

## **TERMS and CONDITIONS for a PURCHASE**

Any instructions to act for you are to act in relation to documenting your purchase. We are not instructed in relation to financial services such as mortgage and insurance. **It is your responsibility to chase up your loan papers.**

There will be periods when you will hear nothing from us but this is normal and does not mean that we are not progressing your transaction. **If you have any concerns, feel free to telephone the person dealing with your case.** Please check contact details of staff below.

### **DOCUMENTATION URGENTLY REQUIRED FROM YOU**

- (1) Evidence of your identity e.g. your passport, driving licence or pension book **AND** an electricity, gas or telephone bill or a bank or building society statement showing your current address. Mobile telephone accounts are not acceptable. Please note that we require 2 pieces of ID for each person although accounts in joint names will suffice for both. Please hand deliver or send these by post or send a copy certified a true copy by your Bank, another solicitor, accountant, police officer or Financial Adviser. **We shall not be responsible for items lost in the post. Items will be returned to you by first class post only. We shall be unable to progress your transaction without this evidence. It is essential that we receive these from you IMMEDIATELY.**
- (2) The Purchase Questionnaire. We shall send this to you either by e-mail or by post for completion.

### **SOURCE OF FUNDS**

Please note that we will require you to give us evidence of where you got funds from to pay to us a deposit on your purchase price or, indeed, the whole price. This evidence will need to be sufficient to show us that you have received the funds legally and that they are your own funds. If you receive the funds from a third party, you will have to satisfy us that this is acceptable and the same evidence will be required of the third party along with their ID. This may mean that you have to produce a copy of a Divorce Court order, bank statements going back for considerable periods, evidence from a solicitor that you have inherited sums or evidence from a solicitor showing that the funds came from an earlier sale of property. This list is not exhaustive. If you need advice from us, please telephone your conveyancer and discuss what will be acceptable. **We cannot settle your transaction without this evidence being provided and being found to be acceptable to us.**

### **MISSIVES**

These are formal letters which pass between solicitors. When all the terms are agreed then the purchase is "concluded".

There is now a standard form of contract for property purchases and sales in Edinburgh and Glasgow which is used by many firms of Solicitors. The Standard Clauses can be found on the

Law Society of Scotland's website along with a Client Guide. The Standard Clauses are hopefully self explanatory however if you have any questions regarding the terms of the Standard Clauses please first read the Client Guide and, if confusion still exists, advise us so that we can discuss them with you. We will use the Standard Clauses in any purchase on your behalf. If you are purchasing a property please be aware that by instructing us to offer for a property (or if the offer is "subject to survey" and you instruct us to withdraw the survey clause in writing following your receipt of a verbal survey report) you must be willing to be legally bound to purchase the property. It is possible that the seller's solicitor may issue a formal letter accepting the offer which would immediately result in a legally binding contract. You should therefore not instruct us to put an offer in for a property unless you are willing to be legally bound to the purchase and unless you are satisfied that you will be able to finance the purchase.

If you do have difficulty in obtaining mortgage finance or concluding any house sale in time for the date of entry, you will be liable to pay damages to the seller of the property. These damages will include any losses which the seller makes as a result of your failure to complete on time and will certainly include interest at the rate of at least 4% per annum on the purchase price. If you fail completely to make the payment, you will also be liable for other substantial damages. **This is a situation you do not want to find yourself in. Full details of the damages which you could be asked to pay are included in the Standard Clauses.**

Please note- **you do not have to sign missives** - you will be bound by our signing the letters on your behalf. We will check with you throughout the negotiation of the missives and will give you a final opportunity to withdraw from the transaction before missives are concluded.

## **SURVEY**

Once your offer has been accepted verbally by the selling agents, we will instruct survey for you. A Home Report will have been prepared prior to the marketing of the property commencing. While you may be able to rely on this, your lender may not especially if it is more than 3 months old. We **STRONGLY** recommend that a separate Scheme 2 report should be obtained although you may, if you wish, choose a Scheme 1 report which is a mortgage valuation for your lender only. Please note that we have had some real difficulties with Home Reports disclosing a limited amount of information. When a Scheme 2 report is instructed, often problems are highlighted which have not been identified in any detail in the Home Report. The Scheme 2 report will be prepared on YOUR behalf so will be truly independent.

We shall be entitled to disclose your address and telephone numbers to the surveyors so that they can contact you to offer you the opportunity of paying by credit or debit card.

## **MORTGAGE ADVICE**

We would strongly advise that you should take professional advice in order to ensure that you obtain the best possible finance deal for your house purchase. We recommend that you should speak to our financial advisers, Edinburgh Investment Consultants and Independent Women. For your information, their telephone number is 0131 454 2343.

