



Buying a Property

For most of us, buying a house or a flat is the most important financial transaction that we will ever get involved with. It can be a complicated business but your solicitor can help to guide you through the process.

That process includes finding the right property, arranging a survey and the finance, and making a formal offer to buy. Your solicitor is there to help. Throughout the whole transaction, your solicitor will explain the procedure and offer you expert advice.

When you decide to use a solicitor, he or she will send you **terms of business**. These give details about who will carry out the work for you, how much it will cost, the nature of the work and in the event of a problem, the firm's complaints procedure. As part of the process, you should expect to provide proof of identity and your address before your solicitor carries out work for you.

The steps to buying a property

- finding a property
- getting a Home Report
- arranging a survey
- arranging a loan
- making an offer
- having the offer accepted
- agreeing the contract
- checking the documents of ownership
- preparing the new title documents
- completing the purchase
- new build properties
- glossary of terms

Finding a Property

There are many ways to find a property from newspapers, solicitors/estate agents and property centres to For Sale signs. Your solicitor can also help by providing general information on current property available in the area and can use local knowledge to assist in finding a property to suit you. Once you have found a property you like, ask your solicitor to note your interest with the selling agents (selling agents are usually estate agents or solicitors). A **note of interest** does not oblige you to buy, it simply indicates that you are interested in the property and wish to be kept informed of developments, such as when an offer must be made.

Equally, however it does not restrict the seller who remains free to sell the property as he or she sees fit.

Home Reports

Once you have noted interest in a property, a selling agent must provide a copy of a **Home Report** to you on demand (the agent is entitled to make a small charge for its provision). This contains a Property Questionnaire prepared by the seller, a report on the condition of the property prepared by a surveyor and lastly, an Energy Performance Certificate. Home Reports contain a lot of detail so if you are unsure, you should discuss the contents with your solicitor.

Arranging a Survey

Despite the availability of Home Reports, you may still wish to have an independent report on the property you are considering buying (your mortgage lender may require an independent report). This can be a simple mortgage valuation report, a more detailed survey report or a lengthy building survey (although these are rare). Your solicitor will advise you on the best type of report for the property you have chosen. He or she can also instruct a surveyor on your behalf if you wish. In recent years most offers have been made **subject to survey** and it is expected that this will remain common practice even when a Home Report is available.

Arranging a Loan

Once you have an idea of the price range of properties that you are interested in, you will have to arrange your loan. Even before you begin a detailed search for a property, it is recommended that you talk with your mortgage lender and agree how much you can borrow. Some solicitors are also mortgage brokers and can assist in arranging a mortgage. A formal offer can quickly lead to a binding contract, so it is essential that your loan arrangements or other funding are in place beforehand.

Making an Offer

Once you have found a property that you are interested in, your solicitor will give you advice about how much you might need to offer. If there are other people interested in the property, the sellers may set a **closing date** when all the interested parties must submit their best offers (usually **offers over** the asking price). If you are the only person interested in purchasing the property, or if the property is advertised for sale at a **fixed price**, it may be possible to put in an offer right away. The next step is to instruct your solicitor to prepare a formal offer, sign it on your behalf and submit it to the selling agents.

In Scotland, all formal offers for property must be submitted by solicitors. A verbal agreement is never binding and an informal offer would probably be ineffectual. However, there is a risk that an exchange of letters directly between the buyer and seller could inadvertently lead to a binding contract to the detriment of one or the other.

Having the Offer Accepted

Usually the highest offer is accepted although occasionally the seller accepts an offer on the basis of some other factor such as an earlier or more convenient date of entry. Sometimes no offers are accepted. Normally however, a few hours after the closing date you would expect to hear whether your offer is to be accepted or not. If accepted verbally, this will be followed by a written acceptance (called a qualified acceptance) from the seller's solicitor.

The written acceptance may contain a number of points about the property. At this stage your solicitor will discuss with you in depth the written acceptance. Having discussed all the

details of the written acceptance with your solicitor, you can now tell your solicitor to get back to the solicitors for the sellers with a formal response. The seller's solicitors in turn will speak to their client, before sending their own formal reply. This process will continue until there are no outstanding points.

Agreeing the Contract – The Missives

Once all points have been agreed in writing, a binding contract will have been formed. This contract is known as **concluded missives**. It is important to note that, although you will not have been asked to sign anything at this stage, you will still be bound by the terms of the contract. Neither party can pull out of this contract without penalty. Your solicitor will explain to you the penalties that will occur if you fail to pay the price on time without the consent of the seller.

Checking the Documents of Ownership

Your solicitor will check the documents of ownership (**title deeds**) and report to you on the description of the property, any rights relating to it and any conditions that will have to be observed by any owner. These conditions are known as **title burdens** and could include:

- parking restrictions
- restrictions on use
- rules about where rubbish and bins are to be put
- a ban on putting up an aerial or satellite dish
- a ban on any alterations and new buildings
- restrictions on the height of walls, fences and hedges
- rules about upkeep of private roads, pavements and parking areas
- obligations to pay insurance
- obligations to pay common repair costs
- an obligation to pay a management fee for repairs and maintenance
- a right for your neighbour to enter your garden to carry out repairs to their house and vice versa

These are all typical (but not universal) conditions in housing title deeds. You should see your solicitor if you have any issues with the title deeds. For example, if you want to put up a satellite dish in a new development, it is often possible to obtain the consent of the builder.

