

STEWART & WATSON

your **complete**
property &
legal service

House Purchase and Sale

A Clients Guide

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Banff AB45 1HU
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FRASERBURGH

38 Broad Street,
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Mintlaw AB42 5HH
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BUCKIE

42/44 East Church Street
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TURRIFF

THE PROPERTY SHOP
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OLDWELDRUM

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CULLEN

25 Grant Street,
Cullen AB56 4RS
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HUNTLY

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35 Queen Street,
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www.stewartwatson.co.uk

your **complete** peace of mind

INTRODUCTION

STEWART & WATSON - The Property People

For most people, buying or selling their home is the biggest financial transaction they ever get involved in. So naturally you want your house sale and/or purchase to go as smoothly as possible. This is where we come in. Remember - IT'S NEVER TOO EARLY TO CONSULT YOUR SOLICITOR.

The Conveyancing Process



The legal side of a house purchase or sale is called conveyancing. The purpose of this booklet is to explain stage by stage what happens in a conveyancing transaction and to give you an idea of what you can expect us to do for you.

Good Advice



Making a contract for house purchase and sale - agreeing the terms and conditions of the deal - has become more complex than ever. If something goes wrong, it could cost you a lot of money, or even your house. It is therefore more important than ever before that you get sound legal advice from a solicitor prior to committing yourself to any course of action. A short interview may be sufficient and it may save expense later.

Good Service



A good professional service is not only about the quality of legal advice. It also means prompt attention to your business, availability when you want to discuss something, and communication - keeping you informed about what is happening.

Good advice + good service = Peace of mind

If you need FREE INDEPENDENT MORGAGE ADVICE
let us know and we can put you in touch with a
reputable Financial Adviser

Your home is at risk if you do not keep up repayments on a mortgage or other loan secured on it

BUYING A HOUSE

General



You will find that this starts long before you actually make an offer and it does not finish when you get the keys. At your first meeting with us, we can discuss all the financial aspects of the transaction - for example, the price range you are interested in, your mortgage requirements, the deals and incentives available and the expenses you will have to meet.

Noting Interest



If you are house hunting, take advantage of our local knowledge. It could avoid a lot of wasted effort. When you see something you like, ask us to note interest for you with the selling agent. A note of interest does not oblige you to buy, so you are not committing yourself in any way. It simply indicates that you are interested in the property and wish to be kept informed of developments, such as the fixing of a closing date for offers.

Surveys



Just about the only thing that we do not do in your purchase transaction is carry out the survey, but we can advise you on the options available and the costs involved and can instruct a surveyor on your behalf. You should discuss the need for a survey report with us before making an offer. If the property which you wish to buy has a Home Report, it may be possible to use the survey report from it - but you are entitled to get your own report from a different surveyor - at your own expense - if you so wish.

The Loan



An Independent Financial Adviser can give you unbiased, independent advice regarding your mortgage or loan. There are hundreds of mortgage products available in the current market. You definitely need an expert guide to see you through the mortgage maze! They can arrange your loan for you.

Alterations and Additions



This is an area which gives rise to many problems. If you are aware from the survey report or from your own observation that the house has been altered, or extended, you must let us know, so that we can check whether planning permission and/or a building warrant were required and, if so, whether they were obtained and whether a Completion Certificate was issued when the works were finished. This may be of vital importance when, in turn, you come to sell your house.

Making the Offer



If you decide to take the plunge, we at STEWART & WATSON can advise you on the terms of your offer. Offers are quite complex documents designed to protect you against all the pitfalls of buying a house and it is important to get them right first time. Our expertise and experience are vital here. This is a crucial stage in the whole procedure, because acceptance of your offer can create a legally binding contract. We shall give you a copy of the offer for reference purposes.

Acceptance



If the seller decides to accept your offer, then the seller's solicitor will send a formal acceptance, in which the seller will probably include conditions which attempt to modify the conditions in your offer. This is because the conditions in your offer were framed to force the seller to disclose certain facts about the property and the title to it. These conditions by the seller are described as "qualifications" and the acceptance is therefore referred to as a "qualified acceptance." Our job is then to discuss the qualifications with you and give you advice so that you can decide on those qualifications which you are prepared to accept and those which you are not. This may lead to a further exchange of formal letters before both sides are in agreement and your offer, subject to these negotiated modifications, is finally accepted.

