

General Information on Closures – FAQ for clients

Conveyancing - Property Purchases / Sales / Transfers

Registers of Scotland closed the Application Record of the Land Register to new applications on 25th March. The Law Society of Scotland, as a result, immediately issued blanket guidance not to settle any property transactions until this situation was resolved. However, since the closure, emergency provisions have been put in place and this is an ever-changing area.

Please contact the Solicitor dealing with your transaction who will be able to keep you up to date with the Law Society Guidance to Firms and how this applies to your transaction. For the avoidance of doubt, some transactions can complete but this will depend on the nature of the transaction, the level of risk, your lenders' consent (if applicable) and the co-operation of the Firm acting for your Purchaser/Seller. Where your Purchaser/Seller's Solicitor is based in Shetland this will make logistical co-operation easier and our Firm has been in contact with the other local Firms to discuss arrangements.

We would also make clear that, even where the emergency provisions do apply to your transaction, if you are self-isolating, the Guidance issued by the Law Society confirms that clients should not feel compelled to proceed with a settlement.

The Scottish Government have now published their guidance on moving home at this time which should be read by anyone buying or selling residential property: <https://www.gov.scot/publications/coronavirus-covid-19-guidance-moving-home/>

If you are worried about already having provided notice to quit for your rental property and your purchase is now delayed please see section on residential lettings.

If you are looking to put a new offer in on a property we will ask that you obtain an up to date mortgage promise/offer of loan from your lender if you are obtaining a mortgage. The reason for this is that many lenders have decided to strictly limit the new mortgages they are offering to those with higher Loan to Value (LTV) ratios. This should not affect anyone who has already applied but it may mean that mortgage promises you received previously are no longer valid.

Halifax, Barclays and Virgin are limiting new mortgages to those with 60% LTV, Santander and Nationwide 75% LTV and most lenders are withdrawing all their 90 – 95% LTV mortgages temporarily.

Property Sales

We have taken the decision to advise clients with properties on the market to suspend in-person viewings during this time.

This is both for your own safety, those of viewers and compliance with the restrictions on movement. This is in line with updated guidance published by the Scottish Government on 31st March 2020 linked above.

We will of course continue to issue Home Reports, high resolution photographs and answer queries from interested purchasers by email and telephone. We can also provide advice to clients regarding other methods of interested parties "viewing" properties, such as video calling. If you wish to have any of the photos updated on our website/Facebook/other advertisements and have access to a high-resolution camera, please contact our Property Officer, Jacqui Smith.

During this time it will not be possible for our Property Officer to visit any properties but please contact us if you wish to discuss alternative arrangements, or if you have been contacted by an interested party and are unsure how to proceed.

If you have already accepted an offer for your property much of the conveyancing section above will apply. Your purchaser may be affected by the lender decision to temporarily withdraw certain mortgage products and the difficulty in obtaining updated valuations at present but we are finding in most cases both buyers and sellers are happy to wait in the hope matters will be able to proceed "as normal" down the line once the current restrictions have been lifted.

Residential Lettings, Landlords & Tenants

The Scottish Government has advised it will be bringing in legislation to suspend all residential tenancy evictions for a period of six months and, as such, we will not be undertaking the issuing of Notice to Quit or any other eviction paperwork for the time being until the legislation is published and we know more about how this will be implemented (due 31st

March). The same restrictions apply to the social housing sector so this includes Shetland Islands Council and Hjaltland Housing Association tenants.

In the meantime the government has published guidance for private landlords and letting agents which should answer some common questions: <https://www.gov.scot/publications/coronavirus-covid-19-landlord-and-letting-agent-faqs/>

In practical terms, pending the new legislation, it is not possible to obtain an eviction order due to the closure of the First Tier Tribunal for the Scottish Housing and Property Chamber (Private Residential Tenancies) and the local Sheriff Courts (Assured and Short Assured Tenancies).

