



Buying and Selling a Home in Scotland



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Introduction



Scotland has its own legal system and law governing the ownership of land and property. Most homes are sold on the basis that the buyer gains the right to occupy and use the property for as long as they own it. The concepts of leasehold and freehold found elsewhere in the United Kingdom do not generally apply in Scotland.

In Scotland, the buyer's solicitor makes a written offer to buy and the seller's solicitor accepts it in writing. The solicitors then exchange letters, known as 'missives', clarifying the details and conditions of the offer and acceptance. Once these details are agreed, the 'missives are concluded' and both parties have a binding contract. If the buyer cannot fulfil the obligations set out in the missives, they may be liable to pay the seller thousands of pounds in damages. Therefore, before making an offer, the buyer must get legal advice and arrange the finance to meet the purchase price.

Until missives are concluded, either the buyer or the seller can withdraw without penalty, although this rarely happens in practice. Once the missives are concluded, however, there will be a binding contract and an agreed date of entry, and you cannot be 'gazumped' or 'gazundered' – that is, the seller can't accept a higher offer from someone else and the buyer can't withdraw from the agreement and then make a lower offer instead.

This guidance tells you about:

- **the Home Report**
- **the legal processes of buying and selling a home**
- **what you can do if things go wrong, and**
- **where you can find further information.**



2 The Home Report _____

With some exceptions (see below), a seller or their solicitor or estate agent must give potential buyers a copy of a Home Report. The report has three parts:

- a single survey and valuation
- a property questionnaire
- an energy report.

The single survey report (see section 6) tells potential buyers about the property, its condition and accessibility, and any repairs that may be required. It also provides information that the buyer should check with a solicitor and gives an opinion of the property's market value (a valuation) and an estimated reinstatement (rebuilding) cost for insurance purposes.

Surveyors will also offer sellers a standard mortgage valuation report. This puts the valuation information into the standard format required by most lenders. Potential buyers should check that the valuation report is acceptable to their lender.

The property questionnaire (see section 6) covers 16 categories of information. It includes, for example:

- the council tax band
- issues that have affected or may affect the property, such as fire or storm damage that may have occurred in the past, or the existence of asbestos
- alterations, additions or extensions to the home
- details of specialist works and guarantees
- details of any notices that affect the property.

The energy report (see section 6) gives the house an energy-efficiency rating. It gives information on the cost of running the property, and contact details for further advice on how to make a home more energy efficient and save fuel costs. It includes an Energy Performance Certificate, which rates how energy efficient a house is, its environmental impact in terms of carbon dioxide emissions, and how to make cost-effective improvements.

The Home Report does not have a prescribed 'shelf life' specifying how long it is valid, although it must be no more than 12 weeks old when the property goes on the market. If a home has been on the market for more than 12 weeks, potential buyers may need to instruct a surveyor to re-survey the house or 'refresh' the valuation to satisfy their lender that it is still a sound basis for lending the money. Or they may ask the seller to have the original survey refreshed.

The seller can only refuse to give potential buyers a copy of the report if:

- they don't believe the buyers are seriously interested in purchasing the property, or
- they don't believe the buyers have enough money, or
- they would prefer not to sell the house to those buyers, although the seller cannot discriminate against them for reasons that are against the law.

2.1 When a Home Report isn't necessary

There are exceptions to the duty to provide a Home Report. These include:

- houses that have been on the market continuously since before 1 December 2008
- new housing sold off-plan or to the first occupier
- newly converted property not previously used in its converted state
- right-to-buy homes
- dual-use homes used for residential and non-residential purposes
- seasonal holiday homes as defined in planning law (as distinct from second or holiday homes that could be used all year if the owner so chose).

Even if a home doesn't need a Home Report, the seller must still give potential buyers a valid energy performance certificate for the house if they ask for one.

Local council trading standards services (see section 6) are responsible for enforcing the duty to provide Home Reports. An enforcement officer may issue a penalty charge notice if they believe the seller or their agent has breached the duty to possess or provide a Home Report. The notice will require the seller or their agent to pay a penalty charge, set at £500, within a specified period.



