

Guidance and Information for Buying and/or Selling A Residential Property

We have written this guide to explain the various stages of the conveyancing process. When buying or selling a property the legal process can sometimes seem confusing and it can be a stressful time. We hope the information given in this Guide will help you understand what is happening.

1. FIRST STAGE

We assume that you have now found the property you wish to purchase and have agreed a price with the Seller or the Sellers' Estate Agents. The price will usually include all fixtures (eg: cupboards and other items which are attached to the house) but not all fittings which can include such items as carpets, light fittings etc., which can simply be removed without causing any damage to the property. If you are buying a property you should always check what fittings and other items of furniture are being sold and whether or not they are included in the price for the property or whether an extra payment is required. We usually receive a Fixtures, Fittings and Contents Form from your Sellers' Solicitors and will send you a copy of this as soon as we receive it.

Until Contracts are "Exchanged" negotiations can still continue as there is no binding obligation on the Purchaser to buy nor on the Seller to sell.

If you are requested by the Selling Agents to pay a preliminary deposit, pay the minimum sum requested. If the transaction proceeds to completion this deposit will form part of the purchase price. If you do not proceed with your purchase then it should be refunded to you.

2. FINANCE

If you require a Mortgage to finance the purchase of the property you will usually arrange mortgage finance either through a Bank, Mortgage Company or Building Society. It is likely that you will also arrange some sort of insurance alongside the Mortgage which may be an endowment policy, low cost endowment or mortgage protection policy. The Buyer should not enter into a legal commitment to purchase the property before they receive a formal mortgage offer.

We are unable to offer financial advice on your Mortgage and would recommend that you seek advice from an independent financial advisor to arrange your Mortgage. The financial

advisor will discuss with you the various options available including any mortgage protection policy that you may require.

Mortgage Redemption – if you have an existing Mortgage and intend to repay (redeem) this on the sale of your property then you should check with your Lender whether or not there are any early repayment penalties payable. Some Lenders do charge penalties if the loan is paid off early or if a notice that you intend to repay the loan is not given to them. We are only notified of these penalties just before completion when we request a repayment figure from them and it may then be too late for you to negotiate with your Mortgage Company.

3. SURVEY/VALUATION

If the Purchaser is obtaining a Mortgage the Mortgage Company will require a valuation report to be obtained. This Valuation Report is primarily for the protection of your Mortgage Company to ensure that the property is worth the money they propose lending before the Mortgage can be granted. It is not a full structural survey although the Surveyor carrying out the valuation will often draw your attention to various points. The Valuation report is not a guarantee that the price you are paying for the property is reasonable. We would recommend that you obtain a full structural survey on the property which will reveal any structural faults in the property and also draw your attention to any minor repairs which may not be immediately obvious. If following the Mortgage Company's valuation or a full structural survey the Purchaser re-negotiates the price with the Seller or any allowances to pay for any works revealed then your Mortgage Company must be informed immediately of any change in the price or any allowances made in respect of repairs.

Older properties may be affected by woodworm, rot and damp. In this case we would recommend that you obtain a free estimate by Local Companies to ascertain the cost of any works before making a legal commitment to the purchase.

4. HOME INFORMATION PACK (HIP)

It is now a legal requirement for a Seller to have a Home Information Pack available before the Seller advertises their property for sale with the Selling Agent. The Home Information Pack must contain; a Property Information Questionnaire, (PIQ), an Energy Performance Certificate (EPC), evidence of the Sellers' ownership of the property, a sales statement and a Local Authority and Drainage/Water Search. The Purchaser should be able to view this to enable them to make an informed decision regarding the property.

5. PROCEDURE TO EXCHANGE OF CONTRACTS

5.1. CONTRACT

The Sellers' Solicitors prepare a Contract for the Buyers' Solicitors and will prepare the Contract based on the copy title deeds that they hold and on the HIP. When you are selling your Solicitor will send various forms for you to complete and will request copies of any planning documentation that you hold and any other certificates that relate to the property for works that have been carried out to the property. The Sellers' Solicitors will send the Contract together with copies of the title deeds and the completed questionnaires together with any relevant documents the Sellers have provided to the Buyer's Solicitors. The Sellers' Solicitors normally send two copies of the Contract, one of which will be eventually returned to the Sellers' Solicitors for signature by the Sellers. The Buyers' Solicitors will retain the other copy of the Contract for signature by the Buyers. The Sellers' Solicitors or the selling agent will also send the Home Information Pack to the Buyers' Solicitors.

