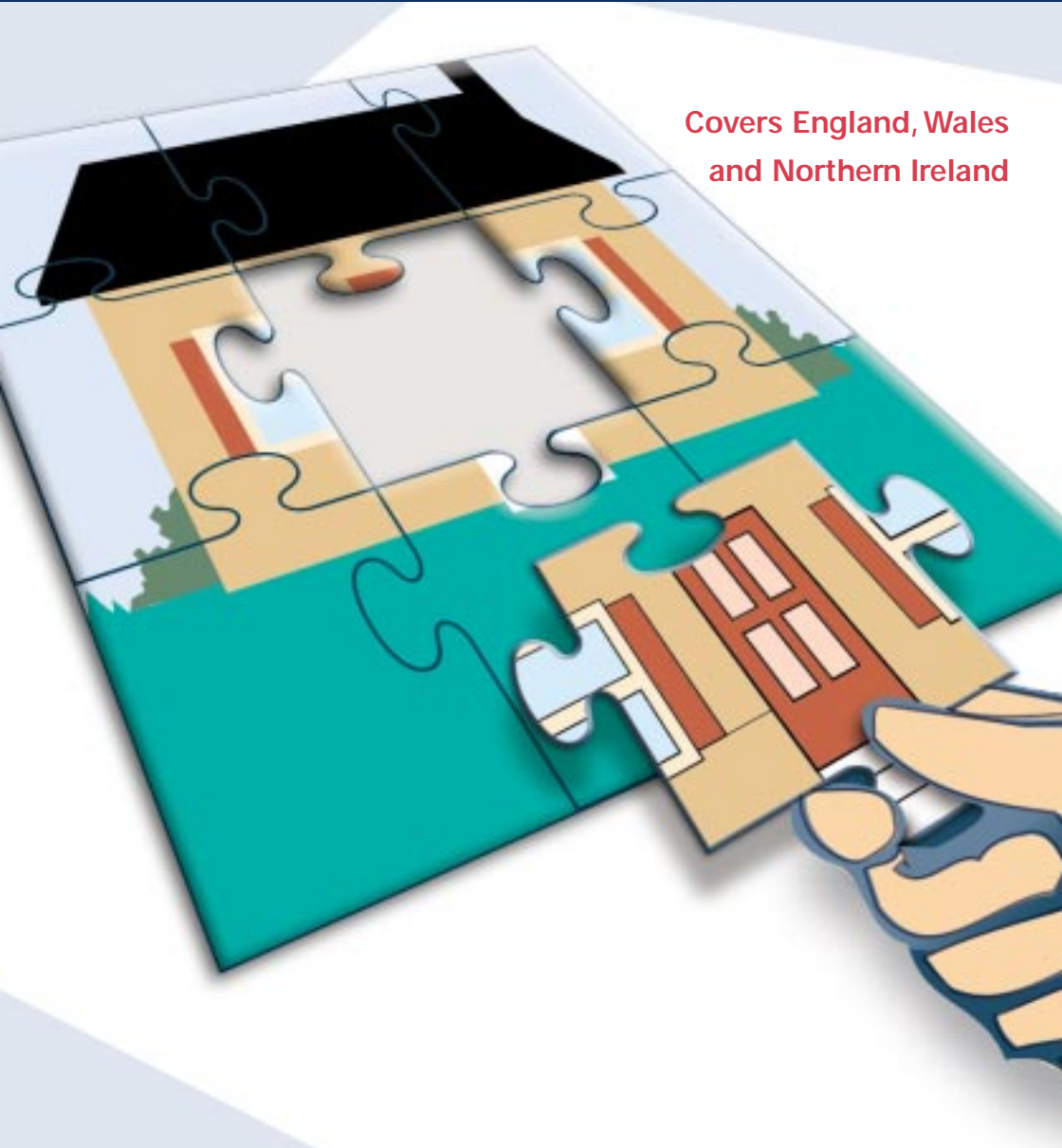
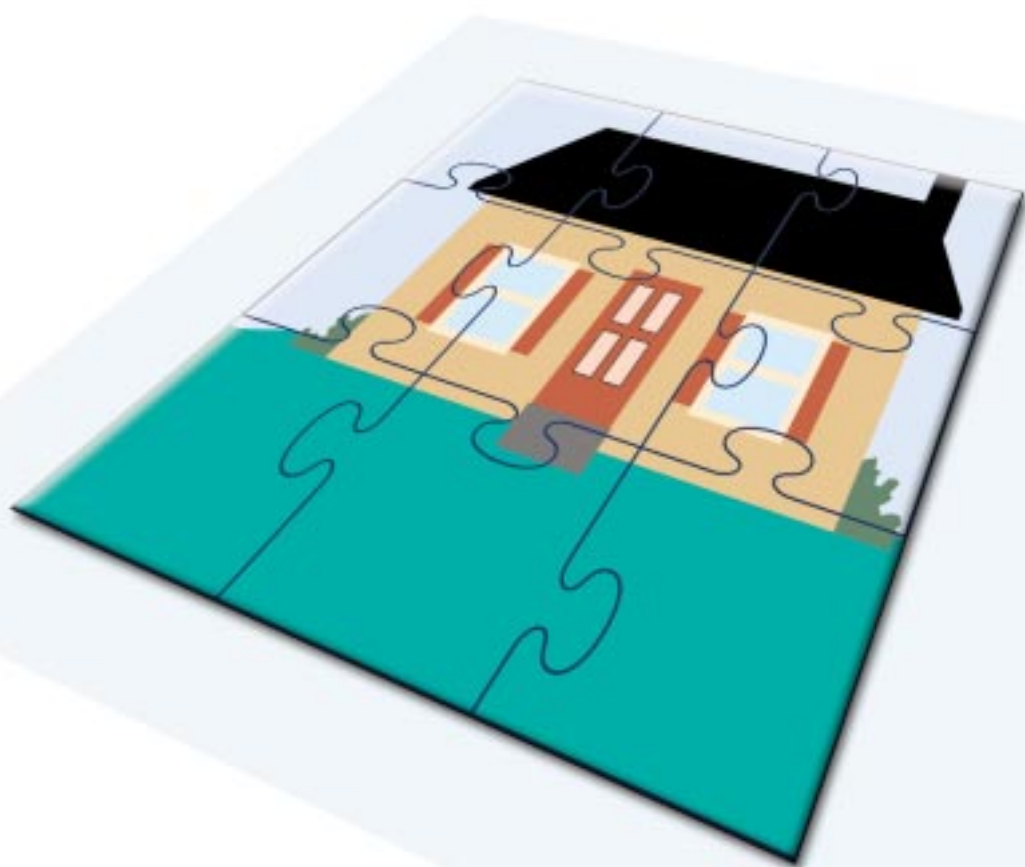


