

# Buying a property: an overview

## LEARNING OBJECTIVES

This topic provides an overview of the property-buying process, mainly from the perspective of the buyer. It aims to help you to understand the stages involved, from finding the property to completion, with the focus on the stages up to receipt of a mortgage offer. In Topic 7 we will look more closely at the role of the solicitor and the conveyancing process and in Topic 8 at the regulatory requirements that govern the involvement of the lender.

By the end of this topic you should have an understanding of:

- contract law;
- the principles of agency;
- finding a property;
- the role of the estate agent;
- making an offer to buy;
- the mortgage offer;
- exchange and completion;
- buying at auction.



## THINK ...

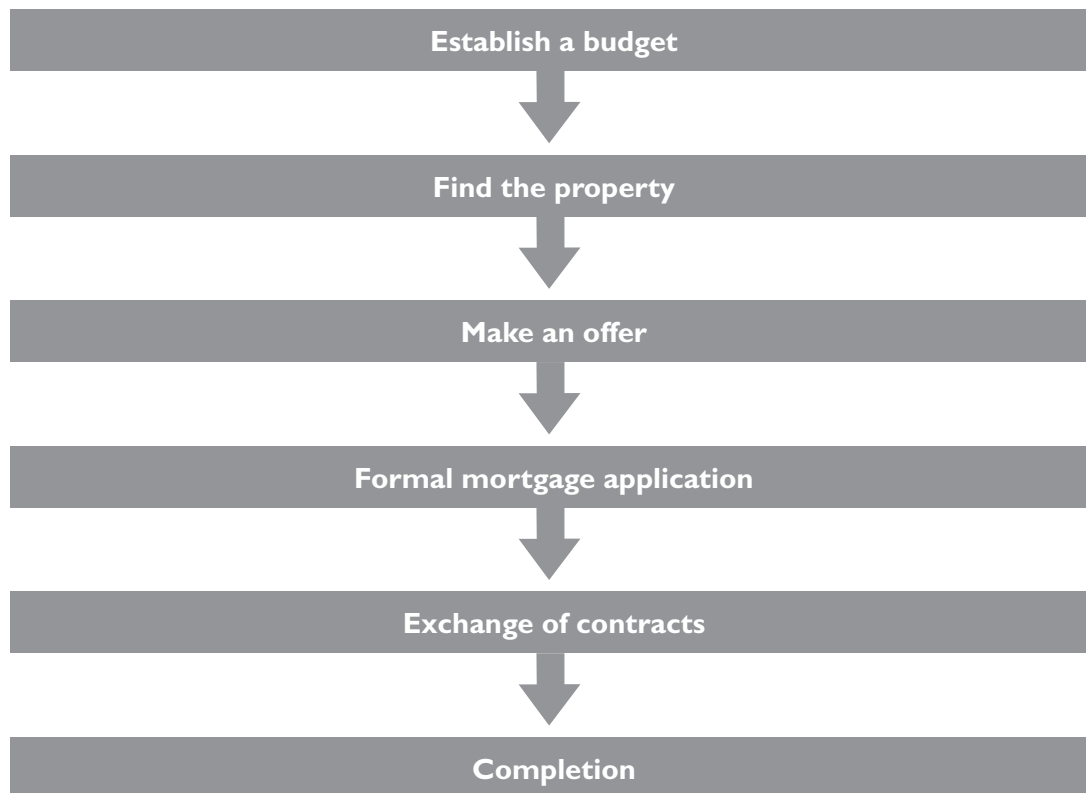
Before you start work on this topic, take a moment to think about what you already know about the property-buying process. You covered the basics of contract and agency law in UK Financial Regulation, so you should be familiar with the content revisited in this topic. If you have been involved in buying or selling a property, you might also know:

- at what stage in the process the mortgage should be arranged;
- the latest point at which either a buyer or a vendor can withdraw from the transaction without penalty.

## 6.1 Introduction

Figure 6.1 provides an overview of the property-buying process. Not all property purchases follow this neat process, but this topic outlines the typical stages.

**FIGURE 6.1 WHAT IS A TYPICAL PROPERTY-BUYING PROCESS?**



We will look at each stage in more detail. The sale of properties may be arranged by private treaty (private bargain in Scotland) or auction. The majority of sales are on a private treaty basis, although auction is suitable for certain types of property and more popular in some regions than others. We begin by looking at private treaty sales and then move on to buying at auction in section 6.9.



### SCOTLAND

The process of buying property in Scotland differs from that in the rest of the UK. Students taking the examination in Scotland need to study the Scottish Appendix as well as this topic.

## 6.2 Law of contract and principles of agency

The laws applying to contracts and those acting as agents are important in the house-buying process, so we begin by exploring key principles and how they relate to property purchase. Buying a property involves a legally binding contract, as does taking out a life insurance policy to support a mortgage. Residential properties are usually bought and sold through an estate agent, and, on occasion, an agent may represent the buyer in the buying process.



