

Ken MacDonald & Co

Lawyers and Estate Agents

The Buying Process: A Guide

1. Introduction

Buying a property can be extremely exciting but also very daunting if you do not know where to start or what is involved. The aim of this guide is to help you understand the house buying process by providing you with information on what you are able to borrow, how to make an offer and ultimately how to get the keys to your new home. In order to assist you along the way, Ken MacDonald & Co, have identified the following steps.

2. Consult a Solicitor

To us this is the most crucial step for anyone looking to purchase a property and no more so for a first time buyer who has no prior experience of the process. The role of the solicitor is key to the entire process. It is therefore in your best interest to consult one as early as possible. It is also vital to consult the right solicitor. Ken MacDonald & Co recognise this fact. We therefore offer a free, no obligation first consultation for anyone interested in buying a home. We have become one of the largest firms of solicitors operating within the Western Isles. We pride ourselves in offering a friendly, professional and local service to guide you through the entire process. Please ask for our Mr MacDonald, Mr MacPherson, Mr Bamber or Mr Gillies, who will all be happy to discuss your requirements and explain our service.

3. Examine your Finances

The next step is to get your finances in order and in place. This can be broken down further into four parts, namely:

I. Get your Deposit Together

An important factor in determining how much you can borrow and how much you can offer will depend on the size of your deposit. Be it a good or bad thing, the days of deposit less-mortgages are long gone. In the present financial climate any prospective purchaser requires a substantial deposit in order to get a mortgage. Lenders require this in order to (1) prove you are solvent, (2) demonstrate that you have financial discipline and also (3) that the loan is less than the property value, thus protecting the lender if you are unable to repay the loan and they require to repossess your home. Therefore, to secure an affordable mortgage these days you require up to 25% of the home valuation as a deposit. The size of your deposit will have a knock on effect on how much you can afford to offer above the asking price. Whilst it is possible to get a mortgage with less than a 25% deposit, the interest rate you pay will be much higher. Unfortunately there is no easy short cut to getting the money together, it may be saving up, money from parents, living at home for a period, selling your car or an inheritance but put simply no deposit equals no mortgage.

II. Assess your Budget

Before you do anything else have a good and realistic look at your finances. Prepare a full and detailed budget to calculate what you can realistically afford to pay each month. Factor in additional

one off-costs commonly associated with purchasing a property. These include stamp duty, lenders fees, legal fees, survey fees (if required) and removal costs. Your assessment should include items such as mortgage repayments, council tax, insurance, utility bills and service charges (often relevant for flats or property with commonly owned or shared parts).

III. Choose a Mortgage Product and Provider

Most purchasers require a mortgage in order to help pay for their property. The type and level of mortgage available to and suitable for you is dependent on the size of your deposit and your monthly budget. By doing your homework first you can search the market place and work out what mortgage products are available to you based on your calculations and assessment. Historically, lenders simply multiplied your income to work how much to lend you. Typically a single person could borrow 3.5 times their single salary whilst a couple would be offered 2.5 times their joint salary. Bear in mind however that this is only a simple guide and a lender will only lend on a percentage of the value of the property you wish to buy. There are a vast number of mortgage products out there and just as many mortgage providers, brokers, and financial advisors all touting for your business. Choosing the right financial advisor can therefore be just as important as the mortgage product you select. A further crucial factor is ensuring that you have a good credit rating. We have prepared guides on each of these three specific topics that should be read at this stage. It is also advisable to read our information sheet on finance.

IV. Obtain a mortgage in principle

Traditionally a purchaser would at this stage, look to obtain a mortgage in principle from a lender. They could then proceed to the next stages of house hunting and making an offer, secure in the knowledge that the lender of choice would lend a certain amount at a certain rate and that the offer would remain open for a fixed period. In recent years however many financial advisors have departed from this trend. There are a number of reasons for this ranging from (a) financial advisors becoming unwilling to apply for a mortgage in principle, (b) lenders now commonly charging large non-refundable fees up front, (c) a constantly changing financial market place, and (d) offers in principle not carrying the same degree of weight or security between customers and lenders that they once did. Nevertheless obtaining an offer in principle, where possible is always better than proceeding to the next step without.

4. House Hunting

Once you know your budget, the next step is to find the right house for you. This should be seen as an enjoyable step and not a chore. At present it is a buyer's market and there is a wealth of property out there.

To help your search we cannot stress enough the advantage that exists in calling in to see us. We are located within the centre of Stornoway and operate a walk in policy for anyone looking to purchase a home. Such consultations are free. Our Property Manager will be more than happy to discuss your requirements, go through our portfolio, offer you local knowledge of the market place and provide that personal touch that we are renowned for throughout the Isles. It is in your best interests to be known to us so that we can keep you in mind should we become aware of a property coming onto the market that fits your requirements.

