

Statutory Conditions of Sale

Preface to Working Paper No.2

1. This Committee has been asked to consider the desirability of enacting statutory conditions of sale, and, if this is thought desirable, to recommend an appropriate set of conditions.

2. The Committee has carried out a survey of practice in some other countries and has had prepared for its own consideration two working papers, the second of which dated 1 December 1972 is attached.

3. This paper has been the subject of discussion at meetings of the Committee and various textual changes are likely to be recommended. However, the Committee considers that there is little point in concerning itself with detailed drafting until the two important points of principle, referred to in paragraph 4 of this memorandum, have been settled. Accordingly, it has been decided to circulate the attached paper at this time in the hope that interested parties will make known their views on these two fundamental issues.

4. The two questions of principle are:

- A. Is it desirable that statutory conditions of sale be enacted?

The Committee thinks it is and general comments are contained in the first few pages of the Working Paper.

- B. The Committee thinks that if the answer to A is 'yes', the Act should make the conditions of sale set out in the Act applicable to all contracts of sale except to the extent that the parties expressly or by necessary implication provide otherwise in their contract. If this is accepted, it becomes desirable to have the Act provide a form of standard contract in such a form as is likely to gain general acceptance. The question is, what form should this standard contract take?

The Committee has discussed at length three alternatives:

- (i) The short form set out on p.27 of the Working paper. This simply requires necessary blanks to be filled in but, unless the parties choose to set out the Statutory Conditions of Sale (e.g. in schedule form), which is unlikely, it will not appear from the contract what these conditions are. The Act would have to be consulted to ascertain the complete contract.
- (ii) A longer form prepared by Mr Warrington Taylor a member of the committee on 15.10.73 and so headed (copy attached). The purpose of this form is to convey more information to the parties by summarising shortly the statutory conditions most likely to be the ones as to which questions would arise for most laymen. This proposal clearly has merit but some members see danger in the possibility of the parties considering they have substituted their own words and not adopted the statutory conditions. The statute would need careful drafting to cope with this problem.
- (iii) A form similar to the English 'Law Society Contract for Sale (1973 Revision)'.
A summary of this is:
- | | |
|-----------------|---|
| Page 1: | Particulars
Agreement headings
Detail of price
Receipt for deposit ;
Signatures of parties. |
| Pages 2
& 3: | Full text in very fine print
of the Law Society's General
Conditions of Sale. |
| Page 4: | Special conditions; some
standing material with blanks
to be filled in. |

The Committee does not think that this type of form would fit the New Zealand scene, but no doubt other views will be held. It has the merit of embodying the whole contract but the result is formidable.

5. The Working paper contains a draft Bill but until the form of contract is settled the text of the clauses dealing with the contract cannot be finally drafted. Also it should be noted that the Working paper needs bringing up to date by reference to the latest English form and conditions; the references in the paper are to the Law Society of England's 1953 Conditions of Sale. The 1973 Conditions depart from those in some respects and these differences will be considered for the next Working paper.

6. The Committee would be grateful for any comments on these matters, which should be addressed to:

The Secretary,
Property Law & Equity
Reform Committee,
Private Bag 1,
Government Buildings,
WELLINGTON.

on or before 30 April 1974,

PROPERTY LAW AND EQUITY REFORM COMMITTEE

STATUTORY CONDITIONS OF SALE

WORKING PAPER NO. 2 - 1 DECEMBER 1972

1. SUBJECT MATTER

The Committee having been directed to investigate the desirability of establishing a statutory form of Conditions of Sale for use where land is sold by public auction or private contract, has decided that there is merit in the proposal.

2. EXISTING POSITION IN NEW ZEALAND

Agreements for the sale of land which merely satisfy the formal requirements of the law by reference to the parties, the land and the price, leaving all other terms to be implied by law are called "open contracts".

The vendor may prefer to specify the terms of the contract more fully by use of a formal agreement for sale and purchase, or where land is sold by auction or tender, in conditions of sale.

3. THE PROBLEM

The open contract for the sale and purchase of land has the advantage of simplicity so that it can be completed with the minimum of delay. It suffers from the disadvantage that no provision is made for likely areas of difference of opinions as to the terms of the contract.

On the other hand special provisions often run to some length and require a skilled draftsman to ensure that the precise terms of the agreement are accurately recorded. Where land is sold by public auction the conditions of sale are usually very long and are read in full before the bids are called. As most of the conditions are common to all sides, this involves a considerable waste of time.

4. THE POSITION IN OTHER JURISDICTIONS

(i) United Kingdom

In the United Kingdom the common terms of a full contract of sale of land are contained in printed forms of conditions. Two sets of such conditions are in general use, the Law Society's General Conditions of Sale and the National Conditions of Sale.

Some local law societies have their own printed conditions. In general, they make use of the Law Society's Conditions of Sale subject to special conditions of their own. The Law Society's Conditions of Sale can be obtained only by solicitors. and are not available to the public generally.

By s.46 of the Law of Property Act 1925 the Lord Chancellor may prescribe forms of contracts and conditions of sale applying to contracts by correspondence. These may be adopted subject to any modifications desired by the parties.

No forms of contract have been prescribed but Conditions of Sale have been (S.R. & O. 1925 No. 779). They are in

short form. Farrand in "Contract and Conveyance" 1968 p.67 states:

"If the contract is 'by correspondence' then the Lord Chancellor's Statutory Form of Conditions of Sale will apply in all its insignificant glory ... The statutory form provides a time-table for the steps leading from contract to completion, deals with a few incidental matters and best of all gives the vendor the contractual remedies of rescission and resale. Nonetheless the shelter afforded though better than nothing is much slighter than provided by the usual general conditions and the statutory form must rarely, if ever, be adopted expressly".

At p.66 the author mentions that "local law societies seem increasingly to be issuing their own pet sets of conditions ..."

(ii) Australia and Canada

A survey has been carried out as to the position in the Australian States and Canadian Provinces and the respective authorities have been communicated with. In summary the position is:

AUSTRALIA

In two jurisdictions, Victoria and Western Australia, statutory conditions of sale have been adopted.

VICTORIA

The Victorian authorities report that an extremely high percentage (estimated in excess of 90%) of land sales in Victoria are affected by use of the "Institute" or "Copyright" forms of printed contract which incorporate the statutory conditions, with modifications.

The "Institute" form is published by the Council of the Law Institute of Victoria and the Real Estate and Stock Institute of Victoria. It is a form of "open" contract but subject to "Terms and Conditions of Sale" which include provision for payment of deposit and balance purchase price, interest from date of possession and provision that the conditions of Table A of the Transfer of Land Act 1958 apply. There are one or two further conditions and space for insertion of "special conditions".

The "1964 Copyright Contract of Sale" is in rather fuller form. It incorporates Table A but modifies it in various respects and also specifies five "special conditions" as to identity of land, town planning restrictions, passing of property in chattels, vendor to discharge mortgages, and provisions re purchaser taking over existing mortgage (deleted where inapplicable).

