

Solicitors AGM in Edinburgh votes to change rules



Solicitors have voted in favour of the principle of changing the current practice whereby a solicitor can act for both buyer and mortgage lender in property transactions.

At the Law Society's annual general meeting today, Friday, 22 March 2013, 58 solicitors voted to remove the current exception to Law Society conflict of interest rules, which permits a single solicitor to carry out work for a client wishing to buy a property and their mortgage lender. There were 27 against and three abstentions. Proxy votes were not cast. Acting for both the borrower and the lender has been the norm since 1986.

The Law Society will now bring forward new practice rules for its members to vote on at a special general meeting (SGM) in September. If voted through at the SGM and subject to approval by the Lord President, solicitors will no longer be able to act for both buyer and lender.

Austin Lafferty, president of the Law Society, said: "This was a highly important debate to have and I thank everyone for their contributions. We can view today's vote as just the start of a move towards reforming and improving conveyancing practice and we intend to hold further discussions with the Council of Mortgage Lenders and others. The exception to the rules was introduced in 1986 to help ensure a smooth transaction but the world is a very different place now. The severe economic downturn, increasingly complex transactions, increasing risk of mortgage fraud and the additional pressures from lenders mean that it is no longer appropriate, and indeed is arguably not in the public interest to continue.

“Solicitors provide conveyancing services for communities the length and breadth of Scotland and we are fully aware of the potential for increased costs for buyers and increased paperwork for solicitors. However these costs are not the borrowers, they are costs associated with lenders satisfying themselves on their own lending risk – and it will be for the lenders to decide on whether they are prepared to pass on these costs to their customers.

“The recession meant a greatly reduced the property market, however the risk on a loan has been largely borne by solicitors as banks and building societies have increased the number of claims on the legal profession’s indemnity insurance where things have gone wrong – for example if a client has defaulted on payment or in a repossession case, negative equity means there is a loss to the lender.

“Additionally, we know there have been situations where conflict of interest arises and the protection of borrower client interests as well as the lender simply do not align.”

Recent changes introduced by lenders have also meant that solicitors are no longer automatically permitted to act for clients who have chosen a particular mortgage product.

Lafferty added: “It’s now the case that if a solicitor no longer on the lender’s solicitor panel, they are not entitled to do the work for both parties which means the client can choose to retain their own solicitor of choice and pay an additional fee, or use the lender’s solicitor.

“It’s in everyone’s interests, particularly the prospective housebuyer, to provide efficient and cost effective services. Technology has improved things enormously and it’s worth remembering that conveyancing fees in Scotland are moderate compared to elsewhere – it can be up to three times as much in Ireland. Market forces will also play a role and undoubtedly determine a new fee structure so, while the borrower and

lender will each pay for the work of their own solicitor, I do not foresee any astronomical price rises.”