

Buying or Selling your Home – a guide for legal consumers



Buying or selling a house can be one of the most stressful, not to mention expensive, experiences we will ever have.

While the vast majority of these transactions go ahead without a hitch, this is not always the case.

We have carried out research which has shown that in Scotland more complaints are made about residential conveyancing than any other type of legal work.

Taking time to choose a solicitor carefully, and asking the right questions at the beginning, can help to make the process of buying or selling a home as stress free as possible.

We have prepared this guide to help consumers who are looking to buy or sell residential property.

Residential conveyancing – top tips

“Conveyancing: The transfer of the ownership of property”

- *Chambers 21st Century Dictionary*

In this guide we suggest that there are some simple things to consider that can reduce the likelihood of your conveyancing transaction going wrong:

- Do your research at the beginning
- Make sure you are clear about the costs
- Understand how your solicitor will communicate with you
- Ask questions if you feel there is something you don't fully understand
- Ensure that your instructions are followed
- Remember that you have the right to challenge or complain

In the rest of this guide, we look at each of these in more detail.

1. Do your research

Doing some upfront research is important. Information to help you choose a solicitor can be found from different sources:

- Recommendations from family/ friends/ colleagues
- The Law Society of Scotland's website
- Members of the Solicitors Property Centre network throughout Scotland/ local property shops
- Consumer Organisations e.g. Shelter or your local Citizens Advice Bureau
- Online searches
- Shopping around to compare different firms

Some solicitors offer an initial free consultation to discuss the work in general so it is worth checking whether the initial appointment is free or whether you will be charged for it.

At the initial appointment you may wish to ask what level of experience the solicitor has in conveyancing work – more experience and expertise should reduce the risk of things going wrong. It is sensible to ask whether they do a lot of conveyancing work.

It is also important at this stage to decide whether you feel that the solicitor is someone you can work with.

2. Costs

Once you have chosen and told your solicitor what you want them to do for you (referred to as “giving your instructions”), the solicitor should send you a Terms of Engagement letter.

Your solicitor may ask you to sign a copy of the letter and return it to them. However, whether you sign the letter or not, the terms of the letter will apply unless you agree otherwise.

The Terms of Engagement letter will set out the work the solicitor has agreed to do for you and should give you an outline of the likely fees for doing this. The letter should also outline any additional costs which you may be responsible for. These might include charges for property searches, bank transfers, registration dues, or fees for sales or purchases that fall through. Sometimes these additional costs can be more than the solicitor’s fee. Mr & Mrs B thought they had this covered, however:

After purchasing their house, Mr & Mrs B were surprised to receive a bill which was £250 higher than the fees which their solicitors had given in their Terms of Engagement letter. The letter had said that if costs exceeded the initial assessment Mr & Mrs B would be advised but no indication of increasing fees had been given.

The complaint was settled when the firm agreed to pay compensation to the complainers to cover the extra charge on the account.

So, don’t be afraid to ask questions about costs and make sure that you fully understand what you may be asked to pay for. This applies to both the solicitor’s fees for their time and any other costs you may have to meet. It’s fine to discuss costs with solicitors – they would rather you were clear about what you will have to pay. Try to be clear in your own mind how much the whole piece of work could be and check with your solicitor that your expectations are right.

Because transactions are unpredictable, the costs estimated at the beginning of the transaction can change. For example, the transaction may take longer or end up being more complicated than was first thought. It is important to make sure that if costs do increase, your solicitor lets you know immediately.

Some solicitors offer ‘fixed fee’ arrangements. The ‘fixed fee’ may not include certain costs (for searches, for example) so if you are considering this option, make sure you know what work this does, and more importantly, does not include.

3. Effective communication

Most of the complaints which we receive about residential conveyancing are about the solicitor not communicating effectively with their client. Here is an example:

Mr D’s solicitor didn’t tell him that the Keeper of the Registers of Scotland had returned his application for registration until certain problems had been resolved. When Mr D became concerned that there might be problems he wrote to his solicitor. His solicitor didn’t reply to his letters.

We were concerned that the solicitor had failed to tell Mr D about the problem, and that it remained unresolved after a very significant period of time. We awarded compensation for the inadequate service which Mr D had received from his solicitor.