3 Buying a home _____

In Scotland, most houses and flats are sold through a system of 'blind bidding'. The seller asks for 'offers over' or 'offers around' the valuation in the single survey report. This indicates the minimum price the seller expects to fetch. How much you will actually have to pay will depend very much on how busy the market is at that particular time and how much competition there is from other potential buyers. Sometimes property is advertised at a fixed price.

3.1 Using the Home Report

If you are interested in a home, the seller or their selling agent (a solicitor or estate agent) must give you a copy of the seller's Home Report (see section 2) within nine calendar days of you asking for it. They can make a reasonable charge to cover the cost of copying the report and posting it to you. It can also be sent electronically.

If any repairs identified in the report are marked as needing future attention or urgent, you should consider whether you can cope with the repair works. If there are lots of similar properties on the market, you could just walk away. If you particularly like the property, you should get estimates for completing the works.

The seller commissions the survey, but you have the right to rely on it. If you lose a significant amount of money because the report isn't accurate or complete enough to meet the legal requirements, then you have a right to damages.

If the seller or their solicitor or estate agent won't give you a Home Report, ask your council's trading standards service (see section 6) for help. They can take action against the seller or agent.

3.2 Making an offer

If several potential buyers 'note' (formally notify) their interest in a property, the seller's agent will set a time and date – the closing date – for offers to be made. This should allow enough time for you to arrange finance for the purchase. If you are seriously considering making an offer, make sure your solicitor 'notes' your interest with the seller's solicitor or estate agent before you arrange finance, or they may not let you know about any closing date. If a closing date is not set, that may be because of a lack of interest in the property or simply a slow market, and you may be able to negotiate a price.

You and your spouse, civil partner or partner can buy a home together by making an offer in both your names and having the title deeds prepared in your joint names.

Your offer to buy should include a brief description of the property, the proposed date of entry (the date you want to get the keys), the price and any items you wish to buy from the seller. It will also include conditions, which will vary from one transaction to another.

Your offer and the seller's acceptance, which must come from the solicitors of each side, take the form of an exchange of letters known as missives.

3.3 New homes

The procedure for buying a newly built home differs from buying an existing one. The home advertised may be part of an incomplete estate or may not even have been built yet, and it will usually be offered at a

fixed price. Similarly, a conversion or renovation may be offered for sale before the work is complete. With a newly built or converted home, the builder makes an offer to sell to the buyer. Most builders have a standard form of offer that sets out the conditions on which they are prepared to sell. You should arrange your loan and take legal advice before you accept the builder's offer, because your acceptance is legally binding.

3.4 When the missives are concluded

Once the missives are concluded and you have an agreed contract with the seller, your solicitor will carry out the conveyancing, which is the process of transferring the title (ownership) of a property from the seller to the buyer. If you also have a property to sell, the conveyancing involved in buying usually happens in parallel with the conveyancing involved in selling your own home. Your solicitor will investigate the property and examine the title deeds and any deed of conditions that applies to the property. He or she will, for example:

- **check the land certificate and the deeds to make sure that the seller actually owns the property, and that the deeds are free from defects and do not contain any unusual or unreasonable conditions that will affect your use of the property**
- **tell you about any burdens (limitations or legal restrictions) or servitudes (obligations to allow someone to use the land or prevent you making use of it) that affect the property**
- **make sure that the ground burdens, such as property management fees or maintenance charges for a common garden, are properly divided between you and the seller**
- **ensure that any existing standard security (mortgage) over the property is paid off when the property is transferred to you.**

If you are taking out a mortgage, you should make sure that the bank or building society has received your application and that any linked life insurance is in hand. You should also make sure that the property is

adequately insured from the date of the conclusion of the missives (not just from when you get the keys).