Using an estate agent to buy or sell your home

Covers England, Wales
and Northern Ireland





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Selling a property

Estate agents arrange the sale of property. They advise on price, negotiate between sellers and buyers and handle advertising. They usually offer other optional services such as arranging mortgages, surveys and conveyancing. You are under no obligation to use these services, either as a buyer or a seller.

Usually, estate agents work for sellers, not buyers. Sellers are the clients. They pay the fees and their interests are an agent's priority. Prospective buyers must, however, be treated fairly. If a buyer pays an estate agent to find a property, the buyer is the client.

The seller is often called the vendor and the buyer is the purchaser.

It is possible to sell property yourself, but most people use estate agents. As their terms of business differ you should shop around for one who sells your type of property and offers terms that suit you. Ask friends and relatives who have recently bought or sold property for recommendations or consider using an estate agent who is a member of the Ombudsman for Estate Agents (OEA) Scheme. You can usually find at least one OEA member in the high street. Such agents operate under a code of practice which ensures that you will have access to help, and redress if appropriate, should problems occur with the service you receive. Details can be found at the back of this book.

The contract

When you instruct an estate agent to act for you, you enter into a legally binding contract. Before agreeing to it, read the contract carefully and make sure you understand it.

Find out whether you have the right to cancel the contract. Check how long it will run. It should allow a reasonable length of time to market your property and find potential

buyers. Beware of ending up tied to an estate agent for an unreasonable length of time. If you are unsure about a contract, seek independent advice from a solicitor or your local Citizens Advice Bureau before agreeing to the terms.

You may come across the following terms in a contract. Make sure you understand what you are agreeing to.



Sole agency

The estate agent you appoint is the only **agent** with the right to sell your property. As you are not an agent, if you find a buyer yourself you don't have to pay the estate agent's commission. You may still have to pay for advertising or a 'For Sale' board.

Sole selling rights

The estate agent is the only **person** with the right to sell your property. It differs from sole agency in that if you find a buyer yourself, you still have to pay the estate agent.

If you appoint more than one estate agent to sell your property under a sole agency or a sole selling rights contract, each agent has the right to claim their fee when the property is sold.

Ready, willing and able purchaser

With this type of contract, you have to pay if the estate agent finds a buyer who is prepared and able to buy your property and exchange unconditional contracts.