Here are some useful tips to ensure good communication:

- Make sure you understand any information your solicitor gives you and that you are happy with what is being explained. If there are legal terms that you don’t understand, for example, don’t be afraid to ask what they mean. You are not expected to be the expert, and you have a right to understand what you are agreeing to.
- Getting updates on how your transaction is progressing is important. Discuss with your solicitor at the beginning how often you are likely to receive updates and also the way you would prefer to receive these – for example, by letter, email or, in some cases, by text message.
- If you have a question about how your transaction is progressing, email may be a good way to contact your solicitor. This can make communications quicker, although remember that the solicitor is likely to

be dealing with other work and you should not expect an immediate response. This also applies to returning telephone calls. Bear in mind that your solicitor may charge you for a reply so only get in touch when you need to.

- Finally, it is important to remember that good communication works both ways. If your solicitor asks you for information you should provide this in good time to prevent delays. If you don't understand what you need to do, ask the solicitor for more information.

4. Advice

If there are things you are unsure about, remember that your solicitor is also there to offer advice. Your solicitor has a duty to make sure that the advice they give you is adequate and that everything that you need to know is explained to you. This was not what happened to Mr & Mrs K:

Mr and Mrs K bought a property with the intention of leasing it to students. They explained this to their solicitor at the time, and also the fact that, as they were on a fairly tight budget, they required the full income from the tenants to cover the total costs of their monthly mortgage. After purchasing the property, and agreeing tenancy arrangements, Mr & Mrs K were disturbed to find out that their property was subject to substantial monthly common maintenance and factoring fees which their solicitor had failed to identify and point out.

We awarded Mr & Mrs K compensation to cover the distress and inconvenience the situation had caused them.

If you feel that you have not been given enough advice or information to make a decision, ask your solicitor to explain what the options are, and what the implications of those might be.

5. Following your instructions

Once you have instructed a solicitor to act for you, the solicitor has a duty to progress the work in line with your instructions.

This includes both the instructions you give at the beginning and any later instructions you might give as the work progresses – for example, an instruction about where funds should be sent on completion of a property sale:

Ms L instructed a Scottish solicitor to transfer the net proceeds from the sale of her joint property with her estranged husband to an interest bearing account. This was until an agreement could be reached between Ms L and her estranged husband on the financial settlement within their on-going divorce action. However, on getting a request from Ms L's divorce lawyers, her solicitor sent the funds direct to them without first checking with her that a settlement had been reached.

We upheld the complaint and awarded Ms L compensation for the distress and inconvenience this had caused her.

It is important to bear in mind, however, that sometimes the solicitor may not be able to do exactly what you have instructed. If that happens, your solicitor should clearly explain to you why that is the case.

If you feel that your instructions are not being followed, don't be afraid to speak to your solicitor about your concerns. Where you and your solicitor cannot reach agreement, the solicitor may decide to withdraw from acting for you. However, if this happens, they should give you reasons for withdrawing.

6. You have the right to challenge or complain

If you are unhappy with the service a solicitor has provided to you, or feel that a solicitor's conduct is unprofessional, it is important that you make your concerns known as soon as possible.

Ideally you should be able to speak or write to the solicitor to sort it out. If you don't want to do that, you can ask if the firm has a Client Relations Manager you can speak to or write to about the problem, so that it can be dealt with as quickly as possible.

You need to allow the firm 28 days to deal with your complaint. If, after having done this, you are still not happy with the outcome, you have the right to make a formal complaint to us.

Generally speaking, you have a year to make the complaint to us. This year begins from the date the work was completed (that is, when the solicitor stopped acting for you) or a year from when the matter could reasonably have come to your attention. However, it is better to make your complaint as soon as possible.

For any advice about making a complaint, we are here to help. Our contact details are below.

Scottish Legal Complaints Commission
The Stamp Office
10 - 14 Waterloo Place
EDINBURGH
EH1 3EG

Tel 0131 201 2130
Fax 0131 201 2131
Email enquiries@scottishlegalcomplaints.org.uk

If you want to find out more about us and what we do, please visit <http://www.scottishlegalcomplaints.com/>

We are open from 9am until 5pm, Monday to Friday, apart from Tuesday when we close for staff training between 10am and 11am.

If you need information in another language or in large print or on audio CD, please get in touch.

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