



St James'
SQUARE
LAW FIRM

Your Guide to Buying and Selling Your Home

Your move

For most people, buying or selling their own home is the largest single financial transaction that they deal with during their lives.

Conveyancing covers the legal and administrative processes by which the ownership of a home is transferred safely from one person to another. It is our intention to ensure that your move proceeds smoothly and that ownership passes from the seller to the buyer.

It is important for all parties concerned to have some understanding of the conveyancing process.

Preliminary matters

If you are selling your property, you must, commission an Energy Performance Certificate (EPC) before you put your property on the market and in any event you must produce the EPC to the Buyer before exchange of Contracts. Please discuss this with us if you are not sure what to do.

Important Dates

There are two important dates in the conveyancing transaction. The first is what is known as the exchange of contracts and the second is completion.

Briefly, the exchange of contracts is the moment during the transaction when the sellers and the buyers become legally committed to concluding the deal. Until that time either party can withdraw.

Once the contracts have been exchanged neither party can legally withdraw from the deal without severe financial penalties. There are a number of matters which have to be dealt with before the exchange of contracts and these will be explained a little later.

Completion is the date on which the buyers are entitled to have possession of the property, and the date on which the sellers are entitled to receive the money and must vacate the property. There are a number of important things which happen on completion and again these will be explained a little later.

Up to Exchange of Contracts

Once the parties have agreed a price, usually through the estate agents, the matter is entirely subject to contract which means that neither party can legally insist on the transaction proceeding as the contracts have not at this stage been exchanged.

The sellers' solicitors task at this stage is to obtain the sellers' certificate of ownership (title deeds) from the sellers, their Building Society, Bank or the Land Registry, together with a large amount of information from the Sellers. The sellers' solicitor will then prepare a contract for the sale of the property and will then send the buyers' solicitors a comprehensive bundle of information about the property, comprising proof of ownership, a list of contents to be included in the sale and a host of other points relating to boundaries, neighbours, planning, rights of way etc.

In the meantime, the buyers will be arranging their survey. If the buyers are having a mortgage, the lender will insist on a valuation being carried out for their own purposes. A valuation is of no use to the buyers in determining whether the fabric of the property is satisfactory. If the valuer misses important items or defects, it is most unlikely that the buyers will be able to take any action against the valuer at a later date. It is therefore essential that the buyers arrange a more detailed survey of the property, either a Home Buyers' Survey or in some cases a building survey. When the buyers apply for a mortgage they will usually be able to ask the Lender's surveyor to carry out a Home Buyers' Survey at the same time as the valuation, although this can be arranged independently if the buyers so wish.

While the buyers are applying for their mortgage and having a survey done, the buyers' solicitors will be checking the information provided by the sellers' solicitors and will also be carrying out searches on the property, usually Local, Drainage, Mining, Environmental and Chancel Searches.

You must ask the Seller, or inspect the property, at this point, if you have any questions about the property, for example about whether the plumbing, heating and electrics all work. It is too late after exchange of contracts.

Signing the Contract

Once the buyers' solicitors have received all the paperwork from the sellers' solicitors, together with the result of the searches and a copy of the buyers' mortgage offer, they will arrange to go through all the documentation with the buyers or send the buyers a written report to advise them fully about the property and to discuss a number of other issues as follows:

- 1 Buildings Insurance** - It is important that the buildings insurance arrangements are made at an early date. If you are having a mortgage, the lender will insist on the property being insured. It may be cheaper to make your own insurance arrangements. You may need to start the insurance from exchange of contracts. If in doubt, check with your lender or us. Do not leave this until the last minute.
- 2 Mortgage Repayment** - By this time you will have discussed with the lender the arrangements that you wish to make for repaying your mortgage. If this is to be in conjunction with a savings policy, a life insurance policy or a pension or any other similar policy, it is essential that arrangements are in place by this stage.
- 3 Options on Ownership** - If there is more than one buyer you will be "joint owners". There are two methods of owning property jointly and it is essential that you discuss these with us. Sometimes it might be sensible to consider putting the property in the name of a relative or relatives, for example, your adult children. Please discuss with us at an early stage if this is a possibility.
- 4 Deposit** - The contract that you sign will provide that you will pay a 10% deposit on exchange of contracts. If you are borrowing more than 90% of the purchase price, your solicitor will have to negotiate a reduced deposit on exchange of contracts. If you are buying and selling, the deposit paid by the person at the bottom of the chain is usually passed up through the chain. This means that one or more parties are likely to be accepting a reduced deposit. Please be aware that if you pay a reduced deposit the Seller can normally claim the balance of 10% off you if there is a later problem. If you are selling and accept a reduced deposit you will normally be entitled to the balance of the 10% if something goes wrong but please bear in mind that you may have to sue the Buyer for the balance.
- 5 Monies** - It is important to ensure that the money for the deposit and/or the purchase of the property is not locked away in a Bank or Building Society requiring several weeks or months notice to extract it. It is also important to note that we will require any cheques to be used in connection with the purchase at least seven working days before the completion date.
Payment of the deposit and balance of purchase money can be made by electronic transfer. This is normally paid by way of a BACS payment which may still take three or four days to reach our account or by a CHAPS payment which is usually a same day transfer (your bank may charge for this).
- 6 Wills** - If you have not already made a will, it is wise to consider the implications of your proposed purchase in the event of your death. If you have already made a will, it would be prudent for you to consider whether any amendments should be made in the light of the transaction.

