

Law Society's formulae for exchanging contracts by telephone, fax or telex

Law Society telephone/telex exchange - Formula A (1986)

(for use where one solicitor holds both signed parts of the contract):

A completion date of is agreed. The solicitor holding both parts of the contract confirms that he or she holds the part signed by his or her client(s), which is identical to the part he or she is also holding signed by the other solicitor's client(s) and will forthwith insert the agreed completion date in each part.

Solicitors mutually agree that exchange shall take place from that moment and the solicitor holding both parts confirms that, as of that moment, he or she holds the part signed by his or her client(s) to the order of the other. He or she undertakes that day by first class post, or where the other solicitor is a member of a document exchange (as to which the inclusion of a reference thereto in the solicitor's letterhead shall be conclusive evidence) by delivery to that or any other affiliated exchange, or by hand delivery direct to that solicitor's office, to send his or her signed part of the contract to the other solicitor, together, where he or she is the purchaser's solicitor, with a banker's draft or a solicitor's client account cheque for the deposit amounting to £..... .

Note:

1. A memorandum should be prepared, after use of the formula, recording:
 - a) date and time of exchange;
 - b) the formula used and exact wording of agreed variations;
 - c) the completion date;
 - d) the (balance) deposit to be paid;
 - e) the identities of those involved in any conversation.

Law Society telephone/telex exchange - Formula B (1986)

(for use where each solicitor holds his or her own client's signed part of the contract):

A completion date of is agreed. Each solicitor confirms to the other that he or she holds a part contract in the agreed form signed by the client(s) and will forthwith insert the agreed completion date.

Each solicitor undertakes to the other thenceforth to hold the signed part of the contract to the other's order, so that contracts are exchanged at that moment. Each solicitor further undertakes that day by first class post, or, where the other solicitor is a member of a document exchange (as to which the inclusion of a reference thereto in the solicitor's letterhead shall be conclusive evidence) by delivery to that or any other affiliated exchange, or by hand delivery direct to that solicitor's office, to send his or her signed part of the contract to the other together, in the case of a purchaser's solicitor, with a banker's draft or a solicitor's client account cheque for the deposit amounting to £.....

Notes:

1. A memorandum should be prepared, after use of the formula, recording:

- a) date and time of exchange;
- b) the formula used and exact wording of agreed variations;
- c) the completion date;
- d) the (balance) deposit to be paid;
- e) the identities of those involved in any conversation.

2. Those who are going to effect the exchange must first confirm the details in order to ensure that both parts are identical. This means in particular, that if either part of the contract has been amended since it was originally prepared, the solicitor who holds a part contract with the amendments must disclose them, so that it can be confirmed that the other part is similarly amended.

9th July 1986, revised January 1996

Law Society telephone/fax/telex exchange - Formula C (1989)

Part I

The following is agreed:

Final time for exchange: pm

Completion date:

Deposit to be paid to:

Each solicitor confirms that he or she holds a part of the contract in the agreed form signed by his or her client, or, if there is more than one client, by all of them. Each solicitor undertakes to the other that:

- a) he or she will continue to hold that part of the contract until the final time for exchange on the date the formula is used, and
- b) if the vendor's solicitor so notifies the purchaser's solicitor by fax, telephone or telex (whichever was previously agreed) by that time, they will both comply with part II of the formula.

The purchaser's solicitor further undertakes that either he or she or some other named person in his or her office will be available up to the final time for exchange to activate part II of the formula on receipt of the telephone call, fax or telex from the vendor's solicitors.

Part II

Each solicitor undertakes to the other henceforth to hold the part of the contract in his or her possession to the other's order, so that contracts are exchanged at that moment, and to despatch it to the other on that day. The purchaser's solicitor further undertakes to the vendor's solicitor to despatch on that day, or to arrange for the despatch on that day of, a banker's draft or a solicitor's client account cheque for the full deposit specified in the agreed form of contract (divided as the vendor's solicitor may have specified) to the vendor's solicitor and/or to some other solicitor whom the vendor's solicitor nominates, to be held on formula C terms.

'To despatch' means to send by first class post, or, where the other solicitor is a member of a document exchange (as to which the inclusion of a reference thereto in the solicitor's letterhead is to be conclusive evidence) by delivery to that or any other affiliated exchange, or by hand delivery direct to the recipient solicitor's office. 'Formula C terms' means that the deposit is held as

stakeholder, or as agent for the vendor with authority to part with it only for the purpose of passing it to another solicitor as deposit in a related property purchase transaction on these terms.

Notes:

1. Two memoranda will be required when using formula C. One needs to record the use of part I, and a second needs to record the request of the vendor's solicitor to the purchaser's solicitor to activate part II.
2. The first memorandum should record:
 - a) the date and time when it was agreed to use formula C;
 - b) the exact wording of any agreed variations;
 - c) the final time, later that day, for exchange;
 - d) the completion date;
 - e) the name of the solicitor to whom the deposit was to be paid, or details of amounts and names if it was to be split; and
 - f) the identities of those involved in any conversation.
3. Formula C assumes the payment of a full contractual deposit (normally 10%).
4. The contract term relating to the deposit must allow it to be passed on, with payment direct from payer to ultimate recipient, in the way in which the formula contemplates. The deposit must ultimately be held by a solicitor as stakeholder. Whilst some variation in the formula can be agreed this is a term of the formula which must not be varied, unless all the solicitors involved in the chain have agreed.
5. If a buyer proposes to use a deposit guarantee policy, formula C will need substantial adaptation.
6. It is essential prior to agreeing part I of formula C that those effecting the exchange ensure that both parts of the contract are identical.
7. Using formula C involves a solicitor in giving a number of professional undertakings. These must be performed precisely. Any failure will be a serious breach of professional discipline. One of the undertakings may be to arrange that someone over whom the solicitor has no control will do something (i.e. to arrange for someone else to despatch the cheque or banker's draft in payment of the deposit). An undertaking is still binding even if it is to do something outside the solicitor's control (see 18.04, p.353).

8. Solicitors do not as a matter of law have an automatic authority to exchange contracts on a formula C basis, and should always ensure that they have the client's express authority to use formula C. A suggested form of authority is set out below. It should be adapted to cover any special circumstances:

I/Weunderstand that my/our sale and purchase ofare both part of a chain of linked property transactions, in which all parties want the security of contracts which become binding on the same day.

I/We agree that you should make arrangements with the other solicitors or licensed conveyancers involved to achieve this.

I/We understand that this involves each property-buyer offering, early on one day, to exchange contracts whenever, later that day, the seller so requests, and that the buyer's offer is on the basis that it cannot be withdrawn or varied during that day.

I/We agree that when I/we authorise you to exchange contracts, you may agree to exchange contracts on the above basis and give any necessary undertakings to the other parties involved in the chain and that my/our authority to you cannot be revoked throughout the day on which the offer to exchange contracts is made.