

Buying and selling your home

Produced for clients of

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Introduction

Whether you are selling or buying a house or a flat you should be aware in advance of the various steps in a transaction. We have prepared this summary to give you a greater understanding of what is involved and to enable you to take steps to avoid some of the possible delays or difficulties that may arise. We hope that it will be helpful. Please contact us at any stage for information or advice.

1. If you are selling

1.1 When to contact us

It is best to contact us as soon as you have decided to sell, rather than wait until you have found a buyer. We will be able to obtain the deeds or evidence of your title in advance to avoid delay in sending out a draft contract when a buyer is found, and to prepare a comprehensive pack of documents for the buyer's solicitor.

1.2 Home Information Packs

Since May 2010, houses no longer require a Home Information Pack ("HIP"). However, houses on the market before then will have required a HIP and it is often a useful place to obtain some initial information.

1.3 Deeds

We usually need to have the deeds in order to prepare a draft contract and the supporting information for the buyer's solicitors. If you have a mortgage, the deeds may be with your lender. We will need the name, address and mortgage account number of the lender. Your lender may charge a fee for sending out the deeds. This is usually payable even if the sale does not proceed.

Most titles to properties nowadays are registered at H M Land Registry and it is often possible to obtain evidence of your title directly from them. Even if the title is registered, there may be other important documents with you or your lender that need to be obtained that a buyer will wish to see such as guarantees and planning documents. Is it a good idea to check the papers in your possession and let us have any documents or correspondence that might be relevant at the beginning of a transaction.

1.4 Property/Fixtures and Fittings Questionnaires

We will send you questionnaires dealing with matters arising during your ownership, such as disputes with adjoining owners, notices received from the local authority etc., which will be of particular interest to a buyer. With leasehold property, we will also ask for a great deal of information relating to the lease, rent, service charge and insurance.

In addition you will be sent a fixtures and fittings questionnaire to complete, showing what items you intend to remove from the property when you leave. Generally, any item screwed, wired or otherwise fitted to the property is included in the sale by law unless you specify to the contrary. It is therefore important to take this opportunity to avoid any misunderstandings as to what is or is not included in the sale.

1. If you are selling (continued)

1.5 Contract

We will send a draft contract to the buyer's solicitors for approval with the other documents. The contract contains all relevant information about the price agreed and your title. It also provides for a completion date to be agreed on exchange of contracts and refers to Standard Conditions of Sale. The Standard Conditions lay down a procedure to be followed by solicitors after exchange of contracts or in the event of any dispute arising between you and the buyer or problems that may delay completion. Sometimes with leasehold properties it is also necessary to obtain permission from the landlord to sell and the contract has provisions for getting permission.

1.6 Exchange of contracts

Until exchange of contracts, there is no binding obligation and if one party decides to withdraw before then, in most cases the other has no claim for loss. On exchange of contracts both seller and buyer are committed to complete the transaction on the completion date agreed.

The buyer pays a deposit on exchange of contracts. This deposit is usually 10% of the sale price. Sometimes the parties agree a reduced deposit of, say, 5%. We normally hold the deposit as stakeholders (that is as independent agents) until completion. It may be used as part or all of the deposit on your own purchase. If the buyer refuses or is unable to complete the purchase, the deposit can provide you with some compensation for any loss suffered. Usually, if you have accepted less than 10% at exchange, you are entitled to require the balance of the 10% to be paid should the buyer fail to complete.

As a fixed completion date is agreed at exchange of contracts, you will need to make sure of your removal arrangements at this stage.

1.7 Completion

After exchange of contracts you need to arrange for meters to be read on the day of completion, and for final electricity, gas and telephone accounts to be sent to your new address after completion. You must consider cancelling/transferring insurance arrangements on buildings and contents as from completion. You should also arrange for apportioned council tax and water rate accounts to be prepared and paid for the period up to completion, or rebates obtained, if paid in advance.

The period between exchange of contracts and completion was traditionally 28 days but it is possible to agree a shorter or longer period if you wish. 14 days is probably an average nowadays. In this period the buyer's solicitor prepares a draft Transfer for approval by us and ensures that there are no last minute problems on title. In advance of completion, we will ask you to sign the Transfer and also provide a statement of account showing the net proceeds of sale that will be available for you after payment of estate agents fees, mortgage redemption and legal fees and disbursements.

On completion we receive the balance of the sale price from the buyer's solicitors and you deliver the keys to the buyer, either direct or via the estate agents. Completion usually takes place about midday on the agreed date but this can be dependent upon the banks and the number of parties in the chain. Out of the proceeds of sale we pay the items shown in the statement of account and arrange for an appropriate form of release to be obtained from your lender.

2. If you are buying

2.1 When to contact us

You may wait until you have made an offer on a property and the offer has been accepted, before contacting your solicitor. Sometimes, buyers find it helpful to contact their solicitor beforehand, to discuss terms of an offer or the form of mortgage finance to be sought.

2.2 Mortgage finance

Wilmot & Co. Solicitors LLP can offer general advice on or explain to you the different types of mortgage finance available. It is important that you raise any queries as early as possible to avoid any delay or uncertainty. However, we are not permitted to offer advice on the specifics of any particular mortgage deal. You should contact an Independent Financial Adviser for further advice.

When you receive your mortgage offer, if you are borrowing some of the purchase price from a bank, building society or other lender, there may be important conditions on the offer that you need to read through carefully and understand. You will not wish to exchange contracts until a mortgage offer is received because only then will you know that the finance is available.

