



**Caesar & Howie**  
The Central Scotland Law Group

# **Common Problems Encountered When Selling**

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If anybody has bought and sold a house recently they will probably know that quite often any problems encountered when trying to negotiate the contract between the buyer and seller arise from practical issues rather than a legal issue. This article will look at some common practical problems which have to be dealt with by our conveyancing team.

### Unauthorised Alterations

The Home Report or survey report obtained by the buyer will detail any alterations carried out to the property. If the report advises of any alterations the buyer's agents will insist that the appropriate consents have been obtained under the Building Regulations. It depends on the nature of the alterations as to what consents are needed. If the alterations are relatively minor the buyer will probably only be looking for a building warrant and completion certificate to be in place. If the alterations are on a larger scale, then in addition to building warrant and completion certificate, planning permission may also have been required. . There is also an added complication if the property is listed as listed building consent will also be required.

If the seller can produce all the necessary building consents then all is well and good and the contract will be able to proceed without any delays, but what happens if the correct documentation has not been obtained? In this situation the seller will have to apply to the appropriate local council or approved architect's firm to obtain a "Letter of Comfort." The cost of this application differs from area to area. . Once the application has been received a building control officer or architect will visit the property to investigate the alterations which have been carried out. Hopefully after this visit it will be obvious that the alterations conformed to regulations even although no consents were obtained. In those circumstances a "Letter of Comfort" will be issued – allowing the sale to proceed.

Unfortunately sometimes the alterations do not comply with building regulations. In this instance a report will be received detailing what requires to be done to the property to allow a Letter of Comfort to be issued. In this scenario the buyer and seller have to agree on what should happen next.

The first option is that Seller will be responsible for making the necessary renovations to the property to bring it up to scratch. If the changes have not been completed by the date of entry then the move does not necessarily have to be delayed. The buyer could make retention from the purchase price until such time as the Letter of Comfort is received from the seller. The amount of retention should cover the approximate expected costs of making the alterations compliant.

The second option that could be agreed is that the purchase price will be reduced, on the proviso that the buyer will be solely responsible for remedying the alterations to bring them in line with building regulations. Obviously the reduction in the purchase price should reflect the likely costs the buyer will incur in doing this.

Of course it is always open to the buyer to withdraw from the purchase completely. For example an extension to a listed building may be required to be pulled down and re-built. The buyer may very likely decide not to proceed.

Fortunately this scenario is extremely rare and on most occasions any problems relating to alterations will be resolved.

### Statutory Notices

A Statutory Notice is a Notice served on a property by a Local Authority demanding that certain repairs require to be carried out. Such notices are usually served on flats (and normally on tenement buildings). If a Statutory Notice has been served on a property the contract will be negotiated so that the seller will remain liable for the repairs under the notice. There is often a large time delay between when the notice has been served and when the repairs are carried out. To ensure the buyer's interests are safeguarded it is the norm for a retention from the purchase price to be agreed. The money will be retained by the buyer's agents until such time as the repairs have been carried out and final invoices have been issued. This may be in a few months time or several years down the line.

If estimates have already been issued then agreement on the level of retention is normally straightforward. If there are no estimates available then this may cause a few headaches. The seller may have to obtain his own estimates or if time is short and there is not enough time to do this guidance will have to be obtained to agree a suitable retention.

### Specialist Reports

The Home Report or buyer's survey report may highlight that Specialist Treatments have been carried out to the property. Specialist Treatments includes treatments for wet rot, dry rot, rising damp and infestations. If such treatments have been carried out the buyer will be looking for Guarantees. It is usual when such treatments have been carried out that a 30 year Guarantee will be issued. It can often be a very costly business to have such treatments carried out and the buyer would wish to be safeguarded against any such costs. Therefore the buyer will require the Guarantee to be handed over to them on the date of entry.

If no guarantees are available, and on advice of the surveyor, there may have to be negotiations between the buyer and seller as to how to proceed. It may be that a reduction in price may have to be agreed. Usually an agreement will be reached without things getting too heated. Very occasionally consensus can not be made, especially if the retention is a large one, and the sale may fall through.

**The above 3 problems do commonly occur in conveyancing transactions. The reader should be re-assured, however, that it is very rare for our conveyancing team not to be able to remedy the situation particularly if both the buyer and the seller take reasonable positions. On most occasions the problem will be ironed out allowing the sale of the property to proceed on the date of entry originally agreed.**