You still have to pay even if you withdraw from the sale and unconditional contracts are not exchanged.

The terms 'sole agency', 'sole selling rights' and 'ready, willing and able purchaser' must be explained in writing if they are used in a contract.

Multiple agency

You can instruct several estate agents to act for you on a multiple agency basis. Only the estate agent which sells the property will be entitled to a commission.

The rate of commission is likely to be higher than for a sole agency or



sole selling rights contract. A few estate agents offer a 'joint sole agency' contract. In this case two agents agree to share one commission.

Charges

Before you enter into a contract you must be given written details of how much you will be charged and when payments will be due.

The estate agent must state either the exact amount you will be charged or, if this is not possible, the way in which the cost will be worked out and an estimate of the amount.

- 3 You pay a percentage of the selling price of your property as a commission. Some estate agents charge a low percentage plus an additional charge to cover costs such as advertising and 'For Sale' boards. You should be told exactly how much the additional charge will be. If this isn't possible, you should be given an estimate of the charge and a breakdown of how it will be calculated. Other agents charge a higher percentage of the selling price but this includes all costs. Occasionally, an estate agent may charge a fixed fee rather than a percentage.

It should be clear from the estate agent's terms and conditions when you will have to pay. Fees are usually due on exchange of contracts but paid on the completion of a sale.

Under a ready, willing and able purchaser contract, you have to pay once a buyer who is prepared and able to exchange unconditional contracts is found. This still applies if you withdraw your property before the sale is completed. There may also be a charge to cover the cost of 'For Sale' boards and advertising.

Property particulars

Once instructed, the estate agent visits your home to take details such as the number and size of rooms. A description of your property (known as property particulars) is prepared and advertising starts. There are strict rules covering the way in which property can be described. It is a criminal offence for an estate agent to make certain statements which are false or misleading.

Other services

Estate agents also provide services to buyers. For example, they may organise surveys and valuations or arrange mortgages or life insurance. This is common when an estate agency is part of, or linked to, a financial institution such as a bank or a building society. You should be kept fully informed of your agent's interest in the sale of your property and any possible conflict of interest.

If an estate agent intends to offer services to the buyer and will receive a commission or an introduction fee, you should be given written details. If the buyer then decides to take up the offer, you must be told in writing. This applies even if the agent offers services through someone else.

Receiving offers

Potential buyers view your property and, if they want to buy, make an offer. You should be told promptly and in writing of all offers received by the estate agent. If there are some you do not want to be told about, such as those below a certain amount, you must tell the estate agent in writing.

You don't have to accept the highest or the first offer. Unless you say otherwise, you should be kept informed of offers received even if you are considering selling to a particular buyer or have already accepted an offer.

Bear in mind that if you have a ready, willing and able purchaser contract and an offer for the full asking price has been received from someone who is prepared and able to buy your property, the estate agent can claim commission even if you don't accept that offer.

Once an offer is accepted, both you and the buyer can renegotiate the price and/or conditions of sale, or withdraw without penalty up until contracts are exchanged or accepted, as in Northern Ireland. If you have a ready, willing and able purchaser contract, you may have to pay the agent if you withdraw before contracts are exchanged. It depends on what happens during negotiations.

Buying a property

Estate agents provide advice and property details to buyers. But bear in mind that the agent's main concern is to get the best deal for the seller, who is the client. (As a buyer, you are the client only if you are paying an agent to find a property for you.)

Property particulars

The particulars drawn up by the estate agent will give you an idea of what a property is like. It is a criminal offence for an estate agent to make certain statements about a property which are false or misleading. For example, if the property is said to have double glazing and loft insulation, then it should have these features.

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You may see these terms in a property description:

- **freehold - the seller has full ownership and the right to sell the property. Most houses are freehold.**
- **leasehold - the seller has a lease on the use of the property for a specified period of time. The seller can sell the remaining time on the lease but the property is ultimately owned by a freeholder. Most flats are leasehold.**

If there are terms in a property description that you do not understand, ask for an explanation.

Before committing yourself to buy the property, seek the advice of a solicitor.

New properties

If you view a new property, or one that is still under construction, you may be asked to pay a non-refundable deposit or sign papers on the spot if you are interested in buying. Get advice from a solicitor first.

Making an offer

Estate agents must treat all buyers fairly. They must not hold back offers from buyers who do not want to use their services. For example, you should not be treated differently because you do not arrange a mortgage through the estate agent.

When you make an offer for a property, the estate agent must pass it to the seller promptly and in writing. The only exception to this is if the seller has specified that some offers are not acceptable, such as those below a certain

amount. The estate agent doesn't have to give you details of other offers which have been received.

