



**MILLER SAMUEL**  
SOLICITORS

## **GUIDANCE NOTES ON THE PURCHASE AND SALE OF RESIDENTIAL PROPERTIES**

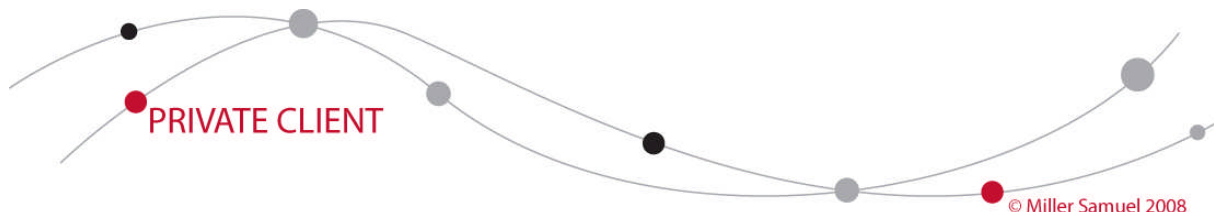
**Prepared by the Private Client & Residential Conveyancing Department of  
Miller Samuel LLP**

We are frequently asked by clients if we could produce explanatory Notes to assist in answering the many basic and wide-ranging questions asked by House and Flat Purchasers and sellers. It is very difficult to produce a comprehensive guide covering every aspect of a conveyancing transaction. In these notes we have attempted to highlight only the main topics and to deal with those topics about which we are regularly asked. Each situation has its own peculiarities and potential problems. We are always available to you to answer more detailed questions and to advise as required.

Please read these Notes carefully. We hope that you will find them very helpful. As we regularly revise them, we would be most grateful to receive any comments, which you feel would be of value in any future updating. It is only as a result of the assistance given to us by our clients that we have been able to identify the particular topics which were the most important for inclusion in these Notes.

### INDEX

<u>Section</u>	<u>Subject</u>
1.	The Survey
2.	Home Reports
3.	The Offer and Acceptance
4.	The Title Deeds and Conveyancing
5.	The Loan and Balance of Purchase Price
6.	Interest and Bridging Loans
7.	Fees and Outlays
8.	Approximate Timetable of Payments
9.	Money Laundering Regulations
10.	Insurance
11.	General





## 1. THE SURVEY

No one should consider purchasing a property without a surveyor's report. This can be arranged, on request, through us.

There are essentially three types and therefore three standards of survey: -

### (a) SCHEME 1 - MORTGAGE VALUATION REPORT

This is the most basic and therefore the cheapest. We can instruct this type of valuation report or it can be done directly by your lender/Financial Adviser. No matter who instructs the report, the Surveyor is actually reporting for the lender and he is there to assess the value of the property for mortgage purposes so that the lenders can determine how much to lend on its security. If there are any obvious defects in a particular property the Surveyor should draw these to you/your lender's attention. If your report is instructed by your lender, the lender is not obliged to release the survey report (either verbal or written) to you but most do so. In general you will receive a verbal report a day or so after the survey is instructed with the written report following shortly thereafter. Bear in mind however that if the report is instructed by your lender, it may be the policy of that lender either not to give you a copy of the report or only supply it with the formal written offer of loan. That could be some weeks later by which time you may be legally committed to buying the property.

Remember, no matter who instructs this type of survey/valuation report, the surveyor is carrying out the survey for the lenders who are only interested in whether the value of the property will cover their loan. If any defect is subsequently found by you then, as you have no contract with the surveyor, it will be almost impossible for you to pursue a court action against him for his failure to spot that defect; nor would you have any claim against the lenders.

There may be defects in the property which are not revealed by the inspection carried out by the Surveyor and there may be omissions or inaccuracies in the report which do not matter to your lender but which would matter to you. If the report is instructed by your lender then the lender's recommendation will be that you do not rely on the report in deciding whether to proceed and that you obtain your own more detailed report.

If you need any advice or wish to discuss what type of report you should instruct, please let us know.

