

**Q:** *I've been told the title is Feudal - why can't I have a Freehold title?*

**A:** "Freehold" is a term of English law, which doesn't apply in Scotland. Almost all property in Scotland is "Feudal", with the rare exceptions being "Long Lease" (the Scottish equivalent of "Leasehold") and some more obscure types in particular areas like Orkney. For the most part, unless you are a lawyer, you can treat it as if it is "Freehold".

A very few Feudal titles still require to pay "Feu Duty" but this has been phased out since the 1970's. Your solicitor should advise if your property is affected in any way by this.

An Act abolishing the whole Feudal system has been passed and is to take effect in the next few years - but the titles still won't be called "Freehold", instead it will be "Ownership".

**Q:** *What is a "Standard Security"?*

**A:** A Standard Security is the Scottish equivalent of a "Mortgage Deed". Technically there is no such thing as a "Mortgage" in Scotland, although the term is used as the non-technical name for a loan secured over land or buildings the same as in England.

**Q:** *When do I have to sign the papers to become owner of the property?*

**A:** You do not have to sign any papers. The contract is formed by the "missives" exchanged between the solicitors (acting on your written or verbal instructions), and only the seller needs to sign the title deed in your favour. You will of course still have to sign any papers for any loan (mortgage) you get to buy the property.

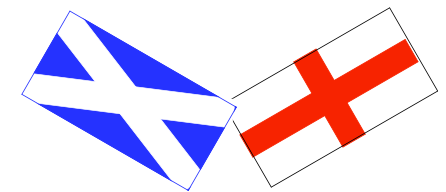
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## An English Purchaser's Guide to Buying Property in Scotland



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England and Scotland have quite different legal systems. This can sometimes lead to confusion when you are used to one system and become involved in the other, such as when buying or selling land or buildings. To assist, the following are answers to some of the more frequent questions we receive from English purchasers.

**Q:** *The seller has already had a survey over the property - can I rely on that survey?*

**A:** If a seller, or anyone else, has obtained a survey over a property for their own purposes, they can of course show it to anyone they want. However, the surveyor is only legally liable to the person instructing the survey or anyone the surveyor was specifically told is to rely on the survey (usually a lender). Therefore if you use someone else's survey, you will usually have no legal recourse if it is in error.

However, you may want to obtain a survey before you are legally bound to proceed with the purchase, simply to find if there are any problems with the property - the rule is *Caveat Emptor*, let the buyer beware. If you are getting a loan for your purchase, your lender will want its own valuation, but you may be well advised to get a more detailed survey, such as a Homebuyers Survey.

While you may make your Offer subject to survey, this is less attractive to a seller, particularly if there is a Closing Date. You may therefore want to get a survey before making the Offer. This does unfortunately mean that if you are unsuccessful in making an Offer you will have paid out for a survey which is of no further use to you.

**Q:** *I've heard a verbal offer can be legally binding - is this true?*

**A:** Yes, it certainly is - and therefore we most strongly recommend that you do not make one! The main problem with a verbal agreement is proving what was said, but if this can be proven (which may be difficult and expensive) the courts

will enforce the contract. Also, Scots law only requires certain minimum elements to be agreed and will then impose certain standard terms (which may be very different than both sides expected) if they are not expressly agreed otherwise. Therefore, you should always make any verbal agreement subject to the formal written Offer to be lodged by you solicitor.

**Q.** *The property I want is advertised as having a "Closing Date" - what is this?*

**A.** If there are a number of people interested in a property, the seller may set a Closing Date. This simply means that anyone interested should submit a formal Offer by the stated time, then the seller will look at them all and pick one - in effect a blind auction. It has advantages and disadvantages to the purchaser: you know that your Offer will be looked at equally with any other submitted, but everyone who is unsuccessful will have incurred expenses (such as survey and legal fees) to no end.

**Q:** *I've seen a property I like marked as "Under Offer". Can I make the seller a higher Offer?*

**A:** If a property is "Under Offer", this indicates that the seller is "in missives" with a prospective purchaser. While it is possible that the two sides might not come to an agreement (and the property go back on the market) the seller should not even consider any other Offer. A seller pulling out from missives for a "gazumping" Offer leaves himself open to being sued by the previous offeror, as well as having his own solicitor refusing to act any further for him. However, there is nothing wrong with having your interest noted so that the seller can contact you should the property go back on the market for other reasons.

**Q:** *Can the same solicitors act for my sale in England and purchase in Scotland?*

**A:** Almost certainly not. Even if they have some knowledge of the system in the other country,

English and Scottish solicitors will not be sufficiently trained in the other system to be able to deal with the transaction. (There are a very few "dual qualified" solicitors trained in both English and Scots law, but they tend to be employed by the government or large companies)

**Q:** *I'm selling my house in England - when can I make an offer for my new house in Scotland?*

**A:** This is one area where the difference between English and Scots law can cause a number of problems.

In Scotland, your contract is created by the "missives" consisting of your Offer and subsequent formal letters between the solicitors. When one side sends a "concluding missive" accepting the terms of the last formal letter that side received, the contract is immediately binding on both purchaser and seller.

This is different from the position in England where usually both sides will only be legally bound to proceed at "Exchange of Contract", which tends to be at a much later stage in proceedings than is usual under the Scottish procedure.

As a consequence, you must make certain that when you make your Offer you would be able to go ahead on the terms you have stated. If you are dependent of a third party doing something, e.g. your buyer in England exchanging contracts, you should tell your Scottish solicitor this so that your Offer can be made conditional on this happening.

Such conditions may make your Offer much less attractive to a seller, but otherwise you potentially run the risk of being ordered by a court to pay the whole price, interest, compensation and court costs if you can't proceed with your Scottish purchase due to your English buyer pulling out.