

PART 1

Law Society of Scotland's Guidance Notes 2006

1. Introduction

- 1.1 Solicitors should consider whether a coal mining search should be made in any particular transaction dealing with land in coal mining areas ("affected areas"), including purchase, mortgage, further advance or before any development takes place. If deemed necessary, it is recommended that the search be made before the conclusion of Missives or in appropriate cases that the Missives be made conditional on the report being satisfactory.
- 1.2 For those solicitors not using electronic means, the enquiry should be in the form approved by the Society (ScotForm 2006) and the Coal Authority. The search should be made before the exchange of contracts or any binding obligation is entered into.
- 1.3 Solicitors are recommended to submit a plan of the property with every postal search enquiry. Plans should be marked with the full boundary of the property and not just the property building footprint or other lesser area. Solicitors should retain a copy of the search form and plan.
- 1.4 These Guidance Notes should be read in conjunction with the Coal Authority's Terms and Conditions 2006 and User Guide 2006.

2. Preliminary enquiries

- 2.1 If the property is in an affected area (see User Guide 2006, paragraph 2), it is suggested that a solicitor should, in addition to requesting a search from the Coal Authority, ask, as a preliminary enquiry of the seller, whether during the ownership of the seller or, to the seller's knowledge, his predecessors in title, the property has sustained coal mining subsidence damage and if so how any claim was resolved (by repair or payment in respect of the cost of remedial, merged or redevelopment works or otherwise).
- 2.2 If the report discloses a current "stop notice" concerning the deferment of remedial works or repairs affecting the property, or the withholding of consent to a request for preventive works affecting the property, it is recommended that the solicitor should ask preliminary enquiries of the seller as to the present position.

3. Reproduction of forms

- 3.1 It is important that both sides of the ScotForm 2006 enquiry form are reproduced for retention and annexing to the reply when received. Solicitors

are granted a non-exclusive licence to reproduce them. Any such form must follow precisely and in all respects the printed version (see the example in Part 5).

- 3.2 The Coal Authority will reject any reproduction of the ScotForm 2006 enquiry form which does not comply with these requirements.

4. Mining surveys and site investigation

- 4.1 Disclosure of a disused mine shaft or mine adit in a report, the existence of recorded shallow workings or possible unrecorded coal workings reported as believed to be at or close to the surface (such that future ground movement may still subsequently occur) and/or any other coal mining related hazard identified within the report, should be brought to the attention of the client. If further information or advice is required in addition to that available from the Coal Authority (e.g. further to that contained within a Coal Authority Interpretive Report, see paragraph 18 of the User Guide 2006), then solicitors should in these circumstances explain to clients that there are experienced mining surveyors and structural engineers able to advise as to what further enquiries, surveys or investigation should be made.
- 4.2 If a lender is involved in the transaction, solicitors should establish that the surveyor or engineer selected is acceptable to the lender and make arrangements to provide a copy of the search to them.
- 4.3 In most cases, but not all, the Coal Authority and not the adjacent surface landowner will own any shaft or adit. Clients should be advised accordingly and reminded that in these cases the permission of the Coal Authority must be sought before carrying out any works to locate, treat or in any other way interfere with former coal workings including disused coal mine shafts or adits.

5. Dealing with lenders

- 5.1 If domestic property which is the subject of a mining search is to be charged as security for a loan, it is suggested that a copy of the report should be sent to the lender as soon as received. Whether or not this is appropriate depends on the result of the search and the lenders' instructions. It is recommended that the solicitor should not comment substantively on the replies within the mining report but should recommend that they be referred to the lender's valuer for review and information.
- 5.2 Provided that a copy of the mining report has been so provided solicitors are not obliged to make any other reference to the replies in any mining report on title to a lender except to refer to the existence of the search and the mining report.

- 5.3 The Royal Institution of Chartered Surveyors, the Council of Mortgage Lenders and the Association of British Insurers have been consulted with regard to these Guidance Notes in respect of, surveys of, loans granted on security of and insurance of, domestic properties in areas affected by coal mining and each such organisation has prepared separate guidance to its own members.
- 5.4 With regard to non-domestic property a similar procedure should be adopted. It is suggested that solicitors should, however, refer to the replies to the additional enquiries included in the mining reports for non-residential, commercial or development sites as these deal with legal matters (namely the withdrawal of support and the existence of working facilities orders).
- 5.5 When also acting for the lender it is suggested that solicitors should, in all cases, check whether the instructions from that lender require the solicitor to deal with the mining report in any other manner. If so, it is suggested that the solicitor should explain to the lender the basis upon which the solicitor is recommended by these paragraphs to proceed. It is important that solicitors should not attempt to perform the function of the client's valuer or surveyor with regard to the mining report.

6. Implementation of ScotForm (2006) enquiry form

- 6.1 The new form ScotForm 2006 will be available from October 2006. The Coal Authority will continue to accept the 2004 form until 31st December 2006.
- 6.2 ScotForm can also be used by Scottish solicitors in the event of them acting for client's purchasing property in England or Wales.
- 6.3 From 23rd October 2006, all ScotForm (2006) reports requested from the Coal Authority will be prepared in accordance with the Law Society's Guidance Notes 2006, the User Guide 2006 and the Coal Authority's Terms and Conditions 2006.