Guidance for conveyancers

New challenges

Coronavirus (COVID-19) creates additional risks for clients seeking to sell or buy property at the present time.

It’s important that clients understand those risks and make an informed decision on how they wish to proceed.

Position under Standard Conditions of Sale (5th edition, 2018 Revision) (SCS)

Ordinarily, either buyers or sellers who do not complete on the contractual ‘completion date’ may be liable to pay compensation. (SCS 7.2)

If the date has passed and completion has not taken place the party who is ‘ready, able and willing’ to complete can serve a notice to complete on the other, requiring completion to take place by a certain date (SCS 6.8) and failure to comply when served on a buyer can result in loss of their deposit. (SCS 7.4)

Explain the risks

Advise your clients of the new risks which arise as a result of COVID-19.

Make sure that clients understand the advantages and disadvantages of the different ways in which they can proceed.

Clients should be fully advised as to the possible additional provisions that can be added to the contract and what the implications may be if they or someone in their chain of transactions is unable to complete on the contractual date.

If there’s a significant delay, a number of factors may come into play. For example:

- market values may change
- mortgage lenders may withdraw mortgage offers
- buyers may lose employment or their financial position, or that of a donor of a gifted deposit, might change
- someone in a household in the chain may need to self-isolate due to contracting the virus or symptoms or due to being notified by the NHS Test and Trace service
- deposit – it’s important to remind clients that even if a 10% deposit is not available when contracts are exchanged, it’s the 10% of the purchase price which is forfeit should completion not take place and a notice is served. This is particularly relevant in chain transactions where parties rely on the first time buyers’ deposit, which is a
smaller deposit, but others in the chain are still liable for the full amount of 10% of the purchase price of the house they are buying

- buildings insurance and other arrangements – remind the client that they are still responsible for buildings insurance if contracts are exchanged and completion does not take place

The additional provisions

Option three in the client guidance contains the same provisions as those contained in the COVID-19 variation agreement.

One or more of the possible ‘delay provisions’ may not be relevant.

There may be other ‘delay provisions’ which your clients require.

The ‘no later date’ needs to be agreed between the parties to reflect the circumstances of the transactions involved and the needs of the parties.

The ‘long stop date’ should take into account the same considerations.

Some of the delay events are easier to evidence than others.

Do not simply adopt this clause as a standard clause to be used in every transaction. It’s not suitable for use in this way. It’s not a ‘one size fits all clause’.

It’s essential for you to discuss with your clients what they want to achieve in being able to vary their contract if certain situations arise. It’s likely to be easier to achieve this in single sale and purchase transactions.

Where there are chains, it’s essential that a common clause is used throughout. If different clauses are used in parts of the chain, your clients need to understand the effect of the different provisions especially where this will allow different dates for completion or different reasons for rescinding.

Consider how you will know what clauses the other parts of the chain are using and how you will know if these are varied before exchange of the variation agreement.

Should a Delay Event occur ensure that notice is given throughout the chain as soon as it becomes apparent that completion will not take place and not less than 24 hours before completion wherever possible.

It’s acknowledged that someone might find out that they need to self-isolate on the day of completion and they should review the guidance for moving home whilst self-isolating should this happen and before deciding to postpone the move.

Disclaimer

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