

## **Buying and Selling Properties – A Guide to Conveyancing**

### **1. Introduction**

This is a short guide to explain the work that my firm will be doing for you. We set out the work undertaken in respect of a sale and in respect of a purchase. Where you are selling and buying together then it is important that the two transactions are synchronised so that you do not end up either without a property or with two properties!

### **2. The Two Stages**

There are two stages to any conveyancing transaction

1. Exchange of contracts
2. Completion

It is only when contracts have been exchanged and made binding that both sides are committed to the contract and it is then that the completion date is agreed. The completion date is the date when the seller hands the property to the buyer and when the buyer pays to the seller the purchase price (less any deposit paid previously).

### **3. Registered and Unregistered Land**

The distinction between registered and unregistered land has largely disappeared from your point of view as since 1989 all properties with unregistered titles must be registered for the first time on the next transaction involving the property.

Once the title to the property has been registered at Her Majesty's Land Registry it is allocated a title number. Its title is guaranteed as being correct and is backed up by a compensation scheme.

Experience shows that dealing with a property with a registered title can produce as many complications as with a property with an unregistered title.

### **4. Your Sale**

It is worthwhile setting the wheels in motion even before you have found a buyer for your property. If you hold any title deeds or supporting papers you should forward these to your solicitor.

Once a sale has been negotiated then we shall prepare the contract papers from the title deeds and from information provided by you. We shall be asking you to prepare a Fixtures Fittings and Contents Form, and a Property Information Form and certainly these are papers that you can produce straightaway.

You will not be legally bound to the sale until you receive from the buyer a signed contract and deposit and when you decide to make the sale binding by providing to the buyer your signed copy of the same contract. This is known as "exchange of contracts" and is the crucial stage of any sale or purchase. You must remember that the buyer will not tender to you his signed contract and deposit until everything is ready at his end and so a seller must always remember that his buyer must have done everything set out in this Guide under "Your Purchase".

Remember that there is little point in worrying about a completion date until your buyer is ready. Realistically it can take a seller two weeks in which to obtain his title deeds and to send out the contract papers and probably four weeks from then for the buyer to check everything out and arrange his finance.

### **5. Your Purchase**

You cannot have a contract to buy land unless it is in writing or there is some written evidence of it. This rule gives the buyer time to make the necessary investigations and arrange finance before becoming legally committed and gives the seller time to find somewhere else to live.

The phrase “subject to contract” is used to ensure that buyer and seller are not committed to a contract too early. It also, incidentally, enables “gazumping” *i.e.* where the seller accepts an increased offer from another buyer.

Before committing yourself to a contract there are three main points to consider

- (A) Mortgage
- (B) Survey
- (C) Conveyancer’s report

### **(A) Mortgage**

You will receive a written offer of a mortgage which, in theory, the Bank/Building Society can later withdraw. Before accepting it you should make sure it allows you enough money and is not subject to any conditions that you will not be able to satisfy.

Banks/Building Societies may say that they will withhold some or all of the money until specified works are completed, *i.e.* damp proofing, re-wiring, timber treating, etc. You must discuss any such retention with us as soon as you can. It may be possible to sort the problem out before completion or could involve renegotiating the price or arranging a bridging loan until the specified works are finished.

If required you must accept the mortgage offer (within the time limit - if any - given by the Bank/Building Society), by signing one copy and sending it back to them. Generally, the Bank/Building Society will ask us to act for them and we should receive their instructions when you receive the mortgage offer. It will cost more if two different conveyancers are used because there will be some duplication of work.

### **(B) Survey**

It is important to remember that the property is sold in its then condition and that there are no warranties given by the Seller as to the condition of the property. As a general rule your bank or building society will advise you on the type of property inspection available to you in connection with your application for a mortgage but if you do not require a mortgage we shall advise.

### **(C) Conveyancing Matters: Our Job in a Nutshell**

Things will probably happen in this order:

We will:

- (a) Send for the draft contract and other papers from the seller’s conveyancers;
- (b) Make appropriate “local searches” and enquiries;
- (c) Make preliminary enquiries regarding the property, and the draft papers sent back to the seller’s conveyancers;
- (d) Receive and study the seller’s replies to those enquiries;
- (e) Seek and obtain instructions from your Bank/Building Society;

- (f) Receive and study the results of the local searches and enquiries;
- (g) Make other searches and enquiries where appropriate;
- (h) Report back to you with the draft contract for you to sign;
- (i) Discuss your surveyor's report with you if necessary;
- (j) Obtain the deposit from you;
- (k) Exchange contracts.