### CHECK YOUR UNDERSTANDING I

You learned about contract law and the principles of agency in your studies for UK Financial Regulation. Before continuing with this topic, see if you can list the key requirements for a binding contract, and note down what the terms 'agent' and 'principal' mean.

### 6.2.1 Law of contract

**FIGURE 6.2 WHAT ARE THE BASIC PRINCIPLES OF A CONTRACT?**

<b>Agreement</b>	<ul style="list-style-type: none"> <li>An agreement between two or more people to enter into a legal arrangement</li> </ul>
<b>Offer and acceptance</b>	<ul style="list-style-type: none"> <li>One party will make an offer and the other will accept</li> <li>Both offer and acceptance put legal obligations on both parties</li> </ul>
<b>Consideration</b>	<ul style="list-style-type: none"> <li>A consideration must be given – in property terms the buyer usually gives a consideration (money) and the vendor gives a consideration (property)</li> </ul>
<b>Capacity</b>	<ul style="list-style-type: none"> <li>All parties must have the capacity to enter a contract, being: <ul style="list-style-type: none"> <li>aged 18 or over (16 in Scotland)</li> <li>legally able to sell or buy the property – acting either as principal or agent (with authority)</li> <li>of sound mind</li> </ul> </li> </ul>
<b>Intention</b>	<ul style="list-style-type: none"> <li>It must be clear that both parties intended to enter into a legally binding contract</li> </ul>
<b>Bound by terms</b>	<ul style="list-style-type: none"> <li>Once a contract has been agreed and put in place, both parties are bound by its terms</li> <li>If either party fails to comply with the contract terms they could be sued for breach of contract by the other party and ordered to comply, or to pay damages and/or compensation to the 'injured' party</li> </ul>

Generally, there is no duty of disclosure between parties to a contract; most contracts are based on the principle of *caveat emptor* ('let the buyer beware'). This means that neither party is required to disclose information to the other

unless asked to do so, in which case they must answer any questions honestly and to the best of their knowledge but do not have to volunteer information not requested.

This is particularly relevant to the vendor as a property buyer's solicitor will ask them to complete a Law Society property information form (TA6), which asks a number of questions about the property, the surroundings, disputes, flooding, parking and other important issues. The vendor must answer the questions honestly and completely as far as possible, and supply documents to support certain answers. The vendor could face legal action if the buyer later has any problems relating to issues that were not disclosed honestly or accurately. The vendor is not required to research answers to any questions that they cannot answer, but must make clear that they are unable to provide an answer. Again, if it transpires later that they did have information to be able to answer a question, non-disclosure could lead to legal action.

### 6.2.2 Principles of agency

**FIGURE 6.3 WHO ARE THE AGENT AND THE PRINCIPAL?**



An agent should only act within the powers given to them by the principal, so it is crucial to set out the conditions of the agency in a written contract before the agent starts to act on the principal's behalf: this is commonly known as the *actual authority*. It includes what is expected from each party and the limits to the agent's remit.

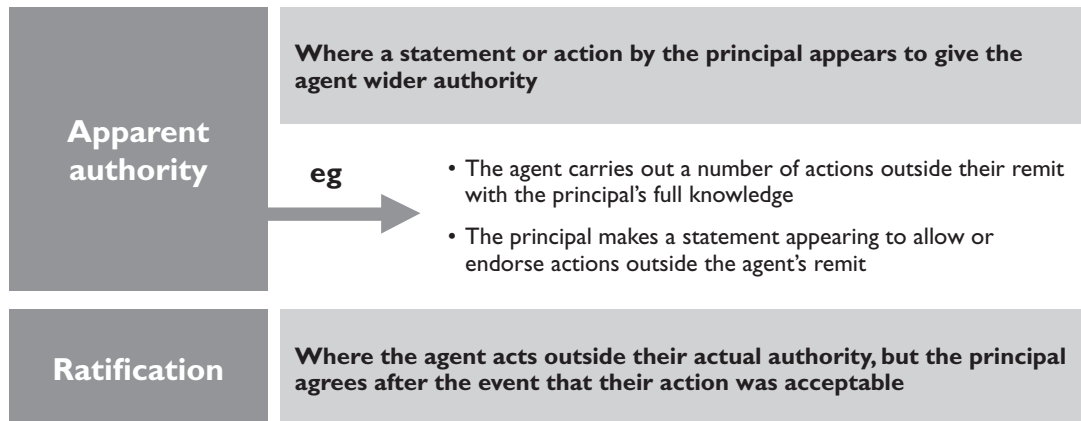
#### THE GENERAL PRINCIPLE OF AGENCY

The principal is liable for the agent's actions unless the agent acted outside their authority. In the latter case, the principal may be able to seek redress from the agent.

The terms of an estate agent's agency will usually state that they forward offers on the property to the vendor, who makes the decision whether to accept. This is in contrast to many other types of agency, where the agent is given authority to act on the principal's behalf.

There are two situations in which the agent may act outside their actual authority without necessarily making themselves liable for redress. These are outlined in Figure 6.4.

