



# Buying a Home in Scotland



Our objective is to improve the scope and quality of housing information and advice throughout Scotland.

We aim to:

- identify and meet the needs of consumers
- improve the standard of housing information and advice provision.

HomePoint has an advisory committee with members drawn from a variety of backgrounds, including housing and consumer information, local authorities, voluntary agencies, legal, technical and financial organisations

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# Buying a home in Scotland

Compiled for HomePoint  
by the Scottish Consumer Council

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# Introduction

If you are reading this book you are probably looking forward to buying your own home. You may even be looking around for suitable properties. There is no doubt that most people gain a great deal of satisfaction from becoming a homeowner.

But owning a home also brings financial responsibilities, and you need to think about these before you decide to buy. This book will guide you through the Scottish system of buying a home and points you need to consider, from the costs of home ownership to what kind of mortgage to choose, that will help you decide how much you can afford.

Why move? It may be that your home no longer suits you because your circumstances have changed since you moved there. Perhaps it is now too small or too big, or you or someone living with you has become disabled, or with increasing years can no longer cope with the layout. Whatever your reasons, take time to think about what you want from your home. Everyone has different goals.

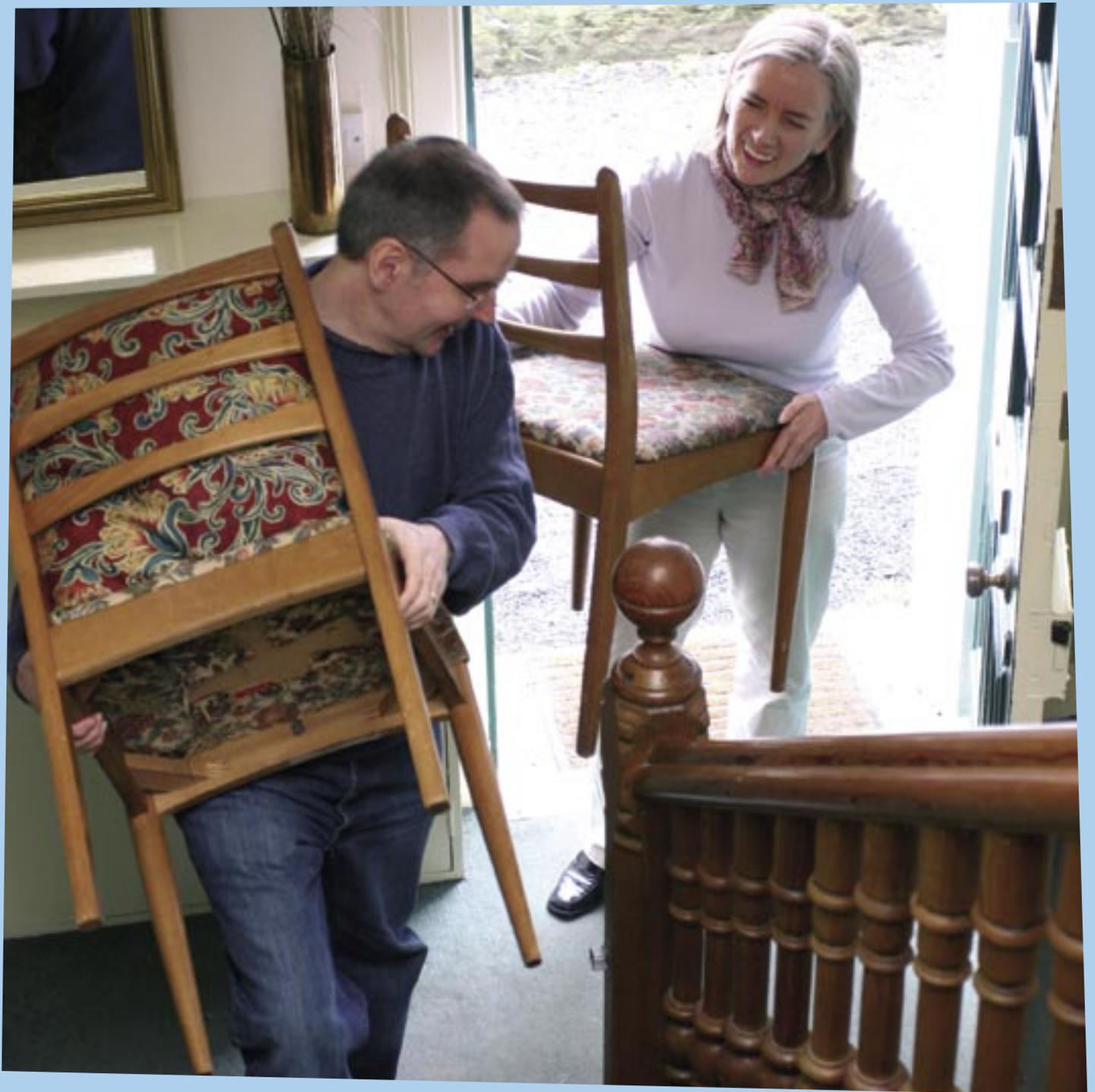
We hope this booklet will help you to make the right choice.

This publication replaces 'How to Buy a Home in Scotland' published by HomePoint and the Council of Mortgage Lenders in June 2000.

A fuller guide on buying and selling your home, *Moving Home in Scotland* (2nd edition, March 2006), published by the Scottish Consumer Council, from which the contents of this book are taken, is available from The Stationery Office, price £8.99.

## Acknowledgements

The Scottish Consumer Council would particularly like to acknowledge the work of Derek Manson-Smith who was the author of the publication. The author acknowledges with gratitude the use of information drawn from *How to Buy a Home in Scotland*, which was written by the Council of Mortgage Lenders.



## Part 1 Why move?

Moving home can be one of the more positive events of life, such as being able to afford a better home and standard of living or moving to another part of the country. Unfortunately, it is often associated with one of the more stressful events of life, such as changing job, starting a family, divorce or bereavement.

It is worth considering whether you really need to move, especially if you are happy where you are.

If your home needs serious repairs done to it, you may be able to get a home improvement grant from your local council. These are discretionary and depend on the age and value of your home. If your home is short of basic necessities, you may be eligible for a grant to cover installing them, such as a bath or shower, a wash-hand basin, a sink, hot and cold water and a toilet. If you or someone in your family is disabled and your home is short of basic necessities or needs adaptations to make it suitable to live in, you may be able to get a grant from your local council to cover installing the basic necessities or making the adaptations or both.

If you own your home and you or someone in your family is elderly and, because of this, cannot cope with the layout of your home, you could qualify for a grant to make suitable alterations if your council has a care-and-repair scheme.

However, if you don't want to or can't stay where you are, you may want to consider whether you want to rent or buy. Home ownership carries with it heavy responsibilities for maintenance of the property, and usually the burden of paying for a mortgage for many years. Renting may be more flexible and better suited to those in more casual employment, or who tend to move from one part of the country to another, and it may be cheaper in the long run.

If you are getting older, you may wish to consider buying or renting some kind of sheltered accommodation. This guide does not cover sheltered accommodation, but you can find details of where to go for more information about this subject in Part 6.

If you own your home and decide to move, you will need to decide whether it is best to buy a new home or sell your existing home first. This will depend on your circumstances and you should discuss them with your solicitor.



# Part 2 Buying a home: making a decision

## Introduction

Scotland has its own legal system and law governing the ownership of land and property. Most residential property is sold on the basis that the buyer gains the right to occupy and use it for as long as they own it. The concepts of leasehold and freehold found elsewhere in the United Kingdom do not generally apply in Scotland.

In Scotland, you make a written offer to buy and the seller accepts it in writing. A number of letters, known as 'missives', clarifying details and conditions of the offer and acceptance may be exchanged. Once these details are agreed, 'missives are concluded' and you have a binding contract (see Part 3, The missives). Should you be unable to fulfil your obligations in the missives, you may be liable for damages to the seller of thousands of pounds. Therefore, before making an offer, you must get legal advice and arrange the finance to meet the purchase price (see Part 4, How much can I borrow?).

Until missives are concluded, it is possible for either the buyer or seller to withdraw without penalty, although this rarely happens in practice. Once the missives are concluded, however, you will have a binding contract and an agreed date of entry (see Part 3, The missives).

The legal aspects of buying a home are explained in more detail in Part 3.

## What can you afford?

At the end of the day, it may be that cost is the deciding factor in whether you rent a furnished home, rent an unfurnished home or buy a home. The decision is yours but if you decide to buy, you should consider the essential costs that should be included in your budget.

You can use the following table to help you work out the essential costs.