The cost, which is your responsibility, varies according to the value of the property. To give you an idea of prices, for a property valuing at or less than £50,000 a Scheme 1 Report would be around £100. For a property valuing at or less than



PRIVATE CLIENT



£300,000 a Scheme 1 Report would be around £380 and the price would be around £800 for a property with a value of around £750,000 (these figures are estimates).

(b) SCHEME 2 – HOUSE BUYERS VALUATION REPORT

This is a much more detailed report than a Scheme 1 Valuation. One or two building societies can arrange such a survey on your behalf but most will accept a report instructed by you or us on your behalf always provided that the surveyor involved is on their list of approved surveyors. It is unlikely that a surveyor carrying out such a survey would miss any defects but even such surveys can be restricted in scope due to for example fitted carpets which would prevent an inspection of the floor and subfloor or insulation in the roof space which might restrict access to inspect for rot, damp penetration or other timber problems. The advantage of this sort of survey is that it is being carried out on your instructions and the surveyor should therefore have full professional liability in the unlikely event of a problem.

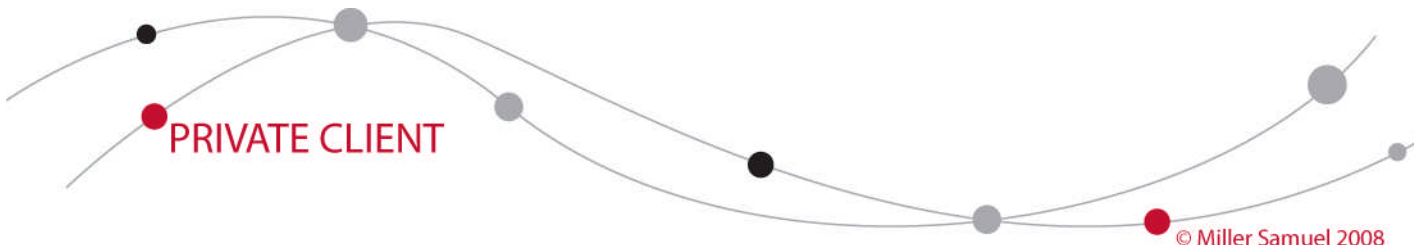
The cost again varies according to the value of the property. For a property valuing at around £50,000, the price would be in the region of £240, for a value of around £300,000, the price would be in the region of £575 and for a value of around £750,000 the price would be in the region of £950 (these figures are estimates).

(c) A STRUCTURAL SURVEY OR STRUCTURAL REPORT

This would normally be instructed by you or us on your behalf. In carrying out a structural survey the surveyors will obtain the services of a builder, an electrician, a plumber and usually also a timber specialist to test all services and carry out a comprehensive inspection of the property. These reports are often carried out or coordinated by structural engineers rather than surveyors. They are used more to report on the structure of the building rather than on valuation. Structural surveys are not at all common on the grounds that such a survey would be being carried out when you did not know whether you were going to be successful in your offer to purchase the property and therefore is an expense that most people are not prepared to incur. The cost of these kind of reports can be prohibitive to most purchasers and are also time consuming given the fact that you are having to call on so many tradesmen/professionals to let you have reports.

SUMMARY

To sum up ideally you should always obtain the most detailed report that you can, better to be “safe than sorry”. The building society type mortgage valuation may be





adequate for your purposes but in recognising the fact that if a defect was subsequently found then any claim against the surveyor would be very difficult to establish. We would certainly recommend that you should have a Scheme 2 Home Buyers Valuation Report carried out which will usually be acceptable to the lenders instead of their own valuation. If you need any advice or wish to discuss what type of report you should instruct please let us know.

## 2. HOME REPORTS

With a very limited number of exceptions (for example new build properties) homes that are advertised for sale from 1<sup>st</sup> December 2008 require a Home Report. The Report consists of a pack of documents that will report on the condition of the property, it will contain a Valuation of the property and a report on the homes energy efficiency.

The onus for providing the Home Report rests with the seller, who will be responsible for the costs involved in obtaining the information required and producing the Report. A prospective purchaser will be able to rely on its contents and is entitled to ask the seller for a copy of the Report. The Report comprises three documents:-

### (1) THE PROPERTY QUESTIONNAIRE

This is completed by the seller and contains useful information helpful to a purchaser, for example, details of any alterations to the property, the council tax banding, factoring details and details of repairs.

