

## **PART V-II      PROFESSIONAL PRACTICE – SECURED LOANS TO SOLICITORS ETC.**

These notes have been prepared with the help of the Director of Professional Practice. If you are unsure how your specific case is affected by the Rule, enquiries are welcomed before you begin to act.

### **LOANS AFFECTED**

**(Rule 22)**

#### **(a)    CREATION, VARIATION and ASSIGNATION of SECURITIES**

*What loans are affected?*

Secured loans to any of the principals in the practice or their spouse or any partnership of which they or their spouse are a partner or any company in which they or their spouse are shareholders (except holdings of less than 5% of quoted companies).

*Can we act for the partners or their spouse?*

Yes – the Rule only prohibits acting for the lender.

*Can we act for the lender if the borrower is a consultant, associate or employee of the practice?*

Yes – provided the consultant, associate or employee is not married to a partner in the practice (or member if it is an incorporated practice) and provided no partner or spouse of a partner is guaranteeing the loan.

*Can we act for the lender where the borrower is the parent, brother, sister, son or daughter of a partner?*

Yes – provided that no partner or spouse of a partner will be guaranteeing the loan.

*Why are guarantors included?*

Rule 22 (3) defines loan as including any obligation to pay money. That includes a guarantee of a loan to somebody else, even though it is only a contingent obligation.

*Can we act in a variation or assignation of an existing standard security?*

Again the firm can act for the borrower, but not for the lender as the Rule applies equally to variations and assignations as it does to the constitution of a standard security.

#### **(b)    DISCHARGING SECURED LOANS**

*What about discharges?*

The Rule has changed. The firm may not act for the lender until the borrower's obligations have been fully implemented.

*At what stage in relation to a discharge does a solicitor act for a lender?*

Only at the stage where the discharge has been drafted and is sent to the lender for execution. Drafting the discharge is done on behalf of the borrower, not the lender.

*Can I send the Discharge direct to the lender for execution?*

Yes – but you must advise them not to return it to you but to either retain it until the loan has been redeemed or to send it to their own agents for onward delivery to you only after the loan has been redeemed.

**(c) OTHER QUERIES**

*If I am buying a property with the aid of a secured loan, can the seller's solicitors act for the lender?*

No - the Society's Professional Practice Committee take the view that there is a conflict of interest between the seller and the lender to a purchaser.

*If I am buying property and another firm are acting for the lender, can the lenders forward the loan funds direct to my firm or do they have to go through their own solicitors first?*

The loan funds can be remitted direct to your firm if another firm are acting for the lender. Receipt of the loan funds does not of itself constitute acting for the lender.

**(d) WAIVERS**

*In what circumstances would the granting of a waiver from the Rules be considered?*

Waivers will only be granted in relation to particular circumstances. They may be subject to conditions and will not be granted routinely. A waiver will not be granted solely because the solicitor concerned is a partner in any particular firm. There would need to be something particular about the circumstances of the transaction to justify granting a waiver. Under the previous Rules the waiver provision was restricted to partnerships (apart from the firm of solicitors itself) or companies in which the solicitor had an interest. Few requests for waivers were received.

An example of a case where a waiver was granted included a company where the solicitor or solicitor's spouse was a nominal shareholder and the principal shareholders were clients or other members of the family.

Another example where a waiver could be considered is where a small piece of ground is being sold to a neighbour or a utility company for a nominal consideration and a deed of restriction is required.

*Who should I contact at the Law Society if I am still in doubt about Rule22?*

You should contact Bruce Ritchie (Direct Line 0131 476 8124).