

HOUSE BUYING IN SCOTLAND

SOME INFORMATION ABOUT BUYING A PROPERTY IN SCOTLAND



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Scotland has a separate legal system from England. Whilst there are many similarities between the English and Scottish legal systems there are also many differences. This is especially true when it comes to buying property in Scotland. This leaflet attempts to answer some of the more frequently asked questions we have been asked by clients who are new house buying here.

Who sells property in Scotland?

We have traditional estate agents but also you will find that solicitors frequently also act as estate agents. In many areas solicitors have formed a Solicitors' Property Centre where you will be able to see under one roof a large selection of property being sold through local solicitors. The Highland Solicitors Property Centre covers Inverness and the Highlands of Scotland. The Centre's excellent website can be found at www.hspc.co.uk. Although most sellers engage the services of a solicitor estate agent or traditional estate agent some sellers will sell privately by advertising in a local newspaper and/or on the internet.

What happens when I see a property I like?

If you don't want to miss out on the chance to offer you should instruct a firm of Scottish solicitors to act for you and "note your interest" in the property with the selling agent. A note of interest does not oblige you to make an offer so you are not committing yourself in any way. It simply indicates that you are interested in the property and wish to be told if a "closing date" for offers is set. If the property is being sold privately it is not always possible to note interest.

What is a Home Report?

A Home Report is provided by the Seller through their marketing agent. If there is no marketing agent the Seller must provide a Home Report himself. A Home Report contains a Single Survey, a Property Questionnaire telling you more about the property, and an Energy Performance Certificate. Although similar to the now scrapped Home Information Packs in England there are differences. The Law Society of Scotland recommends that a purchaser should not rely on a Home Report which is more than twelve weeks old. Some marketing agents require you to "note your interest" with them in the property before they will give you a copy of the Home Report.

If there is no Home Report you should always have the property inspected by a professional surveyor before committing yourself to purchase. Buying a property is probably one of the biggest purchases you will make.

Home Reports are not prepared for land only sales.

What is a closing date?

If more than one party is seriously interested offering for a property the seller's agents may set a "closing date" for offers. A closing date is an invitation to prospective purchasers to submit their best offer to the selling agent by a certain time on a certain date. Once a closing date has been set a seller will not normally consider offers received in advance of the closing date. As the offer must be in the correct legal format a Scottish solicitor should prepare the offer. Normally the seller will accept the highest offer but is not bound to do so. There may also be other deciding factors besides the price being offered such as the proposed date of entry.

Is a closing date for offers always set?

A seller is not legally bound to set a closing date and even although there are several "notes of interest" a seller may accept an attractive offer without setting a closing date. When the housing market is buoyant closing dates are more common than when the housing market is less active.

If a closing date is set you will need to have done all your homework on the property before you make your offer. You must also ensure that you have finance available to pay for it if your offer is successful.

What happens if a closing date has not been set?

If we are acting for you we will normally ascertain when we note interest for you whether there is likely to be a closing date. We will then discuss with you whether you should make an immediate offer.

What does “Offers over” mean?

It means that there is no fixed price for the property. The price over which offers are sought is the “upset price”. The upset price can often be considerably lower than the actual sale price depending on where the property is and how active the market is. If the property is marketed at a “fixed price” normally the first “clean” offer secures the property. A “clean” offer is generally regarded as one which is not subject to survey or other matters over which the seller has no control.

What financial arrangements do I have to make before I can submit an offer?

In Scotland it is possible for your offer to lead to a legally binding contract very quickly after the offer is submitted without further involvement by you. It is therefore essential that at the time you make the offer you have your financial arrangements in place for funding the purchase should your offer be successful. If you are to sell an existing property to pay for your new property you will not be able to withdraw from the purchase contract if you cannot sell your existing property. Purchasers who have property to sell in England should normally wait until they have exchanged contracts for the sale of their English property before submitting an offer for a property in Scotland. In a less active market a seller may consider accepting an offer which is subject to the purchaser arranging a mortgage. If the seller does this the purchaser will have a short time only to confirm to the seller that he now has his mortgage.

I am ready to make my offer. What do I do next?

You will require a Scottish solicitor to submit a written offer in the proper legal Scottish format for you. A verbal offer is not legally binding. The written offer will contain details of the price being offered, the proposed date of entry (the Scottish equivalent of an English “completion date”), a list of what is included in the price, clauses about the condition of the property, the title and various other matters for the general protection of the purchaser. Most solicitors now base their offer on recently agreed Scottish Standard Clauses.