3.5 Settlement

This is when you get possession of the property, and usually happens on the agreed date of entry. On settlement, your solicitor will:

- **certify to your lender that the title is good (that the property has been properly put in your name)**
- **get the loan cheque from your lender, and**
- **obtain from you your contribution to the purchase price.**

In exchange for the cheque for the purchase price, your solicitor receives the disposition (the document that transfers the title of the property from seller to buyer) and other deeds (title documents), and the keys. The property is then yours. If you have a lender, it will retain the deeds as security over the property. If you don't have a lender, you should ask your solicitor to put the deeds in safekeeping.

3.6 Costs

There are two elements to the costs of buying a home: professional conveyancing fees and outlays. Outlays, which are costs outwith your solicitor's control, include:

- **fees and taxes payable to the government, such as the fees due to the Registers of Scotland**
- **search fees, and**
- **if it applies, stamp duty land tax.**



4 Selling your home _____

You can advertise and market your home yourself or use a selling agent, such as an estate agent or solicitor. Most solicitors who do residential conveyancing also provide a full estate agency service.

If you own your home jointly with one or more other people, you must get their consent before you can sell.

4.1 First steps

Before you put your home on the market, you must possess a Home Report (see section 2). You should contact your solicitor or estate agent to arrange for a Home Report to be prepared. You should shop around for the best Home Report deal, or ask your solicitor or estate agent to do so, taking into account factors such as the price, payment arrangements and which lenders will accept a survey report prepared by the Home Report surveyor (rather than insisting on an independent survey). If you plan to do your own advertising and marketing (see below), you will still need to compile a Home Report.

As soon as you decide to sell your home and commission a Home Report, you should discuss your plans with your solicitor. The solicitor can then inspect your title deeds and have them available for the buyer's solicitor to view, and carry out local authority searches to make sure there are no outstanding notices, orders or proposals affecting the property. You should make sure that all necessary documents, such as guarantees and warranties, are available.

If you have a mortgage, you should also check with your lender how much money is needed to pay off your loan on the property.

Before you put your home on the market, you should also:

- **consider whether it is worth doing any repairs, maintenance or redecorating**
- **make sure that everything is in working order**
- **if you have had any changes done that required planning permission or building control consent, check that you have the necessary documents and make your solicitor aware of these**
- **if you have had any remedial treatment done that is covered by a guarantee or insurance, check that the certificates or policies are available and valid.**

4.2 Providing a Home Report

When you put your home on the market, you or your agent must provide, on request, a copy of your Home Report to a prospective buyer within nine calendar days. You may make a reasonable charge to cover the costs of copying and postage. To ensure that your Home Report includes current information, it must be no more than 12 weeks old when you put your home on the market. It would be sensible to include in your Home Report the surveyor's standard mortgage valuation report (see section 2), as this will be useful to potential buyers.

You may take your home off the market for up to four weeks any number of times and put it back on the market without having to

obtain a new Home Report. In a slow market, you may need to 'refresh' the report as buyers may be less willing to rely on a report that is more than 12 weeks old.

4.3 Using an agent

You can use an estate agent or a solicitor as a selling agent. An estate agent will prepare the property description for your home, advertise and market it for sale, deal with enquiries, advise you on offers and pass any formal offers to your solicitor. It is a good idea to find an agent who is a member of the National Association of Estate Agents. You should shop around and ask for a written estimate of the total charges, including commission, advertising and VAT. A solicitor will either advertise and market your property or register it with a local solicitors' property centre. Some solicitors may charge a lower commission or offer a package to cover selling and conveyancing for your sale and also your purchase, so you should shop around and ask for estimates. If you engage a solicitor, they must write to you at the earliest opportunity with an estimate of the total fee, including VAT and outlays, or the basis on which the fee will be charged.

4.4 Doing it yourself

If you do not use a selling agent and instead market your own house, you will need to compile a Home Report (see section 2) by instructing a chartered surveyor registered with the Royal Institution of Chartered Surveyors to prepare a single survey with an energy report, and you must complete a property questionnaire. If you do your own advertising and marketing, it is not usually sensible to do the legal work yourself without employing a solicitor, as your lender is unlikely to accept this.