## 6. Searches, Inspections and Enquiries

We will send off an application for a search of the local land charges register and enquiries of the local authority. The *local search certificate* will reveal obligations of a public nature which are enforceable against home owners, such as tree preservation orders, compulsory purchase orders, listed building orders, smoke control and noise level orders. The *enquiries* give the buyer a more general view of what is going on in the area including details of such matters as roads, drains, sewers, planning etc. We will explain the result of the search to you. However the local search certificate does have limitations and it is important that you advise us of particular matters that concern you; perhaps the possibility of an area of open land being developed and spoiling the enjoyment of your property.

A local search usually takes about two to four weeks to come back. If necessary, however, it can be done quickly in person but this will be more expensive.

Other important details affecting the property may be known to a wide variety of organisations and we will have to ask them relevant questions to make sure you know as much as possible about the place you buy. These searches may include:

- (a) Commons and village greens, if the property is on or next to one;
- (b) Radon Gas enquiries;
- (c) Subsidence: Coal Board or other mines if the property is in an area where there is or has been mining;
- (d) Water authority;
- (e) Electricity, Gas Boards; if they have equipment on the land;
- (f) Public Index map, to see if the land is registered at the Land Registry
- (g) Environmental inquiries

Remember to make sure you mention anything odd or different as soon as possible to us. Common points to raise at this stage are listed below - if in doubt go back and have another look.

- (a) Other occupants. The Bank/Building Society will want to know whether there will be people living with you. By the same token you will have to make sure that anyone who has an interest in the house you have seen will leave before you buy it.
- (b) The shared driveway, alley, rear access. Who organises and pays for its upkeep?

- (c) The maintenance and costs of shared guttering, etc.
- (d) Public rights of access over the land, or a neighbour's right to use a path, etc.
- (e) Boundaries. If they seem in poor condition find out who looks after them if possible because to clear this up now might save a lot of trouble later.

#### 7. **Draft Contract (often referred to as “the Agreement”)**

It usually takes one or two weeks for the draft contract to arrive from the seller's conveyancers. They will have prepared it from the seller's title deeds. The contract will be a “draft” until both sides have agreed it. Copies of any restrictive covenants affecting the land will be sent with the draft contract. These are negative promises, such as not to sell intoxicating liquor on the land. A copy plan may also be included and may give details about the ownership of boundaries. If a “T” mark appears on the inside of a boundary, that boundary is included in the property. Where the land is registered, all these details will be shown on the official copy of the Register and filed plan which the seller's conveyancers send to us along with the draft contract. Land Registry filed plans show general boundaries only, unless they are noted as fixed boundaries. This means that a Land Registry plan cannot be used as evidence in court if there is a boundary dispute.

The draft contract will also state the agreed date for completion and set an interest rate payable in the event of delay. This will commonly be around 4 per cent above the base rate of a named high street bank.

#### 8. **The Fixtures Fittings and Contents Form and the Property Information Form**

The Seller will provide completed forms which are a check list of what is included at the property and which items are to be removed and also information about the property including ownership of boundaries and details of disputes.

#### 9. **Getting Ready for Exchange**

Before exchanging contracts you should be satisfied with:

- (a) the replies to the local searches and the information provided;
- (b) your mortgage offer;
- (c) your surveyor's report;
- (d) your own inspection of the property;
- (e) the buildings insurance arrangements made for your new property probably by your Bank/Building Society.

It is common for us to ask you to sign the contract before it actually becomes binding. It is the *exchange of identical* contracts which makes it binding and your signing in advance merely enables the timing of exchange to be more flexible.

#### 10. **Deposit**

Normally 10 per cent, of the purchase price is required but the seller may agree to a smaller amount. It is helpful to raise this point as early as possible as it will have to be provided for in the contract.

## 11. Contract races

For a number of reasons the seller of a property may decide to “accept” two or more offers on the property and sell to whoever exchanges contracts first with him. Most conveyancers dislike this practice because it will always be unfair to one of the buyers, causing them to lose money spent on surveys, searches, etc.

Solicitors and licensed conveyancers acting for the seller in a contract race must tell the conveyancers of all prospective purchasers that there is a race. If the seller will not allow this information to be disclosed the solicitor or licensed conveyancer must refuse to act at all.

## 12. How you will own the property

Where two or more people buy a property they must agree the manner in which it is owned. There are two alternatives.

