

07/44556

**Books of Council and Session**

**Extract Registered 14 Nov 2007**

DECLARATION

SALLY SWINNEY  
ALISON MARSHALL  
RONALD ADAM KIRK

**REGISTERS OF SCOTLAND**  
*Executive Agency*



*Information about Scotland's land & property*

[ Deed Extract ]

# Registers of Scotland

07/44556

AT EDINBURGH the Fourteenth day of November Two thousand and seven the Deed hereinafter reproduced was presented for registration in the Books of the Lords of Council and Session for preservation and is registered in the said Books as follows:-

WE, SALLY SWINNEY, Solicitor, of 39 High Street, Peebles, Dean of the Faculty of Solicitors in the Shires of Selkirk and Peebles, ALISON MARSHALL, Solicitor, of Royal Bank Buildings, 55 High Street, Hawick, Dean of the Society of Solicitors in the Shire of Roxburgh, and RONALD ADAM KIRK, Solicitor, of 47 Market Square, Duns Berwickshire, Dean of the Faculty of Solicitors in the County of Berwickshire CONSIDERING THAT it has been felt appropriate to produce Standard Clauses which are intended to be incorporated in contracts for the purchase and sale of dwellinghouses and other residential properties (which clauses are to be known as "the Borders Standard Clauses (2007 Edition)") HEREBY DECLARE that the clauses detailed in the Schedule annexed and executed as relative hereto are the Borders Standard Clauses (2007 Edition); And we further declare that any party desiring to use the Borders Standard Clauses (2007 Edition) shall be at liberty to do so and to add to and alter and vary the same in any contract as they may see fit; And we further declare for the information of any party using the Borders Standard Clauses (2007 Edition) that the style of offer annexed and signed as relative hereto is intended for use along with the Borders Standard Clauses (2007 Edition) but that it is at the entire discretion of each party to decide whether to use the same or any variation thereof: IN WITNESS WHEREOF these presents consisting of this and the schedule annexed and executed as relative hereto are subscribed by the said Sally Swinney, Dean of the Faculty of Solicitors in the Shires of Selkirk and Peebles at Peebles on 25 October before Patricia Jane Watson of 39 High Street, Peebles and they are subscribed by the said Alison Marshall, Dean of the Society of Solicitors in the Shire of Roxburgh at Hawick on 17 October before Lesley McFarlane of 55 High Street, Hawick and they are subscribed by the said Ronald Adam Kirk, Dean of the Faculty of Solicitors in the County of Berwickshire at Duns on 12 October, all dates in 2007, before Emma Louise Redpath of 47 Market Square, Duns, Berwickshire.

3/

Patricia J Watson witness  
→ Sally Swinney  
Lesley McFarlane witness  
E Redpath witness

Sally Swinney  
Alison Marshall  
Ronald A Kirk



# Registers of Scotland

This is The Schedule referred to in the foregoing Declaration by Sally Swinney, Alison Marshall and Ronald Adam

OFFER LETTER Kirk.

Dear Sirs

On behalf of and as instructed by our clients [ ] ('the Purchaser'), we hereby offer to purchase from your clients [ ] ('the Seller') the subjects known as [ ] ('the Property'), and that on the following terms and conditions -

1. The price is [£ ] of which [£ ] is apportioned on moveables and the balance on heritage.
2. The date of entry is [ ].
3. The Property includes the following items [ ].
4. The Borders Standard Clauses (2007 Edition) specified in the Deed of Declaration (etc) apply.
5. This offer and any contract to follow hereon are entirely conditional upon (a) a satisfactory survey report and (b) a satisfactory valuation report being obtained by the Purchaser in respect of the Property. The Purchaser and his lenders shall be the sole judges as to what constitutes satisfactory reports.
6. Unless previously withdrawn, this offer is open only for written acceptance reaching us not later than [ ].

### 1. Purchaser's obligation: payment

On the date of entry the Purchaser will pay the price to the Seller, such payment being made by not later than 3.30 pm.

