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Solicitors & Notary Public

Undertakings

In the context of legal matters an undertaking is a promise by a solicitor to take action at a specified time or in a specified event.

Many transactions rely on undertakings by solicitors in order to proceed smoothly and promptly. For example, on exchange of contracts in a sale or purchase, solicitors acting for seller and buyer each undertake with the other to send the signed contract in the post after exchanging by telephone. Another example is where a seller's solicitor undertakes with the buyer's solicitor to redeem a mortgage on the property on the completion date.

They can also be undertakings by solicitors to a court to take certain actions in the progress of a contested case of e.g., family law or litigation generally.

If a solicitor breaks an undertaking he or she may be sued in the High Court and may also face disciplinary proceedings brought by the Solicitors Regulations Authority (SRA).

A recent case has noted one exception to the remedies available. Where the solicitor giving the undertaking is a member of a limited liability partnership or a limited company, the undertaking cannot be enforced in the High Court against that limited liability partnership or limited company itself because these are not natural persons. The other remedies are still available however against individual solicitors and SRA sanctions are still available against all types of law firms.

It may be advisable to seek a personal undertaking instead of a firm's undertaking where applicable but this may not be agreed in any particular case and parties may simply have to accept the position.

Please feel free to discuss this with us if the issue arises in your particular matter.