**Joint Tenancy:** The property is owned jointly, should a person die during the period of ownership then the whole interest in the property will automatically transfer to the survivor regardless of what is said in the deceased’s persons Will. Should the owners go their separate ways then the proceeds of the sale of the property would be divided equally.

**Tenants in Common:** The property is own jointly but in the shares in which the purchase price has been contributed. Where a person dies during the period of ownership the share of the deceased person does not automatically transfer to the survivor but passes under his or her Will or under the Rules of Intestacy where there is no Will. When the property is sold the proceeds of sale are divided in the shares in which the property is owned

It is important that you advise your Conveyancer before exchanging contracts how you wish to own the property.

## 13. Between Exchange and Completion

The completion date is not finally agreed until just before exchange. It is usually two weeks after exchange but can be any date the buyer and seller agree on. It has to be a working day. Most people prefer a Friday to give them the weekend to sort things out but because of this the bank money transfer systems sometimes get overloaded and this can cause delays. Particularly difficult are the last working days before holidays and if you are able to, it would be sensible to choose a quiet day earlier in the week.

As a rule the completion should be at least 10 working days after exchange. In this time we will:

- (a) investigate title;
- (b) raise “requisitions” or further enquiries based on the investigation;
- (c) make a Land Charges search or official search;
- (d) report to the Bank/Building Society that the property is an adequate security for their needs;
- (e) finalise the amount required to pay of any existing loans (if you are selling);
- (f) make arrangements to ensure the new mortgage advance arrives on time.

#### 14. Synchronisation; the inevitable chain

The first time or cash buyer will generally be at the end of a chain, every link representing a sale and purchase by each home owner in turn. The bottom link will generally only be able to move quickly if the rest of the chain permits. **This can be very frustrating.**

If you are selling and buying you aim to move out (and in) on the same day. Our job is to achieve this and miraculously it is usually possible!

#### 15. Completion

We will need you to finalise some documentation to enable completion to go ahead. You must:

- (a) sign the mortgage documents;
- (b) make sure a deed of release is signed by all the occupants of your home;
- (c) sign the conveyance/transfer.

You must also remember to:

- (a) book/confirm your removers - it may be necessary to give them a map with directions;
- (b) cancel and redirect your existing standing orders for the mortgage, general and water rates, t.v. rental, etc.
- (c) organise telephone, electricity and gas meters to be ready and new supplies to be connected;
- (d) if you are getting an endowment mortgage make sure that the policy is put in force
- (e) cancel newspaper, milk and other deliveries.;
- (f) send details of your change of address to everyone - bank, D.V.L.C. insurance companies, club memberships, doctor, health authority, credit cards.

#### 16. Conveyancing Costs

About a week before completion you will receive a completion statement setting out exactly how much is needed to complete your sale or purchase (including the amount needed to redeem your mortgage where necessary). Remember, you also have to pay the Bank/Building Society's legal fees and, of course, VAT. The following lists most of the likely fees:

- Bank/Building Society's valuation fee;
- Your surveyor's fee;
- Bank arrangement fee for bridging loan;
- Your conveyancer's fees;
- Mortgage arrangement fee;
- Bank/Building Society's conveyancer's fee;
- Stamp duty on your purchase;

- Land Registry fee;
- Search fee;
- Estate agents' commission (if you are selling);
- Removal fees;
- Connection charges for gas, telephone, electricity.

## **17. Completion Day**

This is the day you can move in. If you are buying *and* selling you should try to be out of your old home by midday. Unfortunately, there are frequently delays in the transfers of money especially if there are large numbers of transactions involved, so never count on doing anything by a particular time.

You will probably live much longer if the children, cats, dogs, etc are left with friends. Make sure you have an easily accessible supply of electric plugs, fuses and light bulbs, and a torch. A tea-making kit is a must. If possible ask the sellers to explain in words of one syllable how the central heating works.

## **18. The Aftermath**

Your conveyancer's job does not end with completion.

Whether or not stamp duty land tax is payable on your purchase, Her Majesty's Revenue and Customs require a Stamp Duty Land Tax Form to be received by them within two weeks of the transaction completion. Failing which, they have power to levy a fine on the tax payer - the fine is not for failure to pay the tax but for failure to make the return.

When a return is accepted by HMRC they provide a Certificate without which it is impossible to register a change in the land ownership.

Your conveyancer can then attend to the registration of your purchase at HM Land Registry. The Land Registry can take several months to complete their part, especially where it is awaiting for the existing mortgage to be removed by the seller's lender. Once everything is checked your conveyancer will send copies of the registered Title to both you and your Bank/Building Society (if you have a mortgage).