

October 2006 FTR07

# Buying a home

Buying a home will probably be the most expensive thing you ever do, so it's important to know as much about the process as you can. With so much to think about and so much money at stake, every decision counts.

Before you decide to buy a home it makes sense to take the time to look around and get to know the market. This will also help you understand how it all works so you can make a well informed decision when you find the property you want.

## Before you can buy

By law, a residential property cannot be put on the market until a sale contract has been drawn up. You have the right to examine the contract at any time during the buying process, even before you make an offer.

## Paying an 'expression of interest'

Once you have made an offer on a property, you may be asked to pay an initial deposit for an expression of interest. This won't mean that the property is yours or that it gets taken off the market. It only proves to the seller that your offer is serious. The seller or agent can take as many preliminary deposits as they like for the one property.

However, when you pay this deposit, the agent must provide you with a receipt and tell you in writing that:

- the seller has no obligation to sell the property to you
- the deposit will be refunded to you if you do not enter into a contract to buy the property.

The agent must inform you if another offer is received and give you the opportunity to increase your offer if you wish.

Do not sign or exchange the sale contract until you have discussed it with your solicitor or licensed conveyancer.

## Gazumping

Gazumping occurs when a buyer relying on a verbal agreement by a seller to sell a property at an agreed price, spends money getting advice, reports and making necessary enquiries, only to find that the seller has accepted a higher offer from someone else.

The seller is entitled to get the best price for the property and the agent's job is to help them. Unfortunately, this could mean that you lose out if the seller decides to offer the property to another purchaser. This is because until you exchange contracts, there usually is no legally binding agreement between you and the seller.

If you are gazumped, neither the agent nor the seller is obliged to compensate you for the money you've spent on legal advice, inspection reports, finance application costs and enquiries.

## Exchanging contracts and paying a deposit

Exchanging sale contracts is the legal part of buying a home. Before exchange, the agreement is usually just verbal and not binding. After you have discussed the contract with your solicitor or conveyancer and all the proper enquiries have been made, you will be ready to exchange contracts. There will be two copies of the sale contract: one for you and one for the seller. You each sign one copy before they are swapped or 'exchanged'. This can be done by hand or post and is usually arranged by your solicitor, conveyancer or the agent. At the time of exchange you will be required to pay a deposit, usually 10% of the purchase price. At this point, you have a financial interest in the property so it's wise to get it insured.

**NOTE** – A contract has not been made and is not legally binding before the exchange of contracts and the payment of a 10% deposit.

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## Cooling-off period

After you have exchanged contracts, you usually have five business days to change your mind and still get out of the contract. If you do this, the owner is entitled to keep 0.25% of the price you agreed to.

Sometimes, there are more buyers looking for homes than there are properties on the market. This is called a sellers' market. In this case, you may want to organise a quick contract exchange. This way you can reduce the possibility of someone beating your offer and get your building and pest inspections done during the cooling-off period. You will still be able to back out if there is a problem.

Always get your solicitor or conveyancer to check the contract before you sign. It is possible to waive, reduce or extend the cooling-off period with the consent of the seller. If your solicitor or conveyancer has examined certificates from the appropriate authorities, a pest and building inspection has been done and your finance has been approved, then deciding to waive the cooling-off period could make your offer more attractive to the seller.

## Settlement

Settlement usually takes place about six weeks after contracts are exchanged. This is when you become the legal owner of the property. The balance of the purchase price and other adjustments are paid on this date.

## Buying at auction

Buying at auction can be a nerve-racking experience so it's a good idea to familiarise yourself with the process by attending an auction or two as a spectator.

You must be registered in order to bid at an auction of residential property. All you need to do is give your name and address and show proof of identity

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to the selling agent at the auction. You will be given a bidder's number which you must display when bidding. For more information about registering at property auctions, get a copy of the Fair Trading fact sheet *Bidder's guide*.

It is important to have your solicitor or conveyancer examine the sale contract before the auction to make sure that everything is in order. It is also important to have your finance arranged and that you have made all the necessary quality inspections.

Take the time to find out what prices properties in the area have sold for, so you have a guide to the market value of the home you want.

Before auctioning a property, the seller will nominate a 'reserve' price which is usually not told to the interested buyers.

The reserve price is the lowest price that the seller is willing to accept. If the highest bid is below this price, the property will be 'passed in'. The seller will then either try and negotiate a price with interested bidders or put the property back on the market.

If the bidding continues beyond the reserve price, the property is sold at the fall of the hammer. If you are the successful buyer, you must then sign the sale contract and pay the deposit on the spot (usually 10%). Remember there is no cooling-off period if you buy at auction.

If you want someone else to bid on your behalf, they must give the auctioneer a written authority from you, before the auction starts. The letter must include your name, address and details of proof of identity, such as your drivers licence or passport number.

If the property is passed in at auction but you end up exchanging contracts on that same day, the cooling-off period does not apply.

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