

YOUR GUIDE TO THE LEGAL PROCESS FOR BUYING A PROPERTY

Buying a house or flat is probably the biggest investment you'll ever make. Obviously you want to get it right, and it's our job to help you achieve this.

As soon as you have found a property to purchase you should let the estate agents know that we are acting on your behalf.

This brochure will help you understand the house buying process, but please remember that it is for general guidance only and cannot cover every point which could arise. If at any stage you have any queries, don't hesitate to ask.

There are five main stages in the legal process:

1. Preliminary Matters – acceptance of your instructions;
2. Before Exchange of Contracts - obtaining more information – do you still want to buy?;
3. Exchange of Contracts – the day that you enter into a binding contract to buy;
4. Preparing for Completion – preparing for the big day; and
5. Completion Day – the day the house becomes yours.

PRELIMINARIES

Negotiation

You've found your house, and you've told the sellers or their estate agents that you want to buy it. What next?

You make an offer and, hopefully, it is accepted. Whatever you do, do not pay over any money at this stage. If you do, you could find yourself committed to buying before you are ready and ultimately you could lose this money if it later becomes clear you should not proceed.

Please note that if you are buying a new build, the situation is different, and frequently you will have to pay a reservation deposit at this stage. If you subsequently decide not to proceed you will lose this money.

Acceptance of your instructions

As soon as you have instructed us then Law Society Rules mean that there are certain formalities that we must go through in order for us to accept your instructions. At first instance we will, therefore, send you *our terms of business letter* which will give you information on matters such as the scope of our work, who will carry out the work, our fees (including any cost estimate given) and other useful information. It is

important that you read this carefully and return the duplicate copy duly signed indicating your acceptance.

We will also need to *verify your identity* and the documents that we need you to produce will be specified in our terms of business letter. Normally these should be produced at a face to face meeting with a member of staff and you should telephone to arrange an appointment for this purpose. If you are unable to attend the office, for instance, if you live a long way away we will inform you of alternative arrangements that will need to be made.

Please note that we will not be able to carry out further work on your file until the above matters have been dealt with and it is vital that you attend to these quickly to avoid delay.

BEFORE EXCHANGE OF CONTRACTS

At this stage, the aim is to gather further information about the property and its legal title. Once we have this information then you can make an informed decision as to whether you want to proceed. You must remember that you may want to sell the property in the future and, it is best that any problems are revealed now rather than by a future prospective buyer. Please also bear in mind that, if you are getting a mortgage, we will normally also act on your lenders behalf and we will need to confirm to them that the legal title is acceptable security for your borrowing.

Contracts

Once we have accepted your instructions then we will make contact with your seller's solicitors (the estate agents will have provided us with their details). They will then send us draft contracts of sale. The exact documentation that will accompany the draft contract will depend on, firstly, whether you have been provided with a Home Information Pack ("a HIP") and, secondly, what documentation was included in the HIP as not all documentation is compulsory.

If you have not already provided us with a copy of any HIP it is vital that this is passed to us immediately.

Crucially, whether or not the documents are included in the HIP, we will need to ensure we see the following:

- Official Copies of the Land Registry Title to the property, or if the property is unregistered, copies of the Deeds;
- A copy of a plan of the property;
- Completed Property Information Form, which gives more information about the property e.g., any work done, guarantees held, boundaries, any disputes etc;
- Completed Fittings and Contents Form, which details what items are to be included or excluded in the sale;
- If the property is Leasehold then we will need a copy of the Lease, a Completed Leasehold Property Information Form and details of matters such as the ground rent, service charges and insurance.
- Copies of other miscellaneous documents ,e.g., copies of any old deeds referred to in the title to the property, copies of any guarantees held, copies of relevant planning consents, building regulation approvals and completion certificates.

We will send you copies of some of the key documents for your consideration. You must remember that we do not have a personal knowledge of the property and will not as a matter of course inspect it. You must, therefore, ensure that you check the documentation that we send to you. Please ensure that any plan marks the full extent of the property that you are buying and that any replies given in the Property Information form or Replies to Additional Enquiries are, to the best of your knowledge accurate. Please give particular consideration to matters such as whether any works have been done to the property that have not been disclosed and whether anyone, other than the Seller, is living at the property.

It is also important that you check the Fittings and Contents form to establish exactly what is included in the sale, as misunderstandings often arise in this area. If these matters are not clarified before you buy the house and the seller remove the items it may be difficult for you to claim them back. If you have agreed to pay extra for any items please let us know so that we can include them in the contract. It is far safer for us to pay for these, with the purchase price, on completion than for you to pay the seller directly.