Concluding the Bargain



The offer, acceptance and any subsequent letters, which are described as "formal" because they are intended to be part of a legal contract, are known as "missives." When the final acceptance is issued, it is said that missives are concluded, which means that you and the seller have entered into a legally binding contract. We shall give you copies of the correspondence which forms the missives.

The Title



Once we have made this contract for you to buy the house we must carry out a thorough examination of the title deeds to make sure that the seller is genuinely the owner of the property and that his or her right to sell is not restricted in any way. The title deeds also describe the precise extent of the property. The examination of the title will also reveal whether there are conditions relating to the property about which you should be aware, e.g. restrictions on business use, or a requirement to contribute to the maintenance of common ground. Such matters can be quite complex, and our job is to check them on your behalf.

Local Authority Matters



You will want to know whether the roads and sewers are public or private, whether there are any planning proposals which might affect the property and whether the local authority has made any statutory orders or notices affecting the property. We shall check all these items.

The Security or Mortgage Transaction



In most cases your lender will instruct us to carry out the lender's legal work as well. This saves time and money. You should understand, however, that the security (sometimes called 'a mortgage') is really a separate legal transaction in which your solicitor, acting for the lender as well as for you, must have the same regard to the lender's interests as to yours. While these interests are broadly the same, we shall, if possible, resolve any differences which emerge. The lender will issue lengthy and detailed instructions to us in connection with the loan, which involve a substantial amount of work. The lender requires that you pay for this work. It is covered in the fee charged by us.

Provided that you have completed your loan application form in good time and supplied the lender with all the information it needs, your lender should be able to send us the loan funds in time for the purchase price of the house to be paid. If your loan is linked to an investment product, we will need to be satisfied that it has been properly set up before the loan can proceed. Using an Independent Financial Adviser to set up such a policy, etc., can therefore save time and avoid unforeseen problems.

Deeds



There will be various documents for you to sign in connection with the transaction, the most important being the Standard Security, the deed which secures the loan over your new property. We at STEWART & WATSON can explain the effect of all documents which you have to sign and help you to get them properly signed in good time.

Preparing for Settlement



As the date for settlement of the purchase (i.e. payment of the price) approaches we must draw together all the strands of the transaction. We must ensure that there are no outstanding queries about the property or the title, that all the necessary documents have been obtained and, if necessary, signed and that your funds (the balance of the purchase price, solicitor's fees and outlays) and the mortgage funds are in our hands. We shall also explain to you what will actually happen on the date of settlement and how you will obtain the keys.

The Date of Entry



It is crucial to get the price paid on the agreed date of entry. In exchange you are entitled to get the keys and the title deeds. (Although we normally have to send the title deeds to your lender, as part of the mortgage conditions).

Taking Entry



Immediately on taking entry you should check that the property is in good order, that any extras (carpets, curtains or other items) which you are buying are present and that items like the central heating system are in working order (if that is what the missives provide). We can explain what can be done if you discover any problems in this connection and what legal remedies, if any, you have.

After Settlement



Following conclusion of the transaction we shall report to you detailing any matters that remain to be dealt with and in particular any financial matters which are still outstanding. We will also report to your lender and will also check that all the documentation is in order before sending the title deeds for registration in the Land Register of Scotland, which is the final step to complete your title. Eventually when the registration process is complete, we must again check the documentation before sending it to your lender for safe keeping.

OUR FIRM

We are uniquely placed, with well over 100 years' experience in selling properties, and a chain of 11 Offices and Property Shops in North-east Scotland.

SELLING A HOUSE

General



Solicitors are uniquely placed as the only property professionals who can carry out the entire sale procedure for a house including the estate agency and the conveyancing. In Scotland most estate agency is carried out by solicitors. At your first meeting, we at STEWART & WATSON can give you an outline of the whole procedure from start to finish, and will describe the services which a solicitor can offer. We can also explain the need for a Home Report. By law, a Home Report is compulsory for a house which is put on the market as from 1 December 2008. At this stage, you should also ask your lender how much is required to pay off your existing loan, as this is an essential part of the sale transaction. You also need to have a clear idea of what the free proceeds of the sale are going to be if you are working out the budget for the purchase of a new property, bearing in mind all the costs associated with moving house and the fees, taxes and other charges payable.