As explained earlier, there are also advantages in meeting with a representative of our legal team. They can discuss the legal process with you and assist you in your search. If you are not already an existing client of the firm by this stage then there are advantages in becoming one as quickly as possible.

Our website is also an excellent means of keeping abreast of our property portfolio. All new property appears immediately it is introduced to the market. Why not make use of our search engine facility now to take a quick look at what properties are available in your preferred area and price range.

It is also beneficial to register your details through the "your property" facility in order to ensure you are kept up to date with any property that is of interest to you and receive our weekly newsletter. Schedules which include details, pictures, measurements and floor plans can be downloaded for every property and our map facilities will help direct you to the property location.

5. Arrange a Viewing

Once you have identified a property you would like to view, contact us to arrange a viewing. It is beneficial to view as many properties as possible in order to get a feel and understanding for the properties on the market. That way once the property that is right for you comes along you will have other properties to compare it to. There is also nothing like actually viewing a property. Whilst websites and schedules can give a good impression of a property you can only get a feel for a property by being in it. We provide a FREE PROPERTY CHECKLIST that can be downloaded from our website and taken with you to each viewing you attend. This will ensure that you capture all the right information on each and every property you view.

6. Noting Interest

Once you have taken time to view all the properties and using our free house buying checklist, you should hopefully now know which one you want to become either your first or next home. It is therefore time to note your interest. This is your way of notifying the seller that you are interested in the property and wish to be kept informed of any developments, changes in the marketing or closing date fixed. Noting interest is often done when a purchaser is waiting for their survey valuation to be carried out, their finances to be put in place or their own property to be sold, before submitting their offer. Those who "note interest" hope that a closing date will be fixed or that should an offer come in from another party they be given an opportunity to submit an offer of their own. It should be noted however that whilst it is a good marketing strategy to do so, sellers are not obliged to fix a closing date and can simply accept the first "clean" offer they receive. You should be able to "note interest" yourself directly to the estate agent. Our estate agency department is always happy to accept a note of interest from a prospective purchaser direct. Not all estate agents operate in this manner and for some unknown reason insist on it being done only through a solicitor. If you experience such a barrier please contact us and we would be happy to "note interest" on your behalf at no cost.

7. Closing Dates

A closing date is often fixed where there are a number of "notes of interest" in a property and an offer is received. It is designed to give all parties who have noted interest an opportunity to offer should they wish to do so. A closing date means that a date and time will be fixed, like a deadline, for all offers to be submitted. Once set, any offer received will not be opened nor looked at until after the deadline. No offer received after the deadline will be considered. It is hoped that the fixing of the closing date will result in a bidder submitting their highest possible bid and their offer being "clean" i.e. not conditional. It is not essential for every property to have a closing date. Not all closing dates result in offers being received and a seller is not obliged to accept any offer received. If you wish to submit an offer for a closing date, please ensure you inform your solicitor immediately. Do not leave it until the last minute as you may find him unavailable at short notice or instructed by someone else and unable to assist you.

8. Obtaining a Survey

From the 1st December 2008 it became a requirement that a Home Information Report (HIR) be made available for any property placed on the market. It was hoped that the introduction of the scheme would bring to an end the need for a house hunter having to obtain a survey over each and every property

they became interested in. Instead one report, paid for by the seller, would be made available to all. Although they have proved popular with buyers the scheme is flawed in that (1), there is no requirement for a property on the market prior to 1 December 2008 to have a HIR, (2), certain properties are exempt from the scheme and (3), not all lenders accept HIR's whilst those that do normally require their customers to organise an independent survey where a HIR is older than a certain time scale specified by them.

Consequently, instances still exist whereby a prospective purchaser is required to obtain their own survey. Surveys tend to fall into three levels. The first is a bank valuation. This is the cheapest and most common level instructed. It is important to realise however that it simply represents a very brief inspection, often called a 'drive by valuation', and is carried out solely for the lender. You are entitled to obtain a copy but the duty of care is between the surveyor and lender. You, the client, have no recourse should an error be made. The second is a home buyer survey. It is more expensive and more in depth but by no means exhaustive. It is therefore as important to understand what the survey does not include as to know what it does include. The surveyor has a duty of care to you subject to the numerous exemptions contained within his report. The third is a full structural survey. This is the most expensive and most in depth of the levels. Due to the cost they are not common and not all surveyors provide them. It is always advisable that you ask your surveyor to fully explain the types of survey they provide and ensure they are on your lenders panel of recognised/acceptable surveyors.

