relevant Undertaking in the course of a Commercial Property Transaction to a Financial Institution or to any of its Representatives, where if the Solicitor was so permitted, the Relevant Undertaking would be given by the Solicitor (acting either for an Obligor alone, or for an Obligor and the Financial Institution jointly) in connection with the provision by the Financial Institution of financial accommodation to effect the relevant Commercial Property Transaction.

(b) Regulation 4(a) shall not apply:—

(i) where the Relevant Undertaking expressly provides that the Solicitor's liability, whether direct, indirect or consequential and howsoever arising, to the Financial Institution pursuant to the Relevant Undertaking shall not exceed the sum of €75,000 (seventy five thousand euro) or any lesser amount; or

(ii) to a Relevant Undertaking given by a Solicitor to a Financial Institution or to any of its Representatives in relation to a Commercial Property Transaction prior to the coming into force of these Regulations and which remains to be honoured in whole or in part after the coming into force of these Regulations.

(c) For the avoidance of doubt, nothing in Regulation 4(a) shall be construed to prohibit the provision of any Relevant Undertaking to a Financial Institution in the course of the Solicitor's sole representation of that Financial Institution as the Solicitor's own client.

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 meanings of the Acts.



SIGNED on behalf of the Law Society of Ireland pursuant to section 79 of the Solicitors Act 1954.
22 July 2010.

GERARD DOHERTY,
President of the Law Society of Ireland.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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