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property lawyers

The Conveyancing Process: Acting for the buyer



Acting for the buyer

Please read these notes as they contain most of the information you will wish to know about what happens in the conveyancing process.



1. Survey

1.1 We would advise that particularly with an older property you should not rely solely upon the valuation carried out for the purposes of your mortgage, but should obtain your own independent survey report which will provide considerably more detail about the condition of the property and what potential repair bills you may face in the future.

1.2 With a flat it is important that the surveyor should, if at all possible, report on the condition of the common parts of the building as you will no doubt be responsible, under the terms of the lease, for a contribution to the upkeep of the common parts by way of a maintenance charge. A defective roof, for example, could mean that you face a substantial bill within a short time of moving in.

1.3 There are three types of survey

(a) Valuation only – this is the basic one carried out by the mortgage lender's valuer/surveyor for the purposes of the lender's decision on whether to make the loan. This will be all that the valuer will do unless he is instructed to do one of the other sorts of survey.

(b) Homebuyer's Survey and Valuation – this gives more information about the state of repair at the property in this type of survey.

(c) Structural – this is the most comprehensive survey of the property and is advisable for an older property and, in any case, where there could be defects in the main structures of the building, which could prove expensive to put right.

1.4 Ocean Surveyors Limited are part of the Ocean Group. They have extensive experience in Bristol and surrounding area in valuing and surveying residential property. We can, if you wish, get one of the surveyors to call you to discuss your survey

requirements further and the costs involved. Alternatively you can telephone them direct on 0117-9046650. If you act quickly it may be possible for the survey to be done by the same surveyor who carries out the mortgage valuation and this should save money in fees.

1.5 As we are unable to inspect the property, please let us know of any alterations that you believe have been made to the property, which would have required planning permission or building regulations consent, such as any extension or removal of chimney breast, or load bearing walls.

As a buyer, you are responsible for ensuring that you are satisfied with the structure and condition of the property. If it turns out that any structural works did not have the benefit of building regulations consent, we strongly recommend you carry out a structural engineer's report to confirm that the work was adequately completed.

We can ask the seller to provide indemnity insurance for lack of building regulations but this will only protect you against any loss in value to the property should the local authority take any enforcement action. It will not cover you against any defect in the structure.

Unless there is a warranty for the services at the property, we recommend you arrange for the central heating and electrics to be tested prior to exchange of contracts. If you move into the property and discover it is faulty you have no claim against the seller.



2. The pre-contract stage

2.1 Contract documentation

(a) It is up to the seller's solicitor to prepare a draft contract upon receipt of his client's title information and send it to us.

(b) Before we can confirm to you that the contract is ready for signature, we shall need to approve its terms on your behalf. Unless this information is supplied to us with the draft contract we will also raise standard form enquiries on a number of matters such as boundary ownership, planning consents,

rights of way, covenants, disputes, alterations to the property and other matters. You will be supplied with a copy of the replies. If you have any specific enquiries you wish us to raise you should let us know.

(c) The sellers will be asked by their solicitor to complete a detailed schedule of "fixtures, fittings and contents". This will form part of the contract itself and we will send you a copy to check through. This details what will be left at the property for you on completion and what items the sellers are inviting an offer for. If you wish to negotiate a price for such items we would encourage you to do so via the estate agents (if applicable).

(d) We will also investigate title on your behalf - i.e., ownership and the rights and liabilities which will pass to you as the new owner. On a flat purchase we will consider the terms of the lease and additional enquiries will be made, for example, as to the legal and financial status of a flat owners' management company where appropriate, to ensure that maintenance charges have been paid up to date, that communal insurance policies are in force, that there are no problems between the various flat owners, or that there are no outstanding breaches of the lease either on the part of the landlord or the part of the tenant. Problems in any of these areas can make a flat difficult to sell and can be expensive to put right.

(e) Where you are obtaining a mortgage advance we will probably also need to consider the interests of the mortgage lender, and this may mean that matters which you feel are relatively unimportant have to be taken into account because of their requirements. An example is the need to establish that consents were obtained from the local authority and any other relevant party for past alterations to the property, even when carried out many years ago. Sometimes if a consent cannot be traced the lender will insist on 'indemnity insurance' policies being obtained to cover any risk to you or to them. We will try to negotiate for the seller to bear the cost of these.

2.2 Searches

Local search. This investigates matters such as the adoption of roads and sewers, proposed road schemes within 200 metres of the property, the registration of public health notices, improvement grants, planning consents, proceedings for breach of planning law, public footpaths and other matters. It is important to note that the search relates only to the property itself and if you require information on adjoining land, for example in relation to proposals for development of adjoining land, a specific enquiry will be necessary and you should let us know. In rural areas, or where the property is known by name rather than a postal number, a plan will be required before the council can deal with a search.