4.5 Fixing a closing date

If enough people formally notify your solicitor or estate agent that they are interested in your property, you can fix a closing date, which is the time and date by which formal written offers must be given to your solicitor. If you use an estate agent, the offers will usually be sent to your

solicitor. If there is little interest, or the market is very quiet, you will have to decide how long to wait for expressions of interest to gather or whether to let it be known that you will consider an individual offer.

4.6 Offers

You do not have to accept the highest offer, or indeed any offer at all. Usually, the offer will include conditions to suit the person making the offer. These would include the date of entry, any items to be included in the price and technical conditions based on, for example, the information in your property questionnaire and any associated planning permission, building control consent, guarantees and warranties. If the highest offer comes with conditions you don't want to accept, then your solicitor will find out whether there is any room for negotiation. If there is not, you will have to decide whether to accept one of the lower offers or re-advertise.

4.7 The missives

When you have decided, your solicitor will issue a letter known as a qualified acceptance, which states that you will accept the offer as long as certain conditions are changed. Usually, there will then be an exchange of letters (missives) in which your solicitor will try to vary any unacceptable conditions. When both sides agree, the exchange ends with a concluding missive making a binding agreement between you.

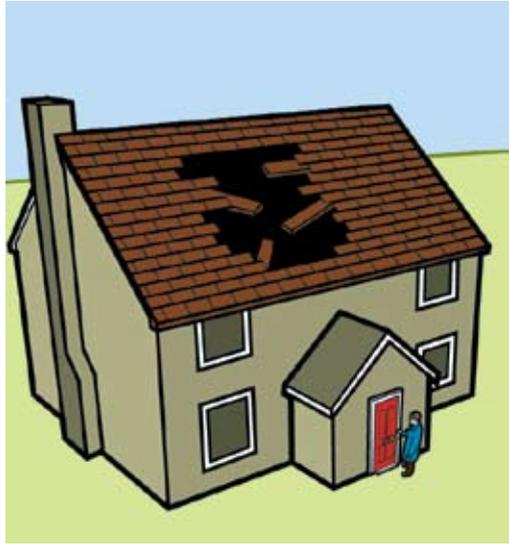
Once the missives are concluded, your solicitor will:

- do the conveyancing, which is the legal transfer of the title (ownership) from you to the buyer
- agree the disposition (the document that transfers the title of the property from you to the buyer), which is drafted by the buyer's solicitor, and
- if you have a mortgage, arrange for the repayment and discharge of your loan over the property.

Just before the settlement, you should sign the disposition and arrange to hand over the keys.

4.8 Costs

The costs of selling your home include your estate agent's or solicitor's commission and marketing outlays and your solicitor's conveyancing fees and outlays. If you are buying another home, some solicitors may charge a lower commission or offer a package to cover selling and conveyancing for your sale and also your purchase.



5 What you can do if things go wrong _____

If you believe that a chartered surveyor, a solicitor or an estate agent has been negligent and you have suffered as a consequence, and you wish to make a claim of negligence against them, you will need independent legal advice from a citizens advice bureau or a solicitor (a different solicitor in the case of a problem with a solicitor).

If you feel that the service provided was unsatisfactory, inadequate or unprofessional, you should first try to resolve it through the firm's complaints-handling procedure. If that does not resolve the matter, you can complain through the following procedures:

