

CONSULTATION QUESTIONS

Section 1

Q1) Do you think the Home Report is meeting its original objectives?

Yes No

Q1a) If yes, please explain why

Comments

Q1b) If no, please explain why

The original objective of the Home Report were to some extent misguided, and had already been superseded by practice by the time the report was introduced. The original objectives were as follows:-

(a) to improve information about property condition and therefore provide an incentive for repair and maintenance works to be carried out.

From a purchaser's point of view, the information provided in the Home Report is more detailed than a basic mortgage valuation but not necessarily as comprehensive as a homebuyer's report which was commonly obtained by purchasers prior to the introduction of Home Reports. Home Reports do not contain the specific information required to ascertain the potential cost of repairs, and often provide little more than an indication that the repairs or maintenance may be required and that further reports and estimates should be obtained.

Prior to the introduction of the Home Report, its proponents argued that a detailed survey report would encourage people to keep better care of their property. This was always optimistic. If homeowners are not inclined to maintain their properties well during their period of ownership, they are unlikely to be influenced by the type of survey required in some future sale. Whilst the pre-sale survey may encourage sellers to carry out repairs/maintenance to their properties prior to marketing, it is likely that such works would be carried out at the lowest possible cost to facilitate a quick sale, and will not necessarily be of a quality to ensure a lasting improvement in housing stock.

There would not appear to be any evidence, either empirical or anecdotal, to suggest that the condition of properties throughout the country has improved as a direct result of the introduction of the Home Report.

(b) to address the problem of buyers paying for multiple valuations and surveys which were prevalent in "market hot spots".

There is no doubt that, when the proposals for Home Reports were first mooted, the problem of purchasers having to instruct multiple surveys did exist in certain areas, with the centre of Edinburgh and West End of

Glasgow being particular hot spots. The extent of this problem was however not uniform throughout the country, and in certain areas where it was essentially a buyer's rather than seller's market, the problem was virtually non-existent. By the time, years later, Home Reports were introduced, the problem of multiple surveys had largely been superseded by a market led initiative to submit offers subject to survey or, in certain areas, arrangements with firms of surveyors for "duplicate" surveys to be provided on a verbal basis at a greatly reduced cost. In such cases, a full fee was only charged if the client was successful in purchasing the property and required a report for their lender. The Home Reports were therefore addressing a problem which no longer existed.

The introduction of Home Reports has however created a situation where multiple valuations are often necessary. Due to the limited lifespan of the Home Reports, it is frequently the case that sellers have to pay additional fees for updated reports.

Many proponents of Home Reports claimed that their introduction would mean that purchasers would never have to pay for a survey again. This was patently untrue. The legislation did not impose an obligation on mortgage lenders to accept Home Report valuations, and as a result lenders' practices vary. Some will not accept Home Report valuations at all, whilst others will only accept them if they meet certain criteria. In such cases, it may be necessary for house purchasers to pay for a mortgage valuation despite the fact that the Home Report, for which the sellers have already paid, already contains a valuation.

If Home Reports are to be retained, this is a key issue which should be addressed. There should be a requirement on lenders to accept a mortgage valuation contained in a Home Report provided by a surveyor who is already on their panel.

(c) to address the problems caused by the practice of setting artificially low asking prices.

This was another so-called problem which was exaggerated by proponents of Home Reports. Whilst there were certainly areas of the country in which it had become common for agents to advertise properties at a considerably lower price than their clients would be willing to accept, this was by no means prevalent throughout the country. Even in those areas where it was, both purchasers and, more particularly, purchasers' agents were fully aware of the practice and would therefore factor into their calculations the price the sellers were actually hoping to achieve. Solicitors acting on behalf of purchasers had sufficient knowledge and experience of the market to properly advise their clients with regard to asking price and the likely selling price of properties. The introduction of a single survey to counter the problem of low upset prices simply penalised all sellers in an attempt to solve a problem which was by no means universal.

Q2) Are the original Home Report objectives still appropriate?

Yes No

Q2a) If yes, please explain why

Comments

Q2b) If no, please explain why

For the reasons outlined above, there is no evidence to suggest that the Home Report has made any difference to the condition of housing stock, whilst objectives (b) and (c) had either been grossly exaggerated by proponents of the Home Report or superseded prior to the introduction of the Report.

Q3) Should the Home Report play a more central role in promoting energy efficiency and property condition improvements among home owners?

Yes No

Q3a) If yes, please explain why

Comments

Q3b) If no, please explain why

There is no evidence to suggest that home owners would take steps to increase the energy efficiency of their home or carry out improvements simply because of the terms of a Home Report.

Q4) Should a national register of Home Reports be established?

