

HEY Bendalls Property Lawyers

A GUIDE TO
SELLING AND BUYING
A PROPERTY



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HEY Bendalls Property Lawyers

A GUIDE TO SELLING AND BUYING A PROPERTY

INTRODUCTION

This guide will provide an overview of the steps when you are selling and buying a property. It will enable you to know what you have to do for this to proceed smoothly and what other people involved are doing at each stage. This guide describes the process in general terms and specific advice should be sought from us for your individual circumstances. Please read it very carefully and do not hesitate to ask us if you need further information or explanation.

What about the legal language?

Legal language and words are used when selling and buying properties. Here are a few definitions to make understanding it easier.

Contract

The contract is an agreement between two or more people to sell or buy a property, and such an agreement must be in writing. To avoid commitment until everything is in order, everything that is agreed or dealt with before “exchange of contracts” is on the basis of being “subject to contract”. This means that no matter how far the transaction has progressed or how apparently clear your agreement is with the other party, nothing is binding on either party until the contract is formally entered into by exchange taking place.

Exchange of Contracts

When a contract for a sale and purchase is prepared, two copies are printed, one to be signed by the Seller and the other to be signed by the Buyer. As and when everything is ready for the parties to commit themselves irrevocably, “exchange of contracts” takes place. This is achieved by a series of telephone calls between the Lawyers. The process starts with the first time Buyer at the bottom of the chain whose Lawyer telephones the Seller’s Lawyers, agrees the terms of the contract including the price, deposit and completion date and then, if there is a subsequent chain, releases (a guarantee that they will be available to exchange) their contract agreeing a later time at which such release will evaporate.

The Seller’s Lawyer does the same until the chain arrives at a point where there is no onward purchase where agreement is reached, contracts are dated, the completion date is inserted, the deposit is inserted and the process is timed. The Buyer’s Lawyer in that case then reverses the process with his Buyer’s Lawyer and so on down to the first

time Buyer. It is at that point, and only that point, that there is a binding commitment between the parties and the completion date is fixed. It is implicit within the agreement reached by the Lawyers that the contracts will be sent to the other party in that night's post and thus the contracts are "exchanged". From that point, both parties are bound to sell and buy at the agreed price, complete on the agreed date and if either side does not carry out their obligations under the contract, there will be consequences as a result of the breach of contract.

Completion

This is the most exciting day of the transaction. On that day the Buyer must pay the price of the property and the Seller must 1) move out, 2) hand over the keys, 3) hand over a document transferring their title to the Buyer and 4) Pay off any mortgage that the Seller has against the property. The completion date is agreed at exchange of contracts (see above). We don't recommend you make any arrangements for completion until exchange of contracts.

Property

A word which is used generally to cover any form of home, building or land, be it a flat, house, bungalow and whether it be freehold or leasehold.

Title or Legal Title

These expressions mean ownership of a property or an interest in a property. There are different types of title, the most important of which are Freehold and Leasehold. When the property is registered at the Land Registry, title will either be Title Absolute, which is the best, or Title Possessory, which indicates that there is a doubt as to the title and the Registry has not been able to give it a clean bill of health. It is usual where there is Title Possessory to

seek an Indemnity Policy to protect the buyer in the event of a third party making a better claim to the land.

Freehold Title

This is a form of property ownership that lasts forever. It is the highest form of property ownership in the sense that all other titles or interests in the land are carved out of it.

Leasehold Title

This is a form of ownership of property that is limited in time. It could be a 6 month tenancy agreement or a 999 year Lease. A short Lease or Tenancy Agreement has little or no capital value so you will not be asked to pay a lump sum. You will have to pay a rent. By contrast, a lease with over 100 years to run has virtually the same capital value as the equivalent freehold property and the rent paid is normally a very small "Ground Rent". Leasehold Title is essential where flats are involved because it is important that someone has control and responsibilities for matters such as insurance, maintenance and also that flat owners respect one another's rights to peace and quiet. It is very important when buying Leasehold property to ensure that the appropriate arrangements exist for adequate protection. The very best arrangements are when the leaseholder has a share of the freehold, normally as a member of a limited company which owns the freehold.

Shared Equity/Shared Ownership/ Help to Buy

There are many schemes invented by the government to help buyers get into the housing market. Some are based on a loan which must be repaid by the time specified. Others are based on you owning part of the property and paying 'affordable rent' on the other part. You should speak to the housing provider/Agent to ensure you are aware



of that Property's specific scheme before spending money. There is also specialised bank accounts e.g. (Help to Buy ISA) which can be used on any property provided you comply with the account and procedures on the account

Joint Tenants and Tenants In Common

When a property is owned by two or more persons they can choose to own it in one of two ways – either a “Joint Tenancy” or a “Tenancy in Common”. If they decide to own it as “Joint Tenants”, there is no specification of the amount of share as each of them is equally entitled to the whole and if one of them dies, the whole estate passes automatically to the survivor irrespective of the provisions in their Will. If they elect to hold as a “Tenants in Common” then they own the property in specified shares, possibly equally 50/50 or unequally, say 75/25, and each Tenant in Common can dispose of their interest as they wish in their Will.

