



Blackwood & Smith W.S.

A Guide to Buying & Selling your Home in Scotland

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For most people, buying and selling their home is the biggest financial transaction they ever get involved in. It often happens at a time when there are plenty of other things to worry about – a new job, moving to a new town, getting married, getting the children settled in new schools, and so on. So naturally you want your house sale and/or purchase to go as smoothly as possible.

A good professional service is not only about the quality of legal service. It also means prompt attention to your business, being available when you want to discuss something and keeping you informed about what is happening.

Buying a House

General

We will give you an outline of the whole procedure from start to finish. You will find that it starts before you make an offer, and it does not finish when you get the keys. At your first meeting with us we will discuss all the financial aspects of the transaction – for example, the price range you are interested in, the expenses you will have to meet, and of course, our own charges.

Noting interest

If you are looking for a new home, take advantage of our local knowledge. It could avoid a lot of wasted effort. When you see something you like, ask us to note interest for you with the selling agent. A note of interest does not oblige you to buy, so you are not committing yourself in any way. It simply tells the seller that you are interested in the property, and would like to be kept informed of developments, such as the fixing of a closing date for offers.

Surveys/Home Reports

All properties being marketed for sale must have a Home Report. This is like a house survey but gives you additional information and also includes an Energy Efficiency Report. The Home Report is provided by the seller. It may be that your Bank or Building Society require an additional survey of the property and this will be arranged by them or through your financial advisor. You will be responsible for the cost of this survey.

Making the Offer

We will discuss with you, and advise you, on the terms of your offer. Offers are long and complex documents designed to protect you against the pitfalls of buying a house. This is a crucial stage in the whole procedure, because acceptance of your offer creates a legally binding contract.

Acceptance

If the seller decides to accept your offer, his or her solicitor will send us a formal acceptance. This may include conditions, which attempt to change the terms in your offer. We will discuss the changes with you, and give you the advice you need to decide on those which you will accept, and those you will not. An exchange of further formal letters may be needed before all the terms are agreed between you and the seller.

Concluding the Bargain

The offer, acceptance and any subsequent letters (which are described as “formal” because they are intended to be part of a binding contract) are known as “missives”. When the final acceptance is issued, it is said that missives are concluded. This means that you and the seller have entered into a binding contract.

The Title

We will carry out a thorough examination of the title. The title deeds describe the precise extent of the property. The title will also reveal whether there are conditions relating to the property about which you should be aware eg restrictions on business use, or a requirement to contribute to the maintenance of common ground.

Local Authority Matters

You will want to know whether the roads and sewers are public or private, whether there are any planning proposals which might effect the property and whether the local authority has made any orders or notices affecting the property.

The Security or Mortgage Transaction

In most cases your lender will ask us to carry out their legal work as well. This saves time and money. You should keep in mind, however, that the security (sometimes called a “mortgage”) is really a separate legal transaction in which we are acting for the lender as well as you.

Deeds

There will be various documents for you to sign in connection with the purchase, the most important being the Standard Security. This is the deed which secures the loan over your new home.

The Date of Entry

We will do our best to ensure that the purchase price is in the seller’s solicitor’s hands on the agreed date of entry. In exchange you are entitled to get the keys and title.

After settlement

After entry we will report to you any matters that remain to be dealt with, and in particular any financial matters which are still outstanding. We will also report to your lender, will check that all the documentation is in order before sending the title deeds for registration in the Register of Sasines or the Land Register of Scotland. This is the final step needed to complete your title, we will send the documentation to your lender for safekeeping.

Selling a House

General

Solicitors are uniquely placed as the only property professionals who can carry out the entire sale process for a house, including the estate agency and conveyancing. In many parts of Scotland estate agency work is carried out by solicitors. At your first meeting, we can give you an outline of the whole procedure from start to finish, will describe the services we can offer, and the costs and charges involved. At this stage, we will also ask your lender how much is required to pay off your existing loan. You need to have a clear idea of what the free proceeds of the sale are going to be if you are working out a budget for the purchase of a new home. You should keep in mind all the costs associated with moving house and the fees, taxes and other charges payable.

Pre-sale Procedure

Before your home can go on the property market there are a certain number of things which have to be dealt with.

i) **Home Report**

A Home Report must be obtained. It is a legal requirement to obtain a Home Report and we would require a copy of this.

ii) **Advertising Costs and Marketing Fee**

We require advertising costs to be paid up front. These usually entail advertising in the ESPC together with our marketing fee.

iii) **Quotation and Terms of Business**

We will provide you with a fee and outlay quotation together with our Terms of Business letter. The costs involved will be 1% of the eventual sale price plus VAT together with any additional advertising costs to those mentioned above. However, if you wish Blackwood & Smith to carry out accompanied viewings of the property the costs will increase to 1.5% of the eventual sale price plus VAT.

iv) **Client Identification**

We are required to verify your identity, even if we have acted for you before. There are examples of the identification documents we are allowed to accept on the Terms of Business letter. Generally you must provide some photographic identification together with a recent (i.e. within the last 3 months) utility bill or bank statement.

v) **Title Deeds**

We will require your title deeds. We will need details of any existing mortgage over the property (i.e. name of lender, mortgage account number and full name(s) of borrower(s)). Alternatively, if you do not have a mortgage we will need to know who holds the deeds.

We will advise you on how to deal with prospective buyers, on the procedure for noting interest, and the rules which Scottish solicitors adopt in relation to closing date procedures.

Receiving an Offer

When you get an offer with an acceptable price and date of entry, we will advise you on all the conditions attached to the offer. It is important that together we give this very detailed consideration, as you will be asked to give various guarantees about the property and its title, which the buyer will rely on when deciding to buy your property.

We will reply to the offer for you, by sending an acceptance which will include the conditions (known as “qualifications”) which you wish to include in the contract. This may involve further negotiations with further conditions and qualifications being set out in letters between the solicitors, until the terms are final agreed and a binding legal contract concluded.

Redeeming the Loan

We will obtain a redemption statement from your lender, which will tell you how much is needed to pay off the loan.

Settlement

On the date of entry we will receive the buyer’s solicitors cheque for the price, and in exchange will hand over the Disposition (document which changes title into the buyer’s name), the other title documentation and the keys.

On receiving the price, we will repay your loan. We will have asked for your instructions as to what is to be done with the balance of the funds. We will provide you with a statement showing the full financial details of the transaction.

Fees & Costs

Budgeting for Costs

We are always willing to give written estimates of our fees, and on the other necessary costs which are outwith our control. These costs include VAT, fees payable to local authorities, fees payable to the Registers of Scotland, search fees and (sometimes) stamp duty. If you are taking out a loan you may also have to pay the lender a survey fee, and in some cases an arrangement fee.

Quality of Service

Client Satisfaction

It matters to us that you are satisfied with the job done for you. This leaflet has sought to explain the nature and scope of the work which we should do for you in a conveyancing transaction. If you are unhappy with any aspect of the professional service provided by us, please let us know straight away. Very often, concerns arise from misunderstandings which can be cleared up very quickly. If a problem is not resolved with the individual lawyer, you should take the matter up with our Senior Partner. Most problems can, and should, be resolved by us at this level.

Scottish Legal Complaints Commission

If you do not feel that your concerns have been properly dealt with by us, then you should contact The Scottish Legal Complaints Commission (SLCC) setting out the reasons for your complaint. The SLCC operates independently of the legal profession and is impartial and accessible.