The Institute is considering the adequacy of the Table A conditions and has drafted amendments.

WESTERN AUSTRALIA

The statutory conditions are less comprehensive than those adopted in Victoria. The Attorney-General advises:

"Probably because the Conditions of Sale set out in the Act are thought to be out of date or more particularly applicable to sales by public auction the Law Society of Western Australia by resolution dated 7 August 1970 settled general Conditions of Sale which the Society in conjunction with the Real Estate Institute of Western Australia recommended for general use".

OTHER STATES:

No other state has statutory Conditions of Sale but they have miscellaneous statutory conditions in the context of vendor and purchaser such as covenants for title and so on.

CANADA

All the major and some minor provinces replied to inquiries. Some are under Torrens System and some are not, but none have adopted statutory conditions of sale. A few have said they are interested and may investigate the possibility of adoption. They all seem to be generally satisfied with printed forms of contract in wide use, usually settled between the Law Society and real estate agents.

5. PROS AND CONS

Advantages which may be claimed for the adoption of statutory Conditions of Sale are:

- (i) It would enable agreements for sale and purchase of land to be drawn by persons other than skilled draftsmen and still give effect to the intentions of the parties. There would be more likelihood of the more common points being specifically covered.
- (ii) It would avoid delays in having a formal agreement drawn up.
- (iii) It would avoid time-consuming procedures such as the necessity to read Conditions of Sale at an auction.
- (iv) It would reduce litigation because contracts would be better drawn and would give better and fuller effect to the intentions of the parties. In addition, litigation which did take place would develop around the statutory forms so that a greater degree of certainty would exist.
- (v) The advantages would extend not only to vendors and purchasers by avoiding delays giving more certainty and reducing costs, but also to estate agents, solicitors and the courts. Estate agents would be able to draw contracts with more confidence that common points had been covered. The solicitor would have less difficulty in advising on the effect of the provisions or their breach. His time would be saved at every stage from formation of the contract to litigation arising from it.

Against these considerations can be placed:

- (vi) It is unsatisfactory if the parties to a contract have to consult legislation to ascertain many of the terms of their contract. If the statutory conditions are modified both contract and Act will have to be read together. This point would be overcome however if the Standard Contract provided for below were accompanied by a small print Appendix of the Statutory Conditions.
- (vii) A contract which incorporates statutory conditions will involve the draftsman consulting the Act and deciding in effect what conditions to put into the mouth of the parties. Full prior discussion would be necessary. Time may not permit this.
- (viii) A grave objection is the difficulty of adapting statutory conditions to changing times. This is one of the reasons for failure of the Western Australia conditions. One answer to this is for the Act to confer power to substitute a new schedule of conditions by regulation but even this requires some application and perseverance.

6. Should the Act be drafted so as to incorporate conditions in the contract only if appropriate words are used? This is the case in the two Australian States. If so there is a risk of this not being done and the legislation falling into disuse. Alternatively the conditions could be made to apply to all contracts for the sale of land except to the extent that the contract negates them. This would ensure substantial applicability but may work hardship in individual cases where no competent advice is sought on the drafting of the contract. The Committee after consideration, favours the adoption of the second course i.e. applicability unless negated.

7. The Committee has proceeded to draft a proposed Act, and Conditions of Sale, and now circulates the draft for comment. In doing so it has recognised that the starting point for drafting is utilisation as far as possible of forms already in use here.

Forms of conditions of sale for various purposes are available in the New Zealand Encyclopaedia of Forms and Precedents Volume 11.

In addition, the Real Estate Institute of New Zealand have printed forms of agreements for sale (Form Re 1 Urban Form, Re 2 Rural) and a form of offer and acceptance. The provisions in these forms are less comprehensive than in the conditions of sale in the New Zealand precedent book and elsewhere. Also there is in use a printed form of "Agreement for Sale and Purchase of Urban Land" printed for the Auckland Law Society and the Real Estate Institute which is rather fuller than the form Re 1. There may be other local arrangements.

In conjunction with these have been considered the various forms received from overseas including the long forms in use in England but of course great care is necessary because of local law which is not applicable in New Zealand.

Short and Long forms The Committee considered whether it would be preferable to have a short form, applicable to simple cases, and a long form for more complex sales but decided it was better to adopt a long comprehensive set of conditions which the parties could modify in their contract if they wished. Similarly any division between urban and rural forms was regarded as unsatisfactory; one set of conditions should, it was thought, apply to both and be sufficiently comprehensive to do so.

8. The Committee therefore submits for consideration of interested parties the attached:

- (a) Draft Bill
- (b) Draft Statutory Conditions
- (c) Draft Standard Contract.

Comments are appended as necessary. Abbreviated references are:

"Re - 1" : "Real Estate Institute of New Zealand
Urban Form".

"Re - 2" : "Real Estate Institute of New Zealand
Rural Form".

"Auckland
Law
Society": This Society's printed form.

"Victorian
Table A": The conditions in the Seventh Schedule,
Transfer of Land Act 1958.

Some aspects have not been covered in the draft, such as: costs of preparation of the agreement; provision for price to be fixed by valuation; mortgage back to vendor; sale subject to mortgage; house in course of erection. It is thought that items of this nature are better covered by express conditions in the contract.

9. As stated earlier, the general principle accepted by the Committee is that the Statutory Conditions should apply to every contract for the sale of land except where the parties expressly or impliedly provide otherwise; and although a "Standard Contract" is proposed, as usefully providing a short form of contract, the parties can accept any form of contract they please. The Statutory Conditions will, however, apply to whatever form of contract they adopt unless specifically excluded.

10. The Committee is not so optimistic as to expect that unanimity will be reached as to the content of the conditions or the proposed method of treatment. Indeed Committee members do not agree on all points. The object of this working paper however is to ascertain as far as possible the views of those concerned with the subject and to recommend the adoption in Statutory Conditions of whatever material meets with majority approval, leaving the dissenters to modify the conditions as they wish, if the proposals become law.

(a)

DRAFT BILLSALE OF LAND

An Act providing for contracts for the sale of land.

1. Short Title and Commencement - This Act may be cited as the Statutory Conditions of Sale Act 1974, and shall come into force on the first day of January 1975.

2. Interpretation - In this Act unless the context otherwise requires -

"Land" includes all estates and interests, whether freehold or chattel in real property, and includes messuages, tenements, and hereditaments, corporeal and incorporeal, of every kind and description, and every estate or interest therein, together with all paths, passages, ways, waters, watercourses, liberties, easements, and privileges thereunto appertaining, plantations, gardens, mines, minerals, and quarries, and all trees and timber thereon or thereunder lying or being, unless specially excepted:

"Sale" means sale or transfer of land for monetary consideration whether that consideration is adequate or not and includes, unless the parties otherwise agree in writing, the exercise by the holder of an option to purchase land (including a reversionary interest therein).

"Standard contract" means the standard contract set out in the Second Schedule to this Act.

"Statutory conditions of sale" means the statutory conditions set out in the First Schedule to this Act.