If you are a tenant and have given notice to quit to your landlord because you were planning to move out and you still wish to do so you are still allowed to move out. This is covered in the new guidance published by the Scottish Government. If you wish to delay moving out, for example because your house purchase move-in date has been delayed, you should notify your landlord as soon as possible to work out an arrangement. Your landlord cannot make you leave if you do not wish to do so but we are encouraging everyone to take a common-sense approach during these unprecedented circumstances.

We would advise all landlords to immediately cancel any planned home inspections and if possible we recommend any non-urgent matters be dealt with by sending photos/videos in the meantime, e.g. the tenant could do a videocall walkthrough to satisfy the landlord the property is in good order or simply email pictures of the property.

If there is an urgent repair required the landlord should avoid entering the property if possible, maintain social distancing if not, or have this dealt with by the appropriate tradespersons/contractors, ideally while the tenants are out of the house to reduce contact between parties, although please check with your contractor to see if they have any new measures in place that your tenant may need to be aware of.

The Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020 that were due to come into force on 1st April 2020 have now been delayed. These Regulations, from 1st October 2020, would have prohibited the letting of properties with new tenancies if they fall below the minimum energy efficiency standards (below Band E on the Energy Performance Certificate).

Court Cases

Most civil court business has been continued until August 2020, with Summary Application, Ordinary Cause and Simple Procedure matters being continued for at least four months. Urgent matters being considered on a case by case basis e.g. Interim Interdicts, Caveats, Child Protection and Adults with Incapacity hearings. The local Sheriff Court is closed and urgent business is being dealt with via Elgin Sheriff Court.

Non-urgent Child Welfare Hearings are not proceeding in Court. In urgent cases the Court will consider an application for one to be fixed but it will have to be satisfied this is essential. For Hearings that do proceed, the coronavirus crisis will automatically be accepted as "appropriate cause shown" for not appearing. Parties are not required to attend Child Welfare Hearing in person at this time.

The Scottish Court Service have issued guidance on complying with Family Court Orders for the meantime (link will download PDF): <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/guidance-on-compliance-with-family-court-orders-27-03-20.docx?sfvrsn=0>

Crofting Matters

The Crofting Commission have closed their offices and some staff are working remotely. The Commission are no longer accepting new applications and while they are trying to work on existing applications some matters cannot be progressed because of legislative requirements. For example, no new Decrofting Directions can be issued as present due to the need for these to be signed and sealed by an authorised signatory.

We are in contact with representatives at the Commission, in particular the Northern Isles Officer, to ensure we can make submissions by way of email in circumstances where specific deadlines must be met but please get in touch so we can discuss the particulars of your transaction.

Powers of Attorney & Guardianship Orders

Registration of Financial and Welfare Powers of Attorney by the Office of the Public Guardian have now been suspended and only urgent applications are being processed, meaning if you have not received your Extract Power of Attorney in the post but you signed this in the last few months, there will be a significant delay in this being registered. If you require the Power of Attorney urgently we can submit an application to have this fast tracked but the criteria for this is very strict,

it needs to be a medical emergency, for example if granter is in hospital and powers are required for attorneys to act immediately to allow decisions to be taken.

The Office of the Public Guardian are only processing new and urgent Intervention Orders, Guardianship Orders and Court Orders.

Notwithstanding the suspension, if you require to grant a Power of Attorney, the Law Society has provided Guidance to Firms as to how this can be achieved by way of video calling to enable our Solicitors to interview the Granter immediately prior to signature and provide the required Certificate to meet the legislative requirements. Such Powers of Attorney can then be submitted to the Office of the Public Guardian when the suspension is lifted.

Wills and Advance Directives

The process for dealing with Wills and Advance Directives is mostly unchanged. For existing clients, we can take your instructions by way of phone/email and thereafter send you a draft version for approval. We can discuss any further changes you require and thereafter send you a copy for signature by post, which can then be posted back to our office, the signing details added, and the original placed in our fireproof cabinets for safekeeping. For new clients the same applies, although we may ask to take your instructions via videocall, and you may also require to verify your ID and address as provided for in the ID Verification section.

If the requirement for a Will is urgent and requires an in-person consultation, please email and/or telephone during the hours listed on page one of this Schedule.