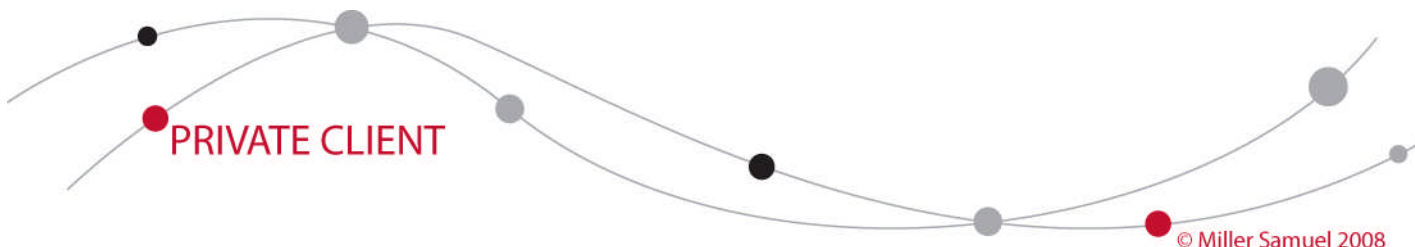
### (2) SINGLE SURVEY

Although instructed by the seller, the Survey is prepared by a Chartered Surveyor and will report on the valuation of the home and its condition. A purchaser may rely on that Survey and providing the purchaser is happy with the terms of that Survey Report and providing the purchaser's lender is also happy with the terms of that Survey Report then a purchaser may not need to obtain or pay the cost of an independent Report instructed by them.

### (3) THE ENERGY REPORT

Again this is prepared by a Chartered Surveyor and will report on the energy efficiency of the property, its environmental impact and if appropriate will suggest ways to improve the property's energy efficiency.

Home Reports dramatically change the level of information that a seller is legally obliged to have available when selling their home. The Home Report needs to be available to be exhibited to prospective purchasers before a property is marketed for sale. The cost of these Home Reports is met by the seller. Miller Samuel can





organise these Home Reports on behalf of sellers through our membership of GSPC.

### **3. THE OFFER AND ACCEPTANCE – “MISSIVES”**

When the Offer is submitted, that itself does not create the binding contract between the seller and purchaser. The offer for the property will, if generally acceptable to the seller as to purchase price and entry date be accepted usually with legal qualifications. The offer, any qualifications made by the two Solicitors on behalf of their respective clients as part of the contract negotiations and the final Acceptance will together constitute a binding contract between the Seller and the Purchaser (called “the Missives”). Only after the final Acceptance is issued will there be a binding contract and “Missives will be concluded”.

It should be understood that the individual purchasers and sellers do not usually sign the Missives and the contract is made binding by the signature of the purchaser’s and seller’s solicitors.

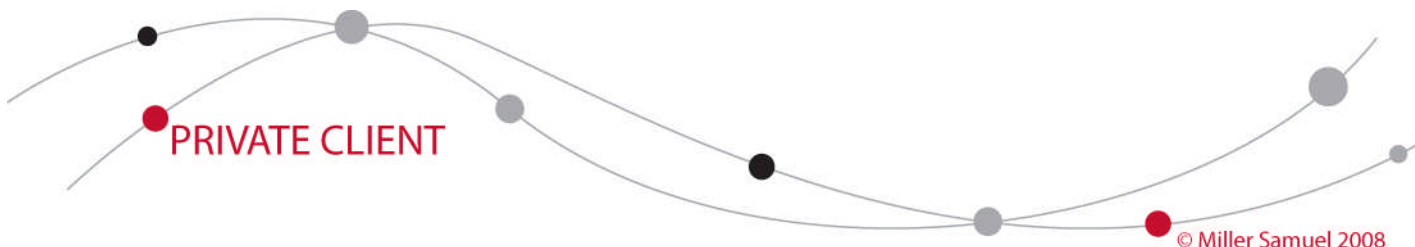
### **4. THE TITLE DEEDS AND CONVEYANCING**

Once there is a binding contract, the two Solicitors proceed to carry out the necessary conveyancing formalities and prepare the legal documentation. As the purchaser’s Solicitors, we will receive and examine all the appropriate Title Deeds of the Property and will check the conditions which apply to ensure that there are no unusual and exceptionally oppressive or onerous conditions and to reconcile any discrepancies.