## Costs of buying and owning a home

One-off costs	£
Deposit towards purchase price	
Mortgage arrangement fee	
Mortgage indemnity guarantee (high lending fee) <sup>1</sup>	
Solicitor's fees and expenses	
Stamp duty land tax <sup>2</sup>	
Registration fees	
Removal	
Furniture etc	
Telephone or cable reconnection	
<b>Total</b>	
<b>Continuing costs</b>	
Factor's or common charges <sup>3</sup>	
Mortgage payments/life insurance premiums	
Mortgage payment protection insurance	
Buildings insurance premiums	
Contents insurance premiums	
Exterior repairs and maintenance costs	
Interior repairs and maintenance costs	
Electricity bills	
Gas bills	
Telephone bills	
Internet/broadband/cable bills	
Council tax, water and sewerage charges	
<b>Total</b>	

<sup>1</sup> Some lenders may require this if you are borrowing more than 75% to 80% of the purchase price

<sup>2</sup> Where the purchase price is more than £125,000

<sup>3</sup> If you live in a block of flats or tenement

## Buying your rented home

If you are a Scottish secure tenant of a council (including a housing management cooperative), a housing association or other registered social landlord (that is registered with Communities Scotland) or a water authority, you may have a legal right to buy your home at a discount. This does not include accommodation provided under a contract of employment, that is, tied housing, certain temporary lettings, and homeless accommodation.

If you are unsure about whether you currently have a right to buy, you should check with your landlord.

The main requirements are:

- you must normally have spent at least two or five years (depending on when your tenancy started) as a secure tenant immediately before making the application;
- the home you rent must be occupied by you as your only or main home.

You need not have lived in the same home or had the same landlord all the time. For example, you can also count time spent as a tenant of certain other bodies, such as the armed forces, a water authority or the Forestry Commission.

If your tenancy dates back to before 30 September 2002 and it allowed you to exercise the right to buy, the old terms and conditions will continue to apply to the right to buy for as long as you remain in that tenancy. However, with some limited exceptions, if your tenancy started on or after 30 September 2002 then the new terms associated with the modernised right to buy will apply. This is known as a 'preserved right to buy'.

You cannot buy your home if:

- you do not have a Scottish secure tenancy or a preserved right to buy;
- you rent from a charitable housing association, which normally would have obtained charitable status before 18 July 2001, unless you had a right to buy as a tenant of the landlord before 30 September 2002;
- your landlord has fewer than 100 homes;
- your home has special features for elderly people;
- it is part of a group housing scheme for people with special needs where the tenants have special facilities for their use or they are provided with housing support services or both;
- it is required by an islands council for accommodation connected with education;
- your home forms part of a fully-mutual cooperative housing association;
- your home is earmarked for demolition and your landlord has obtained a consent to refuse to sell;
- you rent from a council that has been granted 'pressured-area status' and your tenancy started after 30 September 2002.

In addition, your landlord may refuse to sell if you have arrears of rent, council tax, water and sewerage charges, or other amounts owing as a result of your current or a previous tenancy, or if your landlord is in the process of evicting you because of your conduct.

Contacts for further information on buying your rented home are given in Part 6.

## Other options

### Shared ownership

Some housing associations and private developers operate a shared-ownership scheme, where the home is owned jointly between the landlord and tenant. You buy a share in the home (25%, 50% or 75% of the purchase price) and pay rent on the balance. You can buy additional 25% shares once a year, so that you eventually own the home, or you can carry on renting.

### Homestake

If you are on a low income and cannot afford the price of a home, this scheme allows you to share a stake (normally between 60% and 80%) of the market value of a property, with the option for increasing it to 100% later. The scheme is similar to shared ownership (see above), except that you will own the property outright and do not have to pay rent on the balance. For further information, see Part 6.



## Rural Home Ownership Grants

If you live and work in a rural area and are a first-time buyer or you are a pensioner, sick or disabled and have a local family connection, and cannot afford to buy a home, you may qualify for a Rural Home Ownership Grant towards the cost of buying or building a home. For further information, see Part 6.

## Crofter Housing Grants and Loans

If you are a registered crofter, you may be able to get a grant or loan to help you with the costs of building a new croft house or of improving an existing croft house. The Scottish Executive Environment and Rural Affairs Department administers the scheme. For further information, see Part 6.

## Cash-incentive scheme

If you are a tenant of a council or registered social landlord you may qualify for a grant towards the purchase of a home in the private sector. Some councils operate cash-incentive schemes that aim to free up council accommodation for reletting to others in housing need while providing financial assistance to aspiring homeowners. To find out more about the scheme, contact your landlord.

## Where to look for homes for sale

### *New homes*

If you want to buy a new home, you should contact a builder directly or the builder's sales agent. They normally advertise in local newspapers, on television, on the Internet, sometimes through solicitors, and in *Scotland's New Homebuyer*, which is a free quarterly publication available from building societies, solicitors' property centres, and selected banks and estate agents.



### ***Older homes***

If you want to buy an older home, there are three main sources of information.

### **Newspapers**

Most homes for sale are advertised in local newspapers by estate agents, solicitors and private individuals. Daily papers usually have a set day for property advertisements and some publish a weekly supplement.

### **Estate agents**

Remember that the estate agent is working for the seller, not for you, the prospective purchaser. This is the case even if the agent offers to provide other services, such as to help you find a mortgage. It is a good idea to contact local estate agents in the area and give them details of the type of home you are looking for and the price range you can afford. You can get details of any homes they have on offer and get on their postal and e-mail lists for details of homes that come onto the market later. The larger agents publish details of properties throughout Scotland in free news-sheets and on their websites. An estate agent will usually arrange for you to view likely homes and, if you are interested, will negotiate with you on behalf of the seller.

### **Solicitors' property centres**

Solicitors' property centres act for solicitors who subscribe to them. They keep details of properties on offer and maintain mailing lists for homes coming onto the market. If you register your requirements on their websites, you will be sent details of suitable properties by e-mail. You can find details of solicitors' property centres on the Scottish Solicitors Property Centres website at <http://www.sspc.co.uk/>. Usually, viewing will be arranged through the solicitor working for the seller, and the property details will include information on viewing. Any subsequent negotiations are conducted with the selling solicitor. Remember that, as is the case with an estate agent, the solicitor who is selling the property through a property centre is working for the seller, not you.

## Viewing

Before you view a home, you should think about the things that are important to you. The following list gives some suggestions:

- the neighbourhood – local amenities, such as schools, places of worship, shops and public transport, and neighbouring properties;
- car parking;
- space for children to play;
- gardens and balconies;
- safety and security;
- open-plan living space or separate rooms;
- fittings, fixtures and equipment – what you need that may be included and what you will be wanting to take with you;
- storage space;
- the layout of rooms;
- noise from neighbours;
- daylight and views;
- heating costs;
- council tax band;
- broadband access, cable television connections or satellite dish;
- whether old lead piping has been replaced;
- alterations that have been done or that you may wish to do (see Part 2, Alterations);
- in the case of flats, whether the building is managed by the owners or a property manager or factor.

When you view properties, keep a record of those you visit and make notes on the property description. Collect as much information as you can so that you can read through it later.

If you are interested in a particular property, you should visit the neighbourhood and the home again during the day and at night, on a weekday and a weekend. They may seem very different at different times.

## Alterations

### *Alterations made by the seller or previous owner*

If the seller or a previous owner has made any alterations to a property you want to buy, these may have needed planning permission or building-control consent or both. Some properties that have special character may also be listed as of special architectural or historic interest: changes to these buildings need listed building consent. There may also be conditions in the title deeds that prohibit alterations that have been made. Your solicitor should enquire about alterations and, where these have been made, ensure that any necessary permission, building warrants, consents and completion certificates have been granted. If any permission, warrant, consent or certificate has not been obtained that should have been, you could be faced with very expensive work to meet the conditions or undo the work. So, make sure that your solicitor makes these enquiries.

### *Alterations you may want to make*

If you are planning to make alterations to a property you are going to buy, you should find out whether you need, and can get, permission before you make an offer as this could affect your decision to buy.



## Planning permission

You will not need planning permission for certain minor changes, for example, most loft conversions or dormer windows, hedges, low fences and walls and a satellite dish up to 90 cm in diameter. For some changes, you do not need planning permission provided certain conditions are fulfilled, for example, small extensions, garages and outhouses. Most porches to the front of a property do require planning permission.

You will need permission or consent or both, even for those changes that do not normally require it, if:

- the property is a listed building (that is, a building listed under the Town and Country Planning (Scotland) Acts as being of special architectural or historic interest);
- the property is in a conservation area (that is, an area designated as of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance);
- in other circumstances if conditions have been imposed restricting the types of changes allowed.

It is important to be absolutely sure about the position, so you should always contact the planning department at your local council before starting any work.

## Building control consent

As well as planning permission, you may need building control consent. For example, you need to have building control approval for internal and external alterations to existing buildings and new or altered drainage systems. Again, you should check beforehand whether the work you are planning to do needs a building control warrant.