Home Reports



With very few exceptions it is compulsory for a seller to produce a Home Report when a house is put on the market for sale. A Home Report consists of three documents:-

- a single survey, prepared by a Chartered Surveyor
- an Energy Report, prepared by a Chartered Surveyor
- a Property Questionnaire, which is completed by the seller

We can help you to put a Home Report together and of course we can advise you on how long this is likely to take, and what it is likely to cost. It will not be possible for you to put your house on the market until the Home Report is ready.

Pre-sale Procedure



As soon as you have decided to sell you should ask us to obtain the title deeds from your lender so that we can check that all the necessary documents are present. You should also tell us about any alterations or extensions which you know have been carried out to your house.

We at STEWART & WATSON can also advise you on how to deal with prospective purchasers, on the procedure for noting interest and for the rules which Scottish solicitors adopt in relation to closing date procedures. A closing date may or may not be necessary. It is part of our job to advise you on whether to have one.

Sealing the Deal



When we get an offer for your property with an acceptable price and date of entry we will advise you on all the conditions attached to the offer. It is important for you to get our detailed advice here, as you are effectively being asked to give various warranties about the property and its title, which the purchaser is going to rely on when deciding to conclude a contract. If you want to accept the offer, it is usually not a simple matter. We shall probably have to send a formal acceptance which will include the conditions (known as "qualifications") which you wish to include in the contract. This may involve further negotiations with further conditions and qualifications being set out in letters between the solicitors until the terms are finally agreed and a binding legal contract concluded as was explained in relation to buying a house.

The Title



Between the conclusion of the contract and the date when the price has to be paid we will mainly be engaged in dealing with the purchaser's solicitor's enquiries regarding various aspects of the title and other matters affecting the property in order to comply with the conditions of the contract. These enquiries deal with the title and local authority matters described in the paragraph headed Investigation, The Title, and Local Authority Matters in relation to buying a house.

We also have to approve the terms of the Disposition - the actual deed which will convey the property from you to the purchaser - before it is presented to you for signature. In most cases we also have to prepare the Discharge - the deed by which the lender releases the property from its mortgage security.

Bridging Finance



If you require a bridging loan due to the fact that you are buying a new house before the finance becomes available from the sale of your existing house, we shall advise you as to the liabilities which you are undertaking in relation to the bridging loan.

Redeeming the Loan



If you have a mortgage, we will obtain a redemption statement from the lender which indicates how much is required to pay off the loan. We can discuss with you what you should do in relation to any remaining monthly instalments which fall due on the loan prior to the date of settlement.

Settlement



On the date of settlement we will obtain the purchaser's solicitor's cheque for the purchase price and in exchange will hand over the Disposition and the other title documentation, and arrange for the purchaser to obtain the keys. The keys must not be given to the purchaser until the price is received!

On receipt of the price, we must immediately redeem your mortgage. We can discuss with you what is to be done with the balance of the funds. We will provide you with a statement showing the full financial details of the transaction.

WILLS

Every house purchaser should make a Will - regardless of their age! We at STEWART & WATSON are happy to draw up simple Wills FREE OF CHARGE for house buyers. Ask us about it!

FEES AND COSTS

Your Solicitor's Fees



In assessing the fee to be charged, we have to take into account a number of factors, but the most important of these is the time taken on the transaction, and the value of the property (which determines the risk which the solicitor undertakes).

As with any price very low fees are not always compatible with the best service.

The Time Factor



The amount of work which your solicitor requires to carry out in connection with a house purchase transaction can vary enormously and often bears no relation to the size and value of the property. A one-bedroomed flat in a 100-year-old tenement can present far more problems than a 10-year-old four-bedroomed detached house. Other problems may arise from the legal standing of the seller or a previous owner. These difficulties cannot be foreseen but they may involve your solicitor spending considerably more time on the transaction than was anticipated.

QUALITY OF SERVICE

Client Satisfaction

As conscientious solicitors, we at STEWART & WATSON are concerned to ensure that our clients are satisfied with the job done for them. This booklet has sought to explain briefly the nature and the scope of the work which your solicitor should do for you in a conveyancing transaction. This work requires knowledge, professional and technical expertise, skills in communication, organisation and management and sustained attention to detail, very often while working under the pressure of tight timescales. The high standards of the profession ensure that the vast majority of conveyancing transactions are completed to the satisfaction of all concerned.

We look forward to doing our professional best for you