Once the buyer's solicitors have dealt with all these points, the buyers will be asked to sign the contract to buy the property.

Once the seller's solicitors have prepared the contract they will arrange for the sellers to sign one copy of the contract.

It is important to note that signing the contract is not the same as exchange of contracts. Both parties will sign their own copy of the contract some time before the exchange of contracts. It is only on exchange of contracts that the deal becomes legally binding.

Timing

One of the more regular questions that is asked about any property transaction is "how long will it take?" It is impossible to give a fixed timescale. If there is one Buyer and one Seller, ie no chain of transactions, then, subject to the wishes of the parties, the legal process would normally be completed within six to eight weeks of an offer being accepted.

It is, however, important to be aware that when involved in a chain of transactions with several people moving at the same time and dependent upon each other, ***the whole chain can only proceed at the speed of the slowest person in the chain.***

For example, if someone is waiting for the result of a search, or awaiting a survey or specialist report on the property, everyone in the chain will be held up until these issues are resolved. We will do our best to resolve any outstanding issues as quickly as we can, but please bear in mind that some matters can only be resolved by the parties involved.

Being involved in a chain of property transactions can be extremely frustrating for the most patient of people.

It is also sensible to bear in mind, that although one or both parties may wish to meet a particular deadline for moving, it cannot always be achieved despite the best of effort on all sides.

If there is one issue in the whole conveyancing process which, day in day out, week in week out, causes more frustration, irritation, anger, annoyance and worry, it is the question of completion dates. We understand that our Clients have deadlines to meet due to job changes, holidays, changes of schools for children etc. It will be abundantly clear from these notes, and from all the paperwork that you complete for your sale or read on your purchase, that there are a hundred and one issues that have to be considered and must be dealt with properly by everybody involved before a transaction can proceed to an exchange of Contracts. Our firm and clear advice having helped thousands of people to move house is that you should not set a date for your move until everyone in the chain

of transactions, with which you are involved, is in a position to exchange Contracts. As a minimum, and for practical purposes, that means that the Solicitors must be in possession of the signed Contracts, the Buyers must have dealt with the Survey, received a written mortgage offer, arranged their buildings insurance and paid a deposit in cleared funds to their Solicitor.

We make no excuse for spelling this all out in detail in the hope that it will save some of our Clients from some of the excessive stress which can be involved in the whole process.

The Exchange of Contracts

Once the buyers' and the sellers' solicitors are satisfied that everything is in order they will then arrange an exchange of contracts, at which stage the date for moving (the completion date) is inserted in the contract so that both parties are then legally committed to that date. It is also wise to bear in mind that a gap of at least seven days and preferably longer should be left between exchange of contracts and completion, since neither party is guaranteed a particular completion date until the formal exchange of contracts has taken place.

Between Exchange of Contracts and Completion

Following the exchange of contracts all parties involved are aware that the matter is to be completed on a particular day. The solicitors on both sides will be busy dealing with various administrative tasks, including obtaining the money from the lender if there is a mortgage. By the completion date, the buyer's solicitors will have received sufficient money from the buyers and their lenders to enable them to pay for the property.

Completion – The Big Day!

All the financial transactions are conducted through the solicitor's client accounts where money belonging to clients and the Building Society/Bank is kept entirely separate from money belonging to the solicitors.

The buyer's solicitors will on the completion date transfer to the seller's solicitors sufficient money to buy the property. In return for the money, the buyer's solicitors will receive the legal transfer document, together with all the other relevant documents for the property.

In return for the money, the seller's solicitors authorise the seller or their estate agents to hand over the keys to the buyers.

It is important for the sellers to be aware that they should not authorise the release of a key until they know that we have received the money for the property.

It is important for the buyers to advise us if the property will not be empty on the proposed completion date.

On the completion date the seller's solicitors will pay off any mortgages on the property and provide proof of payment to the buyer's solicitors.

After Completion

As far as the seller and the buyers are concerned, once the completion has taken place, they will have reached their goal. The sellers will have their money and the buyers will have the house and probably a mortgage to pay. The buyer's solicitors however have a number of tasks to perform after completion including the payment of any stamp duty land tax, the registration of the property at the Land Registry and notification of the freehold owner, if the property is leasehold.

This is a general guide to a basic form of transaction, which we hope you have found to be helpful. Although the administrative and legal procedures in each transaction are similar, every single piece of property is different and it goes without saying that all sellers or buyers have their own particular expectations and requirements. The information above is by no means exhaustive and there are a host of other points which crop up in any one transaction from time to time. If you are in doubt about any particular item it is essential that you ask us before taking action.

Results that move you

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