(a) Drainage and water search. This will confirm whether the property is connected to mains sewerage and water. It will confirm whether there are agreements in place for the sewerage/water companies to connect the property. Also, it will confirm if there is permission for building over any sewer.

(b) Planning search. Please see our point above that the local search relates only to the specific property searched. This is a 'free' search and will supply you with information on planning applications and permissions in the area.

(c) Mining search. In appropriate cases a mining search will also be carried out.

(d) Environmental search. A huge new database of environmental matters and local history is now established, we will carry out a search for you to cover the following matters: past and present contaminated land use, landfills, coal mining activity, radon, flooding and subsidence. We will submit such a search on your behalf. It is now law that land owners may be required to pay for cleaning up any pollution, even if not caused by them, which is found on their properties where the party creating the contamination cannot be traced.

(e) Flood search. For obvious reasons this may be important and these searches are increasingly common, although a specific search may be unnecessary if the environmental search covers this. It is always advisable to have one carried out in a low lying area. Any adverse results must be referred to your proposed buildings insurer.

2.3 Mortgage

(a) Clearly it would be very foolish to commit to a purchase until you are sure of your financial situation. If you require a mortgage you should apply for one as soon as you have had an offer accepted on a property. Always check with the mortgage lender what, if any, deductions there will be from the money being lent, or you may find yourself getting less than you think.

(b) If you require a mortgage advance we cannot, of course, advise you to proceed on your purchase without obtaining a copy of the mortgage offer and getting confirmation from you that you are happy with its terms. We will not advise on the particular loan scheme, date or amount of mortgage payments, calculation of early redemption penalties, or other particular features of the loan. These matters should normally be checked with your mortgage lender or financial adviser. The conditions attaching to the mortgage deed itself will often be set out in a booklet provided to you by the lender.

In brief summary, however, the standard terms with which you will be obliged to comply will include the following:

- (i) you must maintain the agreed payments to the lender, whether interest and capital or interest only
- (ii) you must not let the property without the lender's consent
- (iii) you must not alter the property without the lender's consent
- (iv) you must keep the property insured, whether this is done through the lender or independently
- (v) you are obliged to keep the property in good repair so that it remains suitable security for the loan.

If you are in breach of any of these conditions, the lender will have the right to repossess and sell the property. After a forced sale in these circumstances, you would be responsible for any shortfall due to the lender. The lender may have taken out insurance against part or all of this shortfall but such insurance is taken out for its own benefit and not for your benefit. The insurance company in those circumstances would normally have the right to pursue you for any sums paid out to the lender.

When the mortgage is in joint names, each borrower is 'jointly and severally' liable for the mortgage debt and performance of the covenants – i.e., each borrower may be required by the lender to pay all monies due to them.

You should note also that, where we are instructed by the lender, we will have a duty to the lender to act in its best interests and, in particular, to supply to the lender information which it may wish to know regarding yourself as the borrower. We will seek your authority before revealing such information but, should you withhold this authority, we will have to cease to act for both of you.

Also, there may be times when we will point out to you a defect in the legal title or some aspect of the property which you are purchasing and you inform us that you are nevertheless prepared to proceed. Because of our duty to the mortgage lender we will have to point out to them the existence of this defect, and they may decide to withhold funds until we are able to confirm to them that the situation has been resolved to meet their requirements. You will, of course, be fully informed if such a situation arises.

If you do not yet have a mortgage arranged please speak to us.

Please note that a mortgage lender can withdraw or change the mortgage offer at any time before the mortgage completes.

2.4 Buildings Insurance.

Unless you are purchasing a flat, when the insurance is usually arranged by the landlord/managing agents, you will need to arrange buildings insurance in plenty of time prior to exchange of contracts (unless you are arranging insurance through the mortgage lender). The risk in the property you are buying will normally pass to you from the date of exchange and we cannot therefore exchange until we are sure that you are adequately insured. Your mortgage lenders will have requirements in respect of the insurance, for example, a required sum insured (This will be the reinstatement cost of the building and nothing to do with its purchase price which can normally be found on the valuation report) and that their interest should be noted on the policy, and these must be carefully followed.

Please therefore arrange for your insurance company or broker to issue us with written confirmation of insurance, in accordance with the above requirements, as soon as possible after exchange of contracts (or in advance of exchange if this is simultaneous with completion). We will not be able to complete without this because the mortgage lenders do not permit us to.

If you are both selling and buying, your current insurer or broker will no doubt be happy to arrange cover on the new property for you from exchange. Please note however that you should not cancel the cover on the current property you own until completion. Even if your buyer is arranging their own cover on your property it will be a condition of your existing mortgage that you maintain insurance until the mortgage is paid off.