### 2. Seller's obligations: possession

- (1) On the date of entry the Seller will give to the Purchaser -
  - (a) vacant possession of the Property, and
  - (b) the keys to the Property, any remote controllers for garage doors or parking barriers, and any necessary security codes.
- (2) The Seller will show to the Purchaser any other [ ] for [ ] disposal provided by the local authority.

Sally Swinney  
Ronald A. Kirk  
Alison C Marshall

2

# Registers of Scotland

## BORDERS STANDARD CLAUSES

### 1 The Property

The Property includes –

- (a) the minerals, if they are owned by the Seller;
- (b) the following items, if they were in the Property at the time when it was exposed for sale:
  - (i) garden shed, greenhouse, garden frames, summerhouse, garden statuary, clothes poles, rotary clothes dryers, and all plants, shrubs and trees;
  - (ii) blinds, pelmets, curtain rails and runners, and curtain poles and rings;
  - (iii) carpets and floorcoverings (excluding loose rugs), and stair carpet fixings;
  - (iv) fitted bedroom furniture, shelving and fireplace surround units, bathroom fittings including mirrors and cabinets, kitchen units (whether freestanding or fixed), extractor hoods and extractor fans, and such kitchen appliances as are integral to or encased within kitchen units;
  - (v) electric storage heaters, and fitted gas or electric fires;
  - (vi) electric light fittings including fluorescent lights, wall lights, bulbs and bulb holders (but not shades, except in the case of wall lights);
  - (vii) loft ladders, double and secondary glazing, and door chimes; and
  - (viii) television aerials and associated cables and sockets, satellite dishes, burglar and fire alarms and other security systems.

### 2 Purchaser's obligation: payment

On the date of entry the Purchaser will pay the price to the Seller, such payment being made by not later than 3.30 pm.

### 3 Seller's obligations: possession

- (1) On the date of entry the Seller will give to the Purchaser –
  - (a) vacant possession of the Property, and
  - (b) the keys to the Property, any remote controllers for garage doors or parking barriers, and any necessary security codes.
- (2) The Seller will leave for the Purchaser any bin or other apparatus for refuse disposal provided by the local authority.

3

# Registers of Scotland

## **4 Seller's obligations: title**

- (1) The Seller will exhibit to the Purchaser not later than 10 working days before the date of entry, and deliver to the Purchaser on the date of entry, a good and marketable title to the Property including –
  - (a) if the transaction induces first registration in the Land Register, the items specified in clause 5; and
  - (b) if the title to the Property, or part thereof, is already registered in the Land Register, the items specified in clause 6.
- (2) The Seller will also deliver at the date of entry –
  - (a) a valid executed disposition in favour of the Purchaser or the Purchaser's nominees;
  - (b) if the disposition is to be dual registered, a completed registration form in respect of any registration required against other property belonging to the Seller together with payment in respect of the registration dues;
  - (c) a valid executed discharge of any outstanding heritable securities together with completed registration forms and payment in respect of the registration dues;
  - (d) a form 10 or form 12 report brought down to a date not more than three days before the date of settlement; and
  - (e) a letter of obligation in the 'classic' style recommended by the Law Society of Scotland.
- (3) The Seller warrants that the land certificate to be issued to the Purchaser will disclose no entry, deed or diligence prejudicial to the Purchaser's interest other than such as are created by or against the Purchaser, or have been disclosed to and accepted by the Purchaser prior to the date of settlement.

## **5 First registrations**

The items referred to in clause 4(1)(a) are –

- (a) a prescriptive progress of title (principals or extracts) together with principals, extracts or quick copies of all writs creating servitudes or real burdens;
- (b) except where the Property comprises part of a tenement, a P16 report or property definition report from reputable professional searchers confirming that the legal boundaries coincide with the occupational boundaries; and
- (c) such other documents and evidence, including a plan, as the Keeper may require to enable him to issue a land certificate in name of the Purchaser (or nominee) as registered proprietor of the Property without exclusion of indemnity and containing a statement that there are no subsisting occupancy rights in terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or the Civil Partnership Act 2004.

