

Brodies LLP Can Help You Buy and Sell Residential Property – FAQ's

Buying a Property

What should I do first?

You need to find the right property within the correct price range. The sales particulars, distributed by the selling agents, usually contain a description of the property, together with photographs and the price. Where the price is not disclosed in the sales particulars, it is available on request from the selling agents.

Most properties marketed since 1 December 2008 will have the benefit of a Home Report available to potential purchasers upon request- new homes and buildings that have newly been converted to homes do not require Home Reports. A Home Report has three elements- Single Survey, Energy Report and Property Questionnaire. The Single Survey provides information about the condition of a property and its value. It also includes an accessibility audit where the accessible features of a home are highlighted. The Energy Report gives a home's energy efficiency rating and its environmental impact in terms of carbon dioxide emissions. It provides recommendations for improving energy efficiency and allows prospective purchasers to compare energy costs between different properties. The Property Questionnaire is completed by the seller and may contain information such as the council tax band, parking facilities, factoring arrangements and alterations to the property.

You also need to arrange finance at the earliest possible opportunity, so that you are clear about how much you can borrow from your selected mortgage provider. If the purchase of a new property is to be funded in whole or in part from the sale of another property, the funds will need to be available before the date of entry or bridging loan facilities arranged. We can help by putting you in touch with an Independent Financial Advisor and can also assist with regard to obtaining bridging loan facilities.

What happens when I have found a property that I wish to purchase?

Once you have found a property that you wish to purchase, please let us know. We can then "note your interest" with the sellers' solicitors if the price is offers over. Noting interest does not require you to buy the property. It does however allow you to be kept informed of developments, such as the fixing of a closing date for offers to be received. Where you are the only interested party or the property is for sale at a fixed price you may wish to submit a formal offer to purchase the property. Otherwise, we will keep you updated as to the closing date and you can then decide whether to offer when the time comes.

What about the Survey?

Where a Homeowners Report is available, we can advise whether a survey of the property should be instructed in addition to the Single Survey that forms part of the Home Report. We can also advise on what type of survey should be arranged, which will

depend on the type and age of the property, the requirements of your mortgage lender and any other particular aspect of the property that you would want to have checked before you are legally bound to purchase the property. In certain circumstances it may be advisable to make an offer 'subject to Survey and Valuation'. This means that if the Survey is unsatisfactory or if the valuation by the Surveyor is substantially lower than the price offered, you have the opportunity to re-negotiate the price or withdraw the offer before a contract is concluded.

How will I know what to offer?

The price may be stated as "Offers over £...", where the actual value of the property is likely to be higher than the offers over price - often set low to attract interest from potential buyers. Alternatively, a property may be offered for sale at a fixed price, where the first written offer for the fixed price is usually accepted. The Home Report valuation can also be a useful guide.

If an offer is submitted against other potential purchasers at a closing date, the price may have to be higher than the valuation in order for your offer to be successful. We can help by providing you with information as to what similar properties in the same area have been selling for recently. The final decision will be yours, but we can provide you with all of the relevant information to reach your decision.

What happens next?

The next step is to make an offer, which is a formal letter to the sellers' solicitors detailing the names of the parties, the property, the price, the date of entry, any furniture or other items to be included in the price and other standard legal terms. The offer is prepared and signed by us on your behalf and then submitted to the sellers' solicitors. Submission of such an offer will have legal consequences and therefore it is essential to have finance arrangements in place by this time.

What are "the missives"?

The exchange of formal letters back and forth between the purchasers' and sellers', solicitors setting out the terms of the contract, is known as the missives. Once one firm of solicitors writes to the others to confirm that the latest formal letter is acceptable in all respects, at that point a binding contract will exist.

What about insurance?

We will advise you about insuring the property and its contents. The missives should normally provide that the risk of damage to the property will remain with the sellers until the date of entry when the keys are handed over to the purchasers. At that stage you will be well advised to insure the property for the reinstatement value indicated in the Single Survey, or the Survey that you have instructed, if applicable.

When will the property be transferred to me?

Once your offer has been accepted in principle it is likely that we will be checking over the title deeds at that stage and reporting to you on the exact description of the property and any restrictions that apply to the property (known as real burdens). If any of the real burdens are unacceptable or if the description does not coincide with your understanding of what you thought you were buying you

must let us know immediately so that you can withdraw from the purchase. After conclusion of missives, but before the date of entry, you will be required to obtain mortgage funding and to provide any other finance to enable us to pay the purchase price on your behalf. At the date of entry we will receive delivery of the title deeds, including the signed Disposition which is the legal document transferring title in the property to you, and the keys in exchange for the price. We will then pay Stamp Duty Land Tax to the Inland Revenue from the funds provided to us by you and once the Stamp Duty Land Tax Certificate has been issued we can proceed to have your title registered at the Registers of Scotland.

What other issues arise?