## Title deeds

The title deeds are the legal documents that set out your rights of ownership of a property, and they may restrict the changes you can make to it. For example, they can prohibit the use of the property for business purposes or specify how the exterior of the building should look.

## Special treatments, guarantees and insurance

Your solicitor should ask for details of any special treatments that have been carried out in the property, such as treatment for wet or dry rot, or the installation of a damp-proof course.

Special treatments should be covered by a guarantee or insurance policy. Make sure that your solicitor checks that any guarantees or insurance policies are valid and can be transferred to you. If the company that provided the guarantee has gone out of business, then it will be useless unless it is backed by insurance. It will also be of little use if the guarantee period is due to run out soon.

A home that that was built, converted or renovated 10 years ago or less may be covered by a National House-Building Council Buildmark warranty or Premier Guarantee warranty and one that is less than 15 years old may be covered by a Zurich Building Guarantee warranty (see Part 3, Newly-built property and newly-converted or renovated property). These warranty policies can be transferred to a new owner but they exclude damage or defects that you knew about when you bought the home or which might reasonably have been discovered by a survey.

## Fixtures, appliances and central heating

Any fixtures and appliances included in the purchase price should be in reasonable working order. You should try to find out how old they are, whether they are still under guarantee and, if so, whether the guarantees can be transferred to you.

Central heating systems can cause problems. Find out if there is a maintenance contract or, if there is not, how old the system is and when an engineer last looked at it. If you are having a homebuyer's or building survey done, ask your surveyor to check if the system is working and appears adequate. But remember that the surveyor is not a heating engineer. For peace of mind you may wish to instruct a heating engineer to check the system.

## Running costs

You should find out as much as you can about the running costs of a home before you buy. Details of some of the outgoings should be easy to get. For example, information about council tax, water and sewerage charges will be available from the seller or the seller's agent.

Other costs will depend on your lifestyle. For new homes, the National Home Energy Rating (NHER), which gives you an indication of a house's annual energy costs, may be available if the builder has had an assessment carried out. You could commission an assessment yourself, which would cost between £50 and £150. From 2008, for an older home, and possibly for a new home, you must be given an energy report on the condition and energy efficiency of the property. In the meantime, you could commission an NHER assessment, which would cost between £75 and £200. For more information, see Part 6. You can also get some idea of fuel costs for an older home by asking the seller what the average cost of gas and electricity was for the last year.

The following list includes the main outgoings you should allow for:

- Mortgage payments (see Part 4)
- Council tax, water and sewerage charges
- Insurance premiums – contents and buildings (see Part 2, Insurance and Responsibilities of flat owners: insurance), mortgage payment protection (see Part 4, Mortgage payment protection insurance), life (see Part 4, Life insurance)
- Fuel – electricity and gas, oil, or coal
- Telephone, internet and cable/satellite
- Television licence
- Repairs and redecoration – interior and exterior
- Factor's or service charges (if you live in a flat – see Part 2, Responsibilities of flat owners)

## Insurance

### *Contents*

You are under no obligation to insure the contents of your home. However, a home contents insurance policy, besides covering your belongings, provides valuable additional cover. If your home is badly damaged and you have to move out while repairs are carried out, the policy will usually pay towards the reasonable cost of alternative accommodation. Your legal liability for injury to someone or damage to his or her property while in your home is usually covered, as is your liability in day-to-day life if, for example, as a pedestrian you cause an expensive traffic accident. It is important to shop around for insurance, to check what will be covered, and to read your policy once you receive it to see what is included.

### *Buildings*

If you have a mortgage, the lender will insist that you take out buildings insurance covering the reinstatement cost of your home, that is, the full cost of rebuilding the property and not just its current market value. If you buy a flat, you and your fellow owners are legally obliged to insure your own flats for their reinstatement values. Alternatively, you and your fellow owners could agree to meet that obligation by taking out a common insurance policy for the reinstatement value of the whole building.

Most mortgage lenders offer buildings insurance as part of a package with the mortgage. Normally, you do not have to insure through the lender, but if you buy your insurance elsewhere, your lender may make a small charge for checking that the policy is suitable backing for the loan.

You are responsible for making sure that your insurance cover is adequate. Any significant under-insurance could mean that any claim you make might be reduced or even rejected. Your valuation or survey report will normally contain a recommended amount for buildings insurance.

Buildings insurance, as well as covering the structure together with the fixtures and fittings, also covers your legal liability as the owner. For example, if someone is injured or damage is caused to their property because of your negligence, you could find yourself having to pay damages or compensation, which may amount to a lot of money.

If you live in a flat or share ground or property with other people, your insurance should cover your share of responsibility for common parts (see Part 2, Responsibilities of flat owners: shared boundaries).

## Potential problems with neighbourhoods and neighbours

### *The neighbourhood*

You can get a good idea of a neighbourhood by visiting it at different times of the day and week before you buy. Consider things like vacant land nearby. This may become the site of a new housing or industrial development. Other factors to consider are the proximity of things like a pub, a take-away, a school playground or a disco. The neighbourhood may be too noisy for you or there may be heavy traffic congestion or pollution at certain times of the day.

Car parking can cause problems, even if you do not own a car. A shortage of parking spaces can lead to disputes between neighbours. In some inner-city areas, car owners have to pay for a resident's parking permit to park outside their homes.

### *Neighbours*

Although you cannot choose your neighbours, you can look for features that reduce the likelihood of problems. These include marked parking spaces for visitors' cars, separate driveways and front paths, doorways that do not face each other directly, and proper bin-storage areas.

If you live in a block of flats, the garden may belong to the ground-floor flat or be shared by other owners. If it is shared and you live on the ground floor, you may have little control over who can use the garden. You may not enjoy a garden full of party-goers or children playing near your windows.

Noise is a major cause of disputes between neighbours. If you can hear your neighbours, they can also hear you. When you look at a home, you should consider:

- the quality of the construction of the home: for example, in older converted houses the floors between flats may not provide enough noise insulation;
- the layout, or the way spaces in neighbouring homes are organised: for example, the living room, kitchen, hall and bathroom of a flat on one floor should not lie over bedrooms in the flat below.

## Responsibilities of flat owners

Owning a flat is a lot more complicated than owning a house. When you own a house, you only have to look after your own property. When you buy a flat, you also take on a share with the other owners of maintaining the common parts of the building. These can include the roof, the shared entrance, the stairs, a lift (if there is one), the outside walls, the garden and, in some cases, cleaning and caretaking services.

### *Tenements and multiple-occupancy buildings*

Legally, every flat owner has some responsibility towards the repair and maintenance of shared areas and services. In many cases, the title deeds of the property will set out the common areas of the building you can use and for which you are responsible, what share of the maintenance you pay, how decisions should be reached among the various owners, and whether you have to employ a factor to look after the property.

If there are gaps in the title deeds, such as them not saying how decisions should be taken or not describing all the common parts, or defects, such as allocating shares of costs that do not add up to 100%, then the Tenement Management Scheme will fill the gaps or correct the defects. The scheme is part of the Tenements (Scotland) Act 2004. It does not affect your ownership of your flat. You can find further information in *Common Repair, Common Sense: a homeowner's guide to the management and maintenance of common property* (see Part 6).

If you buy a new, modern or converted flat, there will usually be a deed of conditions about the development or the building. This sets out what you can and cannot do with your property, for example, whether you can keep pets or restrictions on the decoration of the outside of your property, and may provide for the appointment of a factor.

### *Former rented flats*

If you decide to buy a flat that you have been renting from a public-sector body, such as a council or a registered social landlord (see Part 2, buying your rented home), the same general rules apply as to any other flat buyer. The title deeds will set out your rights and duties towards other owners. However, your former landlord may own some of the other flats and, if it owns most of them, it will be open to it to do repairs and maintenance as and when it decides. As a joint owner, you will be responsible for meeting your share of the costs.

You should be absolutely clear about what you are buying, for example, whether you actually own or share ownership of the garden or drying green, which will mean that you also have to share maintenance costs, or whether you only have rights of access.



## *Insurance*

Adequate insurance is a common property obligation. You are not adequately insured unless you and all your fellow owners in the building are adequately insured. While you are responsible for insuring your own flat, you and your fellow owners are legally obliged to insure your flats for their reinstatement values. When you take out a mortgage, your lender will insist that you have buildings insurance that meets its requirements (see Part 2, Insurance: buildings). This should cover damage to your own flat and also your share of the common parts of the property. However, problems can arise if any other owners do not meet their common property obligations and are under-insured. In the event of a claim for repairs to the common parts of the building, the cover provided by those who are not adequately insured may not be enough to pay the costs.

If you buy a flat in a building that has a factor, you will probably find that there is already a common insurance policy covering the whole building. The duty to have this is usually in the title deeds. Sometimes, the cover provided by a common policy has not been kept at an adequate level. This creates no problems if each owner has adequate cover but it can lead to problems if some owners are not adequately covered. If a common policy provided by a factor does not cover the reinstatement value of the building, you and your fellow owners can enforce the obligation in the courts.

