

## Buying a House in Scotland – Frequently asked questions

### Q1 What are Title Deeds?

Usually this is a Land Certificate as the new Land Register System now covers all areas of Scotland. Under the system your title deed is a Land Certificate in an electronic copy, while can be issued in paper form instead.

The Land Certificate contains a plan of what you own. It has sections in it with the description of the property, who owns the house, whether there is a mortgage over the house and then the title conditions that affect the house. The Land Certificate is evidence of who currently owns the property.

“Title Deeds” as a general term can also refer to the other papers that go along with the Land Certificate such as the Charge Certificate, which is the mortgage document and other ancillary paperwork, e.g. Building Warrants and Completion Certificates and paperwork relating to rot guarantees etc.

Title Deeds under the old ‘Sasine’ system used to be either hand written or typed documents. These were signed by the people selling the house and when put together the pack of documents showed the sequence of who owned the house over time. They were traditionally bound with a pink ribbon.

### Q2 Where are my Title Deeds?

If you have a loan your mortgage lender will normally hold your Title Deeds. Under the recent changes some lenders are choosing not to hold Title Deeds. If that is the case, or if you do not have a loan, the Title Deeds should be kept in a safe place either with your Solicitor or in a secure fire proof box in your house.

### Q3 Can I buy/sell my house without using a Solicitor?

In order to do the legal work to buy or sell a house in Scotland, you require a Solicitor.

If you were to attempt to do it yourself it is likely that your mortgage lender would refuse to fund your purchase. In any event the process, although much simplified in recent years, remains a potential minefield. Only a Solicitor has the skill and knowledge to guide you easily through all the formalities. Furthermore, there are a number of official forms that are required to be completed that only a Solicitor can complete and sign.

#### Q4 What is the Land Register?

The Land Register of Scotland is the public record where all property is registered in Scotland.

It is for Scottish properties only and is administered by Registers of Scotland the Executive Agency i.e. a government body. The Keeper is the name of the head of the Register of Scotland but the word “Keeper” is used as a general name for the officers working at the Registers of Scotland.

The Registers of Scotland is a very large organisation and there are offices in Glasgow and Edinburgh. All legal documents relating to ownership of property in Scotland are registered in the Land Register. The Land Register charges registration fees for submission of documents to the Land Register. These are called “registration dues”. These are fixed fees that are levied by the government in order to run the Registers of Scotland and the fees are unavoidable in any transaction involving land.

Registers of Scotland website: - <http://www.ros.gov.uk/>

#### Q5 What is Stamp Duty Land Tax?

Stamp Duty Land Tax (SDLT) is a tax on the purchase of heritable property in the United Kingdom.

SDLT is payable by the Purchaser to the Her Majesty Revenue & Customs (HMRC) upon a purchase and cannot be deferred. SDLT is payable on the whole of the price paid to buy land and buildings where the price exceeds £120,000. Certain transactions qualify for reliefs. SDLT is payable at the appropriate rate shown in the table below on the whole purchase price payable. The rate varies depending on the price. SDLT should be budgeted for in any purchase.

<b>Purchase Price</b>	<b>Rate of SDLT on whole price</b>
£0 - £125,000	0%
£125,000 - £250,000	1%
£250,000 - £500,000	3%
£500,000 +	4%

#### Q6 What does “heritable” mean?

Heritable property is the land and “bricks and mortar” of a house i.e. the foundations, floor, walls, roof and everything else that is fastened down or fixed to the walls and firmly attached to the floor. It also includes items removal of which may damage the fabric or decoration of the property.

Where someone talks about a “Heritable Title” this means ownership of the actual property itself as opposed to another type of ownership such as a lease or a third party right.

### Q7 What are “moveables”?

“Moveables” is an expression used for items that are not heritable that is to say things that can be taken away from a property without damaging the fabric of the property, for example, a washing machine, garden containers, a fridge and carpets.

### Q8 What are “missives”?

The expression “missives” is used for the contract for buying and selling a house in Scotland. “Missives” are only used for property transactions.

Missives are contractual letters that pass between Solicitors. Usually missives comprise an Offer from the buying solicitor to the selling solicitor/estate agent and then the response from the selling solicitor called the ‘Qualified Acceptance’. Solicitors also refer to these letters as “missive letters” or “formal letters”. These contractual letters are part of the contract and are signed on behalf of the clients by the firm of solicitors. Once the missives have been refined (by the battling to and fro of arguments or insertion of words into in the contract) eventually the missives are concluded.

“Concluded Missives” means that all the refinement of the terms of the contract are agreed and both parties, the buyer and the seller, are legally bound and the property is officially sold at that point. The time spent in concluding the missives is usually around 2 weeks but sometimes can be shorter. If there are issues that cannot be resolved quickly sometimes the contract can be delayed and the missives may be concluded much later than would be desirable. At any point before the missives are concluded either side can pull out of the transaction without any financial penalty. Pulling out of a transaction is very serious and most solicitors discourage clients from doing so without a very good reason.

### Q9 Is buying a house in Scotland different from buying in England?

Yes. The law of Scotland is completely different from the law of England in relation to buying and selling homes. We have proud history in Scotland of efficiently dealing with the contract. As mentioned above missives are usually concluded within a time frame of 2 weeks which means that everybody knows where they stand very quickly and once missives are concluded everybody can start planning their removal. In England the concluded missives are called “exchange of contracts” and these are letters physically signed by the purchaser and the seller,

usually the day before the money changes hands and the keys are handed over. There are many other differences, which will not be expanded upon here.

### Q10 What is 'settlement'?

Settlement is the date (or hour) when the buyer actually receives the keys and the seller receives the money for the property.

Settlement is usually on the date of entry that is agreed in the missives. Settlement can sometimes be delayed due to the building society or bank being slow in sending the loan money to the purchaser's solicitors. There are other reasons why settlement is sometimes delayed but this is something that solicitors try to avoid. It is not in anyone's interest to have uncertainty as to when money is to be paid and keys exchanged.

### Q11 What are the costs?

#### Purchase

Most surveyors cost a few hundred pounds for doing a survey, which may take them about ten or fifteen minutes for a scheme 1 survey and around an hour for a scheme 2.

#### Sale

Estate Agents have a vital part to play in selling the property, but if they are slow to sell a property or the service is not as good as the client expects, the repercussions are not as serious as those where the solicitor makes a mistake. The risk of being sued for mistakes is much higher with the solicitor than with the estate agent yet the estate agent receives a much higher fee percentage. Your estate agent's fee will most likely be your largest outlay. Estate agents usually charge a percentage commission plus outlays such as advertising plus VAT.

Most people do not realise how much work the solicitor in doing a purchase and sale does. Most transactions involve at least 5 or 6 hours or more of work by the solicitor and this will include preparing legal documents, making numerous telephone calls and letter writing to the client and to other professional advisors including the surveyor, the other solicitors and the mortgage lenders. When we sell a property solicitors must gather information from various agencies including the Coal Authority and the Local Authorities. All of this is done without the client realising how many letters and phone calls are made. In comparison to estate agents and surveyors the solicitor will be the one person you will rely on most. He or she will be orchestrating every element of the purchase and sale transaction, including handling all of the money. A good solicitor will make your transaction happen on time and with as little stress as possible.