6 Pre-contract Searches and Enquiries

6.1 Introduction

You now know that a seller has a duty either implied or expressed in the contract to disclose certain defects in his title to the purchaser. Much information which might affect the value or the enjoyment of the property, and make it unattractive to the purchaser is not within this duty of disclosure. He should seek out this information before contract. As the seller is not under a duty to disclose it, it is too late for a purchaser to discover it after the contract, as there will be no breach of contract to offer him a remedy.

The solicitor for the purchaser therefore always makes, or ensures that he has the results of, what are known as the ‘usual’ pre-contract searches and enquiries. They are called ‘usual’ because they are applicable to nearly every transaction. There are also ‘unusual’ searches which might have to be made because of the property’s location. A purchaser’s solicitor who fails to obtain the usual searches, and whatever other searches are considered necessary as a matter of good conveyancing practice, will have failed in his duty to his client.

Again we revert to the protocol. The seller’s solicitor, if following the protocol, will be making the pre-contract searches, and supplying the results to the purchaser’s solicitor as part of the pre-contract ‘package’ (see section 1.4). Keep this in perspective. The protocol states that the searches are to be done by the seller’s solicitor solely because this will save time, particularly if, as the protocol hopes, the seller consults his solicitor as soon as he decides to put his house on the market. The protocol, of course, produces the result that the expense of the searches falls on the seller rather than the purchaser. The search fees are not light. If there is a chain of transactions, a person in the middle of the chain will see no difference, as the fees which he bears as seller he now escapes as purchaser. The Law Society in its introduction to the protocol has said that it would deplore a situation in which a solicitor who had agreed to use the protocol made a habit of advising clients to opt out of the requirement for the seller to make the searches on the grounds only of saving the expense. Such a practice, the Society says, could have a knock-on effect in a chain and would destroy the advantage of speed in conveyancing transactions which can be the result of the seller making the search.

The fact remains that whoever does the searches, it is the responsibility of the purchaser’s solicitor to decide if the searches are adequate, if the replies are satisfactory, and if any necessary ones have been omitted. That
it is the seller who actually puts the searches in train is a matter of procedure; the rule remains ‘caveat emptor’ for matters that do not fall within the seller’s duty of disclosure.

6.2 The ‘Usual’ Searches and Enquiries

(a) Enquiries of the Seller (The Property Information Form)

Making the Enquiries There have been until the introduction of the protocol and perhaps will continue to be, many standard lists of enquiries to be asked by the purchaser of the seller. At one time the Oyez form reigned supreme, but in recent years has been challenged by others. The number of questions grew steadily and the answers given by the seller’s solicitor became increasingly non-committal and unhelpful. To quote from the Law Society’s introduction to the protocol:

if any one part of the conveyancing process over the past years has caused criticism within the profession it has been the use of ever-lengthening forms of enquiries before contract, some being a repeat of those included in the standard form and others being irrelevant to the particular transaction or relating to the structure or condition of the property.

The seller’s solicitor will now complete the property information form from information given by his client, and send it to the purchaser’s solicitor as part of the pre-contract package (see section 1.3(c)). The form reads as a series of questions and answers. Why? To quote again from the Law Society:

the property information form continues to be set out as replies to a series of standard questions. Since the seller’s solicitor will be providing this information it might be seen as more logical at a future date to develop this as a simple statement of information without the question and answer format. However there are two reasons for retaining this. First it is a system with which the profession is familiar and secondly, it is hoped that even in those instances where for any reason the protocol is not being followed the buyer’s solicitors will still use the property information form rather than revert to other forms for raising enquiries before contract.

The form is in the Appendix for you to read. Below are a few of the questions for discussion.

(i) Question 4 asks if the property has the benefit of any guarantees. This might cover guarantees given after damp or timber treatment or in