

WHAT ARE MISSIVES?

Under Scots Law the term “Missives” refers to a contract for the purchase of heritable property. The term arises since “missives” is an old fashioned reference to a series of letters “a missive” which together form the contract to buy.

What precisely is needed to form a contract for the purchase of land or buildings in Scotland?

The ordinary procedure is that when you submit an offer for a house or a business then this has to be done in writing. The purchasing solicitor you instruct puts together an offer which is submitted to the selling solicitor or selling estate agent. When the offer is received and the seller indicates that the offer is acceptable, then the next step in the process is that the selling solicitor writes back to the purchasing solicitor accepting the offer and usually making a variety of technical changes to the offer.

The last stage in the process is when the purchasing solicitor receives the written acceptance and speaks to the purchaser about it so that he can then write back and tie up the contract unless within the written acceptance there are some details which need further changes.

In most cases, then, a contract will be formed by an offer being made in writing by the purchasing solicitor, a written acceptance being received from the selling solicitor, and a final letter concluding the contract being sent from the purchasing solicitor to the selling solicitor. **YOU DO NOT AS A PURCHASER OR SELLER EVER NEED TO SIGN PAPERS TO CREAT A CONTRACT.** Your solicitor signs for you.

From time to time because matters are complicated or because the solicitors want to be precise about the terms of the contract, then extra letters can be involved. Whether there are three letters (the offer, the acceptance and the concluding letter) or whether there are four or five letters, then all of these documents together are “the Missives”.

YOU MUST BE AWARE that as soon as your contract is a binding contract, your solicitor will write to you and tell you that the contract is fully and finally binding. Only when you receive that letter telling you that the contract is binding, do you know that the missives are concluded. It is only when the missives are concluded that the seller is bound to sell and you are bound to purchase with the price, the date of entry, the extras and all other technical matters contained within the letters which form the missives.

You should never at any stage assume that because you have received an offer for your house or because you have sent off a written acceptance that the contract is fully binding. While all parties are interested in the swift conclusion of a contract, sometimes technical matters intervene to cause a delay. Please, therefore, never assume that your contract is concluded until your solicitor tells you that it is and if, at any stage, you are unsure whether the contract is binding or not, then please telephone or email to check the position.