If you do have any queries please let us know immediately so that we can raise the matters with the seller's solicitor.

Additional Enquiries

Once we have checked the documentation then it is quite normal for us to raise some additional enquiries. You should not be alarmed by this and we will let you know if the replies do give cause for concern.

Searches

At this stage we must ensure that we hold results to all the necessary searches. The exact searches that we need to carry out will very much depend on what search results were included in any HIP provided and whether the searches provided are deemed satisfactory. Either way, we must have the results to the following searches:

- ***Local Search*** – The search will show firstly whether there are any local land charges registered against the property (*e.g., planning permissions granted and smoke control orders made meaning the property is in a smokeless zone*). It will also show whether building regulations consent was obtained for any structural alterations (*this may only be shown if it was done after a certain date from which the Council keep computerised records*) and other matters such as whether there are any road proposals that may affect the property and whether the road onto which the property fronts is a public adopted highway.
- ***Drainage and Water Search*** – this determines matters such as whether the property is connected to the mains sewer and water supply and whether your supply is metered. It also assists in confirming where the sewer and water mains run in relation to your property.
- ***Environmental Search*** – Environmental issues relating to property and contaminated land have made the headlines on numerous occasions over the last few years. As the property owner/ occupier you may be held liable for “cleaning up” contaminated land, even if you were not responsible for the contamination. The cost of this is enormous. The search is a desktop search to determine whether the land could be contaminated, based on its previous use (*e.g., if it was built on an old tannery*). If the land is potentially contaminated we will then need to raise enquiries to determine if the necessary clean up work has been carried out.

- **Chancel Repair Search** – this relates to an antiquated charge which may affect properties in certain parishes. The owners of the affected properties may be liable for repairing the chancel of a local church, which can be very costly. The search we do is required by lenders and determines if the property is within an affected parish.

In addition other searches may be necessary, e.g., a coal mining search if the property is in a coal mining area.

Please note that the searches will not tell you anything about nearby property. They will not reveal whether, for example, your neighbours are planning any building work. If you are concerned then you should speak to your local planning officer.

Survey

Obviously you need to know whether the house is structurally sound and you should ensure that the property is surveyed. Please note that any HIP provided may include a Home Condition Report, however, you may decide that this is not adequate and instruct your own surveyor. Please note that, if you are obtaining a mortgage, the lender may also want to carry out a valuation.

Remember you are buying your house as it stands subject to any defect there may be and it rests with you to satisfy yourself that it is sound.

Obviously, we are lawyers not surveyors and we cannot advise you on the structure of the property, however, it is still helpful if you provide us with a copy of the survey. For example, the survey may reveal work that has been carried out for which we will need to check that the correct planning permissions and building regulations approval has been obtained.

Repairs

If the survey, valuation or inspection reveals the need for repairs, get estimates as soon as possible. Once you know the likely cost, it may be possible to ask the seller to split the bill or to lower the purchase price instead. Such negotiations are best dealt with through the Estate agents and if there is to be any price change, please let us know. ***Under no circumstances should you start any repairs on the property before you have bought it.***

Financial Arrangements

It is important that you let us know as soon as possible whether you are a cash buyer or whether you are obtaining a mortgage. If you are obtaining a mortgage please let us know who you are obtaining a mortgage with and how much the loan amount is to be.

Obviously, we are lawyers not financial advisors and we cannot advise you on the suitability of your mortgage or financial matters. We can of course refer you to a financial advisor who should be able to assist you if required.

Mortgage Offer

As there is sometimes a delay before the mortgage offer comes through, it is important to apply for your loan as early as possible. Lenders do not normally tell us how your mortgage application is progressing, so if you do experience a problem, be sure to tell us immediately.

We cannot exchange contracts until we have received your mortgage offer.

When your lender checks the survey for the house, it may insist on certain repairs being done before it releases the money. Depending on the seriousness of the faults, it will either:

1. Simply point out certain work, leaving you to decide whether to do it; or
2. Make you promise to do the work within a specified time after you have received the money; or
3. Insist on all the work being done before any money is released; or
4. Retain a proportion of the money until the work has been completed.

If the third option applies you will need the seller's permission to gain access to the house, which we will negotiate for you through their solicitor. Let us know how long the work should take, as it affects the completion date (that's the final hand-over date). The date must not only allow time for the work, it must also give the lender time to complete any final inspection and release the money.

If the lender chooses the fourth option, you have a choice. Either try and negotiate with the seller for the work to be carried out before completion, so that all the money is released in one go. Alternatively, you can leave the work until after completion, but in the meantime of course you will have to make up the shortfall in the mortgage money from your own resources.

