

## The house buying process and the key parties involved

- Introduction .....**
- The house buying process: overview .....**
- Role of Mortgage broker/estate agent/valuer/conveyancer/legal adviser .....**
- Mortgage Brokers .....**
- Estate agents /Solicitors and licensed conveyancers .....**
  - Drawing up the offer to buy .....
  - Investigation of title .....
  - Purchase/sale transaction .....
  - The mortgage and related documentation .....
  - Financial aspects.....
- Valuers.....**
- Process to contract exchange/completion: when a contract becomes binding.....**
- Methods of sale .....**
  - Private treaty & Public auction .....
- Process to contract exchange and completion.....**
  - Completion of the transaction .....
- Use of home information packs .....**
- Energy Performance Certificate (EPC) .....**

## Introduction

The purchase of a property, usually involves two processes: setting up the mortgage and buying the property; which have to be considered in parallel if we are to fully understand the role of various parties in the transactions and their significance to a customer.

It should be noted that owing to fundamental differences between the law applicable to England and Wales and that applicable to Scotland, the processes are entirely different. This chapter should therefore only be considered in relation to English/Welsh law. The house buying process in Northern Ireland is similar to that in England and Wales.

## The house buying process: overview

Most families would agree that buying a house is a huge and formidable transaction when viewed in the context of the household budget. Very few people are fortunate enough to be able to buy a property outright, so mortgage finance is required in order to spread the cost over a long period.

The typical initial contracted period for repayment of a mortgage is 20-25 years, though in practice British people trade up several times, repaying one mortgage and taking out another.

Owner-occupation has increased rapidly in the twentieth century to the point that it is now widely regarded as 'the done thing'. The would-be purchaser usually needs advice on the house buying process. As a first step, the obvious contact point is the lending institution. After all, there is no point in making an offer for a property if it is financially out of reach.

There are other specialists in the marketplace however who are as equipped, or arguably more so, to give advice on all or some aspects of buying a house. These include:

- Mortgage Brokers
- Estate agents
- Solicitors and licensed conveyancers
- Valuers

## Role of Mortgage broker/estate agent/valuer/conveyancer/legal adviser

### Mortgage Brokers

A mortgage broker is a specialist in obtaining the right mortgage for your circumstances.

Questions to ask them are

- Do you offer mortgages from whole of market or a panel? (whole of market means they can use all lenders rather than a select number of lenders)
- Are you independent? (means they can offer not only solutions from a mortgage lender but have other areas that may be more suitable for your needs such as secured loans or bridging)
- Will you provide support throughout the process?

## Estate agents

An estate agent is a specialist engaged by those selling houses to:

- Give advice on an appropriate selling price.
- Market the property in the most appropriate way.
- Guide the vendor through the sale process.
- Arrange visits to the property by interested parties.
- Deal with the initial formalities once a sale has been agreed.

Estate agents were once entirely local businesses, concentrating their activities within tightly defined catchment areas. The business has undergone fundamental change in recent years, with major national and regional chains of estate agents in the marketplace, some of them wholly owned subsidiaries of financial institutions.

Online estate agencies have also entered the property market, accounting for about 7% of estate agents property sales and rentals. Their business model is to offer low, flat fees, with no commission charged. The service offered is normally a scaled back version of the high street estate agent model, with additional costs for services such as accompanied viewings.

They may offer mortgage services, but most operate from a restricted panel and not whole of market.(see mortgage brokers section)

## Solicitors and licensed conveyancers

Conveyancing is the process of transferring the legal title of property from one person to another.

In England and Wales, conveyancing is usually undertaken by a solicitor or a licensed conveyancer. Either may use unqualified staff to carry out some or all of the conveyancing under their supervision. There is now strong competition for new conveyancing instructions, with a high number of firms of solicitors and licensed conveyancing companies offering a similar service and quoting similar fees.

It is vitally important for the applicant to engage the services of a conveyancer at an early stage in the process. The conveyancer serves several important role.