Exchange Deposit

On exchange of contracts, the Buyer must put up some money as part of the purchase price. This is similar to when you have ordered furniture, made a booking for a holiday or something similar. The standard deposit is 10% of the purchase money. This is not to be confused with any mortgage lenders reference to a deposit. The lenders deposit is the difference between the Loan and what you have to put in. The Exchange Deposit is

fixed at 10% regardless of how much you are putting in. In some cases the buyer may not have a full 10% deposit because of the amount they are borrowing or receiving on their sale. In those circumstances, the Buyer will often be allowed to pay a smaller deposit but this is on the understanding and agreement that if they fail to complete their transaction, they must immediately pay the extra money to make the deposit up to a full 10%. Often the word “deposit” is thought to mean the amount of money that a Buyer is putting in to a property from their own resources.

In this guide, we use the word deposit to represent 10% payable upon exchange of contracts. Deposits are normally moved up a chain, that is, the first time Buyer's deposit is used further up the chain and ultimately held by the Seller at the top of the chain.

Covenants

Covenants are legal promises either to do or not to do something in connection with the property. The most common use is when a developer who is selling houses on an estate wants to ensure that everybody acts in a neighbourly way and lays down a series of do's and don'ts. Covenants can be negative (for example, not to be a nuisance or an annoyance) or positive (for example, to erect and maintain a fence). Negative covenants run with the land, that is they bind subsequent owners, whereas positive covenants only

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affect and control the original parties. New owners indemnify the old owner to take on the responsibility of negative covenants only.

Easement

An easement is a right which a property enjoys over another property, normally next door. It could be that two properties have a common drive or accessway over which each will have a right of way. If the drive way is partly owned by one and partly owned by the other, then each party will have rights of way over the part they do not own. Easements again are very common on developments where common facilities such as drains, gas, electricity, water supplies often pass through gardens on their way to the mains. In most cases, you will have a right to use the services that you need to connect to the mains whilst your neighbours may well have a right to use those services which pass through your property. In each case, the parties will have access for maintenance to those areas through which services that serve their property run.

Money Laundering

Money Laundering is a process where criminals seek to make money obtained by illegal means appear to be legitimate. Buying and selling property is a classic way in which a money launderer operates. It is for this reason that there are strict rules relating to identity evidence and evidence of funds we need from you before we can carry out work.

Mortgage/Charge

The word Mortgage firstly can be an explanation of the charge on a property which gives a Lender the security of the repayment of the loan and if the borrower does not keep up their repayments under the terms of the charge, the Lender can sell the property and seek repayment of the loan. The word also applies to the actual document which creates

the charge and is the Mortgage Deed. It also turns up in the other phrases such as Mortgage Offer and Repayment Mortgage.

Mortgage Offer

A Mortgage Offer is the document which the Lender sets out the terms upon which they are prepared to lend you the money. Although the lender may agree in principle to lend you money, it is inadvisable and extremely risky to progress the transaction to exchange of contracts unless 1) a correct written mortgage offer has been received by you, 2) the conditions on that Mortgage Offer have been satisfied and 3) any points that have arisen in any searches or enquiries have been cleared with the Lender.

The Mortgage Offer should set out the amount of the loan, the interest rate, the period over which the loan is to be repaid, whether it includes capital or interest only and any other conditions which the Lender wishes to impose. This could be a result of the survey the Lender would have carried out. Please remember we may be instructed to act for your lender as well as you. A mortgage offer can be revoked at any time and is created based on your personal circumstances at the time you apply. If they change, so can your offer.

Property Information Form

The Property Information Form is a questionnaire completed and signed by the Seller which provides practical and factual information about the property. The information given by the Seller may at times contradict information from other sources such as the deeds. For instance, the deeds may show the owner must maintain the right hand boundary but in practice the owner may say he has always maintained the left hand boundary! The form also covers services,



disputes, access to neighbouring land and details of work undertaken at the property which may have required planning permission and whether there are guarantees. If it is a Leasehold property then there is a separate Leasehold Information Form which is to provide information about the rent service charge, insurance etc. When reading this document remember Caveat Emptor - Buyer Beware.

