

LEGAL ADVICE GUIDES

N.B. These guides provide general background information only to the questions most often asked. They should not be treated as a definitive statement of the law. There are many complex and developing areas of the law with some conflicting court decisions and expert views. Please consult your solicitor for specific advice about your own circumstances.

BUYING A HOUSE IN SCOTLAND

NOTING INTEREST

If you are interested in a property you can ask your solicitor to Note Interest for you. This has no legal effect and does not guarantee that you will be given a chance of offering for a property. It is a courtesy system under which the Estate Agents will usually let your solicitor know if a Closing Date is set for offers.

HOME REPORTS

Sellers must obtain a Home Report and let you see it. It includes a surveyor's report on the general condition of the property. You should read this carefully as it can flag up problems that should be investigated. It is not a structural survey and you might need to get other professional inspections and reports from structural engineers, damp specialists or other tradesmen. The Home Report might not be acceptable to your lenders who can insist on their own surveyor's inspection and report.

FORMAL MISSIVES - CONTRACT

In Scotland, a purchase contract is made up of formal letters (missives) exchanged between the solicitors acting for the parties. You do not sign them personally. The missives are signed by the solicitors as your agents.

Once you decide that you would like to buy and are confident that you will be able to fund your purchase, your solicitor will draw up a formal missive Offer. This sets out the terms that you want to apply to your deal with the Seller and will include the price, the Date of Entry when the price has to be paid in exchange for the keys and title deeds, and what is to be included in the sale by way of curtains, appliances and other moveable items. There are also a number of Standard Conditions designed to make sure that the property meets with current mortgage lender's standards. Standard Conditions cover technical matters such as the production by the Seller of satisfactory title deeds and searches including up to date local authority searches and Coal Authority Mining Reports and paperwork for alterations. They also include clauses about practical points such as asking the Seller to guarantee that the central heating and other items are in normal working order. In practice it is difficult to enforce guarantees so if you are concerned about the condition of the central heating, plumbing or anything else you should have your own tradesmen check before you buy.

If the Seller agrees to the Offer terms he will have his solicitor issue a formal missive confirming this and at that point you will have a binding legal contract. In practice the Seller may issue a Qualified Acceptance seeking to adjust the terms and it will be up to you to decide whether the proposed alterations are acceptable. It is only once all the terms are agreed in written Missives that you have a binding contract.

Title Deeds and Searches

The seller's solicitor will forward the title deeds to your solicitor and will also provide up to date Local Authority and, in some cases, Coal Authority reports. Your solicitor will report to you on the contents of the title deeds. The title deeds set out the legal boundaries and you can only own what is shown in them. It is important that you are satisfied that the title deed description is correct. If you have any doubts you should employ a surveyor to check the boundaries. This is not something that the surveyor does when carrying out a Home Report or Mortgage valuation. The solicitor will also report to you on the conditions in the title deeds which will apply to you. For flats, there are usually conditions about sharing the costs of repairs and for many properties there are conditions prohibiting or restricting the keeping of pets, restrictions on parking and restrictions on the use of the property.

The Local Authority search provides a snapshot of what is in the Local Authority records at that date and should reveal any repairs orders and details of conservation area status or other zoning.

The Coal Authority report shows what is in its records about mining works. A coal report has to be obtained in many, although not all parts of Scotland, as there has been so much mining work in the past.

Your new Title Deed

Your solicitor draws up a new title deed giving details of the sale to you and this is checked by the Seller's solicitor and then signed by the seller for delivery on the Date of Entry in exchange for the price. If buying as a couple you will have to decide if you want the house to be inherited automatically by whichever of you lives longest or if you want to own a half share each which you will be free to dispose of under your Will. Automatic inheritance by the survivor has become less popular as it offer less flexibility for estate planning including avoiding inheritance by a survivor who has to pay care home fees. Whoever inherits the house will inherit the liability for the mortgage too so take the time to think this through and review your existing Will or draw up a new one. If you are not contributing equally to the price you might want to hold the property in unequal shares or draw up a Minute of Agreement about what is to happen if the property is sold or if one of you wants to move on and the other wants to keep the house.

Standard Security – Mortgage loan

Your mortgage lenders require a formal mortgage deed known as a Standard Security to be drawn up and signed by you. It usually incorporates an IOU in which you promise to pay everything you ever come to owe in future as well as a security over the house. This will form part of the title deeds and the lender will not release it until you have repaid your mortgage. If more than one new owner is involved, as is the case with married couples, then they will be “Jointly and Severally liable”. This means that the lenders do not have to split liability between the couple but are entitled to demand payment from either one. The formal loan papers issued to the solicitor incorporate numerous conditions which the solicitor has to deal with and which may require paperwork from third parties. For this reason your solicitor will want the formal loan papers issued to her as early as possible so the conditions can be fulfilled and the necessary Report sent back to your lenders in good time for them to process it and issue loan funds before the Date of Entry. Some lenders require at least ten working days for this. One common condition is that your buildings insurance policy is endorsed by the insurance company to show the lenders’ details. Try not to leave this sort of routine paperwork to the last minute. It is important too that you are satisfied that the terms of the loan are correct and have time to query anything that you are not sure about.

Settling the Purchase

On the Date of Entry your solicitor will exchange the price for title deeds and keys. Obviously, you need to make sure that your solicitor has the funds in place. Loan funds will be sent by your lender to your solicitor, but you will have to put your solicitor in funds for the balance of the price and costs not covered by the mortgage loan. Your solicitor will be able to prepare a statement showing the balance you have to pay after she has received the formal loan papers showing exactly what your lenders will send. This is not clear until she receives the formal loan papers as lenders make numerous charges including, in some cases, charges for sending on the loan funds.

After Completion of the Purchase

Your solicitor will attend to completion of the Stamp Duty Land Tax Return and registering your new title deed and the Standard Security (mortgage deed) in HM Land Register. This includes liaising with the Seller’s solicitor to ensure that the title is still satisfactory and the seller’s old mortgage deed removed from the public records. If you have not already updated your Will you should do so now.