**FIGURE 6.4 WHEN CAN AN AGENT ACT OUTSIDE THEIR ACTUAL AUTHORITY?**



### 6.3 Establishing a budget

Having set out the principles of contract and agency, we can look in more detail at the steps in the property-buying process.

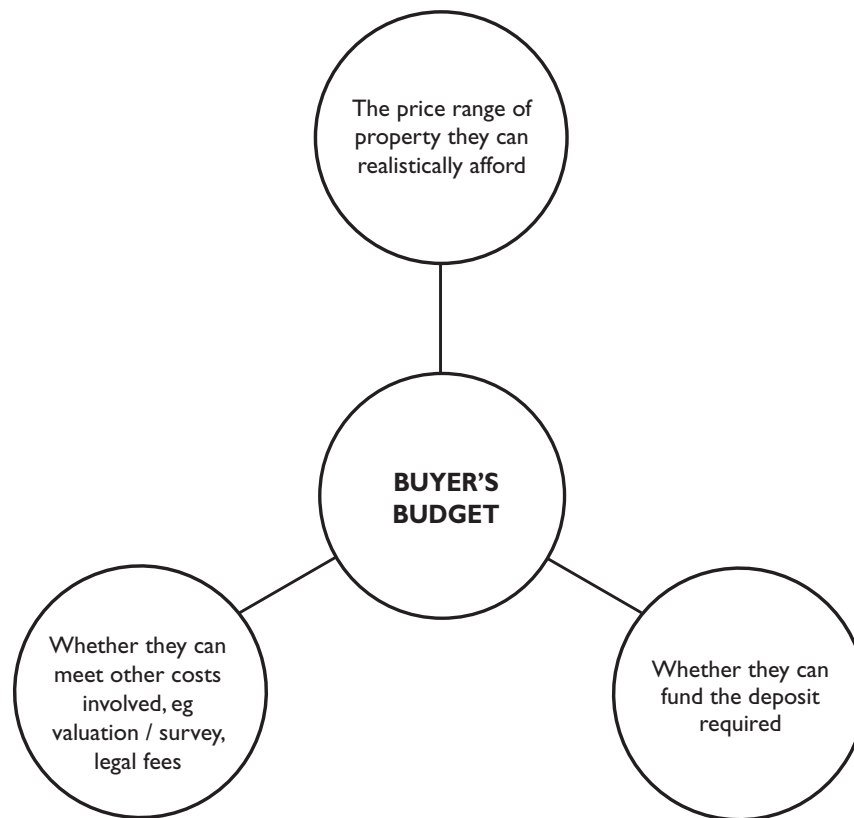
A sensible starting point for potential buyers is to consult mortgage intermediaries or lenders in their area to find out how much they can borrow.

If they are selling a property as well as looking to buy, they need to understand how much they are likely to realise from the sale, as this will affect the size of the loan they need. Being clear about what they can afford will prevent a situation whereby the buyer makes an offer on their ideal property, only to find that they cannot secure a large enough mortgage and the deal falls through, wasting everyone's time.

Most lenders will provide an indication of the maximum they would be prepared to lend based on the borrower's circumstances, although this will not be binding on the lender as they will have many other checks to do before they can confirm a mortgage offer. The intermediary or lender will also be able to advise on the types of mortgage available, the deposit required, and costs associated with particular mortgage products. The borrower also needs to take into account the costs associated with buying a property, such as stamp duty land tax, solicitors' fees, searches and so on.

Figure 6.5 summarises the key factors determined by the buyer's budget. Based on this information, the prospective buyer will now be in a position to start looking for property.

**FIGURE 6.5 WHAT DOES A BUYER'S BUDGET DETERMINE?**



### CHECK YOUR UNDERSTANDING 2



We will look at stamp duty land tax (SDLT) in more detail in Topic 15, but from your studies for UK Financial Regulation can you recall:

- who pays SDLT?
- how it is levied?
- what happens if a single transaction involves multiple properties?

## **6.4 Finding the property**

Buyers have a wide choice of media to use when searching for property, including estate agents, auctioneers, property pages of newspapers, word-of-mouth and (in Scotland) solicitors. The internet is an essential tool in finding properties for sale, with most estate agents using property search websites such as Rightmove, Zoopla, OnTheMarket and Prime Location to show the properties they have available. This means that prospective buyers can go to one website and access properties from a number of agents.

Once the prospective buyer has found a number of potential properties, they can view them, decide which one meets the requirements and make an offer.

### 6.4.1 What is the estate agent's role?

The majority of vendors appoint an estate agent to act for them in the sale. The estate agent is an agent of the vendor not the buyer, although they may choose to advise both parties on areas where a conflict does not exist.

It is the estate agent's job to market the property and secure a sale at the best price possible. Traditionally, estate agents have had a physical presence in the high street. However, a number of internet estate agencies, such as Yopa and Purple Bricks have emerged, with valuations carried out by a local valuer and advertising, communication, and arranging viewings all carried out online. Offering services in this way significantly reduces the cost to the vendor, although some people prefer to deal with a local agent with a visible presence. The online agencies now have a significant presence in the market.