- **Chartered surveyors.** All chartered surveyors' firms must have a complaints-handling procedure and should include details of how to use it in any correspondence to you. If the problem is not resolved, you should write to RICS Regulation (see section 6). You can also use the Surveyors Ombudsman Service (see section 6), which offers a free and independent review of consumer complaints about its estate agent members and about chartered surveyors in Scotland who are members of the Royal Institution of Chartered Surveyors. You may also use the Arbitration Procedure for Surveying Disputes (see section 6).
- **Solicitors.** Every solicitor's firm must have a written procedure for dealing with complaints. If you are still unable to resolve the matter, contact the Scottish Legal Complaints Commission (see section 6). The commission will decide whether the complaint is about the service provided or the solicitor's conduct. It will deal with complaints about service and refer complaints or any aspect of a complaint about conduct to the Law Society of Scotland (see section 6). The Law Society has powers to deal with complaints about professional misconduct and excessive fees and in appropriate cases can award compensation. In more serious cases of professional misconduct, not involving a claim of negligence, it will prosecute the solicitor before the Scottish Solicitors Discipline Tribunal.
- **Estate agents.** All estate agents must belong to an estate agents' redress scheme (dealing with complaints and compensation) approved by the Office of Fair Trading. The approved schemes are the Property Ombudsman and the Surveyors Ombudsman Service (see section 6). If the agent is a member of the National Association of Estate Agents (see section 6), you can also complain to the association, which has powers to discipline its members.

6 Further information

More information about the **Home Report**, including the single survey, the property questionnaire and the energy report, is available on the Scottish Government Home Report website at:

www.homereportscotland.gov.uk

Contacts for **local authority trading standards services** are available at **www.scotss.org.uk/pages/contacts.htm**.

A **directory** of chartered surveyors in Scotland and **guides** to understanding property surveys and home buying and selling are available free from:

The Royal Institution of Chartered Surveyors

Phone **0870 333 1600**

Email **contactrics@rics.org**

Ask for information on services in Scotland. You can also get informal advice from the professional information team at the contact centre. RICS Scotland has produced **Home Report: a guide for buyers and sellers in Scotland**, which is available free from the contact centre or from **www.rics.org/homereport**.

Complaints about chartered surveyors should be addressed to RICS Regulation, Surveyor Court, Westwood Way, Coventry CV4 8JE

Phone **020 7695 1670**

Email **regulation@rics.org**

The Scottish Legal Complaints Commission can be contacted at

The Stamp Office, 10–14 Waterloo Place, Edinburgh EH1 3EG

Phone **0131 528 5111**

Email **enquiries@scottishlegalcomplaints.org.uk**

Website **www.scottishlegalcomplaints.org.uk**

Information on **complaints about solicitors** is available from

The Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh EH3 7YR

Phone **0131 226 7411**

Regulation liaison department helpline **0845 113 0018**

Email **reg@lawscot.org.uk**,

Website **www.lawscot.org.uk/Public_Information**

For information about the **services provided by solicitors**, details of local solicitors who do conveyancing work, and solicitor standards, contact the Law Society of Scotland at the address above or at

Website **www.lawscot.org.uk**

Information on the **Property Ombudsman scheme** is available from

The Property Ombudsman

Beckett House, 4 Bridge Street, Salisbury, Wiltshire SP1 2LX

Phone **01722 333306**

Email **admin@tpos.co.uk**

Website **www.tpos.co.uk**

Information on the **Surveyors Ombudsman Service** is available from

The Surveyors Ombudsman Service

PO Box 1021, Warrington WA4 9FE

Phone **0330 440 1634** or **01925 530270**

Textphone **0330 440 1600** or **01925 430886**

Email **enquiries@surveyors-ombudsman.org.uk**

Website **www.surveyors-ombudsman.org.uk**

The National Association of Estate Agents can be contacted at

Arbon House, 6 Tournament Court, Edgehill Drive, Warwick CV34 6LG

Phone **01926 496800**

Email **info@naea.co.uk**

Website **www.naea.co.uk** to find local members.

To make a complaint about a member, contact the Compliance Officer at the above address, or

Email **compliance@naea.co.uk**



This guidance is taken from the third edition (2009) of **Moving Home in Scotland** by Derek Manson-Smith, which is a more detailed guide to the home buying and selling process, including information on mortgages. It is published by The Stationery Office for Consumer Focus Scotland and is available for £3.95 from bookshops or from the Stationery Office:

TSO Customer Services

Phone **0870 600 5522**

Fax **0870 600 5533**

Website **www.tsoshop.co.uk**