## **FEES**

We will give you a detailed estimate of the likely fees and outlays in this matter. This will be provided by letter which will be either e-mailed or posted to you. If your transaction proceeds to settlement, we do not charge any sums for unsuccessful offers. If your mortgage is with HSBC or any other lenders which operate an independent solicitors' panel and you subsequently do

not proceed with McQueen Legal as your solicitors, we shall be entitled to charge a fee of £50 + VAT for any offers you may have lodged.

## **TITLE**

If your purchase is to be in joint names, **please let us know urgently** and note that there are 2 ways the title can be taken, either jointly or with a survivorship clause. The second means that the survivor automatically inherits on the first death. We shall arrange the title in this way unless you advise otherwise. If you wish to discuss matters, please telephone us as it can have consequences for you if the title is not taken as you wish. These terms and conditions will apply to both parties and we shall be entitled to take instructions from either one of you either verbally or in writing. Please note that, in most cases, your titles will be held by your lenders and not this firm.

## **ARTL**

ARTL is the automated transfer of title to properties as well as other transactions. One lender in particular requires that we undertake your transaction in this way. In the future, it is likely that all transactions will be carried out in this way but, at present, only a limited number of transactions will be affected. What will happen is that the documentation will be prepared online by the purchasing solicitors and will then be approved by the selling solicitors. The selling solicitors will then, at settlement, electronically sign the Disposition transferring the property to the Purchaser. We will require to ask you sign a mandate in these circumstances authorising us to sign all documentation for you either as seller or purchaser. You will no longer sign any documentation yourself. We will, however, continue to keep you informed, as we do now, of any problems which may arise during the transaction and will only "sign" in accordance with the mandate you give us.

## **RETENTION OF TITLE DEEDS**

In most cases, your title deeds will be sent to your lenders following completion of the registration process. If, however, you do not have a lender or your lender does not want the titles sent to them, we would propose to keep the titles in safekeeping for you. We do not charge for this service but we would make a reasonable charge (currently £50+ VAT) for retrieving the deeds if they are to be sent out to another firm of solicitors.

## **STATUTORY NOTICES**

Sometimes these will come to light during the course of a transaction. They are notices by the Council requiring work to happen to the roof or other common parts of a building. If any notices come to our attention during your purchase, we shall request estimates of the cost and will retain the amount of the average of these plus the Council's management fee of 15% + VAT and plus normally 25% until the work is completed. There is no guarantee that this will be enough to pay the bill. The Council would send you an account when the work is completed as you are the owner at that time. You have to pay it although you are entitled to recover it from the seller. However, recovery from sellers is not usually successful unless you are prepared to take legal action against them with the risks which that involves. It should be noted that we are, in accordance with normal practice between solicitors, making a reasonable estimate of costs which might be incurred. However, we cannot foresee any future problems and cost increases and you should appreciate that we will not be liable for any discrepancies between amounts retained and the actual amount of the account you may receive.

## **PAYMENT OF FUNDS TO US**

Please note the terms of the sheet which will be sent to you either by post or by e-mail along with a letter at the start of your transaction and which gives you advice on how to send us your

deposit and fees and outlays. It is likely that you will be requested to send most funds by CHAPs for which your bank will charge you a fee. Please do not allow them to send the money by any other means as it may cause you and us difficulties just before your transaction is due to settle. In particular, Bank of Scotland is inclined to suggest that you should send us the money as a cash transaction. This WILL cause a difficulty as we cannot identify the funds as yours. Please insist that the money is sent by CHAPs. **It is important that you read this carefully and comply with these terms** otherwise your transaction may not settle and you may be charged damages by the seller. We will deposit any funds with the Bank of Scotland plc. We will not be liable for any failure of the Bank. If you wish your funds to be deposited in a different bank or banks you will need to give us specific instructions to that effect and sufficient time to open the appropriate account. You should bear in mind that there is a limit on deposits which will be protected in the event of the failure of a Bank and you should take this into account in giving us instructions. We will charge a reasonable fee for opening such an account other than a Bank of Scotland one.

## COMPLAINTS

We hope that you will be happy with the way in which we deal with your transaction. If you are unhappy with any matter, please speak to the person dealing with your transaction in the first instance. If they cannot resolve your problem for you, please ask for the matter to be passed to the solicitor responsible for your transaction. If, after these steps have been taken, you are still unhappy, please then ask to speak to Mary McQueen. If the matter cannot be resolved after you have gone through these processes, you are entitled to express your dissatisfaction with the firm to the Scottish Legal Complaints Commission.

## DESTRUCTION OF FILES

We will destroy files after the periods recommended by the Law Society. This will mean, in the case of purchases, after 10 years. We will assume that you consent to such destruction unless you inform us otherwise and will not contact you further in this connection.