## *Shared boundaries*

Where you share a wall, be it part of a building or a boundary wall, fence or hedge that separates your property from another, you will probably have a joint responsibility for its maintenance. The title deeds may say what part is owned by whom and may specify the share of the maintenance. If the title deeds don't tell you, the boundaries and share of the maintenance will be determined by the Tenement Management Scheme (see Part 2, Responsibilities of flat owners: tenements and multiple-occupancy buildings).



# Part 3 Buying a home: the legal process

## Making an offer

Once you have decided which property you wish to buy, your solicitor or qualified conveyancer (see Part 3, Conveyancing: introduction) will need to make a formal written offer for it to the seller. The procedure for offering for a newly-built property is described in Part 3, Newly-built and newly-converted or renovated properties.

In Scotland, most houses and flats are sold through a system of 'blind bidding'. The seller asks for 'offers over' a particular price. This is an indication of the minimum price the seller expects to fetch. How much you will actually have to pay will depend very much on how busy the market is at that particular time and how much competition there is from other potential buyers. It will usually be possible to find out how much interest there is in a property by asking the seller how many people have noted interest in the property, or how many surveys have been carried out.

Sometimes property is advertised at a fixed price where the seller will accept the first offer for that amount. This may be because there is little activity in the market or the seller is looking for a quick sale. The seller may also offer the property at a fixed price as a starting point for negotiations on price. If you decide to make an offer, your solicitor or qualified conveyancer will prepare one on your behalf and submit it to the seller's agent. If it is accepted without qualification, you will be in a legally-binding contract, so it is essential that your loan arrangements are agreed beforehand.

## The closing date

If a number of potential buyers show an interest in a property, the seller's agent will set a time and date – the closing date – for offers to be made. This should allow enough time for interested parties to arrange a valuation or survey (see Part 5) and finance for the purchase. If you are seriously considering making an offer, make sure your solicitor or qualified conveyancer formally notifies the seller's solicitor of your interest before you arrange a survey (see Part 5) and finance (see Part 4), or you may not be informed if a closing date is set. In some areas of Scotland, it is becoming more common for offers to be made subject to survey, in order to avoid the buyer paying for multiple surveys on properties they fail to buy.

You will have to decide how much you are prepared, and can afford, to offer for the property, and then make your offer in competition with other potential buyers at the closing date. The seller does not have to accept the highest offer but usually will unless it has unacceptable conditions attached. The seller may prefer an offer that has a later or earlier entry date if there is not much between the offers.

From 2008, potential purchasers must be provided with a survey report and other information about the property. Guidance on how the system will work will be available nearer the time.

If a closing date is not set, that may be because of a lack of interest in the property or simply a slow market and you may be able to negotiate a price for it.

## The missives

Your offer to buy and the seller's acceptance must be made by your respective solicitors. They take the form of an exchange of letters known as missives.

Here are the sorts of things that will be in your offer, which your solicitor should explain to you. It should include a brief description of the property, the proposed date of entry and the price. It may also include any items that you wish to buy from the seller. It will also include a number of conditions, which vary from one transaction to another. For example, these are the main conditions you should expect:

- that there are no planning requirements or unreasonable conditions in the title deeds affecting the property;
- that planning and building control consents and completion certificates required for any alterations will be provided;
- that the street, pavement and main drains are public and maintained by the local authority;
- that there are no proposed road-widening schemes that may affect the property;
- that there are no outstanding statutory notices that affect the property, for example, a tree preservation order issued by the council;
- that the seller is genuinely the owner of the property and that his or her right to sell is not restricted in any way.

Your offer should ask the seller to accept it within a specified time. If you are buying a flat, your offer should also include conditions that the maintenance of the common parts is shared fairly, and that there are no outstanding charges for common repairs, for example for work to the roof agreed to by the seller.

The date of entry is the date on which you are to be given possession of the property, when you pay the seller the agreed price in exchange for a disposition (the document that transfers the title of the property from the seller to you). If you are relying on the proceeds of the sale of an existing property to help finance the purchase, you should try to get the dates to coincide. If you can't arrange this, you will have to take out a bridging loan to tide you over (see Part 4, Bridging loans).

The seller may not accept some of your conditions and may wish to vary others, in which case he or she will return a 'qualified acceptance' of your offer. Your solicitor should explain what the terms of the qualified acceptance mean. Once the conditions and any qualifications are agreed, a formal letter of acceptance is sent and the missives are concluded. You will then have a binding contract.

## Once the missives are concluded

Once you have an agreed contract with the seller, your solicitor will carry out the conveyancing. This is the legal process of transferring the title of the property from the seller to you. It is described in Part 3, Conveyancing.

If you are taking out a mortgage, you should make sure that an application has been made to the bank or building society and that any linked life insurance is in hand.

You should make sure that the property is adequately insured from the conclusion of the missives, although you are not legally required to do so until the date of entry, as the seller's insurance may not be adequate.

It is possible for you and your spouse or partner to buy a home together by offering in both your names and having the title deeds prepared in your joint names. The deeds can provide that on the death of either of you, the title of that person shall pass automatically to the survivor. If you do this, it may affect any will made in the past or future, so you should discuss this with your solicitor.

## Newly-built and newly-converted or renovated properties

The procedure for buying a newly-built home differs from buying an existing one. The home you see advertised may be part of an incomplete estate or may not even have been built yet, and it will usually be offered at a fixed price. Similarly, a conversion or renovation may be offered for sale before the work is complete. With a newly-built home, the builder makes an offer to sell to the buyer.

### *Newly-built property*

#### **Making an offer**

Most builders have a standard form of offer that sets out the conditions on which they are prepared to sell. They will not usually vary these as they are designed to impose similar terms on all properties in a development. You should make sure that you have arranged your loan and taken legal advice before you accept the builder's offer, because your acceptance is legally binding. However, you may be able to reserve a home until you are ready to accept the offer by paying the builder a small deposit. It is at the builder's discretion whether to return the deposit if you do not go ahead, so ask before you pay it.

#### **Deed of conditions**

Normally, you will also be asked to accept, without adjustment, a deed of conditions. This sets out what you can and cannot do with your home, with the aim of protecting the appearance and use of the development.

#### **Stage payments**

When you offer to buy a home that is not yet built, the builder may ask for stage payments. If you are buying with a mortgage, the lender will usually agree to release stage payments at certain stages. The stages depend on the type of construction and the lender's policy. The lender's surveyor will inspect each stage before payment, and you will have to pay the surveyor's fees. You should make sure that the stage payments in the builder's standard offer and the lender's mortgage offer coincide.



### **National House-Building Council Buildmark scheme**

Buildmark is a ten-year warranty and protection scheme offered by NHBC-registered builders. It is not a guarantee. It protects you against the builder going bankrupt before the home is completed, provides an undertaking to repair faulty work within the first two years and insures against major damage of defined types and defects in the drainage for a further eight years.

### **Zurich Insurance Building Guarantee**

This warranty is offered by builders registered with Zurich Insurance. From your acceptance of the builder's offer, it protects you against loss of money paid as a deposit in the event that the builder is unable to complete the contract due to liquidation, bankruptcy or fraud. It also provides ten years' cover against major structural damage and in year nine you can apply for an extension for a further five years.

### **Premier Guarantee for New Homes**

This guarantee is offered by builders registered with MD Insurance Services Limited. It protects you against loss of money paid as a deposit in the event that the builder is unable to complete the contract due to liquidation, bankruptcy or fraud, against defects for which the builder is responsible for two years and against major structural damage for a further eight years.

Contacts for further information on these schemes are given in Part 6.

### ***Newly-converted and renovated property***

A home that has just been converted or renovated will not comply with the same building standards as a newly-built home. For example, the window frames in a new home are factory treated against wet rot, while in a conversion, if the frames are sound, a builder probably won't replace them. Also, a new home may be better soundproofed and insulated than a converted or renovated one. However, all of the work will have to comply with the Building Standards Regulations, which require much higher standards than you would find in an older home.

Builders registered with the NHBC, Zurich Insurance or MD Insurance Services Limited may offer warranty policies on newly-converted and renovated properties similar to those for newly-built homes (see Part 3, Newly-built property).

## Conveyancing

### *Introduction*

Conveyancing is the process of transferring the title (ownership) of a property from the seller to the buyer. It starts as soon as the missives are concluded and you have a 'bargain', that is, a legally-binding contract. Therefore, conveyancing is involved whether you are buying or selling or both. While it is theoretically possible to do the work yourself, conveyancing is a complex process that involves the most valuable asset you are likely to own. If you are taking out a mortgage, your lender will not, as a general rule, agree to you doing your own conveyancing. It is therefore safer to use a solicitor or a qualified conveyancer to do the work.