3. General principles applicable to sale of land.

Here could be set out if desired:

- (1) S.28 Property Law Act - Vendors lie for unpaid purchase money abolished.
- (2) S.47 Property Law Act - Conveyance of land includes easements etc.
- (3) S.51 Property Law Act and s.59 Sale of Goods Act - Auction Sales.
- (4) S.52 Property Law Act - conditions of sale (limitation periods, effect of recitals etc. only limited application to Land Transfer land).
- (5) S.54 Property Law Act - Vendor to remove title limitations from limited certificate of title. (Our Condition 11(1) so provides).
- (6) S.55 Property Law Act - purchaser cannot insist on execution of conveyance by vendor in his presence (not applicable to Land Transfer land.)
- (7) S. 57 conveyances by executors (not applicable to Land Transfer land).

- (8) Ss. 72, 73 Covenants implied in conveyances (not applicable to Land Transfer land).
- (9) S.74 Property Law Act. Covenants implied in conveyance of lease.
- (10) S. 75 Property Law Act Covenants implied in conveyance by trustees.
- (11) S. 138 Property Law Act. No objection to execution of conveyance by Attorney from a person not in New Zealand.
- (12) Part XIV Property Law Act as to apportionment.
- (13) S. 96 Land Transfer Act implied covenant in transfer of equity of redemption.
- (14) S.97, 98 Land Transfer Act - Transferee of lease to become liable on covenants.
- (15) S. 154 Land Transfer Act - covenants for further assurance implied.
- (16) Query if any general "common law" principles should be included; if so which. (e.g. if vendor cannot provide good title purchaser not entitled to damages but only to return of deposit and expenses - Flureau v Thornhill).
- (17) Query if provisions of Contracts Enforcement Act 1956 as to writing necessary for disposition of land moved into this Act.

4. Statutory conditions of sale to apply - (1) Subject to subsection (2) hereof, the statutory conditions of sale shall apply to every contract for the sale of land entered into on or after the date of commencement of this Act and those conditions shall be accordingly construed as part of every such contract:
 (2) Any such contract may expressly or by necessary implication modify or exclude all or any of the statutory conditions of sale.

5. Standard contract - The parties to any contract for the sale of land may adopt the standard contract completing it as necessary or such other form of contract of sale as they choose.

6. Short forms of condition - (1) Such of the conditions set forth at length in the Third Schedule to this Act as are intended to be implied in any contract for the sale of land shall, if expressed in the short form of words prescribed in that Schedule for the case of each condition respectively be implied in that instrument as fully and effectually as if those conditions were set forth therein at length in the words of the said Schedule with all such modifications as may be necessary in order to adapt them to the contract.

7. Regulations - The Governor-General may from time to time, by Order in Council, make regulations varying, modifying or extending any condition or provision in the Statutory conditions of sale, in the Standard Contract or in the short forms of condition.

First Schedule (s.3)

The Statutory Conditions of Sale.

Second Schedule (s.4)

Standard Contract.

Third Schedule (s.5)

Short forms of Condition.

Comments:

Cl.2 "Land"; definition taken from Property Law Act and Land Transfer Act.

"Sale"; is defined as not to include a grant of lease of land although if land is offered for lease many of the statutory conditions could apply. It seems best to leave it to the parties to adapt the statutory conditions as they wish.

Cl.5 "Standard contract": Probably most sales are effected by the purchaser making a written offer to the vendor (usually drawn by the vendor's agent) and by its acceptance by the vendor. Query if the Act should also provide an "offer and acceptance" form. There is a printed form in use stated to be "approved by the Real Estate Institute of New Zealand (Inc.)"

Cl.6 "Short forms": Inserted as suggested by Mr Taylor but I am doubtful; we are providing that all conditions apply unless negatived. Therefore whether short forms are used or not the long form will apply. Is there any advantage in parties using short forms?

I have not listed possible candidates for inclusion (Mr Taylor in his memorandum 25/9/72 gives a few) pending decision on principle.

THE FIRST SCHEDULE
STATUTORY CONDITIONS OF SALE

TABLE:

1. Citation	20. Local Authority requirements
2. Interpretation	21. Tenancies
3. Sale by auction.	22. Risk and Insurance
4. Sale by tender.	23. The Transfer
5. Deposit and Contract.	24. Sale subject to covenants.
6. Completion.	25. Misdescription.
7,8. Possession.	26. Default of purchaser.
9. Possession before completion.	27. Stamp duty
10. Interest on Purchase money.	28. Contract conditional on finance.
11. Vendor to remove title limitation.	29. Electric power and other charges.
12. Consents.	30. Warranties: no merger.
13. Requisitions.	31. Cancellation of registration.
14. Leaseholds.	32. Notices.
15. Boundaries.	33. Payment.
16. Fencing.	34. Land Settlement controls
17. Condition of property.	-
18. Town Planning.	37
19. Easements.	38. Agent.

Citation

1. These Conditions may be cited as the Statutory Conditions of Sale.

Interpretation

2. (1) In these conditions unless the context otherwise requires:
- (a) where chattels are included in a sale of land, "property" refers to the land and chattels.
 - (b) "contract" means the contract of which these conditions are deemed to form part (except to the extent that any condition is thereby expressly or impliedly modified or excluded);

- (c) where the property is sold in lots, "sale" means the sale of each lot to a purchaser and "purchase" means the purchase of each lot;
 - (d) "transfer" means a memorandum of transfer under the Land Transfer Act 1952 and includes, in the case of land not subject to that Act, a conveyance;
 - (e) "purchase money" includes the amount of a successful purchaser's bid at auction and where chattels are also sold under the same contract, includes the price of those chattels;
 - (f) "completion date" has the meaning assigned to it by condition 5;
 - (g) any reference to any Act, regulation, Order in Council or bylaw includes reference to any Act, regulation, Order in Council or bylaw as amended or substituted therefore;
 - (h) subject as aforesaid expressions have the same meanings as in the Property Law 1952.
 - (i) any reference to "condition" or "conditions" is to these statutory conditions of sale or any of them.
- (2) Where the last day for doing any act or taking any step falls on a public holiday (which expression includes Saturdays, Sundays, Christmas Day, New Year's Day, Good Friday and any day declared by any Act or proclaimed by the Governor-General to be a public holiday) that last day shall instead be the next following working day.
 - (3) Words herein used importing the singular number include the plural number and words importing the plural number include the singular number and words importing the masculine gender include females.
 - (4) The marginal notes and headings to these conditions shall not affect the construction thereof.

Comment:

These definitions are similar to the English Law Society forms, amended to suit.