Should a survey be required it is always advisable to obtain one before submitting an offer. If you do not, your offer should be made subject to survey and subject to valuation. Both provide important protection that any competent solicitor should be able to explain and will protect your position should an adverse report be obtained.

9. Buyer Beware

Whilst Home Reports are a useful tool no one should rely on them completely. Errors can and do appear and whilst a duty of care does exist from surveyor to purchaser it is better to avoid such a situation arising. Purchasers should always make their own enquires and satisfy themselves as to the condition of the property. You may wish to instruct a survey of your own from a firm different from the one commissioned to prepare the Home Report in order to obtain a second independent opinion. It is also strongly advisable to ask a builder or similar tradesman to inspect your desired property on your behalf. Quite often this proves to be more in depth and useful than any Home Report or survey.

All sellers, Estate Agents and Solicitors assume that the terms of any Home Report or Survey are accurate and proceed accordingly. We cannot and do not take any responsibility for any consequences arising from an error contained within a Home Report or Survey.

10. Selling your own Property

This is the one area where first time buyers are at an advantage over existing home owners who are attempting to buy and sell at the same time. This is because they are in a position to submit an offer that is chain free. In the present financial climate this is highly sought after. This is because chains are the second most common reason why transactions are delayed or fall through. (The most common reason is that your lender does not follow through on its initial promise to lend). Often it is due to a problem further down the line of the chain, over which you have absolutely no control over. This is especially so where someone is selling in England and attempting to purchase in Scotland at the same time. If you are required to sell your own property in order to raise the funds required to assist your purchase then we strongly advise you to complete your sale first and move into temporary accommodation. That way you can take your time to view properties confident in the knowledge that you actually have the funds available. We appreciate that for many this is not always possible. In these circumstances then we strongly advise that you ensure any offer you make is made subject to the sale of your own property. Although it makes your offer conditional it is good practice as it shows transparency and provides protection further down the process should your own sale be delayed or fall through. It is important that

no purchaser ends up in the position whereby they are in a binding contract to purchase a property but have no funds in place to do so.

11. Submitting an Offer

If you have followed the advice given thus far, you will have progressed from being high risk to a highly sought after commodity to any estate agent. Once you have found a property that you wish to offer for, it is time to consider the submission of an offer. Before doing so however, it is a good idea to double check your assumptions around your finances. Once you have a figure in mind of how much you can afford and the price you value the property it is time to make your offer. This is a really simple process with which we, as your solicitor, can assist. We can offer you guidance on realistic market rates. We do not charge for unsuccessful offers but keep going with you until we find you your next home. Bear in mind that should you be unsuccessful in securing the first property you go for it is not the end of the world. There is a large volume of properties on the market with new ones being introduced all the time. More often than not those who miss out on an earlier property find that the one they eventually secure is better. The crucial thing is to be realistic about how much you can afford and not over extend yourself. Weighing up the worth of any property involves a number of complex factors. A survey valuation is a good starting point but it is always ultimately a matter of finding the balance between your head and your heart. Weigh up how much you want or must have the property along with how much it is worth to you and what you can afford. In general terms if the property is on the market at a reasonable and realistic price and both seller and purchaser act reasonably and realistically in terms of the price then there is no reason why any offer should not be acceptable. One important thing worth bearing in mind is that unless your solicitor is in possession of mortgage papers from your lender at the point he submits a formal written offer on your behalf then your offer should be made subject to finance. Again although this makes your offer a conditional one, it is good practice as it shows transparency and protects your position further down the process should your prospective lender let you down or change their position. As stated earlier it is vital that no purchaser ends up in the position whereby they are in a binding contract to purchase a property but have no finances in place to do so.

12. Offer Accepted

If your offer is accepted, be it verbally or in writing, then good practice dictates that the property be marked "under offer" immediately. This means that during the period between the acceptance of your offer and settlement, when you get the keys, no one else gets to view the property and no other offers are considered. All reputable firms operate on this basis. This is how our estate agency department operates.

The problem however is that independent estate agents do not always operate to this high standard. This is because they are not regulated by the Law Society of Scotland and thus not regulated in the same way or to the same high standard as solicitors. This means that whilst "gazumping" should never occur in Scotland it does go on. This should always be borne in mind when viewing or considering a property marketed by an independent estate agent. We are proud of the fact that we have not separated our legal and estate agency departments and remain regulated by the Law Society of Scotland at all times.

