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Rev. 1/03



**Georgesons**  
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**BUYING AND SELLING LAND  
WITHOUT A WRITTEN CONTRACT**

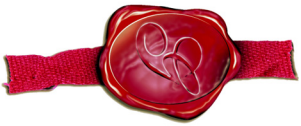


**22 Bridge Street  
Wick  
Caithness KW1 4NG  
Tel: (01955) 606060  
Fax: (01955) 603016**

**19 Traill Street  
Thurso  
Caithness KW14 8EG  
Tel: (01847) 892225  
Fax: (01847) 892235**

**Email: [Servicedesk@Georgesons.co.uk](mailto:Servicedesk@Georgesons.co.uk)**

**Website: <http://www.georgesons.co.uk>**



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SOLICITORS  
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Usually when someone buys or sells land or buildings, there will be some form of written legal contract prepared in advance. Most frequently in Scotland this will be in the form of “missives”, a series of formal letters between solicitors, but it may also be some other form of contract such as the terms of an auction, or a builders contract. Such contracts will usually contain a whole host of provisions concerning the property and the obligations of both parties towards the other.

However, in some cases the parties may not want to have such legal documents drawn up, and agree the sale informally between them. Common examples would be between members of a family, or where the land is question has very little financial value. Each side simply has their solicitor prepare the documents to properly transfer ownership, without any prior written contract. While it can be a useful means of cutting costs, it is not without its own pitfalls.

In law a verbal agreement between the parties can be a binding legal contract. The absolute minimum elements to be agreed are (a) exactly what the property is i.e. the location and legal boundaries; and (b) what price is to be paid. If these are agreed, the law imposes various other conditions if the parties do not agree otherwise; often this can be very much different from what the parties would have agreed if they had thought about it in advance. These can include such important elements as when the money is to be paid, what guarantees the seller gives regarding the property, and what happens if things go wrong.

The solicitors may require to make enquiries to ensure that both sides actually do agree on what they want on various points, and it may be that the parties do not in fact agree about certain important matters. Obviously the more points the solicitor requires to enquire about, the more legal expenses

are incurred. Therefore the usual situation would be for the solicitor only to ask about the most important elements required to complete the transfer, and it would be for the parties to ask for enquiries to be made about anything else.

The other major problem is in proving what agreement there is, and whether it is legally binding. If one party withdraws at any time before the title is transferred, it is very much more difficult to enforce a verbal agreement than a written one, particularly as the only witnesses are often the parties themselves. It may also emerge in a court action that while one or both parties thought they had agreed matters, in fact they misunderstood what the other person meant, and that there was no real legally binding agreement. In view of this, the expense, time and risks involved with such a court action may make it inadvisable to attempt to enforce such a verbal agreement, as the costs could easily outweigh the value of the sale.

**If everything goes smoothly you will almost certainly have less legal fees on both sides, but if something goes wrong you have very little remedy to recover any costs or to force the transaction to proceed. There is also potential animosity arising between you and the other party, be they family or neighbours, from disputes arising in the course of the sale.**

**Therefore you must weigh up the risks against the benefits if you intend to proceed in a purchase or sale of land, without using a written contract.**