We will check to ensure that Local Authority Consents are in place for any alterations to the property requiring consent, which are pointed out to us. Please note, if you believe that there are any structural alterations to the property, you must notify us. If you tell us about any alterations then we will obtain the necessary consents etc. from the selling Solicitors. We will then make observations to the Seller’s Solicitors and check their replies.

In the course of the Conveyancing, checks are made to ensure, for example, that there are no previous bonds or mortgage deeds affecting the property which will remain undischarged after the purchaser has been completed and to ensure that there are no Court Orders (such as a Bankruptcy Order) which prevent the Seller from granting a good and marketable clear title to you. Similar procedures operate in reverse in the case of a sale.

We will also prepare the Title Deed in your favour and after settlement of the transaction takes place, ensure that your title is recorded/registered in the Property/Land Registers in Edinburgh. After return from the Land Registers in Edinburgh (which can take up to several months) we will send to you a copy of your title for you to retain at home. The principal documents will be held by the Building Society, Bank or other Lender who granted the Loan or, if there is no loan by us on your behalf.





## 5. THE LOAN AND BALANCE OF PURCHASE PRICE

In relation to a sale, any existing loans secured over the property will be redeemed from the sale proceeds by the selling Solicitors and the necessary Discharges will be adjusted and recorded in the Property Registers in Edinburgh to clear the records of any outstanding Security Deeds. In relation to a purchase, if there is a Loan this may be from any one or more of several sources but it is most frequently from a Building Society or a Bank. The Building Society or Bank will normally instruct us to act on their behalf as well as on your behalf in completing the Loan Documentation subject to you being responsible for the expenses involved. The Mortgage Deeds along with any other relevant papers required by the Lenders will be prepared by us for signature by you. We will normally need to meet up with you to sign the Mortgage Deeds. Once this has been done and the transaction is fully ready to settle we will request the mortgage monies from your lender and the lender will send these monies directly to us. Provided that your lender has issued your offer of mortgage to you in plenty of time, we will arrange to obtain the mortgage monies normally the day before settlement which should allow us to use the money first thing on the settlement date.

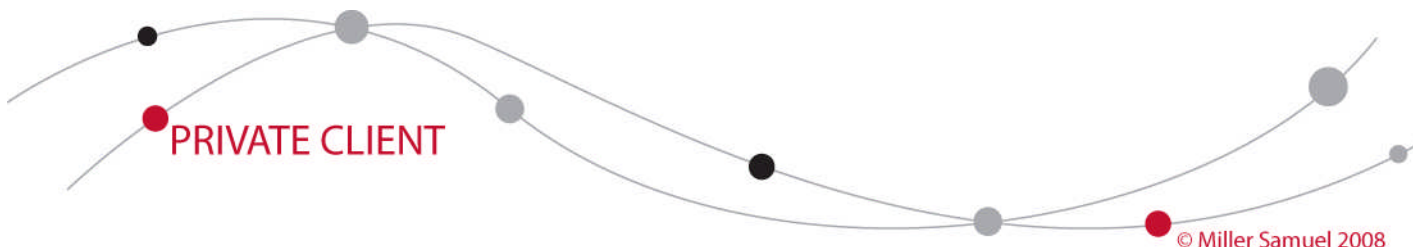
In a purchase transaction, if you need to give us a balance of money to make up the purchase price, we will notify you of the amount as early as we can. We will need you to have paid over to us any balance of money from your own resources to allow the funds to be cleared the day before settlement of the transaction. Again this will allow us to use the funds first thing on the morning of the settlement date – and should hopefully allow you to get our keys as early as possible on the day.

In most cases property sales are settled by payment of the purchase price by a solicitors' cheque drawn on the firms' client account (which is an account separate from the firms' own money). Such cheques require to clear in the normal way but by convention are treated as cash for the purpose of settling property transactions.