Buying together

If more than one person buys a house then the ownership is shared in one of two ways. The parties ownership of the property will be shown in the Transfer Deed. How you decide to own the property is very important and, especially so, if you are contributing to the purchase price or mortgage repayments in unequal shares with your co-owner

You may buy the property as joint tenants or tenants in common.

1. Joint Tenants

This means that in the event of either of the Joint Owners dying the property will automatically ***pass by survivorship*** to the other(s). Even if a Will is executed including a gift of an interest in the property it would have no effect.

Also under Joint Tenancy ownership of the property is vested in the parties in ***equal shares***. In the event of the sale of the property, either by agreement or by any of the owners forcing a sale, the owners (assuming two owners) would each be entitled to 50% of the net proceeds of sale. This is irrespective of whatever contributions may have been made to the original purchase price or subsequently to the mortgage and other outgoings following completion of the purchase.

2. Tenants in Common

This is the opposite of Joint Tenants to the extent that in the event of the death of any of the Owners the share owned by the deceased person ***does not pass to the other Co-owner(s)***, but will pass to whoever they have left it to in their Will. If a Will has not been made the share in the property will pass

to whoever is entitled under the rules of Intestacy.

Furthermore the law makes ***no assumption that ownership is equal***. The Deed transferring ownership to you will actually declare what share each party owns e.g. 50% - 50% or 1% -99% and every variable in between. Therefore in the event of the sale of the property the net proceeds will be divided between the parties in the shares declared in the original Transfer Deed.

We will, of course, be happy to discuss the options in more detail with you.

Buying new goods for your home

Please do not buy anything especially for your new house (e.g. carpets) until after exchange of contracts has taken place. Until exchange nothing is certain and if the seller backs out you will be left high and dry. This is rare but it can happen.

EXCHANGE OF CONTRACTS

Signing the Contract

WHEN WILL WE EXCHANGE?

Only once we (if we also act for your lender) and you are happy with all the documentation that has been provided, all the replies to the enquiries, the search results, any survey and the mortgage offer and all negotiations have been completed will you be ready to exchange contracts i.e., commit yourself to buy.

At this stage we will arrange for you to sign the contract. If possible, this is usually done in a face to face meeting with us to enable us to explain all the documentation to you and to give you the chance to ask any questions.

However, just because you have signed the contract it does not mean you have bought the house. Only when the contract is exchanged for the seller's identical document is the sale binding on you both.

AND if you are in a chain then the position of the rest of the chain will affect when you can exchange contracts and ultimately complete.

Chains

You may well become involved in a chain of transactions, where the seller's are not ready to move out because they have nowhere to go until their own purchase is complete. The person they are buying from may have a similar problem ... and so on.

Everyone in the chain must, therefore, exchange contracts at the same time and complete on the same date.

Only once everyone in the chain is happy with everything will the chain be ready to exchange. The whole chain must also agree a completion date. As the estate agents have direct contact will your seller, and

often, other estate agents involved in the chain they are often your best port of call to help you arrange your completion date.

In circumstances like this we do our best to hurry things along, but often the delays are outside both your and our control. Sometimes patience is the only answer.

Deposit

When you sign, we ask you for a deposit on the house (normally 10% of the purchase price), which we then pay to the seller's solicitor when exchanging contracts. In certain circumstances (e.g., if you are obtaining a 95% mortgage) you may be able to negotiate a lower deposit.

If you are selling one house and buying another we can usually use the sale deposit of one as the purchase deposit of the other, though if you are trading up you will either need to provide some extra money to make up the required amount or we will need to get the seller's to agree to a smaller deposit.

There are two ways of paying a deposit. One is to pay as agent and this gives the seller the right to use your deposit on his own purchase or for any other purpose. The other way is to pay as stakeholder where the deposit is held by the seller's solicitor until completion. It is customary in this area for the contract to be drafted on the basis that the deposit is paid to the seller's solicitors as agents. If you have any question you wish to raise on the payment of deposits please contact us for further advice.

Completion Date

When we arrange the exchange of contracts, we also finalise the completion date, the day when the house becomes yours and the seller must move out. It is also the day when you must pay the balance of the purchase money.

It is usual to allow at least a week between exchange of contracts and completion. The time between the two dates can be more or less than this so long as there is sufficient time for the necessary legal work.

Please note that in certain circumstances a simultaneous exchange and completion date may be agreed, for instance if you are getting a 100% mortgage and have no deposit.