4

# Registers of Scotland

## 6 Dealings

The items referred to in clause 4(1)(b) are –

- (a) a land certificate without exclusion of indemnity or, if the land certificate has not been issued by the Keeper pending a previous application, certified copies of all documents sent to the Keeper in support of the outstanding application;
- (b) all necessary links in title evidencing the Seller's exclusive ownership of the Property; and
- (c) such other documents and evidence, including a plan, as the Keeper may require to enable him to issue a land certificate in name of the Purchaser (or nominee) as registered proprietor of the Property without exclusion of indemnity and containing a statement that there are no subsisting occupancy rights in terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or the Civil Partnership Act 2004.

## 7 Seller's obligations: other matters

- (1) The Seller will exhibit to the Purchaser not later than 10 working days before the date of entry, and deliver to the Purchaser on the date of entry –
  - (a) satisfactory property enquiry certificates from the local authority or a private searcher acceptable to the Purchaser and dated not more than three months before the date of settlement;
  - (b) if recommended by the Coal Authority or similar statutory body, a satisfactory coal mining search;
  - (c) all necessary planning consents in respect of any development on the Property (within the meaning of the Town and Country Planning (Scotland) Acts) (i) during the period of 10 years prior to the date of settlement and (ii) where the Property is listed, during the period beginning with such listing;
  - (d) all necessary building warrants and completion certificates in respect of any work carried out to the Property during the period of 15 years prior to the date of settlement;
  - (e) valid and enforceable guarantees in respect of any specialist treatment (including the installation of a damp proof course) carried out to the Property during the period of 20 years prior to the date of settlement;
  - (f) if the Property comprises or includes a house which was completed during the period of 10 years prior to the date of settlement, either home warranty scheme documentation from NHBC or such equivalent documentation as is acceptable in terms of the *CML Lenders' Handbook*;
  - (g) if the Property is served by a private water supply –
    - (i) a local authority analysis, dated within six months of the date of settlement, evidencing that the water supply is fit for human consumption and conforms with all current regulations; and
    - (ii) in the event that the supply requires to be registered with the local authority, a copy of the relevant registration;
  - (h) if the Property is served by a private drainage system –

S

# Registers of Scotland

- (i) documentation in respect of registration of the system with the local authority, SEPA or such other authority with whom registration may be required; or
  - (ii) if no registration is required, documentation vouching that the system meets with the requirements of any relevant regulations or regulatory body and that the discharge is dissipated or disposed of in a manner and to a standard acceptable to such body; and
  - (i) such evidence as is reasonably required to demonstrate compliance with the Seller's warranties set out in clauses 10 – 14.
- (2) Documentation is 'satisfactory' for the purposes of this clause if it does not disclose any matter which materially and adversely affects the Property.

## **8 Documentation evidencing breach of contract**

- (1) This clause applies where –
- (a) documentation has been exhibited by the Seller in terms of clause 4(1) or clause 7(1), and
  - (b) it is evident from the documentation that the Seller is in breach of an obligation (including a warranty) under the contract.
- (2) The only remedy of the Purchaser in respect of such breach is to rescind the contract; but rescission cannot take place unless –
- (a) the breach is material;
  - (b) the Purchaser gave notice to the Seller within 10 working days of exhibition that the position as disclosed by the documentation was not accepted; and
  - (c) if the breach is remediable, the Seller has not remedied the breach by the date of entry.

## **9 Seller's warranties**

Clauses 10 – 14 are warranties by the Seller in favour of the Purchaser, and warrant the position as at the date of entry.