2.5 Life Assurance

If the mortgage is an 'interest only' mortgage or if (unusually) the mortgage lender requires it for security, it is necessary for the life policy to be set up at an early stage. As long as the paperwork is all done it is not necessary to start the policy until the date of exchange. It is your responsibility to arrange this. We will let you know if we need to see evidence of cover (that is not usually the case these days). Delays often occur because the necessary paperwork is not done and cannot quickly be done at the last moment.

If you have not arranged such cover, please speak to us.

2.6 Signatures

Prior to exchange we will obtain your signatures to the contract, transfer and mortgage deed at a meeting at this office or by post, and supply you with copies of any relevant documents not already sent to you. As a mortgage lender's requirement and for anti-money laundering, unless we have done so already, we will need you to supply to us original forms of identity, such as your passport, photo driving license and recent utility bills.



3. Joint ownership

Where you are purchasing the property in joint names we will need your instructions on which of the two alternative forms of joint ownership you require. The first, and perhaps the more common for a married couple, is called a 'joint tenancy'. This means that on the death of either of you, the property passes automatically to the survivor, irrespective of any will. Contributions to the purchase price are not taken into account and the assumption, should you split up, is that the property is owned in equal shares.

The alternative is to have a 'tenancy in common', meaning that each of you has a separate share in the value of the property, perhaps to reflect differing contributions to the purchase price and potentially payments towards the mortgage or bills/maintenance of the property. Such a share will then pass under the terms of the deceased's will or the intestacy rules if there is no will. If you are making differing contributions to the purchase price, it may well be appropriate for each of you to take independent advice on the terms of a joint ownership agreement, although we can provide for you a specimen form of agreement for discussion. We will normally charge a minimum of £100 plus VAT for completing a joint ownership agreement. Planning to save inheritance tax may be another good reason for buying as tenants in common, in which case you should take further advice on the appropriate provisions in your wills.

If you require advice on wills or tax, please speak to us.



4. Wills and powers of attorney

Please speak to us if you wish to make a will or a power of attorney, or perhaps have a relative that requires this service.



5. Exchange of contracts

5.1 Deposit

(a) Please note that upon exchange of contracts a deposit is payable to the sellers. The amount of this deposit can usually be negotiated with the sellers via their solicitors and we will let you know at the relevant time how much is required. If for example you are obtaining a 95% mortgage, 5% may be acceptable to the seller as a deposit. The sellers can, however, insist

upon payment of a full 10% deposit. In any event, should you decide following exchange of contracts not to proceed, the sellers can keep the deposit actually paid and also sue you for the balance of 10%. We require the deposit to be paid to us by one of the following methods:

- (i) CHAPS payment (or telegraphic transfer), i.e., via your bank.
- (ii) Other electronic payment, e.g., internet banking. Please note that there is usually a limit of £10,000 per day and we will charge you if you make more than 3 payments.

Please note that we do not accept personal cheques and money should not be paid straight into our account or a charge will be made. We will, of course, supply you with our bank details if required.

(b) If you are selling a property as well as buying, we will try to arrange for the deposit offered by the buyer of your property to be passed up the chain so that you are not required to pay anything further at that stage. If the deposit offered on your sale is low, however, this may be unacceptable to your own seller. A risk to you in passing on a low deposit is that, should your own buyer default, you would usually be unable to complete your purchase and you would be liable to your seller for the balance of a full 10% deposit. Whilst you can pass on their claim against you to your own buyer, you could end up in a situation where your buyers have no money to pay you and you have to pay for losses that are not your fault.

(c) Please note that it will be necessary for any deposit funds to be sent from your own bank account and not from an account of any other person. We will ask you to complete a gifted deposit form and/or source of funds form, which we will supply to you, if the purchase monies are not coming from your own funds.

5.2 Exchange

(a) Upon exchange of contracts you and the seller are, for the first time, committed by law to proceed with the purchase; the completion date will be set at this stage and there are penalties if either of you withdraw. If there is a "chain" of transactions, the same completion date will normally have to be agreed by all parties, and the best procedure is for the parties to speak direct to each other or through the estate agents to agree this – all lawyers can do is pass on their clients' wishes and this may slow things down.

(b) Exchange of contracts is normally effected over the telephone between the buyer's and the seller's solicitors who give each other professional undertakings to send to each other their client's signed contract (and the deposit cheque in the case of the buyer). In order for us to exchange on your behalf in this matter we need your irrevocable

authority to do so. This means that, once you have signed the contract, and we have dealt with any outstanding matters specifically discussed with you, for example, agreeing a particular completion date, we can give the necessary professional undertakings (which are binding upon the firm) and start the process of exchanging contracts without the risk that you will change your mind before the exchange process is complete. By signing the attached copy of these notes you are giving us that authority.

(c) On exchange the life assurance and buildings insurance should be put on risk.