Yes No

Q4a) If yes, please explain why including who should have responsibility for development and maintenance

Comments

Q4b) If no, please explain why

The Law Society of Scotland would prefer to see compulsory Home Reports abolished and there would therefore be no need for a national register. The establishment and maintenance of any such register would undoubtedly result in additional cost which would presumably end up being borne by sellers.

Section 2

Q5) Do you think the upfront cost of Home Reports is preventing potential sellers from putting their property onto the market?

Yes x No

Q5a) If yes, please provide details.

Since the introduction of the Home Report, there have been numerous examples of sellers being unable to place their property on the market as they have simply not been in a position to pay the upfront costs. The problem of finding the initial funds required to market the property is of even greater concern for those in financial trouble, and in particular for homeowners who require to sell their property because they cannot maintain their mortgage payments. In many cases, it is simply impossible for them to meet the cost of a Home Report in addition to essential advertising/marketing costs. This has led to a rise in companies specialising in purchasing properties from "distressed sellers" who in some cases are in such a desperate position, they are forced to accept offers substantially below the value of their property.

Proponents of the Home Report argued at the time that the market would provide solutions for such situations. This was optimistic and misguided. Home Reports were introduced at a time when the property market was already depressed and it deteriorated further in the following years, resulting in a situation where many home owners had insufficient equity in their property to clear their mortgages, never mind additional costs imposed on them by the imposition of compulsory Home Reports. In such situations, it was unrealistic to expect selling agents to run the risk of meeting additional survey costs when there is no guarantee that the eventual sale price would be sufficient to reimburse this expense.

The upfront costs of obtaining a Home Report undoubtedly prevented many home owners from putting their property on the market, and almost certainly resulted in the rise in repossessions/bankruptcies which occurred over that period.

Q6) Are you aware of any schemes available (e.g. deferred payment) to help potential sellers to pay for home reports?

Yes x No

Q6a) If yes, please provide details

Various schemes have been introduced and withdrawn over the past few years. Many proved to be too expensive for sellers or came with conditions which would not be met by them. No satisfactory solution to the problem has emerged.

Q7) Are there any issues with the majority of Home Reports being commissioned through selling agents?

Yes x No

Q7a) If yes, please explain why

There are concerns, particularly in the west of Scotland, that the relationship between selling agents and the surveyors providing home reports was too close (in some cases, the surveyors are in fact owned by the same parent company) and this could lead to questionable valuations. There is certainly anecdotal evidence of selling agents advising sellers that they can arrange for a favourable home report valuation to be provided by their nominated surveyors.

Q7b) If no, please explain why

Comments

Q8) Should other organisations be allowed to carry out the Single Survey (including valuation) and/or the Energy Report?

Yes No x

Q8a) If yes, what other organisations and why

Comments

Q8b) If no, please explain why

Explained above (Q. 1(b)). The situation already exists whereby certain lenders will not accept valuations from established surveyors, even if they are on their panel. Allowing other organisations which may or may not be acceptable to lenders to provide reports will simply create even greater confusion for sellers, purchasers and agents.

Q9) In your experience is the requirement for a home report before marketing a property leading to delays in properties coming onto the market?

Yes x No

Q9a) If yes, please outline the implications of this.

Prior to the introduction of Home Reports, many selling agents could arrange for a property to be on the market within twenty four to forty eight hours of instruction. The requirement to complete a Property Questionnaire, have a Single Survey and Energy Performance Certificate inspection carried out, and have a full Home Report prepared and approved, means that this is no longer possible and delays are inevitable. This can in itself have a detrimental effect on the housing market. Some home owners only decide to put their house on the market when they have seen another property for which they want to offer. If they are delayed in marketing their own house, they may miss the opportunity to bid for another and simply decide not to proceed with the sale.

Q10) Are home reports a useful marketing tool for sellers?

Yes x No

Q10a) If yes, please explain why

This is a qualified "yes". The correct answer, if such an option were available, would be "possibly". Basically it depends on the quality of the property.

Prior to the introduction of Home Reports, trial schemes were run in various parts of the country, and only an extremely small percentage of sellers voluntarily obtained Home Reports, which would suggest that they did not consider reports to be a marketing tool which justified the expense. There is no reason to think that the current position is any different. If the requirement for Home Reports was abolished tomorrow, it is unlikely that a high percentage of sellers would voluntarily provide reports at their expense to prospective purchasers.

Q10b) If no, please explain why

Comments

Q11) Is the 12 week deadline for marketing a property after completion of a home report appropriate and reasonable?

Yes No x

Q11a) If yes, please explain why

Comments

Q11b) If no, please explain why

Any survey report or valuation is really only valid for the date on which it has been provided. The condition of a property can deteriorate rapidly due to fire, storm damage, flooding etc. Even if there is no change in the condition of the property, its value could change drastically overnight due to unforeseen circumstances such as an overnight collapse in the banking/mortgage market or the closure of a major employer in a particular location. The value of any report which is not completely up to date is therefore questionable.