### Drawing up the offer to buy

The conveyancer will ensure that the funds necessary to carry out the purchase are in place or will be available by completion date before an unconditional contract is entered into. In practical terms, the conveyancer will wish to see an offer of advance from the lender. Usually contracts are drawn up with the completion date left blank for the time being.

If the buyer commits himself to buy and cannot conclude the transaction this can be financially catastrophic. The vendor would be able to sue for the monies due and for the difference between the eventual price and the actual price obtained. There would also be legal costs to be paid.

The conveyancer also has to establish exactly what is included and excluded in the sale. This is normally done through a standard questionnaire and should confirm what has been agreed informally between buyer and the vendor .

## Investigation of title

Investigation of title serves the following purposes:

- It establishes whether the vendor has a right to sell, or whether there are any factors that will inhibit the sale (such as a caution placed on a public register by an estranged spouse).
- It establishes that the property is what it is represented to be.
- It identifies any servitudes or other encumbrances that may affect the value or marketability of the property, such as easements or restrictive covenants.
- It may identify any local plans or developments which may impact on the value or marketability in the future.

This exercise is of benefit to both the lender and the applicant. The lender assesses that the property is marketable and therefore suitable as security for the loan: the borrower knows any factors that may impact on the value of the property or restrict the enjoyment of it.

In examining title, the conveyancer carries out a series of searches:

- If the land is registered, a search is made of the Land Registry.
- If the land is unregistered, a search is made of the Land Charges Registry to identify any factors that might affect title – in general, the conveyancer must search back over the previous 15 years for such details.
- If the land is unregistered, the conveyancer has to make a first registration at completion date. A bankruptcy search is carried out.
- The local land charges search determines whether there are any rights over the land such as local authority rights over the land.
- In some areas, such as South Yorkshire or South Wales, it is necessary to carry out a mining search to identify any potential subsidence problems.

## Purchase/sale transaction

The conveyancer deals with all aspects of the transfer of land from vendor to purchaser. Integral in this process is the exchange of contracts – this is the stage at which a legally binding contract is made between buyer and vendor. Generally, there is no right to enter the property until completion date – conveyancers usually advise against permitting the buyer to move in before then even if the property is empty.

The conveyancer prepares all the necessary documentation associated with the legal transfer of ownership of the property and the registration of this with the Land Registry.

## The mortgage and related documentation

In order to settle, the applicant must sign the legal charge. This must be witnessed. The conveyancer should guide the applicant on all documents to be signed without necessarily going through them line-by-line. Normally the applicant is happy to be guided by the conveyancer, and in practice is likely only to want to know the purpose or significance of each document. If there are any special features of note applicable either to the mortgage or the conditions of title, these should be discussed with the applicant.

In addition to signing the mortgage, the applicant may also have to sign deeds of assignment in respect of life assurance policies – this action gives the lender control over the proceeds of the policies. If the land is leasehold, the conveyancer has to guide the client through the significance of any clauses in the lease that might inhibit the use or enjoyment of the land.

## Financial aspects

The conveyancer has to ensure that all monies necessary to complete the transaction are available and transmitted by completion date. The financial aspects include:

- Paying off the existing mortgage if the applicants already have one. Drawdown of the mortgage.
- Drawdown of the balance of funds required.
- Payment of Stamp Duty Land Tax (SDLT), or Land Transaction Tax (LTT), if applicable.
- Settlement of other loans if this is a condition of the mortgage.
- Reduction of legal fees.

## Valuers

Before approving a mortgage application, the lender will want to check the property's value. To do this, the lender will usually arrange for a qualified valuer to inspect it, with the applicant normally having to pay for the valuation, even if they do not go on to buy the property.

The valuation is carried out purely to help the lender decide whether it is willing to lend, and if so how much, on the property the applicant wants to buy. The valuer makes a written report to the lender. The lender does not have to disclose the contents of the report, but some lenders will provide a copy or at least tell the applicant about any serious problems which may have been spotted during the valuation.