When the Buyers' Solicitors receive the Contract documentation and Home Information Pack they will examine the terms of the Contract and make any necessary amendments to it and will check the Sellers' ownership of the property and the various information provided in the forms and documents regarding the property from the Sellers' Solicitors. They will then request any further information from the Sellers' Solicitors.

Buyers should check the plan of the property carefully and advise if any structural building works have been carried out to the property to ensure that any necessary planning documentation is obtained. The Buyers should also advise of any shared rights of way that are not shown on the plans supplied to them to ensure that the property benefits from any such rights.

When purchasing a property, if there are any particular points that you would like to raise of the Sellers or the Local Authority, then please advise as soon as possible. These points may concern any possible developments, boundaries, restrictions or rights of way affecting the property. The Local Authority may charge additional costs for any further enquiries raised of it.

5.2. SEARCHES

The Home Information Pack will contain a Local Authority and Drainage and Water Search. The purpose of the Local Authority Search is to reveal any planning permission and any other

proposals affecting the property. It will not show any proposals regarding adjoining properties or land and if a Buyer requires any further information regarding proposals for adjoining properties or land then they should request us to make further enquiries as referred to above.

Most Home Information Packs will contain a personal search as opposed to an Official Local Authority Search. We will need to check whether or not the Local Search contained within the Home Information Pack is current. Mortgage Company's require the Local Authority Search to be not more than 6 month's old at the point of completion. Therefore if the Local Authority Search is out of date and you are obtaining a Mortgage to assist with the purchase then we will need to carry out a new search against the property. We would always recommend that an Official Local Authority Search is obtained rather than relying upon a personal search.

We can also arrange additional searches against the property including an Environmental Search and a Specialist Planning Search.

5.3. DOCUMENTS NECESSARY TO EXCHANGE CONTRACTS

To summarise, before exchange of contracts takes place the Buyer must have received a draft Contract and supporting documentation, satisfactory replies to all enquiries raised and all necessary searches. Where the Buyers are obtaining mortgage finance they must also have a formal offer of mortgage from the Mortgage Company. If the Mortgage is on an endowment basis then acceptance of your life policy should also have been received.

Finally, if you are arranging buildings insurance, then you should also have in place buildings insurance for the property.

Both the Buyers' Solicitors and the Sellers' Solicitors must each hold a Contract signed by their clients.

DEPOSIT

On exchange of Contracts a deposit is payable to the Sellers' Solicitors. The Contract will always provide that the Buyers pay a deposit of 10% of the purchase price. However, the Seller will usually be prepared to accept a reduced deposit representing either:-

- (a) the difference between the mortgage advance and the purchase price; or

- (b) where the Mortgage Offer equals 100% of the purchase price, the total of the Solicitors' costs, stamp duty, land registry fees and any other fees required to enable you to complete the purchase of the property.

In the event that you have a related sale of a property, in most cases, you will be using the deposit provided by your Buyers.

5.4. EXCHANGE OF CONTRACTS/LEGAL COMMITMENT

Exchange of Contracts occurs when both the Buyers and Sellers Solicitors hold a Contract in exactly the same terms signed by the respective clients. Up until the point of exchange of contracts either party can withdraw from the transaction without any consequences. If there is a chain of transactions then exchange of contracts cannot take place until all parties within the chain are in the same position.

Normally when the Contract is sent to you, you will be asked to suggest suitable completion dates and this information will be passed to the rest of the chain. Quite often all parties within the chain agree a completion date between the Selling Agents and simply advise the Solicitors of their wishes.

On exchange of contracts a "completion date" is agreed by all parties and this is the date when the purchase price is paid to the Sellers and they give up possession of the property. It is only at the point of exchange of contracts that the Buyers and Sellers are committed and they have then entered into a Contract or a legal commitment to buy/sell the property. If after exchange of contracts the buyers or the sellers fail to fulfil this legal commitment, to pay for the property or transfer their ownership of the property then there will be legal consequences.

6. AFTER EXCHANGE AND BEFORE COMPLETION

Once Contracts have been exchanged the Solicitors for the Buyers and the Sellers will need to carry out various works to arrange completion. We would usually recommend that there is a minimum period of 2 weeks between exchange of contracts and completion to carry out these works. There is no legal minimum requirement for the period between exchange of contracts and the completion date. The various works that need to be carried out include:-

- Obtaining any repayment figures from the Sellers' Mortgage Company

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- Reporting to the Mortgage Company to request the mortgage advance (Mortgage Company's usually require 5 working days notice).
- Preparing the legal documents to enable the ownership of the property to be transferred to the purchase.
- Obtaining up to date searches on the property at the H M Land Registry or Land Charges Department.
- Obtaining signatures to any Mortgage documentation
- Preparing financial statements in respect of the sale and/or purchase and obtaining any necessary funds.