A solicitor has a professional duty to ensure that there are cleared funds in the client account to meet any such cheque but anyone selling a property must recognise that as the settlement cheques require to clear, money received from a sale cannot be paid out until the appropriate number of clearance days have passed. One usual exception to this rule involves the purchase of new build properties for housebuilders where frequently the price has to be paid by bank transfer from the solicitors' client account. Bank transfers invariably incur an administration charge of approximately £25 per transfer and this expense is paid by the purchaser.

## 6. INTEREST DUE BY YOU OR TO YOU AND BRIDGING LOANS

Due to the apparent mystery surrounding it and the sometimes very substantial expense involved, this must be one of the most emotive subjects in the whole field of House and Flat Purchaser. There is really no mystery to it and although it can seem quite complicated, it is





easy enough to understand. A Bridging Loan may be required in the following circumstances:-

- a) If the entry date arrives and the Conveyancing has not been completed (because, for example, the time until the date of entry is very short and there is not enough time to complete all the Conveyancing procedures or because there is some problem with the Deeds still to be resolved) the Seller's Solicitor may agree on behalf of his client that the keys can be released in exchange for a deposit (usually the amount which the purchaser is directly contributing to the purchase and interest will be charged by the seller to the purchaser on the outstanding balance until final settlement is made at Bridging Loan rates. Where the Conveyancing delay is caused by or attributable to the seller, however, the purchaser may be able to insist on postponing entry until the Conveyancing is completed.

In reality this situation rarely happens. A seller would not normally agree to accept a payment to account and interest on the outstanding balance. If we are acting for a seller, in normal circumstances, we would not recommend it.

- b) If the date of entry arrives and the Conveyancing has been completed then the Seller is entitled to (and usually will) insist that the full purchase price be paid. In such circumstances a Bridging Loan may be necessary if the full or any part of the purchase price is not yet available for whatever reason. The usual situations where this can occur are either or both of the following:-

- (i) Where a house is also being sold by the purchaser and that part of the net proceeds of the sale which is to be contributed towards the price of the new purchase is not available at the date on which the purchase transaction is to settle (usually the date of entry):- a Bridging Loan for the appropriate amount is required to fill the time gap until these net proceeds become available.

- (ii) Where the Building Society or other Lender has not yet made the funds physically available and the Building Society's, Bank's or other lender's Loan Cheque is therefore not available at the date on which the purchase

transaction is to settle (usually the date of entry):- a Bridging Loan for the appropriate amount is required to fill the time gap until the Building Society, Bank or other Lender make the Loan Cheque physically available.

A Bridging Loan should be arranged through your own Bank. Banks can depending on circumstances charge an administration fee of up to 1% of the Bridging Loan amount but in most cases a lower level of charge should be negotiated. It may be possible (but no guarantee is given) to arrange the bridging loan through our firm's own Bankers, The Royal Bank of Scotland plc. If we are to arrange the Bridging Loan we have in our office the necessary mandate forms which you will need to



sign. In view of the additional paperwork and communications with the Bank we charge a fee of £150 plus VAT to help on any Bridging Loan. The rates of interest will be identical to those charged at the time by any branch of The Royal Bank of Scotland plc for such Loans (usually about 3½ % above their Base Lending Rate) as it varies during the period of the Loan. The Bank will also make an administration charge which is payable by you as well as the interest due. The administration charge is currently £250.

To comment further on these two situations in which Bridging Loans are frequently required, it should be noted that if you are also selling a house and it has not been sold with an entry date at or earlier than the entry date to the new house then unless you have other alternative sources of funds for that part of the net proceeds of sale which are being contributed towards the purchase, a Bridging Loan for the amount involved will be required at the settlement date of the purchase. We must warn you that it may be difficult to arrange a bridging loan on an unsold house. So too, if the Loan Cheque is not physically available on the settlement date of the purchase, a Bridging Loan for the amount of the mortgage will be required. Different Building Societies, or other Lenders require different lengths of time before being able to make the actual mortgage monies physically available, and indeed the same Lender takes different lengths of time in different circumstances depending upon their own availability of money at the particular time in question. Unfortunately, it is virtually impossible to obtain a definite date from a Lender at the beginning of the transaction because their own position varies all the time. Generally speaking it should be possible to either avoid a Bridging Loan or, at least, to minimise the length of time for which it will be required (a) by setting the entry date for the purchase as late as possible to allow plenty of time for the Building Society or other lender to make the Loan monies available and, where you are also selling, (b) by arranging for the existing house to be sold with an entry dated on or before the date of entry to the house being purchased.

