



buying a property



At andersonbain, we think it is very important that both our new and existing clients fully understand the process of buying a home in Scotland.

This is only a brief account but hopefully will go some way to aiding your understanding of how the home buying process works and allay any of your concerns.

We would, however, stress that if you are uncertain about any aspects of your purchase transaction you should feel free to ask us at any time. We're here to help and to answer any queries you may have.

You can contact andersonbain on **01224 62 62 44** or by emailing us at enquiry@andersonbain.co.uk

andersonbain.co.uk

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mortgage facilities

Please note that the onus is on yourself to ensure your loan funds are in place in time for settlement. If not, you will be liable for financial penalties.

If you have not yet arranged a mortgage or require independent advice, we are happy to recommend a suitable mortgage broker who can advise you on the best deals to suit your own particular requirements.



noted interest

When you see a property you like, it is imperative that you get in touch with us as soon as possible in order we can note interest in the property on your behalf. Only a solicitor can note interest for you. Once we have noted interest, the property should not be sold to someone else without you having a chance to offer for it. As this is an informal system, you are unfortunately left with no legal rights should the seller decide to deal with a third party, without also giving you a chance to make an offer, but normally the system will work to preserve your interest in the property.



what happens after noting interest on your behalf?

(a) No other interest noted - negotiation

If no other interests are noted we will take the opportunity to negotiate as early as possible on your behalf. This may be done on the basis of the Home Report which in the vast majority of cases will be commissioned and paid for by the seller and available to you as purchaser to examine. Most lenders are happy to proceed on the information contained in the Home Report but some may require an additional survey or valuation to be carried out in which case we would recommend that any offer is submitted on a "subject to survey" basis.

If an agreement can be reached in principle, your lender will confirm their approval of the existing Home Report, request an updated version, or in some cases, instruct their own valuation of the property. On your instruction, we will then proceed to conclude the missives as soon as possible.

(b) Other interest noted - may lead to closing date

When noting interest on your behalf we will find out if any other solicitor has noted interest, and will advise you accordingly. Normally offers "subject to survey" will not be accepted at the closing date and accordingly it will be necessary either to rely on the terms of the Home Report or for us to instruct a surveyor on your behalf at that time. If there are other noted interests it would not be usual for us to negotiate, rather we would wait for a closing date to be advised, unless of course you specifically instruct us to make an offer prior to the closing date.



closing date

A closing date is effectively a blind bidding price competition. If there are two or more interested parties, and each party is in a position to make an offer, a closing date may be set. When the closing date is set all interested parties are given the opportunity to submit their sealed written offers on a specific date and at a specific time. A nominated representative from Anderson Bain will normally attend at the offices of the selling solicitor and submit the written offer on your behalf in the presence of representatives of all other interested parties.

Normally, the seller will accept the highest offer, but is not obliged to accept this or indeed any offer. The selling solicitor will take his or her client's instruction prior to accepting any offers submitted.

If you wish to make an offer at the closing date, we can give you our best advice on the actual price to be tendered, as well as all other conditions of the offer that may include the proposed date of entry, what's included in the price and of course, all the legal formalities.

survey / property valuation

Nowadays, a Home Report will, in the majority of cases, be available for you as a purchaser to examine before you make an offer on a property.

The survey / valuation element of the Home Report constitutes a reasonably detailed survey on the condition of the property and of course gives you information on the surveyor's professional opinion on its value.

You should note that when the legislation on Home Reports was introduced it was intended that the Home Report would satisfy the requirements of you as a purchaser and any lender - despite the fact that it was commissioned and paid for by the seller. In practice some lenders are, notwithstanding the existence of the Home Report and valuation, insisting on another survey or valuation being carried out on the property for their own purposes.

If your lender requires an additional survey, then we would recommend any offer be submitted on a "subject to survey" basis until that survey is obtained and you have confirmed you and your lender are happy with its terms.

the offer

We will submit the formal written offer on your behalf. The main conditions are price and date of entry (both of which we will advise you on). There are numerous other conditions which deal with various aspects of the purchase. For example, what is to be left in the property and the various title and planning matters.

It is very important to understand that in Scotland a property can only be bought and sold in writing, so that "verbal agreements" mean absolutely nothing unless followed by a legally binding written contract. Therefore you must never assume you have bought the property until we confirm the legally binding contract. Please also note that the missives are concluded by us and the selling solicitors on behalf of our respective clients and there is nothing for you to sign at this stage.



conveyancing

Conveyancing is an intensive process, which must take place and be completed between conclusion of missives and the date of entry. It involves a considerable amount of work between us and the selling solicitor. However, unless any unforeseen problems should arise, you should not expect to hear from us until nearer the date of entry when we will submit our statement of account. If a loan is involved we will arrange an appointment with you to sign the mortgage documents. At andersonbain, we try our best to ensure that our clients understand what can often appear a complex and daunting procedure.

The following guide may help: -

The Missives

The word “missives” is simply a Scottish legal term for a contract for the purchase or sale of a property. The missives usually comprise of the offer on your behalf, followed by an acceptance from the seller’s solicitor. This acceptance is usually qualified. This simply means that some parts of the offer need to be amended or clarified. In turn further qualification may be required on your behalf. However, at some point a final acceptance will pass and will therefore create a legally binding contract which we will confirm to you in writing immediately after the contract has been concluded.

The Disposition

This is the document signed by the seller which transfers ownership of the property to you. If you are purchasing with another person, e.g. your spouse or partner, you must decide whether you simply wish to own half the property each, or alternatively if you wish for your half to pass automatically to that person in the event of your death. This is something which you will require to discuss with us.