We will scan and destroy the original documents for purchase files when the file is closed (typically around 12 months after the date of entry). There is a risk that in any subsequent dispute or court case electronic copies may not have the same status as original documents potentially reducing their evidential value. Should we thereafter receive a mandate we will print off the file and there will be a charge (currently £100 plus VAT) for the paper copies being produced. This fee will be payable before the copies are produced.

The firm does not presently intend to destroy any of its electronic documentation even after the Law Society's recommended retention periods. However, this policy could change in the future but documentation will always be retained beyond the Law Society's required periods.

Until the point where you purchase a new property, you should contact our Property Department on the main telephone number: 0131 445 3208. Once you have purchased a property, the name of your conveyancer will be notified to you. You should then ask for that person when calling. **If you are directed to our answer machine please leave messages** and we will try to return all calls as promptly as possible. Our staff contact details are as follows:

### CONTACT DETAILS OF MEMBERS OF STAFF:

	Telephone	Fax	E-mail
Mary McQueen:	0131 228 1926	0131 228 9193	
or	0131 442 6641	0131 477 7052	<a href="mailto:mary@mcqueenlegal.co.uk">mary@mcqueenlegal.co.uk</a>
Dot Mullally:	0131 442 6643	0131 477 7052	<a href="mailto:dot@mcqueenlegal.co.uk">dot@mcqueenlegal.co.uk</a>
Dorothy Woodward:	0131 442 6644	0131 477 7052	<a href="mailto:dorothy@mcqueenlegal.co.uk">dorothy@mcqueenlegal.co.uk</a>

### Property Department

Samantha Webb      0131 656 3117      0131 228 9193      [sam@mcqueenlegal.co.uk](mailto:sam@mcqueenlegal.co.uk)  
Jane Yarrington      0131 656 3115      0131 228 9193      [jane@mcqueenlegal.co.uk](mailto:jane@mcqueenlegal.co.uk)

PLEASE NOTE THAT, WE DO NOT GUARANTEE THAT WE WILL BE ON-LINE CONSTANTLY. YOU SHOULD NEVER ASSUME THAT WE WILL RECEIVE YOUR E-MAIL BY A SPECIFIC TIME AS WE MAY BE OUT OF THE OFFICE OR IN MEETINGS OR OFF-LINE. IF YOU WISH TO COMMUNICATE WITH US BY E-MAIL, PLEASE DO NOT ASSUME THAT THIS WILL RESULT IN AN INSTANT RESPONSE AS WE MAY HAVE TO INVESTIGATE MATTERS BEFORE WE REPLY. **WE WILL NOT NECESSARILY ANSWER E-MAILS ANY FASTER THAN LETTERS OR TELEPHONE CALLS as each much be prioritised.** IF THE MATTER IS URGENT, A TELEPHONE CALL WOULD BE MORE APPROPRIATE.

## **DEFECTS IN YOUR NEW HOME**

The Standard Clauses entitle Purchasers, in very limited circumstances, to make a claim against the seller in the event that any central heating system, appliances included in the price or any services at the property are not in reasonable working order. Please check the Standard Clauses for the exact terms of this possible claim. The undernoted comment is intended to be helpful to give you an idea of the extent of any possible claim but it not exhaustive.

However, you should bear in mind that houses are not perfect. Floorboards may be crooked or sag, windows may not open or the catches may not work, tiles may be loose on the roof or a chimney pot may be about to fall off. You will not have a claim for minor defects against the seller. Defects, such as, for example, no stop cock, which do not stop the system working will not entitle you to claim. You should check everything **as soon as you move in** and let us know of any defects for which you can make a valid claim within **4** working days. You will, however, not have a claim in respect of small amounts of less than £100.

You should also note that although you may have a valid claim the seller may not pay without court action being raised. This may be expensive, and even then, if he does not have the funds to pay you may be left out of pocket. In many cases, it is likely that we will advise against any such action being taken especially when amounts involved are relatively small. We do not do court work and would have to pass you to another firm to undertake the litigation.

### **Liability of surveyor**

In a scheme 1 valuation, the basic mortgage valuation, the possibility of a claim against a surveyor is **very limited**. In a scheme 2 valuation there is a better chance of a claim but only for **major** defects that they would be expected to notice with the property in a fully furnished state i.e where they have been grossly negligent.

Examples where claims would **not** be met-

1. Rot hidden beneath bath and not registering on damp meter
2. Tiling being improperly applied so that water seeps behind and leaks to property below
3. Roofs which leak unless it was very obvious.
4. Minor matters where the defect is not material to the valuation of the property.
5. Any defect where it cannot be found without moving furniture, carpets, or doing something destructive to the property.

### **Examples where claim might be met:**

Rot where damp did show on meter but surveyor failed to report

Settlement in the building which is more than just initial settlement and which is continuing to move and which the surveyor failed to report.

Alterations to the property where the surveyor reasonably ought to have noted them but failed to do so.