It must be remembered, however, that where the Seller is particularly anxious to have an early entry date he may accept an Offer a little lower than the highest Offer if the highest Offer contains an entry date which is substantially later than the Seller desires, and the lower Offer contains an entry date which is more attractive to the Seller.

Before leaving the subject of interest which may have to be paid by you we must point out that interest may be due to you in the following circumstances:-

- a) where the purchaser is allowed entry to the house you are selling in exchange for only a deposit (usually the difference between the sale price and the loan being obtained by the purchaser). We would negotiate an appropriate interest rate (usually Bank Bridging Loan Rates) to run on the balance due to you until final settlement but we would normally advise that you agree to postponement of entry rather than accept such an arrangement when you are the seller because of the possibility of ultimate default by the



purchaser. This is a matter of careful choice and decision in each case where it arises. We obviously do our utmost to insist that your purchaser pays in full at entry (if necessary by him obtaining a bridging loan) but this is not always possible. Occasionally, for example, a purchaser's loan arrangements "fall through" and whilst you, as the seller, have contracted legal rights they can never be worth any more than the credit worthiness or financial substance of the purchaser. We mention this not to cause alarm but to highlight the risk factor, which arises, in practice, but rarely in house purchase/sale contracts.

- b) Where you have paid to us the "deposit" for your purchase and we are likely to be holding it for more than a few days we will automatically lodge it on deposit to earn interest for you.
- c) Where we retain the whole or any part of the net proceeds of your sale to be used for your purchase and we are likely to be holding it for more than a few days, we will automatically lodge same on deposit to earn interest for you. This situation occurs when you have a later date of entry in the purchase than in the sale and are staying in other accommodation during the "gap".

## 7. FEES AND OUTLAYS

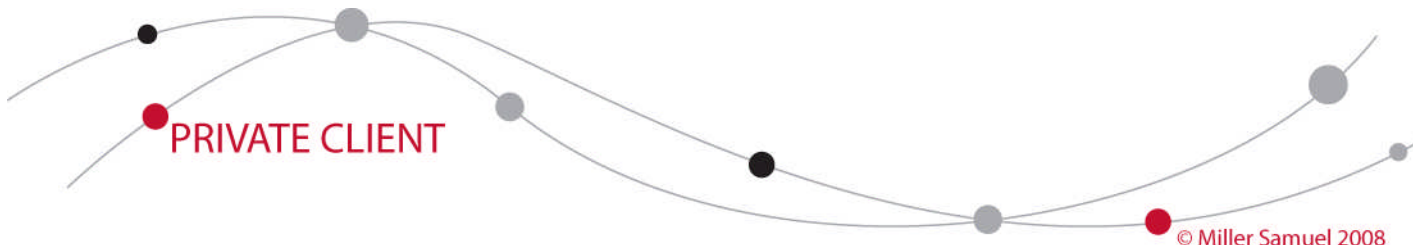
### (a) FEES

As soon as you have given Miller Samuels' Private Client/Residential Conveyancing Department instructions to act on your behalf in connection with a sale/purchase, we will send to you a written quote of fees and outlays. Initially that quote will require to be an estimate but provided that there are no complications or unforeseen difficulties, the final fee should not vary from the initial quote provided. If we do need to carry out additional work or incur additional expenses we will inform you of this before carrying out any additional work on your behalf. Any additional work unforeseen at the time of giving the original quote will be charge on an hourly rate basis. VAT is levied on fees at the current rate of 15%.