Traditionally, solicitors have carried out the legal work in buying and selling property. You could also use a qualified conveyancer, who is not a solicitor but is qualified to carry out conveyancing. He or she must be registered with the Law Society of Scotland, which is responsible for setting standards for training and qualifications and for carrying out disciplinary functions. If you want to find an independent qualified conveyancer, you can get the names and addresses from the Law Society of Scotland or Registers of Scotland Executive Agency (see Part 6). Further references to solicitors in this part apply equally to qualified conveyancers.

A solicitor cannot act for two parties where his or her interests conflict or where there is a serious possibility that a conflict may arise, such as between a buyer and a seller.

You will be asked to sign documents at various stages of the process. Make sure that you are given an explanation of the meaning of any documents and that you understand them before you sign.

Unless you are a first-time buyer, the conveyancing involved in buying is usually carried out in parallel with the conveyancing involved in selling. If you are moving locally, your solicitor will carry out both procedures. However, if you are moving out of the area, you may find it more useful and convenient to use a local solicitor to do the conveyancing for your purchase.

Once you have a legally-binding contract, your solicitor will investigate the property and its title. Your solicitor will get the deeds, including the title deeds and any deed of conditions that applies to the property, from the seller's solicitor and do the following.

- Check the land certificate and the deeds to make sure that the seller actually owns the property, and that the deeds are free from defects and do not contain any unusual or unreasonable conditions that will affect your use of the property.
- Tell you about any burdens (limitations or legal restrictions) or servitudes (obligations to allow someone to use the land or prevent you from making use of it) that affect the property.
- Check the rights of the 'superior' – a person or company who has retained some rights from the date of the property's original sale.
- Ask the local authority and water and sewerage authority whether there are any impending plans that might affect the property.
- Make sure that the ground burdens, such as factor's fees or maintenance charges for a common garden, are properly divided between you and the seller.
- Make a compensation payment to the former superior for feu duties, if applicable, where the date of entry is before 28 November 2006.

### *Standard security*

This is the legal agreement that grants security over the property to your lender, if you have a mortgage. This means that if you don't keep up the loan repayments, the lender would be able to sell your home to recover the amount lent to you. The agreement has to be drawn up by a solicitor, and can normally be done by your solicitor, as long as your lender agrees to this. Although the work is being done for your lender, you are the one that pays for it, so it will be cheaper for you if your own solicitor can do it. So, check whether your lender will use your solicitor before instructing him or her. When the document is ready, you will have to sign it.

If you are married, or in a civil partnership and are buying the house in your name only, your solicitor must get your spouse's or civil partner's consent to grant the standard security to your lender.

### *Occupancy rights*

When a husband and wife live together, but only one of them owns the home, the other has the right to live in it. Similarly, when a man and a woman are (or were) living together as if they were husband and wife, but only one of them owns the home and the other has been granted occupancy rights by a court, they have the right to live in it for the period granted by the court. From summer 2006, if two people in a civil partnership are living together, but only one of them owns the house, the other has the right to live in it. Your solicitor will check that there are no outstanding rights that could affect the transfer of ownership to you. If the seller is divorced or, from summer 2006, was in a civil partnership that was dissolved, your solicitor will check that no applications have been made to a court for a transfer of the property under the Family Law (Scotland) Act 1985.

### *The disposition*

This is the document that transfers ownership of the property from the seller to you. Your solicitor drafts it and agrees its terms with the seller's solicitor. The seller will sign the document before the settlement so that the disposition, the deeds and the keys can be exchanged for your solicitor's cheque for the full purchase price on the date of entry.

### *Settlement*

This is when you get possession of the property, and usually happens on the agreed date of entry. To do this, your solicitor will certify to your lender that the title is good; get the loan cheque from your lender; and obtain from you your contribution to the purchase price. In exchange for the cheque for the purchase price, your solicitor receives the disposition and other title documents, and the keys. The property is then yours. If you have a lender, it will retain the deeds as security over the property. If you don't have a lender you should ask your solicitor to keep them in safekeeping.

After the settlement, your solicitor will register your ownership of the property and the standard security in favour of your lender in the Land Register of Scotland. The Land Register registers details of the current ownership, charges (securities or mortgages) over and burdens on properties. Its accuracy is guaranteed by the state.

## When you get the keys

Normally, the keys will be handed over as part of the settlement package in exchange for your solicitor's cheque for the full purchase price.

When you get the keys, there are a number of checks that you should make as soon as possible. You should check that all the items set out in the missives are there and that services, such as gas, electricity and water, and central heating are in working order. If anything is missing or not working, contact your solicitor immediately, or you may lose your contractual rights.

It is the seller's responsibility to take final readings of gas and electricity meters but you should make a note of the readings when you get the keys so that you can check them against your first bills.

## Costs

There are two elements to the costs: professional conveyancing fees and outlays. When you engage a solicitor, he or she must write to you at the earliest opportunity with an estimate of his or her total fee, including VAT and outlays, or the basis on which the fee will be charged. If your mortgage lender is prepared to use your solicitor to prepare the standard security, as is normally the case, this will reduce your costs.

## Conveyancing fees

A solicitor's fees and commission are not fixed but are open to negotiation, so you should shop around. The main factors he or she will take into account are the time involved in doing the work and the value of the property. The lowest fee is not a guarantee of the best service. If you choose a cheaper service, you may not get the same degree of personal service or the face-to-face advice that you may get elsewhere, so you should decide what is important to you. The fees should cover the following services:

- Preliminary work, including making the offer and exchanging missives, leading up to the conclusion of the bargain.
- Conveyancing.
- Handling the legal work connected with the loan part of the transaction.



## Outlays

The costs outwith your solicitor's control are fees and taxes payable to the government, such as the fees due to Registers of Scotland, search fees and, where applicable, stamp duty land tax. The outlays that you will have to pay should be set out in the letter from your solicitor detailing the fees and outlays payable.

If you are taking out a loan, you will also have to pay for a mortgage valuation and, in some cases, an arrangement fee (see Part 4, Fees and penalties for more information on this).

## Registration fees

Fees are charged for applications for registration in the Land Register. The fees are based on the amount of money paid for a property. These range from £22 for a transaction of up to £10,000 to £7,500 for a transaction in excess of £5,000,000.

A standard security registered at the same time costs £22. If submitted separately, the fee ranges from £22 for a loan of up to £20,000 to £3,750 for a loan in excess of £5,000,000.

The fees are revised periodically and at the time of writing were under review. See Part 6 for where to obtain details of current fees.

## Stamp duty land tax

This is a government tax on the purchase of a property that has to be paid where the price exceeds £125,000. The rate of duty is 1% for prices of £125,001 to £250,000, 3% for prices of £250,001 to £500,000 and 4% for prices over £500,000. The tax is due on the full value, not just the excess over £125,000. If the property is in a disadvantaged area, the 1% duty applies to prices from £150,001 to £250,000. See Part 6 for further information on these areas. If you are buying under the right to buy scheme (see Part 2, Buying your rented home), you pay duty on the discounted price, if applicable. You can save on the amount of duty to be paid if the purchase price includes items of furniture or appliances that can be distinguished from the price of the property.

## **When will payment be due?**

Most fees are usually paid at settlement. Where you are also selling, your solicitor will normally deduct the fees and outlays from the proceeds of sale. Your solicitor is entitled to expect payment of his or her fees at settlement but you may be able to come to a different arrangement.

## **Complaints**

Sometimes solicitors are negligent – they may do something that results in loss to the person who relied on their services. In other cases, their services may be unsatisfactory, inadequate or unprofessional. What you do depends on the type of complaint.

## **Professional services**

You should let your solicitor know right away if you are unhappy with any aspect of his or her professional services. If you are unable to resolve the matter, take it up with the firm's client relations partner. Every solicitor's firm must have a written procedure for dealing with complaints. If you are still unable to resolve the matter, contact the Law Society of Scotland (see Part 6).

If you are dissatisfied about the handling of your complaint, you can complain to the Scottish Legal Services Ombudsman (see Part 6).

## **Negligence**

Negligence may occur when a solicitor does not exercise a reasonable standard of skill and care and the client suffers a loss because of this, for example, by failing to register documents. If you consider that your solicitor has been negligent then you will need independent legal advice from a Citizens Advice Bureau or another solicitor if you wish to pursue such a claim. The Law Society of Scotland does not handle negligence claims.



# Part 4 Mortgages

## Introduction

Most people buying a home need to take out a loan – a mortgage – to help pay for it. How much you need to borrow will depend on your personal circumstances, such as your financial situation and your age. A mortgage is likely to be your biggest and most important financial commitment, and it will be secured on your home. This means that the lender could sell your home if you don't keep up the loan repayments. So you need to be sure that you can afford the commitment or you will risk losing it. You should also allow for the other costs involved in buying a home – valuation and survey fees, legal expenses, stamp duty land tax, registration fees and removal expenses.