(d) Warning - it can take longer than you thought to get to exchange of contracts. Try to be patient. Although most people are anxious to exchange contracts early for their own peace of mind, particularly when there is a chain involved, the whole transaction becomes immensely stressful for all concerned when someone in the chain loses patience and tries to impose a deadline on everyone else. The most frustrating part of the whole process is sometimes the period leading up to exchange of contracts, when all the parties in the chain have signed their contracts, and are keen to end the uncertainty and get to the stage of a binding agreement as soon as possible so that they can finalise removal arrangements. Even at that stage there may be a further delay whilst a cheque is cleared, a legal point is checked with a mortgage lender, or a lawyer buckles down to dealing with the file. Please rest assured that we will do all we can to find out where any hold up is. We will let you know and we will ask the estate agents to assist in this but there may be little we can do if we are not directly involved in any delay. Sometimes a little patience will lead to a much smoother end to your move.

We appreciate that at that stage of the process you have probably contacted a removal firm and wish to confirm a definite date with them, or perhaps to arrange time off work. We sympathise greatly but must caution you against making any arrangements other than provisional ones until we confirm exchange of contracts or you risk losing money and adding to the stress. Although it is possible to complete on the day of exchange or shortly thereafter, it is better to avoid this as it does not allow for making alternative arrangements if for any reason there is a last minute hitch with money transfers or otherwise. With this, there is an increased risk of a very stressful moving day, perhaps with keys not being released until mid afternoon at the top of the chain. There may then be the added stress of unhappy removal companies demanding overtime payments. As a rule of thumb, a completion of less than a week after exchange may well be unacceptable to someone in the chain or their lawyer.

Our advice is by all means to try to get an agreement on a preferred moving date with the other parties in the chain well ahead of time, but do not regard that as 'written in stone' and accept that it cannot be guaranteed.



6. After exchange

Assuming that a normal time scale applies, following exchange we will carry out final searches, obtain the balance of the purchase money from you and the mortgage lender and forward the final transfer deed to the seller's solicitors for signature by the seller. In urgent cases these steps can be carried out before exchange of contracts.

Following exchange of contracts we will let you have a statement showing the final sum required to complete, taking into account any mortgage advance which will come to us from the lender. In all cases these fees and disbursements are payable before completion.



7. Completion

7.1 The completion date, i.e., when you are entitled to have the keys to the new property and when the ownership passes into your name, will be fixed when contracts are exchanged.

NB --The contract specifies that the funds must be in the seller's lawyer's account by a particular time (often 1pm). If for reasons beyond our control this is not possible, you will be in breach of contract and will have to pay for any losses that your seller may have, plus the daily interest rate specified in the contract until completion does take place. Losses can involve compensation payable by your seller to a seller higher up a chain, accommodation and storage. In order to avoid such possibility of delay we ask for the mortgage advance and also for any money due from you to be sent to us at least the day prior to completion where possible. You should note that you may be liable for payment of mortgage interest from the date the transfer of mortgage funds is made. We will always order your mortgage advance for the day before completion. Banking delays and the delays of any lawyers further down a chain are beyond our control. The fact that it is not your fault will unfortunately not affect your liability.

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7.2 Release of keys

Regrettably we are not able to guarantee the time at which the handover of keys takes place on completion day. The keys should normally be left with the selling agents. Whilst our bank will be given instructions early on completion day to transfer the funds (assuming that all necessary funds are in our account) delays are occasionally experienced because of the time taken by a bank to take the necessary action or by the seller's lawyers to telephone the estate agents to authorise release of the keys. If difficulties are experienced you should telephone us.



8. After completion

8.1 The following steps will have to be taken:

- (a) The deeds are sent to us by the seller's lawyers.
- (b) Payment of stamp duty land tax. As this is a tax form, which we complete for you, we need you to sign the appointment of agents form for SDLT (enclosed with our estimate pack), so that we can confirm the price and other matters relating to the purchase on your behalf. There are of course strict penalties for false declarations as well as for late submission of the tax form and payment of the tax. Please note that without an appointment of agents form from you and payment of any tax due we shall be unable to complete your registration as owner.
- (c) Registration at the Land Registry. This takes a few weeks. The legal title does not pass to you until registration is complete.
- (d) After registration we will send to you a copy of the new amended register. The Land Registry no longer issue anything other than a paper copy of the electronic register, and that is generally all that your mortgage lender will need. We will send to you any old deeds and searches etc. that we receive from the seller's lawyers.
- (e) If your mortgage lender has required an assignment of a life policy we give notice to the life assurance company.
- (f) Notices of transfer have (where relevant) to be given to a landlord/ rent charge owner/managing agent etc.
- (g) Notice of transfer of a guarantee is also given where relevant and appropriate.