When someone decides to sell their property, the process begins with a market valuation by the estate agent, who will estimate a realistic sale price and advise on any action the vendor could take to increase the potential price or improve the prospect of a sale. At this stage the agent and vendor will agree the price at which the property will be marketed (the asking price). The agent will prepare marketing material for distribution to potential buyers and posting on websites, including a description of the property, photographs and other relevant information. Estate agents must take great care not to mislead potential buyers.



#### CHECK YOUR UNDERSTANDING 3

From your studies in Topic 3, can you remember which regulations make selling agents liable for extravagant or fanciful sale particulars that are subsequently found to be misleading?

The estate agent usually markets the property through local (and sometimes national) press advertising, and on the internet through their own website or property search websites. Potential buyers contact the agent to establish further details and arrange a viewing, where they can look around the property to see if it meets their requirements, sometimes accompanied by a representative of the estate agent.

Generally, estate agents will guide the vendor on progress and interest shown in the property. If demand is greater than expected, the vendor will be more likely to obtain the asking price or even a higher price in some circumstances. If demand is 'flat', the estate agent might recommend a lower advertised price or even a sale by auction.

Once a provisional offer is made, the estate agent liaises with the vendor's solicitor to progress the formal sale.

The estate agent is usually paid on a commission basis, expressed as a percentage of the sale price (typically 1–3.5 per cent), with internet agents offering significantly lower fees. It is becoming more common for estate agents, particularly those who are internet based, to charge a fixed selling fee and separate fees for additional services.

Table 6.1 sets out a number of ways in which an estate agent can operate.

**TABLE 6.1 HOW CAN AN ESTATE AGENT OPERATE?**

Type of arrangement	What is it?	Notes
Sole selling rights	The agent has exclusive rights to sell the property and will receive the fee even if the vendor or a third party finds a buyer	Not a common arrangement
Sole agency	The agent has exclusive rights to sell the property, although they will not be entitled to a fee if the vendor finds a buyer	Most agents charge less if they are given sole agency
Joint sole agency	Two agents agree to market the property exclusively and split the commission when a sale is made	The commission is likely to be higher
Multiple agency	A number of agents market the property	<p>The agent who sells the property will receive the fee</p> <p>In the past, fees for such arrangements tended to be higher than normal to reflect the agent's gamble; in today's competitive market, multiple agency fees tend to be similar to standard fees</p>

Estate agents may offer a range of additional services including:

- auctioneering;



- property listings;
- property management and letting agency services;
- removals;
- arranging mortgages and the associated financial advice (some estate agents now have in-house independent financial advisers);
- insurance services;
- relocation services;
- survey and valuation services.

### ENERGY PERFORMANCE CERTIFICATE

An energy performance certificate (EPC), detailing a building's energy efficiency, is required for a new build or when a property is marketed for sale or rent, and is valid for ten years. The estate agent cannot market a property unless an EPC has been commissioned, although marketing can start before the certificate is received. Failure to commission an EPC before marketing a property is an offence carrying a fixed penalty.

Buildings need an EPC if they have a roof and walls, and use energy to heat, cool or ventilate the building. If a building consists of separate units, each unit requires its own EPC.

An EPC is not required for certain buildings, such as places of worship, temporary buildings intended to be used for less than two years, and listed buildings that meet specific minimum energy performance standards.

The certificate rates the property from A (efficient) to G (very inefficient), in the same way that domestic electrical appliances are rated. It is now illegal to arrange new rentals or renew an existing rental agreement for a residential property with an EPC rating of F or G, unless a landlord has an exemption.

## 6.5 Making an offer to buy

In England and Wales, it is common to sell houses by private treaty. The house is marketed at a particular price and prospective buyers make offers through the agent (or directly if no agent is involved). The vendor is free to decide which offer to accept, but no offer is binding until exchange of contracts. It is very common for the asking price to be set at a level higher than the vendor

is actually prepared to accept, and equally common for the initial offer to be below the asking price. In a rising market the property may sell for a price above the asking price, while in a falling or static market, the agreed price is likely to be below the asking price. In many cases several buyers may be involved in a bidding war for the same property.

An offer is usually made subject to contract, which means that neither vendor nor prospective buyer is legally committed until contracts have been exchanged. Either party may withdraw from the sale at any point up to exchange of contracts, with no penalty and no compensation to the other party.

### GAZUMPING

Sometimes the vendor, having accepted an offer, accepts a better offer from another buyer later on. This is known as gazumping.

Although gazumping could be seen as unethical, it is legal because neither the vendor nor the buyer is bound by an offer until exchange of contracts.

Property law in Scotland means that gazumping cannot occur in Scotland unless the sale is based on a conditional offer.

## 6.6 Formal mortgage application

Once the buyer's offer has been accepted they need to make a formal application for a mortgage. While they might have had a decision in principle for a mortgage, it is likely to be based on a relatively superficial view of their finances and unlikely to be based on information about a specific property. We will look at the assessment of the borrower and the property as security for a mortgage in Unit 4.

