

PRACTITIONERS' GUIDE

TO THE

SCOTTISH NEW BUILD STANDARD CLAUSES (2015 EDITION)

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THE SCOTTISH NEW BUILD STANDARD CLAUSES WORKING PARTY

are

- 1) Ross MacKay of HBJ Gateley, Edinburgh**
- 2) Paul Carnan of Blaney Carnan, Glasgow**
- 3) Alan Minty of Gillespie Macandrew LLP, Edinburgh**

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behalf of the Scottish New Build Standard Clauses Working Party**

1. PURPOSE

The Scottish New Build Standard Clauses 2015 Edition is a new creation. It can be used throughout Scotland and it is intended in the long run to replace many styles of Builders' Missives particularly styles of small and medium sized builders and developers.

The larger Builders may wish to use their own styles and have the negotiating position to insist. However it is hoped that when larger Builders see the advantages in theory or practice they may be persuaded to use or to a large extent use and refer to these Standard Clauses.

2. WHY BUILDERS' SOLICITORS SHOULD USE THE CLAUSES

There is now a set of Standard Clauses used throughout Scotland, the Scottish Standard Clauses, for properties that are not new. That is a success and allows both solicitors and clients to use a single style with a Client Guide and Practitioners Guide. That assists clients and solicitors alike with wording with which they can become familiar.

If there is a Court case on missives the decision is creating authority for all using the same particular clause and so the law will be clear on the wording of a single Standard Clause for all using them.

Adoption of the Standard Clauses allows the Builder to claim that it is trying to be "consumer friendly" by following the recommendations of the Consumer Code for Home Builders and it is not trying to catch people out in the small print nor is it imposing more onerous terms on their purchasing customers just for the sake of it or the sake of their own style. The clauses are an attempt at a reasonable balance of rights and does recognise certain clauses that were perceived non-negotiable. Builders solicitors were represented in the Working Party.

The Working Party generally looked at the "settled for" position of what practitioners will usually accept so making a compromise of reasonable clauses for both parties but still with the balance in favour of the Builder. An example is that the Purchaser pays for the Legal Report, Advance Notice and any Company searches unlike it being the Seller that pays for these in the Scottish Standard Clauses used for residential property that is not new.

3. WHY PURCHASERS' SOLICITORS SHOULD USE THE CLAUSES

The Working Party worked from the premise that many individual firms attempted to amend the style Builders' missives based on a "wish list" of best possible outcomes but the reality is that counter qualified acceptances by Builders or outright rejection of amendments to the Builders' style cut these down to size and there then emerged a wording that most people will "settle for" as mentioned in the previous paragraph above.

4. HOW SOLICITORS CAN USE THE CLAUSES ?

If a small builder asks for an Offer by a purchaser then the style of Offer in the Client Guide can be used which refers to the Scottish New Build Standard Clauses 2015 Edition.

If a builder sends its style offer for a purchaser's solicitor to use the solicitor may wish to use the new style Offer instead or if that is not possible to use the builder's style but amend to incorporate certain of the Scottish New Build Standard Clauses.

If an Offer to sell is sent by the Builder's solicitors that is not in the Scottish New Build Standard Clauses 2015 style, the purchasers' solicitors in those cases may wish some qualifications in a Qualified Acceptance to that Builder's missives by using certain wording or clauses from the Scottish New Build Standard Clauses.

A word version of the Scottish New Build Standard Clauses (2015 Edition) is attached to the Client Guide so that clauses from it can be used in other ways e.g. in a Qualified Acceptance or a bespoke offer. The Clauses are not a straightjacket but intended to be of assistance in showing a reasonable wording from both a Builder's and Purchaser's perspective.

5. CLIENT GUIDE to the SCOTTISH NEW BUILD STANDARD CLAUSES (2015 EDITION)

A Client Guide has been created and is available on the websites of the GCF, the ECF and The Law Society of Scotland.

**Written by Ian C. Ferguson of Mitchells Robertson
on behalf of the Edinburgh Conveyancers Forum and Glasgow Conveyancers Forum and
Scottish New Build Standard Clauses Working Party**