Mortgages are available from a variety of lenders, such as building societies, banks, insurance companies, finance houses and specialist mortgage companies. If you are buying under your right to buy (see Part 2, Buying your rented home) and you have difficulty in arranging a mortgage, you can apply to your landlord for a loan.

When considering how much you can afford to borrow, and what type of loan would suit your circumstances, you may wish to get independent financial advice.

An independent financial adviser can advise on a range of financial products, such as insurance or investments, as opposed to a tied adviser who can only advise on one company's products. You should always shop around for advice. Financial advisers are regulated by the Financial Services Authority. You should check that any adviser you propose using is registered with the FSA and is independent. For more information, see Part 6.

These are some of the key questions you should ask of any prospective lender:

- Does the cost of the loan vary depending on whether you take out any linked purchases, such as buildings or life insurance?
- What are the costs and implications of transferring your mortgage from one lender to another? You should ask this of any existing and prospective lender.
- Can you use an endowment policy that you have for an existing endowment mortgage to cover a new endowment loan (see Types of mortgages opposite)?
- Can you use an existing life insurance policy as security for an individual savings account (ISA) mortgage or personal pension plan mortgage (see Types of mortgages opposite)?
- What fees and costs are involved and what is the total amount payable?

## How much can you borrow?

Ask a potential lender how much it would allow you to borrow, but be warned that what a lender may lend you and what you can afford to borrow may not be the same. The amount you can borrow will usually be up to three times your gross annual earnings but may also take into account your other financial commitments. If you want a joint loan, it may be up to two and a half times your joint earnings.

The amount you can afford to borrow should take into account your current disposable income and how that may be affected in the future. For example, if you take out a joint loan based on your earnings and those of your partner or spouse, how will that be affected if you start a family and one of you takes time out of employment?

So, before you start to look for a home, you should find out, in principle, how much you could borrow. Don't forget that the lender's valuation may be less than the price you propose to pay and, if so, you will have to find the difference. For example, if you want to pay £160,000 for a property which the lender values at £150,000 and it offers you an 80% mortgage, that will be a mortgage of £120,000 ( $150,000 \times 80\% = 120,000$ ). You will have to find the difference of £40,000, and all the other costs of the purchase.

If the property needs essential repairs to bring it up to the standard the lender requires, part of the mortgage may be withheld until you have carried them out.

## Types of mortgages

A mortgage has two elements: the capital, which is the amount of money you borrow; and the interest, which is the money charged on the capital until you pay it back. There are different ways you can repay a mortgage. The main ways are as follows:

- *Repayment mortgage*. You make regular payments, usually monthly, of capital and interest.
- *Endowment or 'interest-only' mortgage*. You make regular payments of the interest only and repay the capital sum at the end of the mortgage term from the proceeds of an endowment policy to which you contribute during the term of the mortgage.
- *Individual savings account (ISA) mortgage*. You make regular payments of the interest only and repay the capital sum at the end of the mortgage term from the proceeds of an ISA to which you contribute during the term of the mortgage.
- *Personal pension plan mortgage*. You make regular payments of the interest only and repay the capital sum at the end of the mortgage term from the proceeds of a personal pension plan to which you contribute during the term of the mortgage.

You can always repay the loan before the end of the period for which it was arranged, although there may be an additional charge, especially if you do so within a few years of arranging it. You can pay off lump sums from time to time, or make regular overpayments if you have a 'flexible' mortgage, so reducing the period of payment. The shorter that period, the less your total interest bill.

### *Repayment mortgage*

This is the simplest type of mortgage. You have one contract, with the lender, to whom you make regular repayments of capital and interest during the term of the loan. In the early years, these will be mainly interest but as the outstanding capital decreases, more of your payments go towards repaying the capital as the interest decreases.

The loan is usually paid off over 20 to 25 years. However, if you do not have as long as this before retiring, a lender may only offer you a shorter loan period.

### *Endowment or 'interest only' mortgage*

With this type of mortgage, you have two contracts. The first is with the lender, to whom you repay only the interest over the period of the loan. The second is with a life insurance company with whom you take out an 'endowment life policy', which repays the capital at the end of the loan. You will be paying life insurance premiums and interest on the loan. If you die before the end of the loan period, the life policy will pay off the full debt.

The aim of a simple endowment mortgage is to provide you with the whole capital sum needed to pay off the loan at the end of the loan period, or before if you die. You can also take out a 'with profits' policy that may provide you with a lump sum in addition to the amount needed to pay off the loan. However, with any endowment policy, there is no guarantee of the capital value of the policy at the end of the mortgage period.

A 'with profits' endowment mortgage assumes that the eventual value of the policy will be greater than the sum assured, so that the initial sum assured can be lower than the amount of the loan. That reduces the premiums you pay and you may still receive an additional capital sum after you have paid off the loan. However, there is no guarantee of the eventual value of the endowment policy. If the value, with profits, is less than the amount of the loan, you will have to find the difference.

If you are considering an endowment mortgage, you should be very clear that there is a risk that the policy will not fully pay off the loan, and you must get independent financial advice (see Part 4, Introduction).

### *Individual savings account mortgage*

This is similar to an endowment mortgage in that you pay only the interest during the period of the loan. At the same time, you make regular payments into an individual savings account (ISA), and at the end of the mortgage period, you cash it in to pay off the full loan. There is currently a limit of £7,000 on the amount you can invest in an ISA in each tax year.

The value of ISAs depends on their value on the stock market, which can go down as well as up. Therefore, you run a risk that at the end of the mortgage period, your investment may not be worth enough to pay off the loan and you will have to find the difference. Because the ISA value is building up during the loan, a lender will probably require you to take out a life insurance policy for the amount of the mortgage in

case you die before the end of the projected period of the loan. That makes this type of mortgage more expensive overall. However, if you are prepared to accept the risk, an ISA investment has the potential to do better than an endowment policy. An additional benefit of an ISA mortgage is that currently the proceeds of your investment are tax free.

Again, if you are considering one of these mortgages, it is important to get independent financial advice (see Part 4, Introduction).

### *Personal pension plan mortgage*

If you are self-employed or have a personal pension plan, you can link a mortgage to the pension plan. As with endowment and ISA mortgages, you pay only the interest during the period of the loan. At the same time, you make payments to a pension plan, which at the end of the loan period is designed to pay off the full loan and provide you with a pension.

You can only use the lump sum element of your pension plan to pay off the loan, and there is no guarantee that its value will be enough. If there is a shortfall, you will have to find the difference. This type of mortgage can offer substantial tax advantages. You can claim tax relief on your payments to the pension plan, and the lump sum you get when you retire is tax free.

You must get independent financial advice before considering this type of mortgage (see Part 4, Introduction).

## **Interest rates**

Whatever type of loan you choose, the interest rate is very important. All lenders will quote an annual percentage rate (APR), which is an approved system to help you compare the cost of the credit. The APR takes into account the added costs of a loan, such as arrangement fees, valuation fees and solicitor's charges. Generally, the higher the APR, the more expensive the credit. Some APRs will reflect short-term discounted or fixed rates, so you should check the monthly repayments and the sum paid over the whole term of the loan, and not just the initial APR.

While the general interest rates charged by lenders will be similar, many offer incentives for first-time buyers or to persuade you to switch to them, so you should shop around. Your solicitor or other independent adviser can help you. Some terms you may come across are as follows.

### *Variable rate*

Interest rates on deposits and mortgages vary according to the base rate (the rate, determined by banks, on which they base their lending rates of interest). Some lenders adjust the interest rate each time the base rate varies, others review your repayments annually, or you may be able to choose. This is usually the lender's standard rate and it is generally worth looking at other options, as they may be cheaper.

### *Fixed rate*

The interest rate is set for a fixed period, for example, two, five or ten years and possibly even longer. This may help you to budget but it could be an expensive option if the general interest rate falls below the fixed rate. Unless the rate is fixed until the end of the mortgage, you are usually charged the lender's standard variable rate at the end of the fixed rate.

### *Capped-rate and collared-rate loans*

On a capped rate, the interest rate will not rise above an agreed maximum for a given period but will fall in line with the base rate. On a collared rate, the interest will not fall below an agreed minimum for a given period but will rise in line with the base rate. These may be combined in a cap and collar-rate loan. At the end of the period, you are usually charged the lender's standard variable rate.

### *Discounted-rate loans*

Many lenders offer new borrowers a discount of 1% or more on the standard variable rate for a year or more.

### *Tracker mortgage*

The interest rate is a set amount above or below the Bank of England or some other base rate. It always tracks changes in that rate.

### *Deferred-interest loans*

These may be called ‘low-start’ mortgages. Parts of your repayments are deferred until a later time. The deferred interest is added to your loan so that the amount borrowed increases. At the end of the deferred period, there will be an increase, which may be substantial, in your monthly repayment. You will also have to agree to stay with the lender for a fixed period or face withdrawal penalties if you move to another lender.