Insurance

Depending on the terms of the contract, the house will be "at your risk" either from exchange of contracts or the completion date. In practice it is most important that you insure the property immediately from exchange of contracts. At this stage you only need to insure the buildings. The contents insurance does not need to be on risk until completion.

If you are obtaining a mortgage then you may have asked the lender to insure the property or you may have agreed to do it yourself. A mortgage company will specify the minimum level of buildings insurance required and they will also state if the insurance should be in the joint names of you and them or whether their interest should be noted on the policy.

However the insurance is handled, make sure the house is covered for the full rebuilding cost, not just the purchase price.

For our file you should provide us with a copy of your insurance schedule before completion.

Please note that, if the property is leasehold, buildings insurance will commonly be dealt with by way of a block policy arranged by the Landlord

Stamp Duty Land Tax

To comply with the tax a Land Transaction Return form must be completed, signed, and then submitted on completion of each purchase. This applies even if SDLT (or “stamp duty”) is not payable and we are prevented from submitting our application for registration at the Land Registry, until we have the necessary certificate.

We will help you to comply with your obligations by completing the form on your behalf acting as your agents. In order to complete the form we will need you to provide us with your National Insurance Number.

Please note that financial penalties are imposed by the Inland Revenue if returns are submitted late so please ensure you promptly sign and return any documentation provide.

Upon receipt of the Land Transaction Return Certificate from the Inland Revenue our agency will cease. Any investigations or enquiries raised as a result of the information contained within a Land Transaction Return must be dealt with by you.

PREPARING FOR COMPLETION

Removals

Once the completion date has been fixed (and ideally after exchange of contracts) you should book your removals.

Utilities

Remember also to inform the gas, electricity, water, phone and any other utility provider of the completion date and arrange for the services to be changed into to your name following completion. You will need to provide them with meter readings taken on the day of completion to ensure that bills cover only those charges from the moving day. You must also tell the council tax officer.

Documentation you MUST sign

We use the time between exchange of contracts and completion to finalise the paperwork, so if any documents are sent to you, be sure to return them to us immediately.

If you have not already signed them before exchange of contracts, at this stage, you must sign any Mortgage Deed, Stamp Duty Land Tax Form (whether or not stamp duty is payable), Transfer Deed and any other necessary documentation sent to you.

If we have to ask you to our office to sign the mortgage deed (some lenders insist on this) it is most important that you respond without delay.

Please do not date any documents we send you.

Money required from you

As soon as possible, before completion, we will send you a completion statement setting out exactly what is required from you in order to complete. This will include our fees, any search fees, Land Registry fees, stamp duty, any other expenses payable and of course the rest of the purchase price if the mortgage is not providing it all. We will receive your mortgage money direct from your lender

It is critically important that the balance required from you clears into our account the day before completion.

It is essential that we have all that is required on the day of completion. If you cannot pay over the purchase price on the completion date, the seller can charge you interest until the money is paid. As this can amount to quite a lot of money, it is essential that you make every effort to have the cash ready on time and all documents returned to us. There is also the risk of losing your deposit and the property.

COMPLETION

The completion day is the day you your seller must vacate the property and you will get the keys so that you can move in.

Completion Time

Completion takes place when your seller's solicitor receives the purchase money from us. The money will be sent direct to their bank account and the time that they receive this will very much depend on the banking systems and whether we are waiting for money from your lender, your buyer's solicitor and whether they are waiting for the sale money from their buyer's solicitor or their lender etc.

The contract will normally specify that completion must take place by either 1pm or 2pm and generally you can expect to receive your keys by around this time.

Due to the many external factors that affect it, we cannot guarantee the completion time, so please be patient.

Please note that if you are also selling there may be a time delay between when your buyer gets the keys to their property and when you get the keys to your new property.

Keys

The estate agents will normally telephone you first as soon as they know that the purchase has completed and your seller's solicitor has authorised them to release keys.

As soon as we know that completion has taken place we will also telephone you.

Any problems?

If after completion you have any problems, e.g. the seller has not moved out, or removed their belongings, please let us know immediately. We can then try to resolve them through your seller's solicitor.

What next?

Once completion has taken place we will then deal with the payment of any stamp duty land tax due and the registration of the change of ownership at the Land Registry.

We will write to you again to confirm when registration at the Land Registry has been completed.

ANY QUESTIONS?

We pride ourselves on keeping our clients in the picture.

If you phone and the person you want is not available when you telephone, please leave a message and phone number.

If you prefer to call in, please first ring for an appointment, otherwise the person you want may be out or tied up.

If you write, please address your letter to the person dealing with your transaction and quote the address of the property plus the reference from our most recent letter to you.

If you e-mail, please quote the property address in the subject line.