Sale by Auction

3. In a sale by auction -

- (1) Where land is put up for sale by auction in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;
- (2) The sale of the land and of each lot is subject to a reserved price;
- (3) The vendor reserves the right to bid up to any reserved price, by himself or his agent;

- (4) The vendor reserves the right to divide the land into lots and to subdivide any lot, and, where the land is sold in lots, to rearrange or consolidate any lots;
- (5) The vendor reserves the right without disclosing any reserved price, to withdraw from the sale any land or lot at any time before it has been sold, whether or not the sale has commenced.
- (6) No person shall -
- (a) on any bidding, advance less than the sum to be fixed by the auctioneer, who shall have power to refuse any bid; or
 - (b) retract a bidding.
- (7) If any dispute arises as to any bidding, the auctioneer shall forthwith (at his option) either determine the dispute or again put up the land or lot in dispute at the last undisputed bidding.

Comment:

By s. 51 of the Property Law Act 1952, s.59 of the Sale of Goods Act 1908 is to apply to auctions of every kind of property. (1) above is the same as s.59(1) but it seems desirable to repeat it here. The other provisions (2) to (7) are usual.

Sale by Tender

4. (1) Where the property is offered for sale by tender, every person desiring to purchase the same or any lot thereof shall fill in and sign a tender in the following form or to like effect:

I (full name, address and occupation)
 hereby offer to buy from the vendor the land described as (here describe it) for the sum of \$ AND I agree that in the event of this offer being accepted in accordance with the Statutory Conditions of Sale (as modified in the following respects ... (vendor to have completed as necessary)) on or before the day named in the said conditions I will pay the said purchase money and carry out and complete the purchase in accordance with those conditions.

DATED this day of 19

Signature of
 intending purchaser.

The intending purchaser shall send the said form of tender so filled in and signed in a sealed envelope to the vendor on or before the date the vendor has notified by advertisement or otherwise that tenders close.

- (2) The vendor does not undertake to accept the highest or any tender for the land or any lot thereof.

- (3) The person whose tender for the land or any lot is accepted shall be the purchaser thereof and shall be informed of the acceptance of his tender by letter sent to him by post to the address given in his tender and every letter so sent shall be deemed to have been received in due course by post.

Comment:

This generally follows the clauses in 11 N.Z.E.F.P. As the vendor is in control of a sale by tender he can readily specify the form of contract.

Deposit and Contract

5. (1) A purchaser, at the close of the sale to him, shall pay a deposit of \$10 per cent on the amount of the purchase money and sign a contract for the completion of his purchase according to these Conditions, but subject to the variations, if any, contained in the contract. In the case of a sale by tender, the purchaser shall pay a like deposit within 3 days after the posting to him by the vendor of notice of acceptance of his tender.
- (2) The deposit shall be paid -
- (a) in a sale by auction, to the auctioneer;
- (b) in a sale by private contract, to the agent of or the solicitor for the vendor, as nominated by him.
- (3) The said auctioneer or agent or solicitor shall take and give a receipt for the deposit as stakeholder.

Completion

6. (1) The purchase money or the balance thereof shall become payable by the purchaser on the date fixed for completion by the contract, or if no date is so fixed, on the first day after the expiration of one calendar month from the date of the contract, which date is, in these Conditions, referred to as "the completion date".
- (2) Unless the contract provides that completion is to take place at the appropriate Land Registry Office, completion shall take place at the office of the vendor's solicitors, or, if so required by the vendor, at the office of the solicitors of his mortgagees. If there are no such solicitors completion shall take place at such place in New Zealand as the parties may agree upon.
- (3) If Land Transfer Act land is sold subject to a mortgage the vendor shall forthwith after the completion date at his own expense arrange for the production of the certificate of title to the land at the appropriate Land Registry Office to enable the transfer to the purchaser to be registered.
- (4) The vendor shall take all other steps as are reasonably necessary to enable the purchaser to complete his title.

Comment:

English Law Society cl.5 amended.

Possession

7. (1) Subject to his having paid the purchase money or the balance thereof and having executed any instrument requiring execution by him, the purchaser shall, from the completion date be entitled to the rents and profits from the land and be liable for all outgoings thereon. Up to and including completion date, all rates, taxes and other outgoings shall, if necessary, be apportioned, and the balance shall be paid by or allowed to the purchaser on completion. The vendor shall deliver to the purchaser a statement of the apportionments at least seven days before the completion date.
- (2) Provided as follows:
- (a) all rents, whether payable in advance or in arrear or otherwise, shall be apportioned according to the period in respect of which they are payable;
 - (b) the foregoing provisions of this condition shall (unless otherwise agreed) apply to the premium under any policy of insurance affecting the land;
 - (c) all rates shall be apportioned, according to the period for which they are intended to provide;
 - (d) where, as regards any rate, the date fixed for completion falls between the expiration of the period for which the last rate was made and the making of a new rate, the new rate shall, for the purposes of this Condition, be deemed to have been made at the same rate in the dollar as that at which the last rate was made and shall be calculated from day to day;
 - (e) land tax shall be apportioned according to the period for which it is levied and shall be computed on the basis that the land sold is the only land of the vendor if the vendor is the owner, and is free from encumbrances.

Comment:

English Law Society cl. 5(3) amended. As to insurance, cf. condition 22. Possibly this provision should add that the vendor makes no representation that the insurer will accept the purchaser as assignee of the vendor's interest in the policy.

8. In the absence of express stipulation and of such authorisation as is mentioned in Condition 9, the purchaser shall not be entitled to take possession of the property or to receive the rents and profits thereof (as the case may be) except upon payment of the purchase money and any balance of apportionments, and subject to his executing any such instrument as aforesaid.

Comment:

English Law Society cl. 5(4)

Possession before Completion

9. (1) Where the purchaser is authorised by the contract or by any subsequent agreement with the vendor (otherwise than under a lease or tenancy entered into or created before the date of the contract) to take physical possession of the property before the actual completion of the purchase, then (save as otherwise agreed) the following provisions shall apply:
- (a) The purchaser shall occupy the land as a licensee of the vendor and not as a tenant;
 - (b) The taking of possession shall not be deemed to be -
 - (i) an acceptance by the purchaser of the vendor's title, or
 - (ii) a waiver of the right of the purchaser to make requisitions or objections in respect of the title;
 - (c) The purchaser shall, from the date of taking possession (including that day) and until the time of actual completion, or until the vendor resumes possession by reason of rescission of the contract -
 - (i) keep the land in as good a state of repair and condition as it was in at the time of taking possession;
 - (ii) pay all rents, rates, taxes, costs of insurance and of repairs, and other outgoings in respect of the land;
 - (iii) be entitled to the rents and profits as if the completion date had arrived; and
 - (iv) pay interest on the purchase-money or the balance thereof at the rate which would be applicable if paragraph (1) of condition 10 applied.
 - (d) If the contract is rescinded or becomes void the purchaser shall -
 - (i) forthwith deliver up possession of the land to the vendor in as good a state of repair and condition as aforesaid; and
 - (ii) apply any insurance money received by him in respect of the land in making good any loss or damage thereto, or otherwise account for the same to the vendor as the vendor may elect.