You might decide that it is appropriate for the title to your new property to be taken in joint names with your spouse, civil partner or partner. Alternatively, you may wish title to be taken in the name of a company or family trust. If there are likely to be Inheritance Tax issues we can discuss these matters with you at an early stage and provide you with advice. Once the purchase of the property has been completed you may consider drawing up a Will or if you already have a will to consider whether it might need to be updated. We can provide you with specialist advice on all these aspects.

How much will this cost?

At the outset we will provide you with our Terms of Business and can also provide you with an estimate of the fees, VAT and outlays which are likely to be incurred. In the event of any unforeseeable complication, which results in protracted negotiations prior to conclusion of missives, our estimated fees may require to be reviewed in light of the circumstances.

Right from the point you have decided to buy a new property we can deal with everything involved from then until the moment when you take the keys for your new home. Get in touch with us at the earliest opportunity and we can discuss your particular requirements and introduce you to the team of professionals here who you can contact to obtain the relevant advice on all aspects arising.

Selling a Property

Do I buy or sell first?

If you are not a first time buyer and are thinking of moving house one of the first questions you will ask yourself is whether you need to sell your property first or buy your new property before placing your existing property on the market. We can provide you with advice on this, which will take both your circumstances and market conditions into consideration. After discussion with you, we can help you decide what would be the best option for you, having regard to your own particular circumstances.

What about Estate Agency?

Depending on the estimated value of your property we can put you in touch with a selected number of leading Estate Agents who will be pleased to visit your property and advise you on their marketing strategy for your property. We can help you make a decision as to who will be best placed to effectively market your property. You will be given an estimate in advance from the selected agent as to how much this is likely to cost.

Will I need a Home Report?

The vast majority of homes that are placed on the market will require a Home Report, which is prepared before the property is put up for sale. There are a few exceptions and we can advise whether your property falls into one of the excepted categories. However, even if your property does not require a Home Report, an Energy Performance Certificate will still be required. The Single Survey and Energy Performance Certificate will be prepared by a Chartered Surveyor and you will complete the Property Questionnaire. The cost of the Single Survey and Energy Performance Certificate will be set by the Surveyor and will depend on the size of the property – the average cost is estimated between £600 and £700 plus VAT. The three documents that the Home Report consists of should be no more than 12 weeks old when the property goes on the market. When you are ready to put your property on the market, we can assist by putting you in contact with a Chartered Surveyor, so that a Home Report is available the moment the property is for sale.

What legal work is involved?

At the earliest opportunity you should let us know about your intended sale of your property. At that time it makes sense for us to obtain the title deeds (possibly from your mortgage provider if you have an existing mortgage) in order that these can be checked. It may be beneficial to obtain certain Reports on your title in order to speed up the process of tying up the missives whenever an offer acceptable to you is received.

What is a “closing date”?

This is a date fixed by your Estate Agent and intimated to all solicitors who have noted interest on behalf of their respective clients to submit their formal offers at a certain time on the closing date for you to consider. The offers are submitted on a “blind bid” basis rather than an auction. We will then assist you in making your decision as to which offer you would like to accept. At that point we can assist in the negotiations so that the sale price, date of entry and items to be included in the price are agreed. Once exchange of all formal letters results in all the terms and conditions being agreed in writing there then exists a binding contract (commonly called “concluded missives”). Neither party can then withdraw without being in breach of contract and therefore liable for substantial damages to the other party in such event. It is common at this point to arrange for the date of purchase of your new property to coincide with the date of entry for the sale of your existing property. If the dates do not coincide then a bridging loan might be required.

What happens after the missives are concluded?

At this stage the purchasers’ solicitors will examine the titles on behalf of the purchasers. We will obtain a local authority property enquiry certificate to demonstrate that there are no outstanding problems e.g. any outstanding statutory notices (or if there are notices how they may be dealt with). Similarly if there are any alterations to your property then it is prudent to check first of all that all alteration documentation is in existence. Ideally any missing alteration documentation should be addressed and resolved before you find a buyer or a closing date is set since otherwise this might hold up conclusion of a satisfactory bargain with your intending purchaser.

What shall I do before the date of entry?

Once missives are concluded we will arrange for the Disposition in favour of the purchasers to be drawn up and signed by you. This will then be held by us until it is handed over in exchange for payment of the price at the date of entry. You will also need to make your own arrangements for removal from the property to give the purchasers vacant possession. Final meter readings and forwarding of mail to your new property will be your responsibility to arrange direct with the utility providers and with Royal Mail. We will also liaise with your mortgage provider to obtain a Redemption Statement indicating the full amount required to redeem your mortgage which will require to be paid off at the date of settlement of the sale of your property. Upon receipt of the price from the purchasers' solicitors we will then repay any outstanding mortgage to your lender and after deducting our fees, VAT and outlays for which an estimate will be given to you at the outset of the transaction the remainder of the money will be paid to you. It may be that these funds are required to purchase another property at the same time in which case we will arrange for the sale proceeds to be applied towards the purchase of your new property.

What happens after settlement?

If there are any outstanding matters after settlement of your sale we will advise you of what these are and what requires to be done in order to finally conclude matters satisfactorily.