### *Cash back*

You will get a cash payment, usually between 3% and 5%, from the lender. The higher the cash payment, the greater and more complex are the number of strings likely to be attached. You may be faced with high redemption penalties over several years and you may also be offered a less competitive interest rate than is available elsewhere.

If you have a repayment mortgage on a variable interest rate and the interest rate increases, you may be able to extend the period of the loan, rather than increase your repayments.

### **Fees and penalties**

Most lenders charge an arrangement fee for setting up capped, discounted, tracker or fixed-rate mortgages. This could be as much as £600, or more in some cases.

If you decide to change from a fixed, capped-rate, collared-rate, tracker or cash-back mortgage during the agreed period your lender is likely to make an early redemption charge, which can be from one to six months’ interest. In addition, the lender may make a redemption charge if you change within a certain period after the agreed period. You may be better off staying in the scheme for the agreed period and then think about changing.

With a cash-back mortgage, the lender may require you to take out insurance through its agency, and the cash-back payment may affect your liability for Capital Gains Tax.

Some lenders may require a mortgage indemnity guarantee. They may also refer to it as a high percentage loan fee, high lending fee or additional security fee. This is a one-off premium, which is

paid along with your first mortgage payment, that you pay to protect your lender (not you) if you fall significantly behind on your mortgage payments and it has to repossess your property and sell it. You may have to pay this if the value of your mortgage is above a threshold of 75% to 80% of the value of the property; this varies depending on the lender. For further information, see Part 6. The premium can be substantial – up to 8% of the amount of the loan over the threshold – so you should check this when working out how much you can afford to borrow.

## Bridging loans

If you are selling your present home and buying a new one, you may find that you have to produce the money to pay for your new home before you have received the proceeds from the sale of your old home. Banks and financial institutions will provide bridging loans to tide you over this gap.

You will not be able to take on a bridging loan before you have concluded the missives (see Part 3, The missives) on the sale of your present home. If you purchase your new home with a bridging loan, you will have to continue paying the mortgage on your present home as well as the interest on the bridging loan for your new home.

If you take out a bridging loan to tide you over between purchase and sale, the interest paid qualifies for tax relief at the basic rate.



## Mortgage payment protection insurance

Your home is at risk if you do not keep up your mortgage payments. Mortgage payment protection policies will help you to pay your monthly mortgage and mortgage-related expenses if you become unemployed, disabled or unable to work. There is usually a waiting period, typically 30 to 60 days, before you can claim, after which the policy will normally cover your payments for up to one year. Policies will normally cover you against disability until you reach 65 and against unemployment until you reach retirement age or 65, whichever is earlier.

You should compare the different policies on offer, as the premiums and cover vary, depending particularly on your occupation. For example, you may not be eligible or cover may be limited if you are self-employed, a sole trader or a contract worker, or it may not cover both parties to a joint loan. If you are in one of those categories and are offered a policy, you should consider whether the limitations of the cover would provide you with any practical benefit.

## Life insurance

If you take out an endowment loan, the life insurance policy will pay off the full debt if you die before the end of the loan period. If you have a repayment loan, you should consider taking out a life insurance policy, which can be decreasing term insurance or level term insurance. The cover provided by a decreasing term policy decreases as the capital is repaid. The cover provided by a level term policy is equivalent to the amount of the original advance, irrespective of the actual loan debt. If you have an ISA or personal pension plan loan, the lender will probably require you to take out a level term life insurance policy.

However, while life insurance is of benefit to your lender and your dependants in assuring that your loan is repaid if you die, if you have no dependants, you should consider whether it is of any benefit to you. Also, if you take out a life policy in connection with an endowment or pension mortgage, this is likely to increase the amount of the loan fee.



# Part 5 Surveys and valuations

## Introduction

When you find a home that you would like to buy, you and, if you are taking out a mortgage, your lender will want to have the property inspected to find out about its condition and its value. There are three basic types of inspection, each for a different purpose:

- Mortgage valuation (also known as a scheme 1 survey)
- Homebuyer's survey and valuation (also known as a scheme 2 survey)
- Building survey (also known as a structural survey)

How much you can expect to pay will depend on the type of inspection, with the building survey being the most expensive. While the fee may be based on the valuation figure, ask the lender or surveyor to tell you what the likely fee will be before the inspection is carried out.

From 2008, the seller or his or her agent will have to provide you with a survey report and other information about the property. Guidance on how the system will work will be available nearer the time.

## Mortgage valuation report

A mortgage valuation report is *not* a survey. It is a limited report made for the benefit of building societies, banks and other lenders to guide them on the value of the property, to help them decide how much to lend. You should not rely on it as a report on the condition of the building. If the surveyor or valuer is negligent, your legal rights may be less than if you had instructed the inspection yourself.

The inspection will be carried out by a valuer who is usually a qualified chartered surveyor. In this type of inspection, only major visible defects that affect the value of the property will be identified. If defects are identified, the valuer may recommend that the lender keeps part of the loan until you have carried out certain repairs.

## Homebuyer's survey and valuation

This kind of survey is different from a mortgage valuation report, in that it is you who instructs the surveyor, who will have a direct responsibility to you to carry out the work with reasonable care and skill. If the surveyor is negligent, and you suffer loss as a result, you may be able to take legal action. Your solicitor should be able to give you guidance about which surveyor to choose, and it's a good idea to find out beforehand whether your lender will accept the surveyor's report, which will contain an opinion about the value of the property, for lending purposes.

The survey will cover the outside of the property, such as the general condition of the woodwork, gutters and downpipes, dampness in walls, damp-proofing, insulation, drainage and under-floor ventilation. If there is no ready access to the roof, under floors or to cellar space, inside or outside, these will not be given a detailed inspection but you should be told about this in the report. Inside, the condition of services, such as wiring, drainage and central heating will be commented on but the surveyor will not check to see if they are working properly. The report will include the estimated cost of rebuilding the property for buildings insurance purposes and the value of the property on the open market.

Although this type of survey should contain the information you need to assess the property, the detail will depend on what the seller will allow the surveyor to do. The surveyor will not be able to comment on parts of the property that can't be reached or seen, such as under fitted carpets. However, the surveyor may recommend further investigations that can only be made by lifting carpets, for example, to look for dry rot.

This type of survey is likely to cost at least twice as much as a mortgage valuation inspection, but you will get much more information. If you consider the cost of putting things right that were unforeseen, it may well be a price worth paying.



## Building survey

This type of survey is a detailed examination of the whole property and its services and is carried out by a chartered building surveyor. It is rarely used in Scotland, partly because of the speed at which home purchase normally takes place and because most sellers are unlikely to allow such a survey unless there is a very limited market for the property and you have expressed a very strong interest. Because of the work required for the report, this type of inspection will cost considerably more than any other.

## Insurance

All types of survey report will normally recommend the approximate level of insurance required to cover reinstatement of the property. Your lender will require you to have buildings insurance, and the reinstatement cost is the estimate of how much it would cost to rebuild the property should it be destroyed, for instance by fire.

## Complaints about chartered surveyors

It is important to take care when deciding which survey would best suit your needs, and to be clear about what each kind of survey will and will not provide. Sometimes buyers arrange a basic mortgage valuation inspection and are disappointed when they don't get as much information as they expected. However, sometimes surveyors are negligent: they may miss something about the property that was important which results in loss to the person who relied on the survey. In these circumstances, it may be necessary to take legal action. In other cases, a surveyor's conduct may be unsatisfactory or unprofessional and, in these circumstances, you can complain to the surveyor's firm, his or her professional body or to the surveyor ombudsman.

If you have a complaint about a firm of chartered surveyors (or one where at least one partner is a chartered surveyor), you should first try to resolve it through the firm's complaints handling procedure. All chartered surveyors' firms must have one and details of how to use it should be included in any correspondence to you. If it is not resolved, you should write to the Professional Conduct Department at the Royal Institution of Chartered Surveyors (RICS) (see Part 6). Your letter should contain permission for the RICS to send a copy of your complaint and any documents to the firm involved.

The RICS can only investigate complaints alleging professional misconduct. It will not comment on, or investigate, cases where you have a remedy in law, nor will it assess or award compensation. In cases such as alleged professional negligence or breach of contract, or where you believe that you have a claim for compensation, you should consult a Citizens Advice Bureau (see the phone book) or a solicitor.

### Surveyor ombudsman scheme

The surveyor ombudsman offers a free and independent review of consumer complaints about surveying services provided by chartered surveyors in Scotland who are members of the RICS. The ombudsman will only consider a complaint that has not been resolved by the surveyor concerned. The ombudsman can investigate:

- possible breaches of a chartered surveyor's legal obligations;
- unfair treatment;
- financial loss or maladministration.