It is not always the highest offer which wins. The seller may, for example, decide to sell to the person who can proceed with the sale quickest.

If your offer is accepted, the estate agent will send you a letter confirming the details. But at this

stage there is no legally binding contract. Other offers can still be received and accepted in preference to yours and both you and the seller can renegotiate the price and/or any conditions of the sale right up to the point when contracts are exchanged or accepted, as in Northern Ireland.



Gazumping

Although your offer may have been accepted, the estate agent has a legal duty to pass on any further offers received unless specifically told not to by the seller. This can lead to 'gazumping', where a higher offer is put in and accepted at the last minute before contracts are exchanged. You can make an offer subject to the condition that for a certain period of time other offers will not be accepted. Get advice from your solicitor if you want to do this.

Reposessed properties

Reposessed property belongs to the mortgagee, usually a building society or a bank. The mortgagee has a legal obligation to obtain the best possible price for the property but may also take into account the speed with which you can raise funds and exchange contracts.



If your offer for a repossessed property is accepted, a procedure known as 'The Notice of Offer' sometimes follows. This may delay things. Details of the property and your offer are advertised in the local press. The mortgagee asks for offers from other prospective buyers to be made by a certain date, usually by sealed bids. If one of these offers is accepted instead of yours, the whole process may start again until the highest possible price has been reached.

Deposits

When you make an offer, you may be asked to pay a pre-contract deposit of a few hundred pounds to show your commitment to buy. This is usually held by the estate agent. Before you part with any money, find out from your solicitor whether such a deposit is necessary. If it is, check whether it is refundable if contracts are not exchanged. When you pay, get a detailed receipt from the estate agent.

On exchange of contracts, you may have to pay a bigger deposit, usually five or ten per cent of the purchase price. This will be held by the seller's solicitor.

Mortgage arrangements

There are a number of ways to find a mortgage. Shop around, for example, at banks and building societies. Or go to an independent financial adviser who will be able to tell you about the mortgages that are available. Estate agents can also advise you and may offer to arrange a mortgage for you. You are under no obligation to take up this offer.

A mortgage is a large, long term debt. You could lose your home if you can't keep up with the repayments. Think carefully before taking on such a commitment.

Surveys and valuations

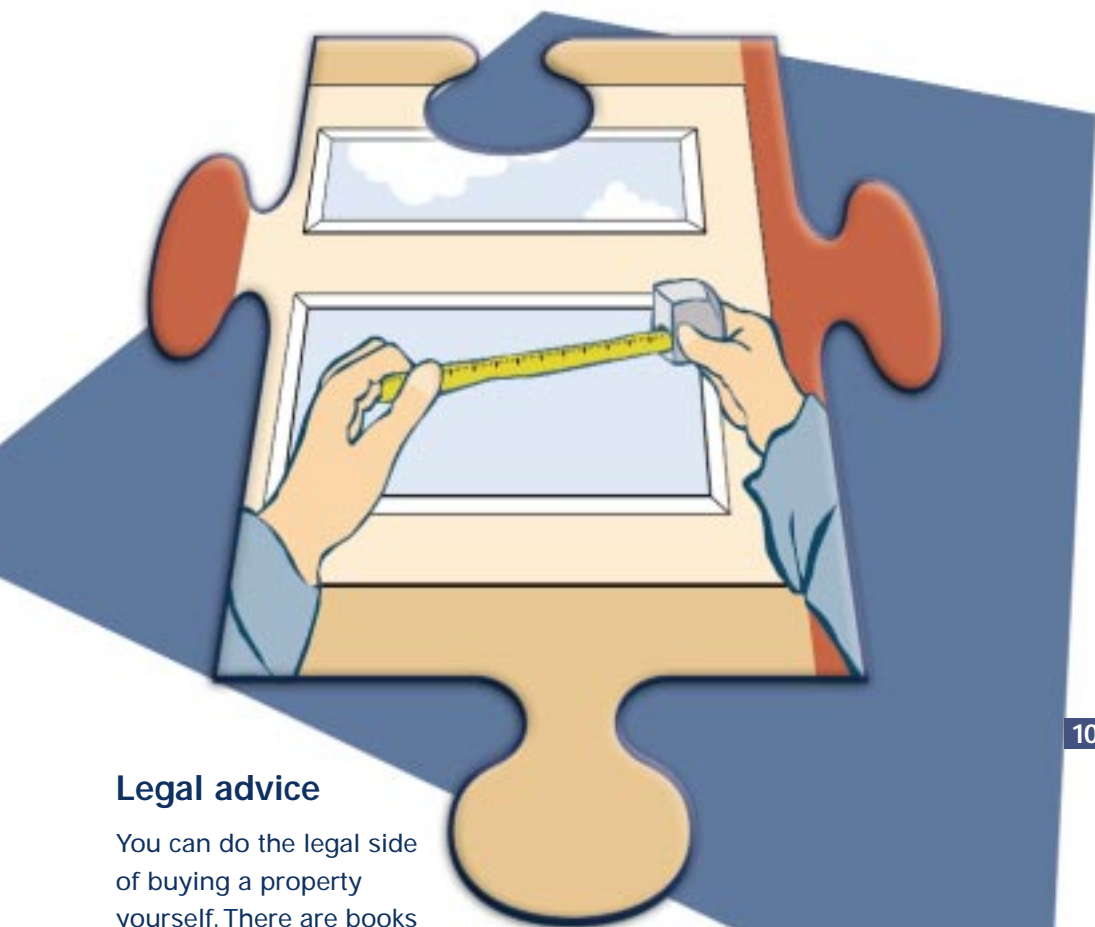
Before agreeing to give you the mortgage you want, the lender will want the property valued. A valuation helps the lender but you may want more information from a home buyer's survey and valuation. This is a partial survey of the state of the property. You could ask the valuer to draw up a house buyer's report while preparing the valuation. Or you may prefer to use a valuer who is not in contact with your lender.