Provided that (subject to the requisite apportionment of all rents, rates, taxes, costs of insurance or of repairs and other outgoings and without prejudice, in the case of the purchaser's default, to the rights of the vendor under condition 26) the vendor shall repay to the purchaser his deposit money, if any (including any purchase money previously paid), but without interest thereon, and the purchaser shall return

forthwith all papers in his possession belonging to the vendor, and shall not make any claim on the vendor for costs, compensation or otherwise.

- (2) If when the contract is made the purchaser holds a lease or tenancy of the land, the contract shall not (in the absence of any provision to the contrary) determine or affect the lease or tenancy.

Comment

Modelled on English Law Society -cl.6. The Committee is doubtful whether this condition should be included as it is long and not usual. Comments are invited.

Interest on Purchase Money

10. If the sale is not completed by the completion date, then unless the delay in completion is attributable to any act or default of the vendor the purchaser shall pay interest on the purchase money or the balance due thereof at 8% per annum from completion date to the day of actual payment.

Provided that -

- (1) without prejudice to (2) hereof the vendor may by notice in writing to the purchaser served before actual completion elect to take the net income of the land up to actual completion in lieu of that interest.
- (2) if the delay arises from any cause other than neglect or default of the purchaser, (not being in occupation under Condition 9) the purchaser may at his own risk, deposit the purchase-money, or, the balance thereof, at any bank in New Zealand, and forthwith give to the vendor or his solicitors notice in writing of that deposit, in which case the vendor shall (unless and until there is further delay in completion which is attributable solely to the purchaser's own act or default) be bound to accept the interest, if any, allowed thereon, as from the date of deposit, instead of the interest accruing after such date which would otherwise be payable to him under this condition.
- (3) the vendor shall not be entitled in respect of the same period to both income and interest nor shall the purchaser be entitled both to the interest earned by money on deposit, and the income.

Comment:

This is a combination of English Law Society 7 and UK National Conditions 6 bearing in mind comments in Farrand Contract & Conveyance p.229.

Vendor to remove title limitation

11. Where the land sold is subject to the Land Transfer Act 1952 and is limited as to title the vendor shall remove or cause to be removed that limitation within one month of the date of the contract.

Section 54(1) of the Property Law Act 1952 is to similar effect.

Consents

12. Where the consent or licence of any person or body is required to the sale the vendor shall at his own expense apply for and use his best endeavours to obtain such consent or licence. If such consent or licence is not obtained before the completion date the contract shall be null and void and all money paid hereunder by the purchaser shall be refunded to him unless delay or default of the purchaser is the reason for failure to obtain the consent. This condition does not operate where conditions 34 - 37 (Land Settlement Control) or Condition 14 (Leaseholds) applies.

Comment:

This could probably be dropped. It is general law that a vendor e.g. assigning a lease is obliged to obtain consent of the lessor to the assignment where necessary; and there is no contract if the consent is not obtained. See also condition 14(5).

Requisitions

13. Any objections or requisitions on the title which the purchaser shall be entitled to make shall be made and delivered in writing to the vendor or vendor's solicitor within 14 days from the date hereof or at least fourteen days before the completion date whichever is the earlier (time being of the essence) or in the case where a plan is to be lodged or has been lodged in the Land Transfer Office for deposit in respect of the land hereby sold then in respect of requisitions arising out of the deposit of the said plan within 14 days of the date that the purchaser is notified in writing that the said plan has been deposited (time being of the essence) and all objections or requisitions not so made shall be deemed to be waived and the title to have been accepted absolutely by the purchaser and in the event of the vendor being unable or unwilling to remove or comply with any such objections or requisitions the purchaser shall within 7 days of receiving notice from the vendor to this effect be required to notify the vendor in writing whether the purchaser will waive his objections or requisitions on the title and if the purchaser does not do so the vendor shall be at liberty notwithstanding any intermediate negotiations by notice in writing to the purchaser to rescind this Agreement in which case the purchaser shall receive back the deposit and all other moneys paid hereunder without interest but shall have no claim whatsoever on the vendor for the expense of investigating the title or for compensation or otherwise howsoever.

Comment:

This is Auckland Law Society's clause 5, slightly amended.

Leaseholds

14. Where the land is held by the vendor on leasehold tenure, the following provisions shall apply:

- (1) The title shall commence with the lease or underlease creating the term or interest sold;
- (2) The purchaser, whether or not he inspects the lease or underlease, shall be deemed to have notice of it and the sale shall not be affected by any partial, incomplete or inaccurate statement in the contract **with reference thereto;**
- (3) Where the term or interest sold is created by an underlease -
 - (a) the purchaser shall be entitled to require the vendor to supply (at the purchaser's expense) an abstract or copy of the immediately superior lease, if any such abstract or copy is in the possession or control of the vendor but the vendor shall not be bound to verify such abstract or copy; and
 - (b) whether such abstract or copy be supplied or not, the purchaser shall make no objection on the ground that the covenants and conditions in the underlease do not in all respects correspond with those in the superior lease (as appearing in such abstract or copy or otherwise), if the provisions of the underlease substantially give effect to the provisions of the superior lease (if and so far as so appearing).
- (4) Where the lease or underlease is granted without reserving a rent or is at a nominal rent, the fact of possession thereunder at completion date shall be accepted as conclusive evidence of the due performance or observance of the lessee's covenants and conditions therein contained.
- (5) Where the lease or underlease under which the land is held is subject to a restriction against assignment without licence -
 - (a) immediately after the contract is made, the vendor shall at his own cost apply for and endeavour to obtain the necessary licence;
 - (b) the purchaser shall perform any condition reasonably required by the reversioner before granting the licence in order to show that the purchaser will be a satisfactory tenant; and
 - (c) if the vendor is unable to obtain the licence within one month from the date of the contract, either party may, by notice in writing to the other party or his solicitor, rescind the contract.

- (6) On production of a receipt for the last payment due for rent under the lease or underlease, the purchaser shall assume without proof that the person giving the receipt, though not the original lessor, is the reversioner expectant on the said lease or underlease or his duly authorised agent.
- (7) No covenant implied in any transfer by virtue of any provision in the Land Transfer Act 1952 or the Property Law Act 1952 shall extend to any breach of any covenant or other provision of the lease or underlease to which the purchaser is precluded by this condition from objecting or any such breach in respect of any matter of which the purchaser is deemed by condition 17 to have full notice.

Comment:

This is modelled on English Law Society cl.14. Doubtful if necessary to include it.

Boundaries

15. The vendor shall not be bound to indicate the boundaries of the land.

Comment:

R.E. 1, cl.4 is fuller.

Fencing

16. The usual fencing provision whereby vendor is absolved from contribution is omitted pending consideration of the Committee's recommendations for a new Fencing Act.

Condition of Property

17. The purchaser shall be deemed to purchase with full notice of the actual state and condition of the property, whether as to state of repair, means of access, or otherwise howsoever, and shall take the same as it stands.

Comment:

English Law Society cl. 17(5).

