

STEPS INVOLVED IN BUYING YOUR HOME

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CLIENT GUIDE IN CONVEYANCING MATTERS

1. Introduction

We have provided this Guide in the hope that it may explain some of the terms used in conveyancing, the steps which are usually taken (and the reasons for them), and the factors which dictate when these steps are to be taken.

A short written explanation like this cannot cover all the points which may arise. We hope you will discuss worries of any kind with us, so that we may try to remove the cause of the worry.

2. Conveyancing - What is it?

Transferring the ownership of land is not like transferring the ownership of, say, a piece of furniture or a car. Land is always there, and in the course of time many rights and obligations may be created in relation to it. They are often not evident on an inspection of the property. For example, someone may have a right to occupy part of it, but not be there when you call; a neighbour may have a right to enter the property and dig up the drains in order to inspect or clean his drain.

The public, too, may have claims - perhaps there is a public footpath across the property; the council could have rights in respect of, for example, compulsory acquisition or unpaid charges for making up the road. The planning authority or the highway authority are perhaps considering schemes which would affect the environment of the house you are thinking of buying.

Then there is the question: Does the seller really own it and, if so, is he free to sell it? If he inherited the property, were the correct steps taken to transfer legal ownership to him, or is it still outstanding in someone else's hands?

These are only a very few of the snags which arise and which is your solicitor's duty to discover, if they exist, and advise you about. Conveyancing is the name given to the process of transferring ownership of land from one person to another, the solicitors for the seller and buyer each being obliged to safeguard their client's interests.

3. What happens in a conveyancing transaction?

There are three main areas to consider and we shall briefly look at each. They are:

- (a) The work carried out after agreement in principle is reached, but before the seller and buyer are bound by contract to proceed with the matter.
- (b) The stage between "exchange of contracts" (when the parties become contractually committed) and "completion" (the day on which money changes hands in return for the keys and transfer of ownership, i.e. the day on which you are entitled to move in).
- (c) The conclusion of the formal side of the transaction, when documents are submitted to the Inland Revenue for payment of stamp duty land tax and to the Land Registry for "registration of title".

4. **Pre-contract**

- (a) Whether you are the Buyer or Seller, if you are a new client to the practice and not known personally to a partner, as a first step we are required to ask you to produce evidence of identity e.g. such as production of your passport.
- (b) The Buyer: You have found the property you want, and the seller has accepted your offer. (Another guide ought to be written about this stage - before most people even consult a solicitor!) Some of the most difficult and responsible work has to be done by your solicitor at this stage. The making of searches (with the local authority an environmental search and drainage search) and "preliminary enquiries" is by no means a formality. We shall summarise for you the information obtained about the property and advise you as to the meaning of the provisions in the draft contract. It is also your solicitor's duty to ensure you do not "exchange contracts" before you have available all the money needed to pay for the house at completion. We shall be in touch with your lending institution (or your bank, if bridging finance is needed) and with your buyer's solicitors, if you have a related sale. Once all these elements have come together, we shall ask you to sign the contract and pay the agreed deposit (usually 10% of the purchase price) to us, so that contracts can be exchanged.
- (c) The Seller: Having found a buyer, you will instruct us to send a draft contract to the buyer's solicitors. To do this we shall need the deeds, to check the nature of your ownership and the existence of any rights or burdens which must be revealed and passed on to the buyer. At this stage we will send you two forms to complete, one about the

house itself and the other dealing with the fixtures and fittings.

When we have the deeds, we shall prepare a draft contract and related documentation and send it to the buyer's solicitors, who will in all probability raise some additional enquiries designed to discover from your own knowledge of the property whether any of a number of possible disadvantages actually affect this property. Once the buyer's solicitor is satisfied, he will approve the contract and we shall ask you to sign it. Contracts will be "exchanged" and a date fixed for moving and payment: "completion".