Stamp Duty Land Tax (SDLT)

The Government imposes Stamp Duty Land Tax on the Transfers of Land. It is payable by the buyer upon completion of the purchase. A return has to be made to HM Revenue & Customs providing information about the parties and the transaction. This information finds its way into many Government departments. Coincidentally with the providing of that information, a payment (if appropriate) is made to the Inland Revenue. Even if no Stamp Duty Land Tax is payable, most transactions for value have to be notified to the Revenue under a provision which dates from the Finance Act 1931.

In recent years the calculation for SDLT has become more complicated due to the governments desire to help people own their own home. This means they have been playing a game of cat and mouse by trying to put off people buying a second or third home whilst giving tax breaks to first time buyer. With loopholes being identified and unforeseen scenarios unintentionally being punished it is hard to keep track of how it would personally affect you. The government have tried to help by giving access to a calculator which can be found at <https://www.gov.uk/stamp-duty-land-tax/residential-property-rates>



Vacant Possession

In most sales of property, the contract will state that the Seller has to give Vacant Possession on completion. This means that property is not being sold subject to any occupier e.g. under a Lease or Tenancy Agreement, or the seller themselves. The Property should be unoccupied and clear of all belongings (except for those items which are agreed to be included in the sale) on or before the completion date. This means the Seller should clear out all the unwanted furniture and rubbish, clear the loft, the sheds and the garden before completion. In practical terms, the Seller is expected to vacate the property by midday of the day of completion, giving the buyer the opportunity to collect the keys as soon as the money has been received by the Sellers lawyers and move in during the second half of the day. Whether or not the property is clear of such things depends on the organisational skills of the Seller and the number of bin collection days between exchange and completion!

SELLER – PUTTING YOUR HOME ON TO THE MARKET

As soon as you think about selling, you will want to discuss the sale with an Estate Agent and ourselves.

You Should:

Have a look around the local area and see who has the most boards on properties. Look not only at those that are “For Sale” but probably more importantly those that are “Sold”. Talk to us and your friends and neighbours, particularly if they have recently moved. Who would they recommend?

Compare your own house to others which have been sold recently or are on the market currently. View the internet sites of the Agents that you are considering. Are they easy to navigate? Do they provide the information you would like to be given if you were a buyer? Most Agents will be on leading property portals, e.g. Rightmove, Zoopla, etc. Check that your Agent is represented. Are the photographs of a good quality and do they give a good selection of views of the properties in question? Are floor plans included? Are the location and directions instructions included?

You should ask at least three Agents to view the property and ensure that you meet them face to face. Ask them for a valuation and ask them how they have arrived at their figures. A well prepared Agent will show you the comparables and explain the reasoning behind the valuation. Do not be swayed

by the highest figure if you think it is either unrealistic or has no foundation (Are they just saying that to get you to sign up?!).

Decide if the Agent is someone you can work with and understands your communication needs. Some have a compulsory text/call frequency which you may find useful or annoying. You will need to be comfortable dealing with that person and the Estate Agent’s team. Be careful about rates. Do they include VAT? Are there any other hidden expenses? Does the charge cover the provision of a board and EPC? Does it cover the provision of newspaper and website advertising? Ask how long you are to be committed to them? 8-12 weeks is the maximum we recommend but some agents seek to tie you in for 24 weeks – Beware! Find out how much notice you have to give to terminate the arrangement. There are even agents who do not require you to commit yourself at all to a fixed period.

Online Agents have also appeared and similar to online Lawyers many clients have reported that the initial fee is not what it seems. Read the small print, and watch out for repeat payments or hidden/additional costs!. Also consider if you are the best person to represent your property to sell it at the best possible price. If not use a professional.

Compare your own house to others which have been sold recently or are on the market currently.



It is worth looking at agents who are 'independent Estate Agents' because that gives you maximum flexibility and gives them maximum motivation. Remember whatever Agent you use, your Buyer will also have to deal with them.

It is important to find out what you will pay if the Agent is successful in selling the property? Is it a fixed fee not dependant on the price achieved or is the percentage fee based on the price achieved? Do not forget to ask whether the fee quoted includes or excludes VAT. Please remember the Agents fee often is payable on exchange of contracts, but the Agent will usually agree to delay payment until completion.

Do not sign any terms of business with an Estate Agent without reading the terms very carefully.

Do help your agent by keeping your property at its best. Most Estate Agents will make some suggestions, particularly if you ask as to how best to present your home. First impressions count! "Kerb appeal is important." Maybe they feel that you should de-clutter or possibly give the front door a lick of paint. Most of us need to do something to make our home more appealing to viewers and a little effort now may well help a quick sale follow.

You should receive regular feedback from viewings and if you don't receive this, do contact the agent and ask what the reaction was. If viewers dry up or do not appear, contact the Estate Agent on a regular basis, preferably by visiting the office or at least by telephone and ask their advice.