The valuation is not an extensive survey and will not necessarily identify all the repairs or maintenance that might be needed. For a full picture, the applicant should consider having a complete structural survey or a mid-range 'home-buyer's report' carried out. This can usually be done at the same time as the valuation.

## Process to contract exchange/completion: when a contract becomes binding

### Methods of sale

There are two methods through which a sale of a property may be made: Private treaty or auction. Private treaty is the most common method.

### Private treaty

The property is advertised on the basis of offers in the region of a certain price. Offers are usually invited 'subject to contract'. The highest bid may not be the one that is accepted. It is common, for example, for a lower bid to be more acceptable if the buyer has no property to sell, can offer a 'cash' purchase or complete the purchase in a shorter time frame. The latter may apply of course if there is no 'chain' involved in selling the purchaser's property.

### Public auction

Properties are marketed through a public auction on a set date in a specified location. They are advertised through catalogues and on the Internet. These catalogues provide basic information on the property, standard forms such as the Memorandum of Sale and standard draft contract and will state a 'guide price'.

The vendor usually agrees a reserve price with the auctioneer, enabling the property to be withdrawn if this threshold is not reached on the day. This may be different from the guide price advertised in the catalogue. Larger auction houses organise several major auctions each year, often bringing 250-500 properties to market on the same day. The property is sold to the highest bidder on the day.

## Process to contract exchange and completion

In bidding for a property, the purchaser must ensure:

- That the property is of sufficient quality to warrant a bid.
- That the property is adequate security for the mortgage finance.
- That the price will be acceptable.
- That the transaction can be completed within an acceptable time frame.

An offer to purchase is not usually legally binding (unless made at public auction) as it will invariably be made subject to contract. Normally this type of conditional offer will be put to the vendor who will then decide whether to accept or decline the offer.

If an offer is accepted the solicitors representing the purchaser and the vendor will then start work preparing contracts. It is only from the stage at which contracts are exchanged that the transaction becomes binding on both parties.

Offers to buy properties may be made at a price lower than that advertised. It is then up to the vendor whether it is likely that higher offers will be made later on. As we will see later, the system is subject to abuse in that an offer can be accepted, only for a higher one to override this later, known as gazumping.

Once an offer is accepted, contracts will eventually be exchanged, and the parties cannot turn back. The buyer is committed to buy and the vendor is committed to sell. It is from this point that the buyer becomes responsible for insuring the property, so his solicitor should inform the client of this responsibility.

## Completion of the transaction

At completion date:

- The mortgage is signed by all parties (this may have been done in advance) and comes into effect.
- All assignments if applicable take effect.
- The property is legally transferred from vendor to purchaser.
- All monies are paid over.
- The borrowers have a right of entry.

The solicitor normally prepares a completion statement. This shows exactly how all the monies involved in the purchase have been applied.

## Use of home information packs

Homes marketed for sale on or after 21 May 2010 no longer require a Home Information Pack (HIP), although an Energy Performance Certificate (EPC) is required, with sellers being required to commission the EPC, but not necessarily having received it, before marketing their property.

## Energy Performance Certificate (EPC)

An EPC confirms how energy-efficient a home is on a scale of A-G, with the most efficient homes being in band A.

EPCs also note, on a scale of A-G, the impact the home has on the environment. Better-rated homes should have less impact through carbon dioxide (CO<sub>2</sub>) emissions.

EPCs also compare the current grade for energy efficiency and carbon dioxide emissions with the potential grade that the home could achieve, if energy saving measures were put in place.

The average current efficiency grade is 'D', with all homes being measured using the same calculations. An EPC is valid for 10 years.

Further information at:

<https://www.gov.uk/buy-sell-your-home/energy-performance-certificates>

## What next

Contact the team at Try Financial on:

Tel: [01473 462288](tel:01473462288)

Or

Email: [enquiries@tryfinancial.co.uk](mailto:enquiries@tryfinancial.co.uk)

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