If you are having a mortgage, we will call you in to have the mortgage explained to you before you sign it. An obligation to repay thousands of pounds at a rate of perhaps hundreds a month is not undertaken lightly. In any event, when we act for you in a purchase we report on title to you in the form of a brief meeting of around an hour for reading through the papers together so that you wholly understand the legal aspects of your purchase.

Having decided to sell, the sooner you instruct us the better. We can then get together a package of the documents and information which will be required by the buyer's solicitors so that no time is wasted once a buyer is found.

5. **Between contract and completion**

It is in this period that we check that the title to the property remains the same by submitting a Land Registry search in you or your mortgage company's favour. We as buyer's solicitors also prepare the Transfer for the seller to sign. In some cases the Transfer only has to be signed by the seller but it must be signed by the buyer too, either because the buyer must covenant with the seller to observe the restrictions or because there is more than one buyer and the Transfer document contains details of a declaration of trust. As we approach the date for completion, the financial details will be worked out and the buyer will be asked to provide the balance of purchase price in return for the deeds and signed Transfer Document. It is at this point when the purchase price is paid over to the seller's solicitors that you will be entitled to occupy the house and take possession of the keys.

6. **After completion**

What remains to be done is almost entirely in the hands of the solicitor. We shall send the Stamp Duty Land Tax Return (SDLT1) to the Inland Revenue for its details to be entered into their records and any necessary

duty to be paid. If the purchase price is in excess of £125,000.00 then Stamp Duty Land Tax is payable by the buyer at rates varying from 1% up to 4% of the price, depending upon the value of the property. This is a government tax and should not be confused with our professional charges! The Inland Revenue requires the Buyer to answer over sixty questions on a Land Transaction Return relating to the property and the price the Buyer has paid. You as Buyer have to provide your national insurance number on this return. Once the appropriate stamp duty land tax has been paid the Inland Revenue will issue us with a certificate and at that point we can register change of ownership and the new mortgage at the appropriate District Land Registry. When we lodge these papers we have to advise the Land Registry whether you or we are aware of any "overriding" interests which affect the property in e.g. rights affecting the property in favour of third parties. If you are aware of any please let us know at the earliest moment. On the return of the papers for the Land Registry, we shall lodge these with the lending institution. If there is no mortgage, we shall deal with the deeds as you wish. We should be happy to look after them for you free of any charge.

7. **Glossary of terms used**

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| "exchange of contracts" | literally, the exchange of one copy signed by the buyer for another signed by the seller. At this point both parties become committed to proceed. |
| "completion" | the date fixed for transfer of ownership, on payment of the price. Normally between two and four weeks after exchange of contracts. |
| "registration of title" | ownership of unregistered land is proved by showing its recent history as recorded in the "deeds". A sells to B, who dies, leaving it to C, etc. In all areas of the country title to land now has to be registered in one of the registries maintained by the Land Registry on completion of a purchase. The Register records ownership and all important details of rights and liabilities. |
| "local searches" | the search is in the registers |

maintained by the district council in relation to such matters as road charges and planning decisions. The expression includes the enquiries made of different departments of the council to do with a wide range of other matters which may affect the property. Apart from road proposals affecting land within 200 metres of the property, the local authority search will only give information about the property itself. The search will give no information about other property, for example, the development of neighbouring land. If, therefore, you are concerned about the possibility of development or any matter relating to other property in the neighbourhood, you should make enquiries of the local authority before you consent to exchange of contracts on the purchase.

"preliminary enquiries"

a series of questions addressed to the seller, who is expected to answer from his own knowledge about such matters as disputes with neighbours, or work done on the property needing building regulation approval, or rights enjoyed over the property.

"deposit"

part of the purchase price paid at exchange of contracts, normally 10%.

"mortgage"

document recording loan of money secured on the property. If payments are not maintained, the lender may have the right to take possession and sell the property.

"transfer"

the document transferring

ownership.

"overriding interests"

these are rights to which the property is subject but which may not appear on the title as registered at HM Land Registry. These include a lease of any part of the property for more than 3 years, a person in occupation, rights of way or drainage in favour of a third party.