If my offer is acceptable when must I sign the contract?

In Scotland, unlike in England, there is no one contract document signed by both purchaser and seller. The contract is made up of a series of formal letters passing between the solicitor acting for the purchaser and the seller. These formal letters are called "missives" and will be signed by the solicitor on behalf of their client. The first missive will be the formal offer for the property. If the offer is to be accepted the solicitor acting for the seller will then issue a missive in the form of an acceptance. If all of the terms of the offer are acceptable without any qualification on behalf of the seller the acceptance will be an outright or unqualified acceptance. If the seller's solicitor issues an unqualified acceptance the contract becomes legally binding between purchaser and seller as soon as the unqualified acceptance is issued. This is why it is very important for a purchaser to have done their homework and have their finance in place at the time they make their offer unless their offer is subject to mortgage.

More usually a seller will wish to introduce conditions into the sale in which case his solicitor will issue a "qualified acceptance ". This means that the offer is accepted subject to the qualifications contained in the seller's acceptance. The contract is not binding at this stage as such qualifications, if acceptable to the purchaser, will have to be accepted in a missive on behalf of the purchaser. Once this is done the bargain is legally binding or, in legal speak, the missives are said to be "concluded". Sometimes more missives pass between the solicitors for the purchaser and seller before everything is agreed and missives are concluded.

There is no set time period for concluding missives. Sometimes missives are concluded on the day the offer is made but more usually the process can take between one or two weeks and sometimes longer if matters are complex.

What happens after missives have been concluded?

Your solicitor will finalise the legal work for the transfer of a valid title into your name. This involves examining the titles, drawing up the new title deed transferring the property into your name, checking deeds containing conditions of title, examining Searches, liaising with you regarding the transfer of funds, completing a Land Tax Buildings Tax

return to Revenue Scotland and dealing with many other tasks which have to be completed before the date of entry.

Will I need to sign anything?

If you are taking out a mortgage for the purchase of the property there will be one or more documents for you to sign to give your lender a legal security over the property. There will also be a Buildings Transaction Tax form for you to sign even if there is no tax payable.

What happens on the date of entry?

The date of entry is the day when the solicitor acting for the purchaser makes payment to the solicitor acting for the seller. In exchange the keys will be released so the purchaser can move in and the signed documents of transfer will be handed to the purchaser's solicitor. The date of entry is normally several weeks after the offer has been submitted to allow for the conveyancing formalities and the funding/mortgage arrangements to be finalised.

Can my date of entry be the same day as the completion date for my sale in England?

As the solicitor acting for a purchaser must have cleared funds to pay for the new property this will depend on whether funds can be transferred from the selling solicitor in time. Your Scottish and English solicitors will normally discuss whether this can be achieved.

What happens after the date of entry?

The solicitor's work does not finish on the date of entry. The purchaser's solicitor will require to lodge the Land and Buildings Transaction Tax Return and pay any tax due on the transaction. He then requires to register the title deeds at Register House in Edinburgh. Once Register House has registered the title they will issue a copy of your entry for the property in the Land Register which shows the extent of the property, any rights pertaining to the property and also the conditions of title.

What formalities do I need to go through before I can instruct South Forrest?

If you would like to instruct us ideally we like to meet our clients but this is not always essential. We can take instructions by telephone but may ask for these to be confirmed in writing. We can also take instructions by email. We are obliged by law to see certain types of identification for new clients. We may also require detailed information about your funding arrangements.

How much will this all cost?

We will give you a written quotation of costs at the outset of the transaction. This will also show outlays which we have to incur for you. The standard outlays are Land and Buildings Transaction Tax and Register House dues. Register House dues are charged by Register House on a sliding scale increasing with the value of the property and any security. You may also require to budget for survey costs. If you own or part own another property anywhere in the world you will probably have additional tax called Additional Dwelling Surcharge Land and Buildings Transaction Tax which is 3% of the full price.

Can a Purchaser and Seller use the same solicitor to keep costs down?

Scottish solicitors are governed by the Law Society of Scotland. The Law Society of Scotland does not allow the same solicitor or firm of solicitors to act for both a purchaser and seller except in limited special circumstances.