### (b) OUTLAYS:-

#### Recording Dues

These are the amounts paid for recording the Title and Mortgage Deeds in the Land Registers of Scotland in Edinburgh. The fees are paid to the Keeper of the Registers of Scotland in Edinburgh which is a Government Department whose charges vary depending on the value of the deed being presented for registration (i.e. in a purchase transaction, usually the value or price of the property). To give you two examples, the registration or recording dues on a purchase of £100,000 is £100. The recording dues on a purchase of £700,000 is currently £600.





In a purchase transaction where there is a mortgage, the mortgage document also requires to be registered and the registration dues of that document is £30. The same fee applies when registering the Discharge of the mortgage security document in a sale.

### **Stamp Duty Land Tax**

Stamp Duty Land Tax (formerly known as Stamp Duty) is payable at the applicable rate on the whole of the consideration paid to acquire the property. The current rates are as follows:-

<u>RATE</u>	<u>RESIDENTIAL PROPERTY</u>
Zero	£0 - £175,000
1%	over £175,000 - £250,000
3%	over £250,000 - £500,000
4%	over £500,000

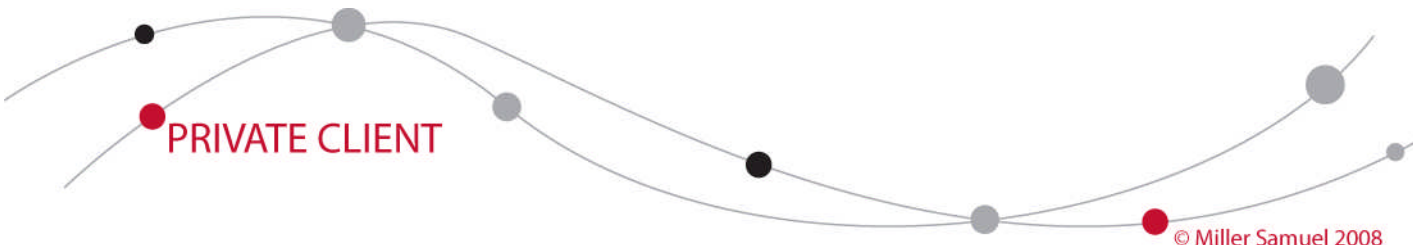
Where moveable items are to be included in your offer a Stamp Duty Land Tax saving may be possible by apportioning the purchase price in the offer to attribute a specific amount to these items. Stamp Duty Land Tax would then only be payable on the remainder of the price. Please note that it is only possible to achieve a saving if the apportionment is reasonable and genuine. You may have to justify the amount of apportionment to the Inland Revenue.

### **Search Dues**

In every case of a sale (and in the case of the purchase of certain new houses), these are payable by us, on your behalf, to the Land Registers or private search companies in Edinburgh. The cost depends upon various factors. As an approximate guide, Search Dues most frequently fall within a range of £50 to £70 inclusive of V.A.T.

### **Copy Deeds**

In a sale transaction we on behalf of the seller often have to obtain for examination by the purchaser's solicitors some of the older title deeds. If the deeds are traceable then these can be borrowed at a cost of approximately £60 but generally it is difficult to trace the deeds and it is therefore easier to obtain copies from public or private search companies in Edinburgh. They of course make a charge for providing the copies and this charge can be considerable. However it is impossible to estimate the charge until the conveyancing is





more advanced as it depends on the number of copies required. In most cases of course copies will not be required.

**Property Enquiry Certificates, Coal Authority Reports and Environmental Searches**

These are Reports issued by the Local Authority or private search companies in relation to Property Enquiry Certificates, British Coal Authority in relation to the Coal Authority Reports and private search companies in relation to Environmental Searches. They disclose whether there are any adverse planning proposals affecting the area, whether there are adverse mine workings which may affect the area or any adverse environmental matters.