If the lender is satisfied that the borrower's ability to repay and the security offered by the property are in order, the lender will issue an offer of advance.

## 6.7 Offer of advance

An offer of advance (or offer letter) is not the final legal contract – that comes later. The offer letter is an invitation to the applicant to enter into an agreement, rather than the agreement

### OFFER OF ADVANCE

The formal statement of the terms and conditions on which the lender is prepared to enter into a mortgage contract.

itself. The offer letter will, however, contain many of the details that will also eventually be reflected in the mortgage contract.

The lender’s offer is binding on the lender, and can only be withdrawn in certain circumstances, which include:

- where the buyer knowingly provided false, inaccurate or incomplete information;
- material changes to the buyer’s circumstances after the binding offer was made that would affect their ability to pay the mortgage;
- a material change affecting the condition or value of the property after the offer was made, or issues affecting the title to the property, such as defective title. Investigation of title is usually carried out after the mortgage offer is made, and so problems would not be identified until the investigation was completed.

The requirement for a binding offer does not prevent the lender from making a provisional offer, sometimes known as an ‘offer in principle’, subject to further clearly stated checks by the lender. Once these checks have been concluded to the lender’s satisfaction and it is happy to lend, it must issue a final, binding offer.

The lender will generally send one copy of the final offer letter to the applicant and another to the applicant’s solicitor. Offer letters are highly standardised and typically contain:

- general details confirming the applicant, property and loan (see Table 6.2);
- standard warranties and conditions, applicable to the vast majority of mortgages and not specific to the property or borrower (see Table 6.3);
- any specific conditions that might be applicable (see Table 6.4).

**TABLE 6.2    GENERAL DETAILS COVERED IN THE OFFER LETTER**

Information	Significance
<b>Personal details:</b>	
Name and address of applicant	Confirms details of the prospective borrower
Customer/account number, if an existing account-holder	

**Details of property to be mortgaged:**

Address or plot number	Confirms details of the property to be mortgaged, its value for lending and insurance purposes
Brief description	
Tenure - freehold, leasehold or commonhold	This ensures that the value of the security and its resaleability is not prejudiced
Value for mortgage purposes	
Value for insurance purposes	
It will be a requirement that the property is subject to vacant possession	

**Details of the loan being offered:**

Amount	Tells the applicant(s) unambiguously what the lender is prepared to lend and on what terms
Term	
Repayment method	
Interest rate and whether variable, fixed, etc	
Length of fixed/capped/discount rate period	
Monthly repayment and number of instalments	
Special conditions	
APR or APRC	
Higher lending charge	

**TABLE 6.3 STANDARD WARRANTIES AND CONDITIONS IN THE OFFER LETTER**

Statement	Significance
A disclaimer: the offer does not imply a warranty of the reasonableness of the purchase price or condition of the property	Limits the lender’s liability in respect of the value and condition of the property

The fact that the offer is subject to certain conditions, including a satisfactory certificate of title	Confirms that the offer itself is not binding on the lender and that there are conditions to be met
Statement that the lender can withdraw the offer at any time if the conditions are not met, subject to the MCOB rules on binding offers	
Statement that the lender can vary the terms of the offer for legitimate reasons	
The period for which the offer letter remains valid	The offer will not remain open indefinitely and so the offer must be accepted within a certain period

**TABLE 6.4 SPECIAL CONDITIONS IN THE OFFER LETTER**

Specific conditions	Significance
Conditions relating to an additional security or guarantee, if any	Sets out the requirements for further security or the obligations of any guarantor
Requirements in relation to completion of roads and access	Important to maintain market value of property - relevant for new developments
Work that the applicant must carry out and by when	Relevant where the lender believes remedial work is necessary to protect the condition and value of the property
Right of the lender to inspect the property to check the work has been done	Protects the lender against the borrower's failing to carry out remedial work
Retention conditions, if applicable	Allows the lender to hold back part of the advance until remedial work is done
Requirement for 'consent to mortgage' form to be completed by non-owning occupants aged 17+	Prevents an occupant deriving an overriding interest in the property (preventing the lender from easily obtaining vacant possession of the property)

Requirement for the redemption of any existing mortgages or other borrowings on, or before, completion

Prevents the applicant becoming overstretched

The offer must include an illustration, together with a tariff of charges, and explain that there is a seven-day reflection (or cooling-off) period during which the applicant can change their mind. The applicant can also waive their right to the reflection period. (The reflection period is covered in detail in Topic 8, as are the details of the contents of the illustration.)

If, on receipt of the offer letter, the applicant wishes to proceed, they will sign the documentation to accept it and return it to the lender. At the same time, their solicitor will be liaising with the vendor's solicitor to agree terms for the sale.