What Do Lawyers Do At This Point?

We will obtain a copy of your title deeds and ask you to complete a number of forms and supply us with more information. We suggest you do this before you find a Buyer as it will in the long term save time and give you more time to find papers you put in a drawer somewhere a few years ago. If you have a Mortgage we obtain a redemption/Settlement statement.

You will be asked to complete forms including:-

- Property Information Form
- Fittings and Contents Form
- Leasehold Information Form (but only if your property is Leasehold)
- Sellers Information Sheet

Please take your time when completing the forms and be completely honest and accurate in your answers to the questions raised. If you do not know the answers then say so. If you have any queries, do contact us. Providing inaccurate or false information may leave you open to prosecution and a claim for compensation by the Buyer.

Complete the Fittings and Contents Form carefully. Use the option to enquire if a Buyer wants to buy a particular item. Remember that unless you state it will be removed, it must remain as the form is part of the contract agreed with the buyers.

The Property Information Form asks about guarantees, extensions, double glazing, electrical work and central heating.

Where work has been carried out recently, the relevant permission certificates and guarantees are needed and should be sent to us. For instance, from 1st April 2002, installation of replacement windows, roof windows, roof lights and glazed doors needed a FENSA certificate (or, if not available, building regulation approval and completion certificate). Installation of central heating systems and similar works since 1st April 2005 has required an installation certificate.

If you do not provide these documents to us it will cause a delay. The Buyers will often require you to obtain them or take out an insurance policy at your expense.

If the property is leasehold, you will need:-

- a) Proof of payment of ground rent and service charge payments
- b) Copies of the last three years' service accounts
- c) The budget for service charges for the current year
- d) Insurance policy schedule
- e) Names and addresses of the Landlord, the Landlord's agent and any managing company

It is necessary for us to write to the Managing Agents or similar, who will normally make a charge (sometimes considerable) to provide this information.

BUYER – LOOKING FOR THAT PERFECT HOME!

Once you decide to look for a Home, make a careful list of your needs and requirements including price, location, size and type. Viewing properties for sale may be by a visit to the Estate Agents, looking in the local press and most often using the internet. In deciding how much you both can and want to borrow, be aware of Stamp Duty Land Tax which can affect your choice of property and your financial position. Your Financial Advisor will be able to assist you.

When viewing properties, look carefully at the neighbourhood as well as inspecting the property. If the property does appeal to you then revisit the property and area at different times of the day and night.

Try and evaluate the asking price by comparison both of properties you have viewed and those on the market. If you feel you need further help, talk to a Valuer and ask for their opinion.

When you decide to make an offer this normally is through the Estate Agent. Do remember the Agent is acting for the Seller and not for you the Buyer. The Agent will need to know your position. For example. Have you a house to sell? Is it sold? Do you need a mortgage? Is it agreed in principal?

The Agent will discuss the matter with the Seller and if terms are agreed, the sale will proceed subject to contract.

Seller and Buyer

The Agent will now prepare a Sales Memorandum detailing the Parties, their Lawyers, and the terms of the Sale including

the price agreed. Please do not start thinking about moving dates at this early stage and do not make any binding commitments. If you do have specific requirements, ensure that the agents and your Lawyers are aware so everyone in the chain is notified.

Buyer – Mortgage application and Survey

Once a purchase has been agreed, the Buyer should formally apply for the mortgage and organise the survey.

There are three main types of survey and you should speak to a surveyor who can recommend the most suitable one for you

1. A Bank or Building Society Valuation.
This is what it says. It is a Valuation, not a survey, and it is a relatively simple and quick inspection carried out by a Lender to ensure that the property exists and will provide the Lender with adequate security. You, the Buyer, cannot rely on it.
2. Home Buyer's Report and Valuation. This is a much more detailed report on the condition of a property. The Surveyor will

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provide a valuation of the property and a valuation of rebuilding costs. Before you instruct the Surveyor it is worth pointing out any issues which you have noted when you viewed the property and asking for them to be addressed. If you have particular queries, then do not fail to raise them with the Surveyor before they attend the property. In most cases, this type of Survey is normally used for the average sized post war property, providing it is traditionally built and in apparently sound condition.

3. A Building Survey, often known as a full Structural Survey, is probably more appropriate for larger and older properties, or those clearly in a poor state of disrepair. This is a very detailed and comprehensive survey of all parts of the property. It is more costly and again if you have particular issues and concerns, you should raise these with the Surveyor prior to them visiting the property.

Caveat Emptor – BUYER BEWARE!!