Town Planning

18. The land is sold by the vendor and purchased by the purchaser on the basis that, under the provisions of the Town and Country Planning Act 1953 the land as at the date of this agreement is zoned or provisionally zoned as the case may be as specified in the contract under the operative or proposed or draft district scheme as the case may be of the local authority having jurisdiction over the land which shall be taken subject to any qualifications or restrictions as a result of such zoning or provisional zoning and the ordinances relating thereto. It shall be the sole responsibility of the purchaser to satisfy himself as to the zoning or provisional or proposed zoning of the

land. Should it be established either within 14 days from the date of this agreement or not later than 14 days before the completion date whichever is the earlier that the zoning or provisional or proposed zoning of the land, is otherwise than as aforesaid the purchaser shall be entitled to rescind the contract and be repaid in full any money paid by him thereunder.

Comment:

This is Auckland Law Society form cl. 6, slightly amended.

Easements

19. The land is sold and will, if the vendor so requires, be transferred subject to all rights of way, water, light, drainage and other easements, rights and privileges, if any affecting the same and subject to any fencing covenants registered against the same.

Comment:

English Law Society cl. 18(1).

Local Authority requirements

20. (1) The vendor warrants he has not received nor has he any notice of any requisition or outstanding requirement imposed by any local or government authority in respect of the land which he has not disclosed to the purchaser. If the purchaser becomes aware that such a requisition or requirement was notified to the vendor before the contract was made he may deliver an objection or requisition to the vendor in terms of Condition 13 the provisions of which condition shall then apply.
- (2) If notice of any such requisition or requirement, is received by the vendor after the contract is made then:
- (a) if before the completion date the vendor has expended money for the purpose of satisfying it the purchaser shall on completion date, pay to the vendor the money so expended by him, with interest thereon at the rate of \$8 per cent per annum from the date of the expenditure thereof;
- Provided that before expending such money, the vendor shall inform the purchaser of the requisition or requirement and give him the option of satisfying it affording him proper facilities for doing so.
- (b) if the requisition or requirement, has not been satisfied before completion date, the purchaser shall indemnify the vendor in respect thereof; and the purchaser if required shall give a covenant for such indemnity in the transfer.

Comment:

English Law Society cl. 20, amended.

Tenancies

21. (1) Where the land is stated to be sold subject to any lease or tenancy, the purchaser, shall be deemed to have notice of, and shall take subject to, the terms of such lease or tenancy, and the sale shall not be affected by any inaccurate statement in the contract. No objection shall be made on account of the absence of any agreement in writing with any tenant, and in any such case the purchaser shall be satisfied with such evidence of the nature of the tenancy as the vendor may be able to supply.
- (2) If the property is leasehold, no objection shall be made on account of any discrepancy between the agreements or covenants by the tenant in any tenancy agreement or underlease and the lessee's covenants in the lease under which the property is held, unless such discrepancy is such as may give rise to a forfeiture of the lease.
- (3) Where a tenancy or lease affects more than one lot, or affects other land, the purchaser shall take his transfer with the benefit of the apportioned rent stated in the contract or (if not so stated) settled by the vendor or his agent before actual completion of the sale, and he shall not require the assent of any tenant thereto or otherwise require the rent to be legally apportioned.
- (4) The foregoing provisions of this condition shall be subject to the provisions of the Tenancy Act 1955.

Comment:

This is U.K. Law Society cl.23. It may be too full. Auckland Law Society form cl. 16 is simply:

"The property herein bought and sold subject to/free of any existing tenancies".

Risk and Insurance

22. From the time of the making of the contract (or, if the contract is conditional, from the time it becomes unconditional) the land sold is at the risk of the purchaser with regard to fire, tempest, earthquake or deterioration of any kind except and to such extent as any loss or damage may be due to negligence or default of the vendor. As regards any policy of insurance maintained by the vendor in respect of any damage to or destruction of the property, as between vendor and purchaser, the vendor shall not be bound either -

- (a) to keep on foot any such insurance; or
- (b) to give to the purchaser notice of any premium being or becoming due:

- (1) if so required by the purchaser, the vendor shall consent to the endorsement on the policy or entry in the books of the insurers of the purchaser's name as that of the person interested in the policy, and in such case the purchaser shall on completion pay to the vendor a proportionate part of the current premium from the date of the contract up to the expiration of the current period of the insurance.

- (2) if the contract is rescinded, the vendor may require such endorsement or entry to be cancelled.

Comment:

This is modelled on U.K. Law Society cl.25 with provision as to risk from Auckland Law Society form added.

It is probably preferable that the purchaser effect his own insurance as from date of contract.

The Transfer

23. (1) The transfer to the purchaser shall be prepared by him or on his behalf and at his expense, and a draft thereof shall be delivered at the office of the vendor's solicitors at least ten days before the completion date for perusal and approval on behalf of the vendor and any other necessary parties.
- (2) The engrossment of such transfer for execution by the vendor and any other necessary parties shall be left at the said office within four days after the draft has been returned approved on behalf of the vendor and such other parties. Alternatively, if the vendor has not required the purchaser to submit a draft, the engrossment of the transfer shall be delivered as aforesaid at least six days before the date fixed for completion. The vendor may agree to accept a draft transfer as an engrossment.
- (3) Delivery of a draft or of an engrossment shall not prejudice any outstanding requisition.

Comment:

This is U.K. Law Society cl. 26.

Sale subject to covenants

24. (1) Where after completion of the purchase - (a) the vendor, (b) the estate of any testator or intestate of whom the vendor is personal representative, or (c) any trust estate of which the vendor is trustee, will remain liable (whether directly or by way of indemnity) in respect of a breach of - (i) any existing restrictive covenant or stipulation affecting the property sold, or (ii) any existing positive covenant or provision relating to the property sold, then, if in the contract the property is expressed to be sold subject to any such covenant, stipulation or provision, the purchaser in his conveyance shall covenant thenceforth to observe and perform the same, and keep the vendor and his estate and effects, or the estate and effects of such testator or intestate, or the trust estate, as the case may be, indemnified from all claims in respect of the said covenant, stipulation or provision, so far as the same relates to the property conveyed to him.

- (2) Provided that, unless the vendor or such estate as aforesaid is interested in the observance or performance of such existing covenant, stipulation or provision, apart from his or its liability for such observance or performance, the covenant, by the purchaser shall be by way of indemnity only.

Comment:

U.K. Law Society cl.29.

This condition is probably not necessary.

As to obligations under a mortgage, s.96 L.T.A. implies a covenant by the purchaser to indemnify the vendor; similarly as to covenants under a lease (s.98). If an instrument such as an easement is registered, prima facie, the purchaser must indemnify the vendor.

Misdescription

25. Except as otherwise expressly provided in the contract no error or misdescription shall annul the sale but compensation if demanded in writing before completion date, but not otherwise, shall be made or given as the case may require, the amount to be determined in case of differences by arbitration under the law relating thereto in New Zealand.

Comment:

This is Auckland Law Society form cl. 8 slightly amended.