Preparing the New Title Documents

A new title deed, called a **disposition**, is required to transfer the title of the property into your name. This is prepared by your solicitor, checked by the seller's solicitors and signed by the seller. If you have a loan arranged, you will sign a mortgage document (**standard security**) which gives your mortgage provider certain rights over the property. These include, in the worst case scenario, a right to take possession of the property and sell it. Your solicitor will advise you about the implications of the mortgage agreement.

Transferring the Funds

As well as the purchase price, there are other costs involved in buying a property that you must consider, such as **Stamp Duty Land Tax** (a tax payable to HM Revenue and

Customs). There is also a fee charged by the Registers of Scotland who are responsible for maintaining all the property records in Scotland and where your ownership of your new property is formally recorded. Your solicitor will make sure that there is nothing to prevent the transaction proceeding and then make the arrangements so that all the funds are collected and paid accordingly.

Completing the Purchase

The transaction is completed (settled) on the **date of entry**. The deeds are delivered to your solicitor, the price is paid to the seller's solicitor and you get the keys to your new home. Your solicitor will then deal with all the **Stamp Duty** and Land Register requirements. When the relevant certificates have been issued, your solicitor will send them to your mortgage provider for safe keeping.

Now that you own your new home, it is important to have the property and its contents insured. It is worth drawing up a will or revising your existing will – especially if you are buying the house with someone else. Your solicitor can help with both these matters.

New Build Properties

It might be that your purchase is a newly built house or flat on a new development by a housebuilder.

Here, the price of the house or flat will be fixed, and no noting of interest or closing date procedure will be involved. Instead the housebuilder will send an offer in the form of a standard contract (called a builders' missive) to your solicitor and expect you to sign up to this with no alteration of its terms. Your solicitor will explain these terms to you and seek to negotiate any necessary variations on your behalf. Once terms have been agreed, the contract will then be finalised in the normal manner.

The property will still need to be surveyed, and you will still need to arrange your loan, have the titles checked, have title to the property transferred to your name, complete the purchase, and insure the property in much the same way as described above.

However, there may be other important differences which you will need to consider:-

- ▶ The new house or flat may not yet be built and so the date of entry may not be a specific date.
- ▶ Housebuilders usually require payment of reservation fees and deposits as soon as missives are concluded.
- ▶ They may offer special deals or packages, often with time limits and conditions attached.
- ▶ They may offer a variety of optional extras with the property.
- ▶ Larger housebuilders offer ten year guarantees against major structural defects through the National House-Building Council (NHBC) or Zurich Insurance.
- ▶ Completion of construction can sometimes be delayed by factors outwith the builders' control.

Usually these matters will be discussed with you by the housebuilder's sales staff at their show-home or sales office on site. Your solicitor can also help to guide you through the complexities of what is on offer.

And finally

While many of the details of the property are explained in the survey, the missives and the titles, there are some things that may not be covered. It is up to you as the buyer to be fully satisfied about all aspects of the property you are about to purchase.

If you have any queries or concerns you should ask your solicitor. Your solicitor can then advise you as to whether there should be additional investigations or enquiries made to the seller's solicitors.

Your solicitor can generally deal with everything from the start of the transaction to the moment when you move into your new home. So, if you are thinking of buying a house or a flat, the best advice is to see your solicitor before you do anything else.

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Glossary

Closing Date – date set by the seller when all offers for the property must be submitted

Concluding Missives – putting in place a contract between buyer and seller

Date of Entry – date specified in the contract for completion of the transaction

Disposition – title deed which transfers the property from the seller to the buyer

Fixed Price – indicates that the price of the property is fixed

Home Report – copy document supplied by a seller to a potential buyer of a property comprising

Single Survey – an assessment by a surveyor about the condition and the value of a property

Energy Report – an assessment by a surveyor on the energy efficiency of a property

Property Questionnaire – a document completed by the seller containing additional information about the property

Missives – contract between buyer and seller (i.e. the Offer, Qualified Acceptance and any subsequent formal letters exchanged by their solicitors)

Noting Interest – verbal indication from a potential buyer's solicitor to the seller's agent that the potential buyer is interested in buying the property

Offers Over – indicates that the price is only a guideline for the buyer and that the seller is expecting an offer which is higher than the quoted price

Qualified Acceptance – acceptance by the seller of the buyer's Offer with a list of conditions attached to the sale of the property

Settlement – completion of the transaction, when the price is paid to the seller's solicitors in return for the title deeds and the keys

Stamp Duty Land Tax – a tax payable to HM Revenue and Customs when you buy a property

Standard Security – mortgage document signed by the buyer which gives the mortgage provider certain rights over the property

Subject to Survey – condition often attached to an offer for a property. It means that the offer is only valid when a survey has been completed and the buyer is satisfied with the results.

Terms of Business – written communication from solicitor to client at the outset which provides details of the service that the solicitor will provide

Title Burdens – conditions attached to the title of the property

Titles/Title Deeds – documentation of ownership of the property