It is the Buyer's responsibility to ensure that the condition of the property is acceptable and to highlight to their Lawyer or surveyor any concerns they have had from viewing the property. The Seller has no duty to tell the Buyer of defects and a survey therefore is essential. The Valuation by a Lender is wholly inadequate as a report on the condition of the property and is not for the benefit of you the borrower, it is for the Lenders sole benefit. At best it will confirm that the building is not about to fall down but it will not reveal problems which can cost a Buyer thousands of pounds. Buyers should therefore ensure that one of the other two surveys are carried out. Sometimes a Buyer will seek to use the Lender's surveyor to carry out the more detailed survey. This may save some money but it is worth pointing out that any serious defects may then be reported to the Lender who may put a condition on the Mortgage Offer. They may require certain work to be carried out or even retain part of the loan until such work is carried out. It may be more appropriate to have your own Independent Surveyor carry out the more detailed survey. Most surveys will not include a thorough check of central heating, electrical wiring and plumbing systems. Depending on the result of the survey, the surveyor may recommend that independent contractors carry out such inspections. Again, remember "Caveat Emptor". If there is anything wrong with the services, it is up to you, the Buyer, to find them out.



THE BUYER'S MORTGAGE

Most Buyers will need a loan to buy the property and most Buyers will use a Bank or Building Society who will require the security of the property to cover the loan. It is important to obtain good independent financial advice prior to choosing your mortgage.

There are two basic types of mortgages:–

1. An Interest Only Mortgage. As the name suggests, the borrower pays only interest during the period of the loan. Because no capital (amount you have borrowed) repayments are being made, the monthly repayments are lower but the borrower has to make alternative arrangements for paying off the capital when the mortgage period expires. In the past this has been dealt with through investment products, such as pensions or endowment policies, but such investments can be unpredictable and at maturity may not provide an appropriate amount to repay the mortgage. Again, you need to take Independent Financial Advice if you are thinking about going down this route.
2. The alternative is the “Repayment Mortgage” where each monthly payment includes an element of interest and an element of capital. The loan is thus gradually paid off. As the capital balance is reduced, the interest payable reduces so the amount of capital paid off in each monthly payment gets progressively

larger. The only problem with this loan is if interest rates increase and you do not increase the amount of the monthly instalments. It is only by performing perfectly in accordance with the mathematical formula that the loan will be repaid over the given period.

While thinking about your mortgage, you may want to think about the following other points:-

1. You may wish to consider some form of life insurance to pay off the mortgage if you die before the loan is repaid and possibly to pay the mortgage if you become incapacitated.
2. Make arrangements with regards to insurance of the building and your contents. While some Lenders wish to tie you into their products, it is worth exploring whether you are allowed to use your own product. Please remember that everything must be ready for you to put the cover on risk at exchange of contracts.
3. Do remember that the mortgage will generally not allow you to let the property or carry out any major work without the lenders consent. If these are in your mind at this stage, discuss it with the Lender so that they can be aware of your proposals and give you consent.
4. Lenders will also want to know whether any persons are going to live in the property other than the owners or

It is important to obtain good independent financial advice prior to choosing your mortgage.

borrowers. This may include partners, relatives or grown up children. The reason for this is that occupiers of a property may be or may become entitled to rights of occupation which could take priority over a mortgage. If an occupier has a right to refuse to leave a property, any mortgage that the Lender has on that property will be useless because the property will be unsaleable. For this reason, Lenders insist that adult occupiers (17 or over) who are not owners sign a statement confirming such rights as they have in the property will be postponed and rank after those of the mortgage Lender.

5. When Lenders are offering a fixed rate, there may be a penalty if you repay the loan early. Do check this carefully and particularly ensure that you are able to port (or transfer) the loan to another property on the same terms. Some penalties are extremely expensive and although you may not think that you will be moving house again shortly, circumstances can change beyond your control.

THE CONTRACT

Seller

It is the Seller's Lawyer's job to prepare the contracts. Provided the Seller has completed the forms mentioned earlier and supplied the supporting papers, the Seller's Lawyer can immediately produce and send to the Buyer's Lawyer a full pack of papers, namely:-

- Draft Contract
- Title documents and copies of any documents referred to in the Title.
- Property Information Form and documents referred to in the Form.
- Fittings and Contents Form

The Contract incorporates the Standard Conditions of Sale. These are standard set of contract terms intended to be evenly handed between Seller and Buyer and which include provision, for instance, as to what happens if a party acts in breach of the contract.

The contract sets out:-

- Name and address of Seller
- Name and address of Buyer
- Details of the property to be sold
- The price
- Details of the Seller's Title
- Spaces for the parties to sign and
- Spaces for the dates of the exchange and completion to be inserted on exchange of contracts.