13. The Conveyance

Once an offer has been accepted the conveyance begins. This is a complex process carried out by your solicitor. Information sheets however exist to explain this process in more detail. Due to the complexity it is an area where cheapest certainly does not mean best. We have developed a thorough and highly professional package for which we charge a fair and reasonable price. In addition, in recognition of the difficulties first time buyers are experiencing getting onto the property ladder, Ken MacDonald & Co offer a discount to all first time buyers. In so doing, we acknowledge that first time buyers represent the future of our island, community and service. To qualify for this discount a buyer must satisfy the Inland

Revenue definition of a 'first time buyer' in order to qualify for stamp duty exemption. An information sheet exists on this topic.

14. Home Insurance

An important part of buying a home is ensuring that you have the appropriate levels of property protection in place. You are making a big investment, as is your lender, so it is important that you have the necessary Insurance policies in place. It is advisable to have them in place, at best, by the time missives are concluded or, at worst, at settlement. There are two specific types of home insurance:

I. Building Insurance

This provides cover for the property itself in the event of fire or structural decay. If you are buying a flat then your building insurance may be covered as part of the ownership and paid through a service charge but you should check this and check exactly what it covers. All mortgages will stipulate that there must be adequate building insurance in place to cover your home. They will notify you what the rebuild cost of your home is and you will have to stipulate this to your insurance provider. This will play a part in the cost of the insurance policy.

II. Contents Insurance

This will cover all your possessions in the property. As you will need to estimate an appropriate value it may be useful to make a list of all the keys items to ensure that you are fully covered. Be sure to factor in items such as furniture, electrical goods, jewellery, etc. There will usually be a stipulated maximum value per item so if you have high value items you will need to ensure these are covered or obtain separate cover for them.

The cost of the policy will vary depending on the level of excess you agree to pay. It is advisable to get several quotes before you set up a policy to ensure that you get the best deal for you.

15. Utility and Services

As your date of entry approaches it is worth thinking about the utility services needed for your home. Not all utility companies provide services in your area. It is likely you will require quotes for gas, electricity and water, whilst some of the home essentials you may wish to include are phone, broadband and digital. Consolidating services to one provider is a good way of keeping on top of your admin.

16. Moving Home

It is worthwhile getting several quotes from reputable removal companies. You want someone who is insured and can be trusted to move your valuable belongings into your new home. You are likely to either agree on an hourly rate or a flat fee for this service but either way it will work to your advantage if you have everything organised and efficiently packed. Unless you are using a full removal and packaging process make sure to bubble wrap fragile items and clearly label all boxes with a description of the contents and the destination room in your new home. Remember however to check the position with the removal firm should your anticipated date of entry be delayed. It can often be to your advantage to delay moving until such time as settlement has actually taken place and you are actually in possession of your keys.

17. Obtaining the Keys to your New Home

Settlement, or otherwise known as the date of entry, is achieved when the deed transferring title, keys, prior titles and all other items due to be delivered are handed over to the purchasers solicitor in exchange for the full purchase price. At settlement the seller is required to give vacant possession of

the property and it is common place that the search carried out over the property and the parties involved be updated so that the most up to date information be delivered. Our aim is always to achieve settlement as early as possible on the settlement date but this is very much dependent on when the purchase price and up to date search arrives within the working day. Remember the seller has until 5pm to vacate the property and settle the transaction. The keys are not released until settlement takes place.

18. Moving In.

It is common practice for the selling solicitors to notify the Council Tax Department of the Local Authority of the change of ownership but this is the only one. It is usually expected that the seller will have taken final readings at or before settlement and notified all service providers of the change of ownership. It would be advisable however to take your own readings on taking entry and check all service providers have been notified at the outset as a precaution.

19. Special Offers

In recognition of the valued custom of anyone who instructs us in the house purchasing process, we are willing to prepare new or revise existing wills for you free of charge. In addition, we also provide a discount for anyone interested in granting a power of attorney. These two offers extend to any family members and are available for the entire duration that we act for you. Should you wish to take advantage of either of these two options please advise the person within our office assisting you and they will arrange for the appropriate solicitor within the firm to contact you.

20. Conclusion

Whether we assist you in our capacity as solicitor or estate agents we hope this guide has been of assistance to you. As a firm of General Practitioners our firm offers a wide range of other legal services. We would therefore be happy to assist you in any other legal matter that may arise at any time in the future. Information sheets exist for all the areas of work provided by our firm and can be obtained via our website.

The material in this guide is for general information only and does not constitute investment, tax legal or any other form of advice. You should not rely on this information to make (or refrain from making) any decisions. Always obtain independent, professional advice for your own particular situation.

This guide should also be read in conjunction with our guides on mortgages, credit rating and mortgage brokers.