## **10 Title**

- (1) The Property is not affected by any unusual or unduly onerous title conditions.
- (2) The existing state and use of the Property are in conformity with the title conditions.
- (3) Any reservation of minerals is subject to conditions as to adequate compensation and does not include any right to enter the Property or lower its surface.

6

# Registers of Scotland

- (4) The Property is not affected by any order for the transfer of property made under the Family Law (Scotland) Act 1985.
- (5) The Property is not affected by any entry in the Register of Community Interests in Land.
- (6) The Seller is not a company, limited liability partnership or other incorporated body.

## **11 Dealings: land certificate unavailable**

If an application for first registration by a Seller (or predecessor) is still being processed by the Keeper –

- (a) all requisitions made by the Keeper have been implemented;
- (b) the Keeper has not indicated any concern with the application such as might result in its rejection or in exclusion of indemnity;
- (c) any copy documents supplied by the Seller to the Purchaser are true copies of the originals;
- (d) the Seller shall not (and shall procure that any predecessor does not) withdraw the application.

## **12 Access and services**

- (1) There is direct access to the Property from a road which has been adopted for maintenance by the local authority.
- (2) The Property is directly connected to –
  - (a) the public water supply or a private water supply (whether exclusive or shared);
  - (b) the public sewer and drainage system or a private drainage system (whether exclusive or shared); and
  - (c) the public electricity and gas supply.
- (3) If the water supply is private –
  - (a) the quantity of water is and has throughout the Seller's period of ownership been sufficient in all respects for the proper use and enjoyment of the Property;
  - (b) the whole water supply system is in good condition commensurate with age;
  - (c) there are no known proposals to extend the system which may result in a restriction of the supply to the Property;
  - (d) there are no repairs contemplated or outstanding in respect of the system for which the owner of the Property is liable.



# Registers of Scotland

- (4) If the drainage system is private, it is in full working order and there are no contemplated or outstanding repairs for which the owner of the Property is liable.
- (5) The Property has the benefit of such servitudes (if any) as are required for its proper and convenient use, including servitudes in respect of drainage, water, electricity, gas, and vehicular access.

## **13 Common facilities**

Any liability, however arising, which falls on the owner of the Property in respect of the maintenance of –

- (a) the roof, walls, passage and stair, and other mutual parts of a tenement;
- (b) any other facility which is also of benefit to other property;

is equitable and proportionate.

## **14 Awareness of circumstances affecting the Property**

- (1) So far as the Seller is aware, the Property is not affected by –
  - (a) wet rot, dry rot, rising damp, woodworm or other infestation;
  - (b) significant levels of contamination;
  - (c) a proposed scheme of common repairs which has not yet been agreed or instructed;
  - (d) proposals for development of other property and which are detrimental to the Property;
  - (e) proposals for compulsory purchase.
- (2) So far as the Seller is aware, the Property was not affected by flooding during the period of 20 years prior to the date of entry.

## **15 Central heating, plumbing and electrical systems**

- (1) The Seller will meet the reasonable cost of repairing any fault in the central heating, plumbing and electrical systems provided that notice as to its general nature is given to the Seller not later than 7 days after settlement; but the first £150 of the cost will be met by the Purchaser.
- (2) Except in an emergency, the Purchaser must give the Seller a reasonable opportunity to inspect the system before the repair is carried out.
- (3) In this clause, 'fault' means any defect as a result of which the relevant system is not in good and safe working order commensurate with age; but the absence of regular maintenance or the fact that the system no longer complies with current installation regulations is not, of itself, a fault.

# Registers of Scotland

## **16 Pending repairs**

- (1) Not later than 5 working days before the date of entry, the Seller will provide the Purchaser with full information as to –
  - (a) any notices or orders by a local authority or other public body calling for repairs or other works for which the owner of the Property is liable; and
  - (b) any repairs or other works which have been carried out or agreed to be carried out and for which the owner of the Property is liable.
- (2) The Seller will meet the cost of such repairs or works as –
  - (a) arose under a notice or order issued before the date of entry; or
  - (b) were carried out or agreed to be carried out before the date of entry.
- (3) The Purchaser may retain from the price a sum representing the estimated amount of any cost mentioned in subclause (2) and still outstanding, augmented by 25%; and such retention shall be held in an interest-bearing account by the Purchaser's solicitor and be paid as follows:
  - (a) to whichever of the Seller or the Purchaser pays the cost, a sum equal to that cost;
  - (b) to the Seller, any balance which then remains.