The Seller's title or right of ownership will be demonstrated. This will disclose details of rights benefiting the land, rights adversely affecting the land and covenants to either require action (e.g. to erect or maintain a fence or prohibiting something e.g. not to use the property other than as dwelling). The Seller's title will also disclose a plan. Both Seller and Buyer will be asked to verify that plan to satisfy themselves that the correct area of land is the subject of the contract and subsequent transfer.

Buyer

When the Buyer's Lawyers receive the contract pack they will be able to carry out their investigations and searches. This includes checking the contract, checking the title to ensure that the Seller is the owner and whether the property enjoys the necessary rights which it needs. It also includes checking covenants to ensure that these do not prohibit the use which the Buyer intended or have

been breached in the past. They also check the Property Information Form and the documents provided.

Additional Enquiries may be raised and searches will be put in hand.

It is worth remembering that when you are buying a property, we do not visit or inspect it. This is your obligation. You should have inspected the property at least once and it is important that you help us protect you by providing information and in particular:-

- Are there any adult occupiers other than the Sellers? We will need to make sure that they sign the contract to confirm they will leave the property.
- Has the property been altered or extended? If so, and in the absence of any paperwork from the seller, your surveyor will have to estimate when as we need to ensure

that the appropriate documents are being provided.

- Does the property have a recent conservatory or recent double glazing or new boiler or new electrical system? Again we will need to see whether the appropriate documents are being provided.



THE SEARCHES

Three searches are generally undertaken when a property is purchased:-

The Local Authority Search

An official Local Authority Search uses information drawn from the relevant council records to compile a definitive and up-to-date picture of all the planning issues that could affect the property you are buying but not the surrounding area.

Each official Local Authority Search includes the following key information about any property in England and Wales:-

- Details of proposed traffic schemes.
- Financial charges registered against the property by the local authority such as improvement grants.
- If the property is affected by conservation areas and details of tree preservation orders, which could restrict the homeowner's ability to undertake further building work.
- Listings of any compulsory purchase orders or conditional planning consents and agreements.

Drainage & Water Enquiry

A Drainage and Water Enquiry identifies all the risks that a property may face in relation to the ownership and location of sewers

and water mains. This enquiry has helped prospective homeowners avoid unexpected maintenance bills and may uncover problems that had the potential to dramatically reduce property values.

Each Drainage and Water Enquiry includes the following key information about property and land:-

- Details of water and wastewater services at the property – not all properties are connected to the public system.
- The location of most public water mains and sewers in the area – important if an extension is planned.
- The existence of any agreements or consents.
- An assessment of water quality.
- The location of nearby sewer treatment works.
- An analysis of the risk of receiving low water pressure, together with possible remedial measures.

Homecheck Professional Environmental Report

The information contained in a Homecheck Professional Environmental Report enables homeowners to confidently assess potential environmental risks that could affect the enjoyment and value of the property. The

A Drainage and Water Enquiry identifies all the risks that a property may face in relation to the ownership and location of sewers and water mains.

report can be produced for any property in England and Wales and includes the following information:-

- A professional independent risk assessment carried out by a leading firm of environmental consultants. Their professional opinion is provided along with an indication of the likelihood of the property being described as contaminated (as defined by Part IIA of the Environmental Protection Act, 1990)
- An environmental certificate issued by the environmental consultants based on the level of environmental risk associated with the property.
- Details of past and present industrial land use.
- The location of nearby landfill and waste management sites and details of any storage sites for hazardous substances within 500m of the property.
- Details of consents to discharge that have been granted.
- Confirmation of whether the property is in or close to a radon affected area.
- An indication from the British Geological Survey (BGS) regarding the risk of natural ground stability and instability caused by mining in the area.
- An assessment of flood risk and whether the area benefits from flood defences.

Other Searches

Depending on the location of the property, other searches may be necessary. For example in other areas of the country Mining Searches are necessary.

Do you really know your local neighbourhood?

What planning applications exist in the vicinity of your new property?

Therefore you may wish to consider the following searches :-

Plansearch

Each Plansearch report includes the following key information about any property in England and Wales:-

- Details of planning applications since 1997.
- Full details of Local Development Plans and Local Development Frameworks (which outline the spatial planning strategy for the local area).
- Aerial photography of the site and surrounding area.

If you need to know anything specific about a particular property, then do ask us whether any other searches are available for us to conduct.

Plansearch Plus

Plansearch Plus includes all the information in a Plansearch report along with neighbourhood information including:-

- Local facilities and amenities.
- Council tax bandings
- Crime rates.
- Schools and performance indicators.
- Location of telecoms masts.
- A breakdown of the area's housing and demographics.
- Details of footpaths and rights of way.