You might want to get, or the lender may require, a full structural survey. This tells you whether the property is sound or whether major repairs are needed and should be carried out by an independent surveyor. Check that they are qualified.

To find a surveyor, ask friends and relatives if they can recommend one. If not, look for details in the Yellow Pages or ask in your local library. If you want to use a surveyor who is a member of a professional association look for the letters ARICS or FRICS or get details of members by contacting

The Royal Institute of
Chartered Surveyors (RICS)
12 Great George Street
Parliament Square
London SW1P 3AD
tel: 020 7222 7000

If you are buying a flat, you will probably be partly responsible for the upkeep of common parts of the building, such as stairways, roof and garden. Ask your surveyor to check the whole building as well as the flat. Does it need, or has it recently had, major repairs such as redecoration, or a new roof or a lift? If so, will you have to pay a share of the costs? The cost of a home buyer's survey and valuation or a structural survey will normally be based on the value of the property.



Legal advice

You can do the legal side of buying a property yourself. There are books on do-it-yourself conveyancing in your local library. But unless you are really confident that you know what you are doing, it is best to leave this to the professionals. Solicitors and licenced conveyancers know the problems that can arise, can ask the right questions and are insured against making professional mistakes.

They can also sort out your contract. Fees vary and it pays to shop around. Try the Yellow Pages or ask around. The estate agent may be able to recommend a solicitor or licensed conveyancer.

Do not use the same legal adviser as the seller.

Other things you might need to know

Personal interest

Estate agents may be in a position to benefit from the sale of a property.

If you are selling:

you must be told, promptly and in writing, if your estate agent, or a relative or business partner of your estate agent, wants to buy your property.

If you are buying:

you must be told, promptly and in writing, if an estate agent, or a relative or business partner of the estate agent, owns the property you want to buy.



Problems

If you are not happy with your estate agent's services or feel that you are being treated unfairly, try to sort things out with the branch concerned or the head office. The problem may simply be a lack of communication between you and the agent.

If this does not solve the problem, and you want advice or help, contact your local trading standards (or consumer protection) department. You will find their address in the phone book under your local council, or - in Northern Ireland - the Department of Economic Development.

Some estate agents belong to one of the professional bodies listed here. These organisations may be able to help if you believe your estate agent has acted unprofessionally. If an estate agent belongs to the Ombudsman for Estate Agents Scheme, you can be certain that you will get help with redress where appropriate.




The Ombudsman for
Estate Agents Scheme
Beckett House, 4 Bridge Street
Salisbury, Wiltshire SP1 2LX
tel: 01722 333306

The National Association of Estate
Agents (NAEA)
Arbon House, 21 Jury Street
Warwick CV34 4EH
tel: 01926 496800

The Office of Fair Trading (OFT) has a statutory obligation under the Estate Agents Act 1979 to monitor the fitness of people engaged in estate agency work. The OFT will investigate complaints about estate agents if their behaviour indicates that they have not complied with the Act or any of the Regulations made under it.

Under the Act, the OFT can warn or ban estate agents who have not complied with their statutory obligations. The OFT cannot become involved in individual cases and any investigation will not directly help in any dispute between you and an agent.



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