

STEP 9

CONVEYANCING

This guide summarises the typical stages in conveyancing where the property is purchased by negotiation/on the open market or through the statutory right to buy. Conveyancing is the legal process of transferring the title (ownership) of a property from a seller to a buyer.

FOR DETAILED ADVICE SPECIFIC TO YOUR OWN PROJECT YOU SHOULD ALWAYS SEEK INDEPENDENT LEGAL ADVICE.



STAGES IN A TYPICAL CONVEYANCE

APPOINTMENT OF SOLICITORS

Once you have decided, as a community group, that you wish to pursue the purchase of the property, you should contact your solicitor to discuss the process and to request an estimate of fees and outlays. Ask them to provide a note of their hourly rate together with a fee estimate and a note of all anticipated additional costs (such as searches, registration dues, etc).

LEGAL FEES AND COSTS

There are two elements to the legal costs associated with buying property: professional conveyancing fees and outlays. Outlays, which are costs outwith your solicitor's control, include fees and taxes payable to the government, such as the fees due to the Registers of Scotland, search fees, and if it applies, Land and Buildings Transaction Tax (below). All solicitors charge VAT on their fees.

It is important that solicitors give you a note of their hourly rate, an estimate of the fees involved in your transaction, and that they inform you of when your legal fees reach a given amount (for example £1,500 and every £1,000 thereafter). Asking solicitors to send a breakdown of their fee note will ensure that you understand the time they have booked against your transaction and should include full written descriptions of each time entry.

LAND AND BUILDINGS TRANSACTION TAX

(REPLACED STAMP DUTY LAND TAX FROM 1 APRIL 2015)

Land and building transactions may incur taxation, at a graduated rate depending on the value of the transaction, unless the transaction is exempt or attracts tax relief. Note that subject to certain conditions charities and charitable trusts are exempt from charge. Further information on up to date tax rates can be found online.

HEADS OF TERMS

On a negotiated purchase (rather than when bidding against other potential purchasers) both parties will agree Heads of Terms. This sets out what has been agreed and will include the price, the date of entry, the extent of what is included in the sale (referring to a map/plan and listing any fixtures and fittings) and any additional rights that are being sold with the property such as rights of access over neighbouring land.

CLOSING DATE

If there is more than one party interested in purchasing the property then the seller's solicitors will set a closing date for offers to be submitted. This considerably adds to the pressure that a community will face – particularly in relation to raising the necessary funds within a restricted timeframe.

OFFER TO PURCHASE

Once you have had a valuation carried out and secured funding then you are in a position to make a formal offer. This will be submitted by your solicitor on your behalf, either immediately, or at the specified time on the closing date. The offer should include a brief description of the property, the proposed date of entry, the price and any additional items you wish to buy from the seller. It will also include any relevant conditions.

CONCLUDING THE PURCHASE CONTRACT

Typically, additional contractual letters containing further conditions will be sent between your and the seller's solicitors. Once these conditions are all agreed, either your or the seller's solicitor will issue a final formal letter concluding the contract. At this stage both parties are in a contract with one another constituted by the offer and subsequent formal letters. This binding contract is known as the missives but is effectively the purchase contract for the land and/or buildings.

FUNDING

The money for the purchase price must be in the hands of your solicitor in advance of the date of purchase. This is usually done two or three days in advance of the purchase. Often these funds will come from funding bodies, with the balance being provided by you. These funds have to be sufficient to cover all sums including the purchase price, taxes and other costs. Insurance cover for the property will also have to be considered and ideally arrangements with the appropriate broker made so that insurance cover is in place immediately prior to the purchase date.

TITLE SEARCHES

Once you have an agreed contract with the seller, your solicitor will carry out the title searches. Your solicitor will investigate the property and examine the title deeds and any deed of conditions that applies to the property.

This will include:

- checking the land certificate and the deeds to make sure that the seller actually owns the property, that the deeds are free from defects and do not contain any unusual or unreasonable conditions that will affect your use of the property or its subsequent marketability
- telling you about any burdens (limitations or legal restrictions) or servitudes (obligations to allow someone to use the land or prevent you making use of it) that affect the property
- making sure that the ground burdens, such as property management fees or maintenance charges for a common garden, are properly divided between you and the seller
- ensuring that any existing standard security (mortgage) over the property is paid off when the property is transferred to you.

DISPOSITION

The document that transfers the title of the property from seller to buyer is called the disposition. It is signed by the seller.

SETTLEMENT OR DATE OF ENTRY

On the date of entry, the purchase price will be sent by your solicitor to the seller's solicitor. In exchange, your solicitor will receive on your behalf the disposition and any other relevant papers. Immediately following settlement, you should inspect the property and notify your solicitor of any defects within the time limits specified in the contract. If such defects exist, then your solicitor will intimate these defects to the seller's solicitor calling upon the seller to make these good as provided for in the contract.

GUARANTEE OF TITLE

Your solicitor will then arrange for the disposition to be registered in the Land Register. Once this process is completed, and subject to any comments by the Keeper of The Registers of Scotland, you will have a guaranteed title to the property, as defined in your title deeds and shown in the title plan. See also 'Mapping the asset'

FOR FURTHER INFORMATION PLEASE SEE

www.hie.co.uk/ten-steps

or contact us on community.assets@hient.co.uk