If you need to know anything specific about a particular property, then do ask us whether any other searches are available for us to conduct.

THE SIGNING OF THE CONTRACT

Seller & Buyer

Once the contract has been approved by the Buyer's Lawyers (usually after all legal enquiries have been answered), the Seller's Lawyers will ask the Seller to sign. Whilst part of the process, it is not the all important step which follows and you should be aware that merely signing the contract does not have any legal effect. The Buyer's Lawyer will now prepare and forward a comprehensive report to the Buyer detailing all of the points which have been mentioned in this booklet and providing copies of all the documents for the Buyer to consider. An appointment will be offered for the Buyer to visit the office for a meeting to discuss the contract, report and purchase.

The Buyer will be invited to sign the Contract, Transfer, Deed, the Mortgage Deed and a SDLT form and any other forms necessary for the purchase. At that point if a Buyer is a first time Buyer a deposit (normally of 10% of the purchase money) will need to be paid. If the Buyer is selling a property then the deposit which is received on that sale is used as the deposit on the subsequent purchase, that is the deposit is rolled up the chain, as mentioned previously.

Buyers should be aware of the following points at the meeting:-

- 1) Their building insurance should be ready to be placed on risk;
- 2) Adults who propose to live in the property will need to be approached and their signature obtained to the relevant consent form for the Lender;
- 3) A discussion will take place when two or more of you are buying it together as to whether you hold the property as joint tenants or tenants in common.

Another word of warning! Even now you should not make any binding and irrevocable commitments with regard to completion dates. You may wish to start talking about dates you cannot do and certainly looking at removal contractor options and obtaining quotations, prices and how much notice they require. However, it is still too early to guarantee a completion date.

The contract requires all discussions which you wish to have legally binding are confirmed through lawyers. It may be that the Buyer has further enquires or seeks confirmation of such discussion after this meeting and inspection of the legal documents. If so another round of enquiries will take place!

THE EXCHANGE OF CONTRACTS

When all parties in the chain are ready to proceed with the Sale and Purchase and the date for completion has been agreed by everyone, contracts can be exchanged. This process is carried out using a formula which acts as a binding undertaking. Starting at the bottom of the chain, the contract is released by each Lawyer until the top of the chain where a commitment is entered into and the reverse process occurs. This is normally carried out by telephone and includes confirmation of completion date and deposit. That evening the contracts are placed in the post and thus the Seller's contract is "exchanged" with the Buyer's contract, hence the term. The deposit also normally passes up the chain. Exchange of contracts is the point where each party is locked into the deal. For the first time, the moving date can be relied upon and the arrangements must then be put in hand immediately.

PREPARING FOR COMPLETION

Buyer

Now contracts have been exchanged, the Buyer's Lawyer will prepare the transfer document and have this signed by the Buyer and sent to the Seller's Lawyer. In addition, they report to the Lender and request the mortgage funds. The purchase money has to be paid by a certain time (normally 1pm, but sometimes earlier) on the completion day and the Buyer will be breaking the contract if the money arrives at the Seller's Lawyer's bank after that time. As a matter of course, we therefore ask the Lender to send us the mortgage money on the working day before completion. You will have to pay an extra day's interest, but this is a small amount when compared with the amount you would have to pay if the money could not be delivered to the Seller in time.

The Buyer's Lawyer will prepare a statement showing the balance that needs to be paid by the Buyer before completion. The Buyer's Lawyer will carry out some final searches including a search with the Land Registry to ensure that there have been no changes to the Seller's title to the property since the date when the contract was prepared and, if the Buyer is having help with a mortgage, a search to ensure that there are no bankruptcy proceedings pending.

Seller

The Seller's Lawyer will:-

- Approve the draft transfer. The transfer is the document by which the Seller transfers title to the Buyer.
- If the property being transferred has covenants, the Seller will normally require the Buyer to confirm that the Buyer will continue to obey the covenants and the Buyer will need to sign the document as well as the Seller. Where there are two or more Buyers, they will need to sign to confirm how they will own the property either as "Joint Tenants" or "Tenants In Common".
- Obtain from the Lender a redemption statement showing the amount required to redeem any mortgage.
- Obtain from the Estate Agent a note of fees, their commission account. By this stage you should have notified your Lawyer of the expected charge so they can compare that to the invoice raised. Payment must be made on completion to avoid you being in breach of the Agent's contract with the Seller
- Prepare a completion statement to take account of the sale proceeds, redemption figure, the Estate Agent's figure and the



other expenses. In addition, details will be required from the Seller as to what is to happen to the net proceeds of the sale.

What Should The Seller Be Doing?