A buyer's solicitor is usually also instructed to act for the lender. This avoids the cost to you of having separate solicitors for buyer and lender. The instructions from the lender will usually require your solicitor to take steps to verify your identity. The mortgage company may require that any adults who are going to live at the property, but whose name will not be on the deeds, should obtain independent legal advice.

2.3 Enquiries/Searches

Before you are ready to exchange contracts, you will need to be advised by us that we are satisfied on the terms of the contract, on the replies to written enquiries obtained from the seller's solicitors and satisfactory search results have been received. Any Home Information Pack prepared for the seller was usually required to contain searches. It may be possible to rely on those searches although because of the way they were carried out or their age, it may be necessary to renew them.

The main search to be carried out is a local authority search which reveals any problems affecting the property from the local authority's point of view on such matters as planning and highways. Please note that the search will not generally reveal any proposals for development or change of use on adjoining land other than new roads within 200 metres of the property. If you are concerned about such matters, a plansearch can be done to find details of planning applications in the vicinity.

Other searches that we may carry out are an "Envirosearch" which investigates possible landfill sites nearby and uses of the land that might cause contamination, and, a drainage search to confirm that the property is connected to mains drainage. There are further searches that may be appropriate depending on the nature of the property and the seller.

The enquiries of the seller's solicitors cover such things as previous disputes with neighbours, notices received from local authority or others, problems of access to adjoining properties to inspect and maintain drains. We will also find out what fixtures and fittings, and other items such as garden ornaments, will be removed by the seller on or before completion. Only replies in writing from the seller's solicitor can usually be relied upon for the purpose of the contract; therefore, if the seller tells you something important, please ask us to have it confirmed in writing by the solicitor.

2. If you are buying (continued)

2.4 Survey

You should always consider having a survey of the property carried out at an early stage. There are generally regarded as being three different types of survey, which are as follows:-

2.4.1 Mortgage Valuation – this is carried out by your mortgage company and is a very basic form of valuation. There may be defects in the property which are not revealed by the inspection carried out by the mortgage valuer and there may be omissions or inaccuracies in the report which do not matter to the mortgage company but which would matter to you. You should not rely on the accuracy of the mortgage valuation report in deciding whether to proceed with the purchase.

2.4.2 Homebuyer's Report – this is an intermediate type of report where a surveyor will examine more closely the property, and it is usually the minimum recommended to be carried out.

2.4.3 Full Structural Survey – this is the most extensive type of survey and will involve the surveyor in carrying out a very detailed inspection and report of the property.

We would recommend that you should speak to a surveyor at the earliest opportunity to discuss what type of survey is most appropriate for you. Please note that the existence of an NHBC warranty or other guarantee does not detract from the importance of having a survey carried out.

2.5 Contract

Please refer to paragraph 1.5 above as to the contents of the Contract. Of course, it is the other solicitors who prepares the Contract in the case of your purchase and sends it to us to approve.

2.6 Exchange of contracts

Please refer to paragraph 1.6 above. It is important that you anticipate the need for a deposit well in advance of exchange of contracts. If you are selling your own property you may be able to use the deposit from your sale as part of the deposit for your purchase, but it is important that you discuss this with us at an early stage.

A buyer usually needs to arrange buildings insurance from exchange of Contracts. If there is to be a mortgage this will often be arranged by the lender. In the case of flats, there is usually a block policy arranged by the landlord.

2.7 Completion

After exchange of contracts you need to make the necessary arrangements with the telephone, electricity and gas suppliers to transfer the accounts into your name as from the date of completion. You should also ensure at the same time that the seller has arranged for the meters to be read on the day of completion and for final accounts to be prepared. It will be up to you to arrange your own contents insurance as from the date that you move into your new home. The local authority and water authority will usually write to you automatically after completion to advise you of the apportioned amount of council tax and water rates payable for the remainder of the year.

If you obtain a mortgage, we will have to send a certificate of title to the lender after exchange of contracts. We will arrange for all necessary documents to be prepared and signed by you between exchange and completion. There will also be Land Registry searches to obtain prior to completion, to ensure that there are no unexpected financial charges or other problems on the title that have not been disclosed in the contract.

2. If you are buying (continued)

In advance of completion we will prepare a statement of account showing the balance that you will need to pay by completion. The statement will include the balance of purchase price, stamp duty (if any), Land Registry fees and legal fees and disbursements and taking into account any mortgage advance due from your lender.

On completion, we will deal with the delivery of deeds and documents. You will make arrangements to collect the keys either direct from the seller or, more usually, from the estate agents. Completion usually takes place about midday on the agreed date but this can be dependent upon the banks and the number of parties in the chain. Delayed completion may result in a claim for interest on outstanding moneys.

2.8 After Completion

Following completion, we will deal with payment of stamp duty, registration of your title and service of any relevant notices in the case of leasehold properties or endowment mortgages. When registration has been completed, we will let you have a copy of your title information and arrange for storage of the deeds, usually with your lender.

3. Checklist

Do not forget:

- notify the electricity company, gas company, local authority, water authority and other suppliers
- notify DVLA for change of address on driving licenses and vehicle licenses
- re-direct mail
- cancel old standing orders.

We hope you have found this guide helpful. Please note that it is intended as a brief synopsis of how typical transactions proceed. You are, however, encouraged to contact us if you are in any doubt about any of the points.

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