Q12) Is the 28 day provision for removing a property from the market without requiring a new home report appropriate and reasonable?

Yes x No

Q12a) If yes, please explain why

Again, this is a questionable "yes". Sellers should have the opportunity to change agents and a period of grace when the property is not on the market should therefore be allowed. However, if the existing home report is now out of date (see comments to Q.11) then the terms of that report may be of little value.

Q12b) If no, please explain why

Comments

Q13) Are there any issues with potential buyers accessing home reports?

Yes No

Q13a) If yes, please provide an overview and outline the implications of this

Comments

Q14) Is this the most appropriate way to enforce home report legislation?

Yes No

Q14a) If no, please explain why and how this could be improved

Comments

Q15) What are your views on mortgage lenders' acceptance of home report valuations?

The absence of a consistent policy adopted by all lenders with regard to Home Reports and mortgage valuations causes serious problems. Purchasers and their agents simply cannot be sure that the valuation on which they are relying when submitting their offer will be acceptable to their lenders, who may refuse to accept the mortgage valuation, even if it is provided by a firm on their existing surveyors panel. As a result, offers "subject to survey" are still commonplace, and there can often be substantial delays in obtaining clarification from lenders as to whether or not a Home Report valuation is acceptable to them, and even greater delays if they insist upon instructing their own report. Frequently this leads to delays in conclusion of missives, which substantially undermines what has historically been one of the great benefits of the Scottish legal system.

Q16) Are the re-dress options available to buyers reasonable and appropriate?

Yes No

Q16a) If no, please explain why and how these could be improved

The redress options are of limited use to buyers in most cases.

Q17) Do these exceptions need to be amended?

Yes No

Q17a) If yes, please explain what amendments are required and why

There is no obvious justification for a Home Report not being provided for a newly built or newly converted property. The requirement for purchasers of newbuild properties to obtain their own survey flies in the face of previous

claims by government ministers that no purchaser would require to pay for their own valuation.

Section 3

Q18) Does the single survey element of the home report provide an appropriate and useful level of information?

Yes No

Q18a) If no, please explain why and what information should be removed and/or added

It is not a legal requirement for the single survey to include a mortgage valuation, but without one it is of limited value to a purchaser obtaining a mortgage, who would then have to instruct his own survey.

The repair categories in the single survey are useful but more detail should be provided by the surveyor as to the precise nature of faults and the extent of the repairs which may be necessary.

Single surveys frequently make reference to previous alterations to the property without specifying the exact nature of these alterations. This information is essential to the purchaser and the purchaser's agents in order in order to ensure that all necessary local authority consents have been obtained for alterations to the property.

If home reports are to continue, then the legislation should be amended to make it compulsory for a mortgage valuation to be included in the single survey, and for surveyors to specify precisely what alterations have been made to the property.

Q19) Should the repairs categories in the single survey be amended to make them consistent with the categories used in the Scottish House Conditions Survey?

Yes No

Q19a) If yes, please explain why

Comments

Q19b) If no, please explain why

Comments

Q20) Is the valuation element of the single survey a useful element of the home report? Yes No

Q20a) If yes, please explain why

Not only is it useful, it is essential – see answer to Q. 18(a).

Q20b) If no, please explain why

Comments

Q21) Is the information provided in the energy report appropriate and useful?

Yes x No

Q21a) If yes, please explain why

This is a qualified yes. The reality of the situation is that very few purchasers appear to pay any attention to the energy performance certificate.

Q21b) If no, please explain why

Comments

Q22) Is the information provided in the property questionnaire appropriate and useful? Yes x No

Q22a) If yes, please explain why

This is a qualified yes. The information is useful but the questionnaire could be improved. For instance, one question asked is whether the sellers have carried out any alterations to the property, but their answer could be of limited value if they have only owned the property for a short period. The questionnaire should also be asking if they are aware of any alterations carried out to the property by previous proprietors which would have required local authority consent as it is necessary for purchaser's agents to investigate these matters in order to comply with the requirements of the Council of Mortgage Lenders' handbook.

There should also be a requirement for institutional sellers, and in particular banks selling repossessed properties or trustees in sequestration, to provide as much information as possible. At the moment, it is common practice for every question to be answered "Don't know", when in many cases the bank/trustee will be in possession of the necessary information or capable of checking the position.

Q22b) If no, please explain why

Comments

Q23) Should an additional question on land maintenance fees be added to the Property Questionnaire?
Yes No

Q23a) If yes, please explain why

Comments

Q23b) If no, please explain why

Comments