That might include avoidable delay, failure to follow proper procedures, rudeness or discourtesy, not explaining matters, refusing to deal with a complaint fully or promptly, poor service and incompetence. The ombudsman can award compensation for loss or expenses of up to £25,000 or for stress and inconvenience of up to £500. For further information, see Part 6.

### Arbitration

You could also use the Surveyors Arbitration Scheme or take the firm to court. The arbitration scheme is designed to resolve disputes cheaply and quickly. It is independently administered by the Chartered Institute of Arbitrators (see Part 6). While less formal than a court, the decision is legally binding. Before you can use the arbitration scheme, you must first try to resolve your complaint through the firm's in-house complaints handling procedure. All RICS members must agree to arbitration.



# Part 6 Further information

## Part 1

*Access to housing in Scotland: rights for disabled people* is available free of charge from: HomePoint, Communities Scotland, Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HE  
Tel: 0131 313 0044, e-mail: [homepoint@communitiesscotland.gsi.gov.uk](mailto:homepoint@communitiesscotland.gsi.gov.uk)

If you want to find out more about care and repair in your area, you should contact your local authority housing department. You can also contact the Care and Repair Forum, 236 Clyde Street, Glasgow G1 4JH  
Tel: 0141 221 9879, e-mail: [forum@care-repair-scot.org.uk](mailto:forum@care-repair-scot.org.uk)

*Buying retirement housing*, Factsheet 25, which includes sheltered accommodation, is available free of charge from Age Concern, Freepost SWB 30375. Ashburton, Devon TQ13 7ZZ. Tel: 0800 00 99 66 or download from <http://www.ageconcernscotland.org.uk/pdf.pl?file=age/news/FS2sJUL05.pdf>

## Part 2

*Your right to buy your home* is available free of charge from the Scottish Executive, Victoria Quay, Edinburgh EH6 6QQ Tel: 0845 774 1741 or <http://www.scotland.gov.uk/library5/housing/tbyh-00.asp>  
council housing departments and Citizens Advice Bureaux (see the phone book)

*Homestake: helping you to become a homeowner* is available from: Homestake, Communities Scotland, Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HE  
Tel: 0131 479 5269, email: [homestake@communitiesscotland.gsi.gov.uk](mailto:homestake@communitiesscotland.gsi.gov.uk)  
[http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs\\_008156.hcsp](http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_008156.hcsp)

Rural Home Ownership Grants. Contact Communities Scotland, Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HE Tel: 0131 313 0044

Crofter Housing Grants and Loans. Contact Crofting Branch, Scottish Executive Environment and Rural Affairs Department, Room 106 Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY Tel: 0131 244 6210 or your local SEERAD area office

For details of the NHER and local assessors, contact the National Home Energy Rating Scheme, The National Energy Centre, Davy Avenue, Milton Keynes MK5 8NA. Tel: 01908 672787  
e-mail: [enquiry@nesltd.co.uk](mailto:enquiry@nesltd.co.uk), <http://www.nher.co.uk/assessor-lists.shtml>

*Common Repair, Common Sense: a homeowner's guide to the management and maintenance of common property*, is available free from solicitors, estate agents and HomePoint, Communities Scotland, Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HE. Tel: 0131 313 0044, e-mail [homepoint@communities.scotland.gsi.gov.uk](mailto:homepoint@communities.scotland.gsi.gov.uk), download: [http://www.homepoint.communities.scotland.gov.uk/stellent/groups/public/documents/webpages/hmcs\\_006465.pdf](http://www.homepoint.communities.scotland.gov.uk/stellent/groups/public/documents/webpages/hmcs_006465.pdf)

### Part 3

For information about the services provided by solicitors, details of local solicitors who do conveyancing work or independent qualified conveyancers, or about complaints procedures, contact the Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh EH3 7YR. Tel: 0131 226 7411, client relations helpline: 0845 113 0018, e-mail: [cro@lawscot.org.uk](mailto:cro@lawscot.org.uk)

Information on the National House-Building Council's Buildmark scheme is available from the National House-Building Council Scotland, Suite 4, Pavilion 5, 5 New Mart Place, Edinburgh EH14 1RW. Tel: 0870 850 4494, e-mail: [cssupport@nhbc.co.uk](mailto:cssupport@nhbc.co.uk), <http://www.nhbc.co.uk>

Information on the Zurich Insurance Building Guarantee is available from Zurich Insurance Building Guarantee, 6 Southwood Crescent, Farnborough, Hampshire GU14 0NL. Tel: 01252 377474  
email: [building.guarantee@uk.zurich.com](mailto:building.guarantee@uk.zurich.com), <http://www.zurich.co.uk/buildingguarantee>

Information on the Premier Guarantee is available from MD Insurance Services Limited, Haymarket Court, Hinson Street, Birkenhead CH41 5BX. Tel: 0151 650 4343, e-mail: [enquiries@premierguarantee.co.uk](mailto:enquiries@premierguarantee.co.uk), <http://www.premierguarantee.co.uk/index.htm>

You can get details of the current fees for registration in the Land Register from Registers of Scotland Executive Agency: The Edinburgh Customer Services Unit, Erskine House, 68 Queen Street, Edinburgh EH2 4NF Tel: 0845 607 0161 or Glasgow Customer Services Centre, 9 George Square, Glasgow G2 1DY. Tel: 0845 607 0164. For both offices e-mail: [customer.services@ros.gov.uk](mailto:customer.services@ros.gov.uk), <http://www.ros.gov.uk/citizen/index.html>

You can also get details of qualified conveyancers from the customer services centres or at <http://www.ros.gov.uk/citizen/conveyancers.html>

Details of postcodes qualifying for the stamp duty relief in disadvantaged areas can be found at <http://www.hmrc.gov.uk/so/scotland.pdf> or from the HM Revenue & Customs national advice service on Tel: 0845 010 9000.

The Scottish Legal Services Ombudsman can be contacted at 17 Waterloo Place, Edinburgh EH1 3DL. Tel: 0131 556 9123, e-mail: [ombudsman@siso.org.uk](mailto:ombudsman@siso.org.uk), <http://www.siso.org.uk/>

#### **Part 4**

The Financial Services Authority, 1 Canada Square, London E14 5AZ (consumer helpline: 0845 606 1234, minicom/textphone: 08457 300 104). The FSA does not deal with specific consumer complaints, recommend firms or give legal advice. However, the consumer helpline can answer general queries about financial products and services. It can also tell you if a firm is authorised and help 'sign post' you if you have a complaint and don't know whom to contact. The following publications are available from the consumer helpline:

*The world of mortgages laid bare*, which can also be downloaded from: <http://www.mortgageslaidbare.info/>

*Choosing the right mortgage – taking the right steps*, an information pack of 12 leaflets, which can also be downloaded from:

[http://www.fsa.gov.uk/consumer/consumer\\_publications/mortgage\\_pack.html](http://www.fsa.gov.uk/consumer/consumer_publications/mortgage_pack.html)

You can also request hard copies of the information pack and other mortgage publications online from [http://www.fsa.gov.uk/consumer/consumer\\_publications/online/tpl\\_pubform.html](http://www.fsa.gov.uk/consumer/consumer_publications/online/tpl_pubform.html)

You can find further information on mortgage indemnity guarantees on the Council of Mortgage Lenders website: <http://www.cml.org.uk/cml/consumers/guides/indemnity>

The British Association of Insurers has guidance on *Payment Protection Insurance*, which is only available from its website at <http://www.abi.org.uk/paymentprotectioninsurance>

## Part 5

A directory of chartered surveyors in Scotland and guides to understanding property surveys, and home buying and selling are available free of charge from the RICS contact centre: Tel: 0870 333 1600, e-mail: [contactrics@rics.org](mailto:contactrics@rics.org). Ask for information on services in Scotland. You can also get informal advice from the professional information team at the contact centre.

Complaints about chartered surveyors should be addressed to the Director, The Royal Institution of Chartered Surveyors in Scotland, 9 Manor Place, Edinburgh EH3 7DN. Tel: 0131 225 7078, e-mail: [contactrics@rics.org](mailto:contactrics@rics.org)

Information on the Surveyor Ombudsman Scheme is available from the Surveyor Ombudsman Scheme, PO Box 21537, Stirling FK8 3YD. Tel: 01786 860715, e-mail: [enquiries@surveyorombudsman.org.uk](mailto:enquiries@surveyorombudsman.org.uk) <http://www.surveyorombudsman.org.uk/>

For more information about the Surveyors Arbitration Scheme, contact The Chartered Institute of Arbitrators, Dispute Resolution Services, International Arbitration and Mediation Centre, 12 Bloomsbury Square, London WC1A 2LP. Tel: 020 7421 7444





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91 Haymarket Terrace, Edinburgh EH12 5HE  
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E-Mail: [homepoint@communitiesscotland.gsi.gov.uk](mailto:homepoint@communitiesscotland.gsi.gov.uk)

Date of publication March 2006

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