The closer the gap between exchange of contracts and the completion date the more difficult this is to achieve. If a completion date of less than 2 weeks is agreed then we will use our best endeavours to complete the legal work by the completion date. However, some matters are outside the Solicitors control. The Solicitors will need to be in possession of any monies required to enable completion to take place in cleared funds. Our rules do not allow us to use un-cleared personal cheques and you must bear this in mind when supplying any funds to us on completion.

As soon as possible after exchange of contracts we will supply you with financial statements that sets out the financial details of the transactions. The financial statements will show you the balance that you will need to provide to us to complete the transaction or the amount that will be available to you after completion.

The statement will also include our fees incurred in the transaction.

7. COMPLETION

The final stage of the transaction is of course "The Completion Day". This is the day that the Buyer is entitled to possession of the property and the Seller is entitled to the payment of the purchase price. Legally completion will take place when the Buyers' Solicitors have transferred the purchase price to the Sellers' Solicitors. There is no fixed time during the day when the Buyer may collect the keys as this depends upon when the Seller has finished moving out. The Contract will normally provide that the purchase price has to be paid to the Sellers' Solicitors before 2.30 pm on the completion date.

Most transaction will complete around midday but inevitably if there is a long chain of transactions it may be much later but we will do whatever we can to ensure that the money is

sent to the Sellers' Solicitors as early as possible on the completion date. Unfortunately once instructions are given to our Bankers to send the money through the banking system, the transfer of the funds is actually out of our hands.

If the Sellers fail to give up possession of the property on the due date or the Buyers fail to pay the purchase price on the completion date then the Buyers or Sellers Solicitors will need to serve a Notice on the other parties requiring them to complete within (usually 10 working days). If a Notice to Complete is served and completion does still not take place then at the end of notice the party who was ready to complete can withdraw from the transaction and sue the other party for any damages they have incurred. If completion is simply delayed then the party responsible for the delay will also be liable to pay damages. Delay of completion rarely happens but when it does serious financial considerations arise. If the delay is the fault of the Buyers the Buyers will be liable for interest on all money outstanding in addition to any other damages that the Sellers have incurred.

As we have mentioned, it is therefore very important that a reasonable time is left between exchange of contracts and the completion date and we would recommend a minimum period of 2 weeks to allow the parties to make the necessary arrangements. If you are selling the property then you should notify the Local Authority for Council Tax purposes and contact the utility providers to arrange for final accounts to be organised. If you are Purchasing for the first time it will be necessary to contact the utility suppliers to organise the supplier of the utilities and any telephone connection required. It will also be necessary for you to notify the Local Authority of your new address for Council Tax purposes.

Finally, normally the keys to the property will be released to you by the Selling Agents or, if it is a private transaction, you should arrange this directly with the Sellers. However, when you are selling the property please never release keys to the property to the Buyers until such time as your Solicitor has confirmed that they in receipt of the full purchase monies.

8 AFTER COMPLETION

Following completion of your purchase of the property if you are purchasing a property and Stamp Duty Land Tax is payable we will arrange payment of the Stamp Duty Land Tax and then make an application to register the transfer of the property to your name at the H M Land Registry. The application normally takes a number of weeks and once it has been completed we will then forward the relevant documentation to your Mortgage Lender. If you do not have a Mortgage then once the transfer of the property has been registered at the H M Land Registry we will send the documentation to you. Where you are selling the property if



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you have a Mortgage we will arrange for the repayment of the Mortgage and it is essential that you cancel any standing orders/direct debits which may relate specifically to the property, such as, gas, electricity, mortgage and Council tax payments.

9. MAKING A WILL

Now that you have purchased your property it will constitute a very valuable asset and you may wish to consider making a Will. The firm will be more than happy to assist in advising you on the terms of your Will.

10. CONCLUSION

This guide is meant to be a simplified guide to the conveyancing process. Nevertheless we hope it has been of some help to you in understanding the process. We do fully understand and appreciate that moving home can be a very stressful process. There could be other matters that will need discussion, such as, Planning Permission, Inheritance Tax, Capital Gains Tax and where the property is going to be a joint purchase, how you and your co-owner will own the property. If there are any matters that you require advice on or that you do not understand then we will of course be happy to assist you.

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