Once the final binding mortgage offer has been accepted by the applicant, they know that the lender will make funds available to them. The next step is for contract terms to be agreed with the vendor and for the buyer's solicitor to carry out all the relevant searches. Many buyers will start the process on the basis of an offer in principle from a lender, and may agree contract terms and start the legal process at that point. However, until the lender's formal offer is in hand the borrower is taking a risk that the funds may not be available.

## 6.8 Exchange of contracts and completion

If the vendor has accepted their offer, the mortgage offer is in place and everything is proceeding according to plan, the buyer can brief their solicitors to commence their work to transfer the property from vendor to buyer, a process known as 'conveyancing'.

### IN BRIEF

#### CONVEYANCING

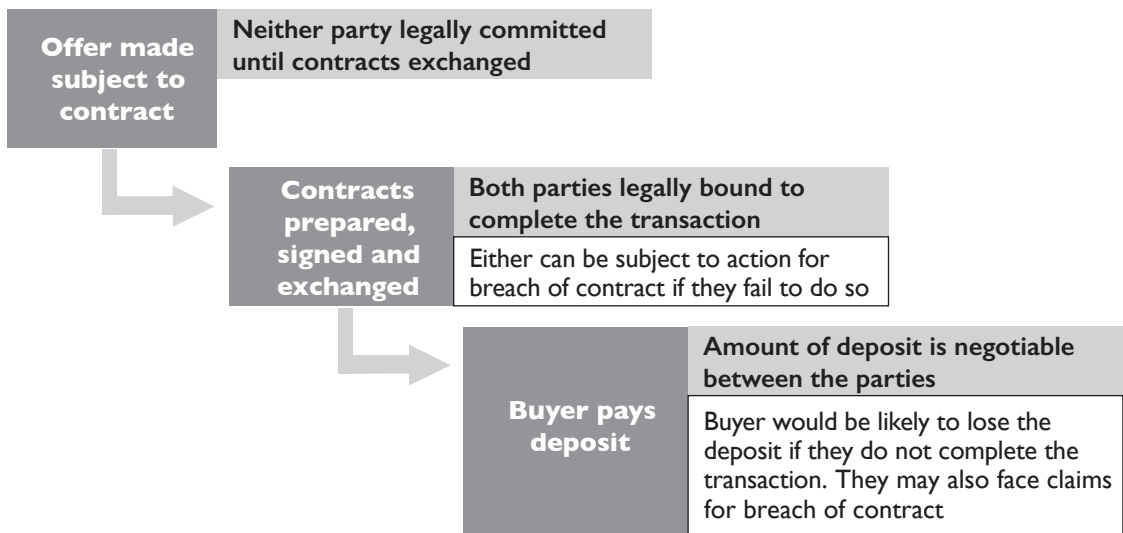
Conveyancing is covered in detail in Topic 7, but in essence it requires the solicitor or conveyancer to carry out a number of searches and enquiries to establish that:

- the property is what it is claimed to be;
- the vendor has the right to sell it; and
- there is nothing that will prevent the buyer from obtaining good title to it.

Most of the work is carried out by the buyer’s solicitor and takes place before contracts are exchanged, because it is at that point that the buyer becomes committed to the purchase.

The vendor’s solicitor will draw up a standard contract of sale and purchase and send it to the buyer’s solicitor. Both parties should sign their copy in readiness. Once the solicitors are happy with the results of searches and other legal work, they will indicate to the buyer and vendor that they are ready to exchange contracts. If both parties are happy to go ahead they will instruct their solicitors to exchange contracts, and the buyer will normally pay a non-refundable deposit to the vendor’s solicitor.

**FIGURE 6.6 WHAT IS THE TYPICAL PROCESS OF OFFER AND CONTRACT EXCHANGE?**



**BUILDINGS INSURANCE**

Once contracts have been exchanged, the buyer is technically responsible for any damage or loss to the building, even though they don’t yet own it. For this reason it is important that they insure the building from the point of exchange of contracts. A sensible vendor will make sure they also maintain their insurance – just in case the buyer fails to arrange cover. We explore buildings insurance in section 18.3.1.

Between exchange of contracts and completion – the actual handover of the property – the lender will prepare the mortgage documentation.

When contracts are exchanged the solicitors will agree a ‘completion’ date for the sale, which is when the balance of the sale price is paid and keys are given to the buyer. It is typically around 28 days after exchange, to allow for final legal work to be completed. However, it is not uncommon for completion to be sooner, and there have been many cases of exchange of contracts and completion on the same day.

6.8.1 Conditional exchange

Sometimes there may be an issue that needs to be settled or confirmed before the transaction can be completed, but the two parties do not wish to delay exchange of contracts. In this case either party may choose to exchange contracts conditional on a specified event, which means they can withdraw without penalty if the condition is not met. Figure 6.7 outlines examples of conditional exchange.