The general rule is that rescission of a contract for sale of land does not lie and conveyance is taken by the purchaser and in Montgomery and Rennie v Continental Bags [1972] N.Z.L.R. 884 Speight J held that in respect of Land Transfer land it is not settlement of the transaction but registration of the transfer that bars rescission by purchaser. The above clause removes the right of rescission but probably would not operate where there was a total failure of consideration.

Default of Purchaser

26. If the purchaser shall make default in payment of the purchase money or any instalment thereof agreed by the contract to be paid or of interest thereon or in the performance or observance of any other stipulation or agreement on the part of the purchaser therein contained and such default shall be continued for the space of 14 days after notice specifying the default complained of has been served by the vendor on the purchaser then the vendor without prejudice to his other remedies may at his option exercise all or any of the following remedies, (but subject where applicable to Section 50 of the Property Law Act 1952) namely:

- (1) rescind the contract and thereupon any moneys paid by way of deposit or instalments and purchase price (but not exceeding in all 10% of the purchase price) shall be absolutely forfeited to the vendor as liquidated damages;
- (2) if the purchaser is in possession of the said land or property re-enter upon and take possession of the same without the necessity of giving any further notice or making any formal demand;

- (3) re-sell the land or property either by public auction or private contract for cash or on credit and upon such other terms and conditions as he may think proper with power to vary any contract for sale, buy in at any auction and re-sell; and any deficiency in price which may result and all expenses attending a re-sale or attempted re-sale shall be made good by the purchaser and shall be recoverable by the vendor as liquidated damages; the purchaser receiving credit for the deposit and any payments made in reduction of the purchase money. Any increase in price on resale after deduction of expenses shall belong to the vendor;
- (4) sue the purchaser for specific performance.

On a sale on terms ~~as to the~~ payment of purchase price, in the event of default for one month in the payment of any instalment of purchase money or interest the balance of purchase price then owing together with accrued interest shall at the option of the vendor immediately become due and payable.

Comment:

This is substantially Auckland Law Society form cl.10. Query the attempt to use the clause to cope with default on cash sales and long term sales is successful.

Stamp duty

27. The purchaser shall before the expiration of 3 months from the date hereof duly stamp either the counterpart or the original copy of this agreement or an assurance in pursuance thereof and in default thereof the vendor may stamp this agreement and recover the cost from the purchaser.

Comment:

This is Auckland Law Society clause 11.

Contract Conditional on Finance

28. Where the contract provides that it is conditional upon the purchaser or his agent arranging a mortgage on specified terms, if the mortgage shall not have been arranged by the date provided in the contract, the contract shall be void and the deposit and all moneys paid by the purchaser shall be refunded to him in full forthwith and neither party shall have any right or claim against the other. The provisions of this clause may be waived by the purchaser by notice in writing to the vendor or his agent at any time before the contract becomes void in accordance with the provisions hereof. The vendor may at any time before the contract so becomes void offer to the purchaser mortgage finance on the terms specified in the contract to enable him to comply with the contract whereupon the contract shall be deemed to have been fulfilled in this respect.

Comment:

This is Auckland Law Society form, cl. 12 adapted to allow the contract to specify the details, leaving the standing material to be dealt with as a condition. Query as to whether the whole thing is not best left to the contract.

Electric power and other charges

29. The vendor shall pay all charges for electric power and/or gas supplied to the said premises down to the completion date and the vendor undertakes as at the date of settlement -
(a) that no land tax is outstanding on the property;
(b) that the chattels (if any) included in the sale are the unencumbered property of the vendor; (c) that all electrical and other installations in the said premises are free of any charge; (d) that there are no arrears of rates on the property; (e) that any adjustments are paid to the dates shown in the vendor's statement of apportionments referred to in Condition 7.

Comment:

This is Auckland Law Society Form, cl. 14, modified to suit.

Warranties: no merger

30. That the agreements, obligations and warranties of the parties under the contract insofar as the same have not been fulfilled by the completion date shall not merge with the giving and taking of title to the land nor with the delivery of any chattels sold under the contract.

Comment:

This is Auckland Law Society Form, cl. 15, slightly modified.

Cancellation of registration

31. In any case where the contract is rescinded or has become void the purchaser shall forthwith and at his own expense procure the cancellation of any entry relating thereto in any register.

Comment:

This is U.K. Law Society cl. 37. Seems a useful provision; could cover withdrawal of purchaser's caveat.

Notices

32. Any demand or notice by one party on or to the other to be made or given under the contract or these conditions shall be sufficiently made or given if made or given personally to the other party or his solicitor or if posted in a prepaid registered letter in terms of section 152 of the Property Law Act 1952.

Comment;

This is similar to Auckland Law Society cl. 13.

Payment

33. Any payment due under the contract may be made or tendered either in cash or by draft or cheque drawn by a bank as defined in the Banking Act 1908.

Comment:

Victoria Table A 16.

Land Settlement Controls

34. If the land affected by the contract exceeds 5 acres in area the contract is subject to any necessary consent of the Administrative Division of the Supreme Court and the purchaser will within 14 days from the date thereof either: (a) complete and deposit with the District Land Registrar a declaration in conformity with s.24 of the Land Settlement Promotion and Land Acquisition Act 1952 and deliver a copy to the vendor or (b) deliver to the vendor any statement declaration or other document required by regulation or otherwise to be completed by the purchaser for filing with an application to the Administrative Division of the Supreme Court and the vendor shall within one month from date hereof unless such declaration shall have been deposited as aforesaid make application to the Administrative Division of the Supreme Court for any necessary consent to the transaction; and each party hereto shall do all such acts and things as may be necessary or expedient for the purpose of endeavouring to obtain such consent or insuring compliance with the provisions of the Land Settlement Promotion and Land Acquisition Act 1952 and any regulations for the time being thereunder; and each party shall bear his own legal and all other costs whatsoever of and incidental to any such declaration application or other process.

35. If any land affected by the contract is held under lease or licence under the provisions of the Land Act 1948 and the contract is subject to consent of the Land Settlement Board being obtained within the period (if any) referred to in the contract each party thereto shall within 14 days from the date thereof make such application therefor as may be necessary and each party shall do all such acts and things as may be necessary or expedient for the purposes of endeavouring to obtain such consent or securing compliance of the provisions of the Land Act 1948 and any regulations for the time being thereunder and each party shall bear his own legal and other costs whatsoever of and incidental thereto.

36. If any such consent where necessary shall not be granted by the date specified in the contract or within a reasonable time if no date be specified, or such later date as the parties agree on or shall be refused or shall be granted subject to conditions then the contract subject as hereinafter mentioned shall be void provided however that if such consent shall be granted within such time subject to conditions to which the parties shall in writing agree or subject to conditions not prejudicial to the purchaser if the vendor shall within 7 days after the grant thereof give notice in writing to the purchaser or his solicitor of the vendor's willingness to comply with such conditions then the contract shall be binding on the parties as modified by such conditions.

37. If the contract shall become void under any of the preceding three conditions or shall become of no effect by virtue of the provisions in the Land Settlement Promotion and Land Acquisition Act 1952 or by virtue of the Land Settlement Board refusing any consent necessary under condition 35 hereof then if the purchaser has duly complied with all his obligations thereunder he shall be entitled to a refund of his deposit and any other moneys paid on account of the purchase money but shall have no other claim against the vendor.

