

Dealing with Non-Authorised Persons (third parties) guidance

The Effect of s.14-16 *Legal Services Act 2007*

1. It is an offence for a person who is not an **Authorised Person** and is not an **Exempt Person** to carry out **Reserved Legal Activities**.
2. Where a **Non-Authorised Person** carries out **reserved legal activities**, the **Non-Authorised Person's client** is likely to be guilty of aiding and abetting the offence. The **Authorised Person** acting for the other party may also be guilty of procuring the commission of an offence by inviting or urging the **Non-Authorised Person** to provide a draft contract or transfer or to progress the transaction.
3. An undertaking offered by a **Non-Authorised Person** should not generally be accepted as it is not enforceable in the same way as an undertaking given by you or by another **Authorised Person**.

Checks

4. You should first check with the **CLC**, the Law Society or other **Approved Regulator** whether a person is an **Authorised Person** entitled to provide reserved instrument activities, as required by paragraphs A3.2 and B3.2 of the CML Handbook, or is otherwise an **Exempt Person** (schedule 3 **2007 Act**).
5. If unable to obtain that confirmation you should write immediately:-
 - (a) to the **Non-Authorised Person**:-
 - (i) asking for an explanation why the prohibition under s.14-16 **2007 Act** does not apply to them; and
 - (ii) stating that in the absence of such explanation you cannot enter into any dealings with him unless there is clear evidence that no offences will be committed. An example of clear evidence would be a letter from an **Authorised Person** confirming that he will prepare the relevant documents;
 - (b) to your own **client** explaining why you can not deal with the **Non-Authorised Person** unless clear evidence is forthcoming.

Conveyancing - Acting for the Buyer

6. You should consider the following and, if appropriate, amend the contract:-
- (a) replies to the Property Information Questionnaire and all other preliminary enquiries and requisitions signed by the seller;
 - (b) the deposit must be paid to you as stakeholder. If the seller will not agree to this, it may be possible to agree to place the deposit in a deposit account in the joint names of you and the seller;
 - (c) either the seller must attend personally at completion, or an authority must be handed over on completion signed by the seller for the purchase money to be paid to his agent. The reason for this is that the protection provided by s. 69 Law of Property Act 1925 only applies when a document containing a receipt for purchase money is handed over by a **Recognised Body** or solicitor, or the seller himself;
 - (d) deeds and keys are given to the person entitled to receive them (the buyer). If an authority on behalf of the buyer is offered to you, it is for you to decide whether or not to accept it, bearing in mind that no authority, however expressed, can be irrevocable;
 - (e) The purchase money, including any deposit, is paid either to the seller or to the seller's properly authorised agent.

Conveyancing - Acting for the Lender

- 7. You are not obliged to undertake work which would normally be carried out by the borrower's legal adviser (such as drafting and preparation of the instrument of transfer). However, it is essential to the lender **client** that good title is transferred to the borrower.
- 8. Compliance with s. 69 Law of Property Act 1925 may mean that you require either that the borrower to attend personally on completion, or that a signed authority from the borrower in favour of his agent is received on completion.
- 9. On completion, title documents should normally be handed over to the borrower.