FIGURE 6.7 EXAMPLES OF CONDITIONAL EXCHANGE

Conditional on sale or purchase of another property, or completion of another transaction	Conditional subject to satisfactory search results	Conditional on a ‘long-stop’ date
<ul style="list-style-type: none"><li>• The buyer or vendor may rely on the sale of another property to provide the finance to proceed or to buy another property</li><li>• Completion may be conditional on that sale or purchase taking place, and the contract could allow the party to withdraw without penalty if the transaction did not go ahead</li><li>• Alternatively it could allow for completion to be delayed until the transaction has taken place</li></ul>	<ul style="list-style-type: none"><li>• Most searches are carried out before exchange of contracts, but the buyer may wish to speed up the process by agreeing to exchange subject to search results</li><li>• This would allow them to withdraw should the searches show any problems</li></ul>	<ul style="list-style-type: none"><li>• When buying a new property, it is often difficult to set a definite completion date. The developer’s standard contract may leave the buyer with no real idea of when they can move in</li><li>• To counter this, it is possible to insert a ‘long-stop’ date into the contract. If the property is not ready by that date, the buyer can void the contract and abort the purchase without penalty</li></ul>

6.8.2 Completion

Completion is the point at which the sale is officially made and ownership transfers to the new owner. In Topic 7 we will look more closely at the process from exchange of contracts to completion with the focus on the work of the solicitor.

6.9 Buying at auction

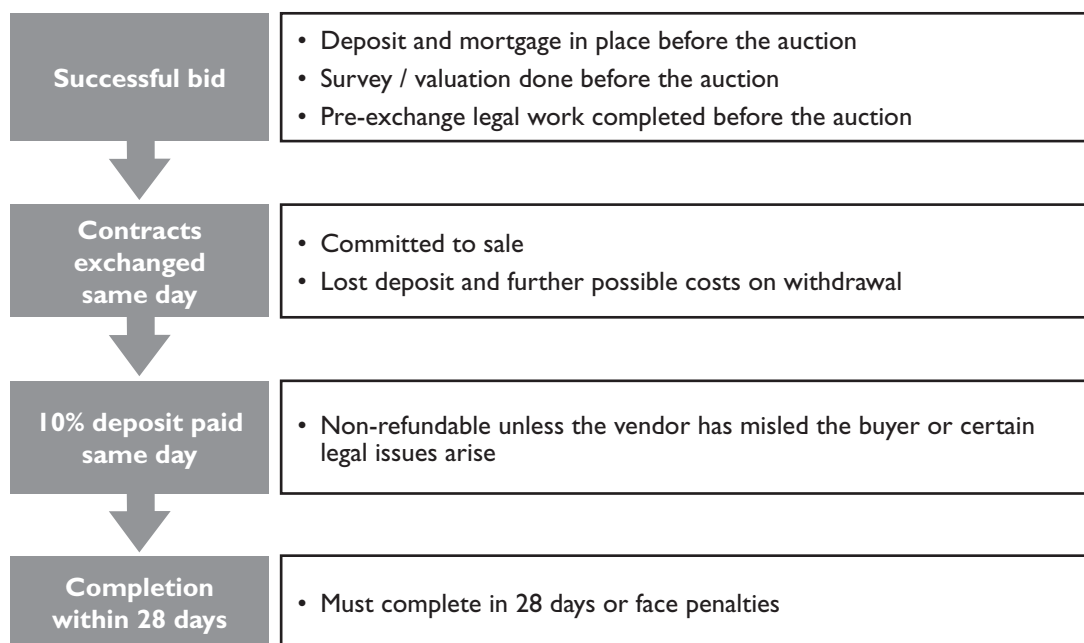
We’ve talked so far about buying through private treaty, but an increasingly popular way to buy property is at auction. Bargains can often be found and the process is very quick.



Property for sale by auction can be found in local and national newspaper advertisements, through estate agents or auctioneers, and on the internet. It varies from repossessed property and redevelopment projects to standard residential property. An indicative (or guide) price will usually be given, although in many cases the final price is far in excess of expectations.

Most property has a reserve price - a minimum price that the vendor is prepared to accept. If the reserve price is not reached during bidding, the property will not be sold, although interested parties may be able to negotiate with the vendor after the auction, particularly where the bid was close to the reserve.

**FIGURE 6.8 WHAT IS THE PROCESS FOR BUYING AT AUCTION?**



### 6.9.1 Preparation required for a bid at auction

Once a winning bid is accepted, a 10 per cent deposit is paid and contracts are exchanged on the day of the auction, so the buyer must be in a position to go ahead at the auction.

The buyer will have to make sure financing is in place, which usually means the mortgage is agreed or cash is available. In view of this, before the auction the buyer will need to complete a survey, mortgage application and offer, and preliminary legal work, in order to exchange contracts on the day. It is now common for the vendor's solicitor to prepare a legal pack for potential bidders to inspect before the auction. Typical contents include:

- memorandum of sale;
- special conditions of sale;
- the local search (if and when available);

- Land Registry search;
- proof of title;
- a copy of any lease affecting the property.

However, the buyer may choose to commission their own legal checks rather than rely on the vendor's pack; such checks should be completed before the auction. Defects or issues identified after exchange of contracts will not release the buyer from their obligations unless the defects are the result of deception or misdescription by the vendor, or there is a legal issue that could not reasonably have been identified prior to exchange.