Examining the Title Deeds

Once the missives have been concluded, we will be sent the title deeds for the property, to examine in detail and satisfy ourselves that the title you are being offered is acceptable. There are other documents which require to be checked, such as the Property Enquiry Certificate, to make sure, for example, that there are no planning proposals or Local Authority Statutory Repair Notices which may affect the property, etc.

Standard Security

The Standard Security is the document which secures your mortgage and entitles your lender to repossess the property in the event of default by you. This requires to be signed prior to us requesting the loan funds from your lender. The Standard Security gives the lender the ultimate power to sell the property if you fail to make your payments on your loan. There are additional terms within the standard mortgage conditions which you must also agree to abide by. These will normally be detailed in the documentation furnished to you by your lender.

Affidavit

If the title to the property is to be taken in your sole name, you may be required to swear a statement stating that the property is not a matrimonial home. If this is the case it will be sworn at the same time as you sign the Standard Security, in the presence of one of our solicitors in their capacity as a Notary Public, or in the presence of a solicitor local to you if it is not practical for you to attend our offices.

Stamp Duty

Stamp Duty is the government tax levied on the purchase of property and requires to be paid at settlement. The government specifies the threshold over which Stamp Duty must be payable and the rates applicable. We will advise you of the rate (if any) that applies to your transaction. Stamp Duty is only payable on heritage (the land and buildings). We are therefore permitted to reduce your liability by attributing an agreed amount of the purchase price to moveables (contents). This will only be possible if both the Seller and your chosen Lender agree to an apportionment.

Registration Dues

All title deeds are registered at Register House in Edinburgh. The charge which applies depends on the value disclosed in the deed.

Loan Funds / Balance Due by You

It is our practice to usually request the loan funds one day prior to settlement of the transaction. This can prevent problems and delays experienced when loan funds are not received until very late on the day of settlement. In addition, any balance due by you should be with us far enough in advance of settlement to allow for clearance.

Statement of Accounting

As stated above, andersonbain cannot settle a transaction on your behalf until we have cleared funds for the entire amount of the transaction, including payment of our fees and outlays. The Statement of Accounting will break down the total amount due by you into our own fee, the outlays which have been incurred on your behalf and the VAT chargeable as applicable.

At andersonbain, we take great pride in the quality of the advice we provide. We have grown our business significantly through word of mouth, referrals and by the extra lengths we go to in exceeding our clients expectations.

Kevin Rattray - andersonbain partner





settlement

On the date of entry, we will normally go to the selling solicitor's office with our remittance for the purchase price.

In exchange, we will receive the keys, title deeds and the signed Disposition transferring the title to you.

Please note, there is never any guarantee at what time on the date of entry we will be able to uplift the keys on your behalf since this may depend on matters outwith our control. For example, receipt of loan funds or the selling solicitor being unable to settle. If you wish to arrange for furniture removal at a particular time, please bear this "variable timing" in mind. It is often best not to arrange for any deliveries to be made or tradesmen to attend until at least one day after settlement is due, to allow for unforeseen difficulties.

Titles

After settlement of your purchase transaction, we will attend to the registration of your title deed. Several months (more in complex cases) may elapse before the return of your registered title deeds. Where there is a mortgage you will not receive the title deeds as andersonbain are obliged to forward the titles to your lender for storage. However, if there is no secured lending over your property, andersonbain will be happy to retain your title deeds in our Deeds Store for safekeeping and at no cost to you.

Post Settlement Problems

The vast majority of purchases encounter no post settlement problems. Occasionally, problems can arise from a seller being in breach of contract. In these circumstances, we will be prepared to act on your behalf. However, it should be noted that this does not form part of the conveyancing process, and we will be obliged to charge in the usual terms of any Civil Action.

making a will

Once you have purchased a property, a new Will or revision of your existing Will is strongly recommended. If you care about what happens to your property after you die, you should make a will. Without one, the law of Intestacy directs who inherits, so your friends, favourite charities and relatives may get nothing. It is particularly important to make a will if you are not married or are not in a registered civil partnership (a legal arrangement that gives same-sex partners the same status as a married couple). This is because the law does not automatically recognise cohabitants (partners who live together) as having the same rights as husbands, wives and civil partners. As a result, even if you've lived together for many years, your cohabitant may be left with nothing if you have not made a will.

A will is also vital if you have children or dependants who may not be able to care for themselves. Without a will, there could be uncertainty about who will look after or provide for them if you die.

andersonbain can also advise you on how inheritance tax affects what you own.

buying a new-build property

There are one or two differences when it comes to purchasing a new-build property.

1. A standard offer will normally be issued for acceptance by you or on your behalf. A reservation fee for the property will be required to be paid by you. The missives will then be sent directly to us.
2. andersonbain will then contact you to go over the missives, which will usually be in standard terms.
3. We will normally arrange for a survey to be carried out and, if the survey is in order, we will send the signed missive back to the builder's solicitor.
4. Once an acceptance is received back from the builder's solicitor, you will then have a binding legal contract to purchase the property. There may also be a deposit to be paid at this stage.
5. The conveyancing aspects of the transaction are then dealt with by us and the seller's solicitor on behalf of our respective clients.
6. Although there is never a specific date of entry in the contract, the builder will give an indication as to when the property will be ready for occupation. Prior to the date of entry, the property will require to be passed as fit for habitation by the Local Authority.
7. For Stamp Duty purposes, there is usually no prospect of attributing any part of the price to moveables.

and finally..

We understand that buying a house is one of the biggest investments you may make and it can be a stressful time. We will always do our best to progress the transaction as smoothly as possible but you should feel free to contact us if you are unsure of anything at any time.

Our aim is to buy the right property for you, quickly and efficiently.





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