Comment

These four conditions are the same as R.E. - 2, clauses 11 - 14. The Committee suggested 37 be amended to provide that if consent is refused because of the failure of the purchaser to comply he should forfeit his deposit per a section in the Act. I cannot locate this section. It seems that forfeiture of deposit would ensure from the present wording of the clause. For discussion.

Query whether some penalty should be imposed on vendor for failing to apply for consent in time.

Agent

38. Where by the contract the vendor has appointed as his agent a specified member of the Real Estate Institute of New Zealand (Inc.) the sale evidenced by the contract shall be deemed to be made through his instrumentality. Where that sale is conditional, because of the application of conditions 34 to 37 hereof, no remuneration for the agency shall be payable if the vendor shall have made all necessary application for consent but the consent of the Administrative Division of the Supreme Court or the Land Settlement Board as the case may be is not granted to the sale either in terms of the contract or subject to conditions which are acceptable by or become binding on the parties provided that if the Crown pursuant to its rights under the Land Settlement Promotion and Land Acquisition Act 1952 takes or acquires the property then commission will be payable as on a sale on the amount payable by the Crown by way of purchase price or compensation.

Comment

Above draft is a combination of the like clauses in R.E. -1 and R.E. -2 (Nos. 11 and 15). One alternative is to omit from the conditions and put the same Clause in the contract; the advantage of making it a condition is to relieve the contract of the detail. If no agent is appointed by the contract, the condition has no application.

Query if sale conditional on finance; presumably no commission if contract goes off but Auckland Law Society 12 does not specifically provide for this.

As to Land Settlement Promotion s.25(3) provides that no commission is payable in respect of a transaction in contravention of the Act.

- 7: Complete as necessary 4. For the purpose of Statutory Condition 18 the zoning is understood to be: ⁷
- 8: Complete or delete as necessary. 5. ⁸ Statutory Condition 28: This contract is conditional upon the purchaser arranging by the _____ day of _____ 19 _____ a (first) mortgage over the above land on reasonable and usual terms for \$ _____ at _____ % interest (lower rate) for _____ years with principal repayments of not more than \$ _____ per week.
6. Statutory Condition 38: The vendor appoints _____ his agent to effect the sale evidenced by this contract.
7. Special terms:

SCHEDULE OF CHATTELS

Included in this sale and the purchase price afore-said are the following chattels: The parties agree that their value for all purposes is not less than \$

In witness whereof the parties have executed this contract.

Signed by the vendor in the presence of:

Signed by the purchaser in the presence of:

Here follow: The Statutory Conditions of Sale per First Schedule.

Comment:

Commencement and clause 1 is as per Auckland Law Society Form except that "subject to etc." has been added after legal description and "freehold/leasehold" etc. which words occur in a "form of offer and acceptance (approved by the Real Estate Institute of New Zealand (Inc.))".

Query, if the property is leasehold, there should not be supplied at least the name of the lessor and the present rent.

Clause 2 gives tenancy details where applicable (embodying Auckland Form Clause 16 and schedule of tenancies). Possession date is here included; it occurs in clause 3 of the Auckland form. Clause 3 refers to the statutory conditions and provides for modification. Clause 4 specifies zoning as present in Auckland form - our draft 18. Clause 5: conditional sale. The Committee is doubtful about this. It could be left to be inserted as a special condition, but as there are many such sales there is advantage in retaining it. The clause gives the details required for Condition 28. Clause 6 appoints the agent and brings 38 into operation.

STANDARD SHORT CONTRACT OF SALE

(using abbreviated clauses

15.10.73.

Prepared by Warrington Taylor

THIS CONTRACT is made the day of 19

BETWEEN

(hereafter called "the vendor") of the one part

AND

(hereafter called "the purchaser") of the other part

WHEREBY the Vendor agrees to sell and the Purchaser agrees to buy the land described in the Schedule hereto (which is freehold unless otherwise specified) together with all buildings and improvements thereon (hereafter called "the property") and the chattels if any specified in the Schedule

UPON THE FOLLOWING TERMS:

1. THE purchase price is \$
2. THE Purchaser shall on signing hereof pay to the Vendor or his agent as a deposit and in part payment of the price the sum of \$
3. THE balance of the price shall be paid or satisfied as follows:

4. THE purchase shall be completed on the day of 19 at the office of

5. UPON completion the Purchaser shall be entitled to vacant possession of the property (unless any tenancies are specified below) and all outgoings shall be apportioned at that date.

6. THE sale is subject to the following tenancies (if any are specified):

7. IF the Purchaser is allowed into possession before completion such concession shall be without prejudice to the rights of both parties.

8. THE rate of interest payable by the Purchaser on default shall be 10% unless otherwise specified.

9. THE Vendor shall obtain any necessary consent from the Landlord if the property is leasehold.

10. THE Purchaser shall satisfy himself of the state and condition of the property and he shall take it as it stands.

11. IF the Purchaser is buying on the basis that the land is any particular zoning such zoning shall be stated here:-

and the Purchaser shall be solely responsible for verification thereof. If it is not zoned as stated the Purchaser may rescind this contract within 14 days hereof.

12. THE property shall remain at the risk of the Vendor until

- (a) 3 days after date hereof if particulars of existing fire insurance or of absence of insurance are inserted; or
- (b) 3 days after such particulars are notified to the Purchaser if not inserted herein.

<u>Company</u>	<u>Amount</u>	<u>Due date</u>
----------------	---------------	-----------------

13. IF the Purchaser fails to fulfil any obligation for 14 days after receiving written notice to comply therewith the Vendor may

- (a) forfeit the deposit and any other moneys paid with a maximum of 10% of the purchase price
- (b) retake possession of the property.
- (c) resell the property and recover damages after giving credit for any moneys paid.
- (d) sue for specific performance.

14. IF any terms of finance are specified below, this contract is conditional upon the Purchaser on or before the day of 19 arranging finance on usual and reasonable terms not less advantageous to him than the following:

	<u>Amount</u>	<u>Rate</u>	<u>Term</u>
1st mortgage			
2nd mortgage			
Other			

15. IF the provisions of the Land Settlement Promotion & Land Acquisition Act 1952 shall apply, this contract shall be subject to the necessary consents and the parties shall observe the requirements of the said Act.

16. THE Vendor appoints as his agent to effect this sale.

17. THE Statutory Conditions of Sale shall apply hereto except as expressly modified.

18. Special terms (if any).

SCHEDULE (description of property)

If property is leasehold insert here

Name of lessor

Term of lease

Rent

Renewal if any.

Inventory of chattels (if any) included in the foregoing purchase price at an agreed apportionment of \$.

IN WITNESS WHEREOF the parties have signed this Contract.

SIGNED by)
as Vendor in the presence of:)

SIGNED by)
as Purchase in the presence of:)