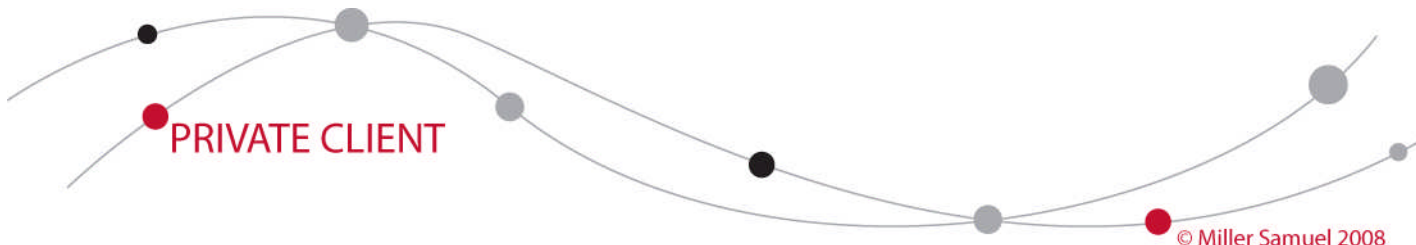
These reports are instructed by the selling solicitors on behalf of the seller and exhibited to the purchasing solicitors. The cost of these reports are met by the seller. Only very occasionally will a purchaser and their solicitor not insist on these letters being obtained by the seller. As a guideline, a Property Enquiry Certificate can cost up to £110, a Coal Report about £25 and an Environmental Search around £50.

**8. APPROXIMATE TIMETABLE OF PAYMENTS**

In a purchase and sale transaction where there may be a surplus due to you after both transactions have settled, we will let you have Cash Statements and a cheque or bank transfer for the net balance due to you as soon as all funds from the purchasing solicitors have cleared through our client account. In all other cases, we will normally let you have a detailed Cash Statement before the transaction is due to settle. This will show the amount which you require to pay to us and will generally amount to the total of the deposit plus or minus the amount of any adjustment required with the seller plus the Solicitor's fees and outlays for the items detailed above. If interest is to be paid to the Seller (see Section 5 above) the amount required will also be shown on the Statement. The amount shown as due by you in the statement must be in our hands at least four clear working days before the transaction is due to settle to enable the necessary Banking transactions to be carried out in time for settlement on the due date otherwise a delay will be caused and you will incur liabilities for interest to the Seller.

We can accept payment from you by personal cheque, bank draft or telegraphic transfer of funds (T.T).

If the funds are being sent or transferred to us by bank draft or TT, we will need you to obtain a letter from your bank confirming that the bank draft or TT of funds has come from your own account. We will need that letter from your bank before we are able to use any of your funds. If the funds have not come from your account then we will need to carry out Money Laundering checks on the account holder.





9. **MONEY LAUNDERING REGULATIONS**

Every solicitor in Scotland must comply with The Law Society of Scotland's money laundering regulations. This means that if we have not acted for you before then we must in every case obtain from you verification of your identity. If you are not able to provide the documentation required then we must report this to The Law Society. We would also withdraw from acting for you. We will need to see the original of one of the following: UK Passport, Residents Permit issued to EU nationals, UK Photo Driving Licence, DSS Benefit Book, Inland Revenue Tax Notification, Firearms Certificate, AND the original of one of the following: Bank Statement, Utility Bill, Council Tax Bill, Mortgage Statement, Land Registry confirming house purchase, confirmation of house purchase from other solicitor, Tenancy Agreement or confirmation of address from Electoral Register.

If you are buying or selling as a limited company, partnership or other body but not an individual, we still need to carry out Money Laundering checks. If you are such a client we will supply you with the necessary requirements at the start of the transaction.

10. **INSURANCE**

We recommend that buildings insurance on the property and Life Policies on your own lives are effected and put into force as soon as missives are concluded in any purchase because from that date you are under a legal obligation to purchase.

11. **GENERAL**

Hopefully we have covered some of the issues that you may raise in relation to a residential sale or purchase transaction. We did not set out in these notes to try and answer every question that may be raised but simply deal with some of the most often raised questions.

If we have cleared up some of the confusion or complexity with the conveyancing process then hopefully this will have been of assistance to you. In the course of the transaction we will no doubt cover these and other matters in more detail. If you have any questions, feel free to ask us. Lastly, we appreciate that purchasing or selling a property can be a worrying and anxious time. We will do everything that we can to ensure that the process is as smooth, friendly and efficient as possible.

MILLER SAMUEL LLP  
PRIVATE CLIENT AND RESIDENTIAL CONVEYANCING DEPARTMENT.