## IN BRIEF

### **WHAT HAPPENS IF THE BUYER RENEGES ON THE CONTRACT?**

The vendor is entitled to keep the deposit and resell the property. If the resale results in a lower price, they can also claim the shortfall from the former buyer.

**FIGURE 6.9 ISSUES TO CONSIDER IF PROPOSING TO BUY AT AUCTION****Substantial prior outlay**

- Valuation and legal fees need to be paid before the auction, without any guarantee of a successful bid.
- While this eliminates frivolous bidding, it means potential buyers must have a realistic prospect of matching other bids.
- Buyers must also go to the auction with a realistic budget and be prepared to stick to it.

**Habitable standard**

- The property may need work to bring it to a habitable standard or to suit the buyer's needs.
- The buyer should investigate the extent and cost of such work and ensure that funds are available before the auction.

**Deposit**

- The 10 per cent deposit must be available on the day of the auction and will not be returned, in most circumstances, if the sale does not proceed.

**Retention of funds**

- The mortgage lender may place a retention on the funds if the property requires repair, particularly in the case of older property.
- The buyer must ensure that the necessary funds are available to carry out the work.

**Speculation**

- Even if the finances are in place, there is no guarantee the bid will be successful, and the money already spent may be wasted.

**No backing out**

- Once the bid has been accepted, there is no backing out, in normal circumstances, without loss of deposit – a big price to pay for making a mistake.

**6.9.2 Modern method of auction**

The modern method of auction is essentially a conditional auction carried out online. There are many similarities with auction websites such as eBay in that each property has a deadline by which bids must be made and bidders can track activity.

When a successful bid is made, the bidder is required to pay a non-refundable reservation fee on the day of up to 5 per cent of the purchase price to secure the property. The fee covers the auctioneer's costs and is not deducted from the purchase price. The buyer then has 28 days to exchange contracts and a further 28 days to complete. The reservation fee will be refundable if the sale cannot be completed due to a fault on the part of the vendor. Should the buyer

withdraw before exchange of contracts, no recompense is due to the vendor, but the reservation fee will be lost.



## THINK AGAIN ...

Now that you have completed this topic, how has your knowledge and understanding improved?

For instance, can you:

- outline the key requirements for a binding contract?
- describe the relationship between the agent and the principal?
- describe the role of the estate agent in the property-buying process?
- summarise the general details, standard conditions and warranties, and typical special conditions that are included in a lender's offer letter?
- explain what is meant by 'conditional exchange'?
- explain key differences between the process of buying at auction and buying via private treaty?

Go back over any points you don't understand and make notes to help you revise.

Test your knowledge before moving on to the next topic.



### Test your knowledge

Use these questions to assess your learning for Topic 6. Review the text if necessary.

Answers can be found at the end of this book.

- 1) In a contract to buy and sell property, both vendor and buyer give a consideration. True or false?
- 2) John is acting as agent for Donna. John carries out a transaction that appears to be outside his authorisation but Donna confirms that she is happy with what he did. The technical term for this is:
  - a) apparent authority.
  - b) additional authority.
  - c) ratification.
  - d) retrospective authority.
- 3) Fred and Eileen are about to put their house on the market and are considering whether to agree a sole agency arrangement with an estate agent or a joint sole agency in the hope of achieving a quicker sale. What would be the likely disadvantage to Fred and Eileen of the joint sole agency approach?
  - a) Each agent is likely to take a different approach.
  - b) The commission each agent charges is likely to be higher than if they had sole agency.
  - c) The approach is likely to be less reliable.
- 4) Who is liable to sanctions for a sales brochure that exaggerates the size of the main living room?
  - a) The vendor.
  - b) The estate agent.
  - c) The vendor's solicitor.
- 5) An Energy Performance Certificate:
  - a) must be received by the estate agent before a property can be marketed.
  - b) is commissioned by the buyer's solicitor as part of the searches.
  - c) must be commissioned before the property can be marketed.
  - d) will cover all the flats in a block.

- 6) Once a lender has issued an offer of advance and the applicant has accepted it, the lender is bound to go ahead with the transaction in all circumstances. True or false?
- 7) Indira had exchanged contracts on the sale of her flat a week before her kitchen was badly damaged by a fire that caused structural damage. Who was responsible for insuring the property at the time the damage occurred?
  - a) Indira as the vendor.
  - b) The buyer's lender.
  - c) Indira's solicitor.
  - d) The buyer.
- 8) Either vendor or buyer can drop out of the sale/purchase of a property at any point up to the completion date. True or false?
- 9) Which of the following would not be a legitimate reason to arrange exchange of contracts on a conditional basis? Exchange is conditional subject to:
  - a) sale of another property.
  - b) satisfactory valuation of the property.
  - c) satisfactory search results.
  - d) a 'long-stop date'.
- 10) James has heard that bargains can be found by buying at property auctions. He also doesn't think that a successful bid is binding? True or false?