The Seller needs to:-

- 1) Sign the transfer.
- 2) Arrange removals.
- 3) Clear the property of any rubbish.
Remember the Sellers are not allowed to leave anything at the property unless it was agreed that it would be left.
- 4) Read meters on the completion day and ask the utility providers and local authority in respect of council tax for a final bill.
- 5) Plan to move out of the property by midday on the day fixed for completion.
- 6) Notify change of address – a suggested but not definitive list of who to notify :-
 - Banks and Building Society
 - Insurance Companies
 - Gas, Electricity and Water Companies
 - Telephone Companies
 - Local Authority (Rating Department)
 - Driving Licence Authorities
 - H M Revenue & Customs
 - Credit Cards Companies
 - Lease, Hire or Rental Companies
 - Employer
 - Doctor
 - Dentist
 - Schools
 - Professional Bodies/Trade Unions
 - Motoring Organisations
 - Friends and Relatives
 - TV Licensing
 - Accountant
- 7) Complete a Royal Mail Post Redirection Form.



What Should The Buyer Be Doing?

The Buyer should:-

- 1) Remember to put the buildings insurance on risk.
- 2) Arrange contracts for the utilities.
- 3) Provide any balance to the Lawyers due to complete the purchase. We will provide you with clear indication of how to make this payment to us.
- 4) Notify change of address – see previous comments.

KEYS

The Seller should leave a set of keys with the Estate Agent ahead of completion day. To avoid a trip to the Estate Agent on the day fixed for completion, as you leave the property and finish your move, post the very last key through the letter box having locked the property up. The Estate Agents should not release any keys to the Buyer until the sale proceeds have arrived at the Seller's Lawyers and been notified by them to release the keys.

If you are buying, then the keys will normally be collected from the Estate Agents on the completion day. Since you will not be allowed those keys until the Seller's Lawyers have received the purchase money, it is normally unlikely that this will be available to you until 1pm. Delays can occur due to the slowness of the system of transferring money or the sheer length of the conveyancing chain and it is wise to keep in touch with us throughout the day. Once we notify you that the money has been received by the Sellers Lawyers we would suggest you telephone the Estate Agents to check that they have received notification to release the keys.

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COMPLETION

The day has arrived for the move. The Buyer's Lawyers arrange to complete the purchase by instructing their Bank to transfer the remainder

If you are buying, then the keys will normally be collected from the Estate Agents on the completion day.

of the purchase money into the bank account of the Seller's Lawyers. If the Buyer is not selling their own house then this may be able to be dealt with either first thing in the morning or sometimes the preceding evening. If the Buyer is selling their house then they will have to wait until the sale proceeds of that property are received.

When the Seller's Lawyers receive the money they will:-

- 1) Telephone the Estate Agents to release the keys to the Buyer.
- 2) Telephone the Buyer's Lawyers to confirm they have received the money and authorised release of the keys to the Buyer.
- 3) Date the transfer deed and send the transfer deed and other documents to the Buyer's Lawyers.
- 4) Discharge the amount required to pay off the Seller's mortgage.
- 5) Contact the Seller to confirm completion has taken place.
- 6) Pay the Estate Agents their commission accordingly.

After completion, the Seller's Lawyers receive from the Lender, confirmation of the discharge of the mortgage and provides that confirmation to the Buyer's Lawyers.

The Buyer's Lawyer has more to do.

It will be necessary to notify HM Revenue and Customs of the transfer. If Stamp Duty Land Tax is payable, that is paid at the same time. A certificate is provided by the Inland Revenue and once the Buyer's Lawyers have received confirmation that the Seller's mortgage has been discharged the application for transfer may be made to the Land Registry. This requests removal of the Seller's mortgage

from the register, transfer of ownership to the Buyer and registration of the Buyer's mortgage as appropriate.

In a straightforward case the registration procedure will only take a week or two, but in the case of sale of part of land (i.e. from a builder) or first registration the procedure may take considerably longer. With recent cut-backs to government departments it is not unusual for complicated matters to take 6 months for registration!

The outcome of registration is the provision by the Land Registry of a Title Information Document, that is an up to date copy of the entries which are logged at the Land Registry. A copy of the title document is often sent to the Buyer's Lender and a copy will be supplied to the Buyer. Lenders do not need to hold any further documents, therefore we will send to you other important paperwork including NHBC documents, planning permission, guarantees and (if the property is Leasehold) the Lease. You must keep them safe as they are likely to be needed should you remortgage or sell the property in the future.

AND FINALLY!

It remains for us to say that if you have moved home, we wish you every happiness in your new home. We do hope that the information provided in this guide has answered your questions and given you an understanding as to the process which is followed when you are selling or buying a property. If you have any specific questions relating to your own circumstances, please contact us.

We are here to help and guide you through the maze of moving.

HEY Solicitors



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