## **17 Maintenance and risk**

- (1) The Seller will maintain the Property (including any garden ground) in its present condition, fair wear and tear excepted, until the date of settlement.
- (2) Risk will remain with the Seller until the date of settlement.
- (3) If a main building on the Property is materially damaged or destroyed before the date of settlement, the Purchaser or Seller is entitled to rescind the contract on giving notice to the other party, and without damages due to or by either party.

## **18 Viewing**

On reasonable notice, the Seller will allow the Purchaser (or the Purchaser's agents) to view the Property at a time or times convenient to both parties.

## **19 Breach of contract by the Purchaser**

- (1) If the Purchaser fails to pay the price or any part thereof on the due date, the Seller is entitled, at the Seller's option, to one (but not both) of –

9

# Registers of Scotland

- (a) damages in respect of all loss resulting from the Purchaser's breach of contract (which may include costs incidental to rescission and the cost of a bridging or other loan to enable the Seller to complete a purchase of heritable property); or
  - (b) interest on the amount of the price outstanding at the rate of 4% *per annum* above the Royal Bank of Scotland plc base rate from time to time from the due date until the earliest of –
    - (i) the date when the price is paid in full;
    - (ii) the date falling 6 months after the due date;
    - (iii) where the Property is resold following rescission, the date of entry under the contract of resale.
- (2) In addition, if the price remains unpaid in whole or in part at any time more than two weeks after the due date, the Seller is entitled to rescind the contract on giving notice to the Purchaser.
- (3) In this clause the 'due date' means whichever is the later of –
- (a) the date of entry;
  - (b) the date on which payment of the price was due having regard to the circumstances of the case including any entitlement to withhold payment owing to non-performance by the Seller.

## **20 Breach of contract by the Seller**

- (1) If, at any time more than two weeks after the due date, the Seller is –
- (a) in default in respect of an obligation set out in clause 3 or clause 4, or
  - (b) otherwise in material breach of contract,
- the Purchaser is entitled to rescind the contract on giving notice to the Seller.
- (2) This clause is without prejudice to any other right or claim arising from the breach of contract by the Seller.
- (3) In this clause the 'due date' means whichever is the later of –
- (a) the date of entry;
  - (b) the date on which the Seller was bound to give vacant possession having regard to the circumstances of the case including any entitlement to withhold possession owing to non-performance by the Purchaser.

## **21 ARTL**

Provided the transaction is ARTL-compatible, it will proceed under ARTL. Neither the Purchaser's solicitor nor the Seller's solicitor will withdraw from using ARTL

10

# Registers of Scotland

during the progress of the transaction without reasonable cause and without reasonable prior notice to the other solicitor.

## 22 Supersession

- (1) This contract will cease to be enforceable on the day falling two years after the date of settlement except insofar as it is founded on in any court proceedings which have commenced before that day.
- (2) Subclause (1) does not apply to this clause or to clauses 4, 5, 6, 11, 16, 19, 23 and 24.

## 23 Notices

- (1) Any notice which is to be given under this contract –
  - (a) must be in writing, and sent by post, DX or LP, delivery, fax, or e-mail; and
  - (b) may be given by or to the solicitor of the party in question.
- (2) A notice is deemed to be given at the time when it is sent.

## 24 Meaning of date of settlement

In this contract 'date of settlement' means the date of entry or, if settlement takes place on some other day, that day.

Sally Sumner  
Alic Marshall  
Ronald A. Kirk

D U

