

Your guide to a stress-free residential property transaction

Moving house can be a stressful experience, so let us guide you through the procedures and address some of the more frequently asked questions.



First things first...

When you have found the property that you would like to buy, you will be hoping to finalise the terms of the purchase through the **seller's** agent and if you have a house to sell, will be settling the terms for the sale of your existing property through your agent.

The **seller's** agent may ask you for a preliminary deposit payable to them or perhaps to the **seller's** solicitor. It is important that if you pay a deposit, you write a 'subject to contract' letter indicating that this is paid to the agent or the **seller's** solicitor as 'stakeholder' on the basis that it must be returned to you immediately if the purchase does not go ahead.

There are occasions, particularly in the case of the purchase of a new house from a developer, when such a deposit is requested on a "non-returnable" basis. We strongly suggest that you refer to us for advice before such a deposit is paid. The deposit is usually only requested as evidence of your good faith. We recommend that a preliminary deposit should not exceed £1,000 and a receipt is obtained. The balance of the deposit will be payable on exchange of contracts.

Contract

As soon as the terms of your purchase have been agreed through the agent, the **seller** will instruct his solicitor to send a draft contract to us. The **seller's** solicitor may have to obtain the title deeds from either the **seller** or the lender, who may hold them as security for the **seller's** mortgage of the property. Once the **seller's** solicitor has received the title deeds or obtained evidence of title from the Land Registry, and obtained other necessary documents and dealt with ID requirements pursuant to money laundering regulations, s/he will prepare and send to us a draft contract and other relevant documents for examination and approval.

Conversely, when we act for you on a sale we will ask you to provide us with any title deeds, guarantees and other documents you hold, and also for the name and address of your mortgage provider and details of your mortgage account number so we can write to your mortgage company for any deeds they may hold. It is increasingly common for title deeds to be held by a **seller**, not a lender. Having said that, where the property is registered we will be able to obtain evidence of title from the Land Registry, which is stored electronically. We ask you to sign and return our terms of engagement letter and we also attend to the requirement to satisfy our regulator in terms of ID and address verification required.

Once approved, a copy of the contract is returned to the **seller's** solicitor for signature by the **seller** in readiness for exchange of contracts. We will arrange for the other copy to be signed by you. It is only when the two contracts are exchanged through the respective solicitors that the **seller** and the **buyer** are legally bound to sell and to buy the property. The exchange is usually carried out by a telephone call between the **seller's** solicitor and the **buyer's** solicitor.

Local and other searches

When we receive an accurate plan of the property from the **seller's** solicitor, we may have to send searches and enquiries to the local and other authorities. We ask you to provide us with funds on account of the disbursements incurred for the searches.

The information given in reply to these searches will only relate to the actual property that you are buying. If you have any further queries relating to neighbouring properties and whether there are any plans to redevelop the same, you should ask us to make enquiries, as such matters are not normally dealt with by the standard searches.

The matters covered by the standard searches usually include those relating to drainage, whether the property is a listed building, possible road widening or construction of new roads nearby or in relation to boundaries, public rights of way, possible mining in the area and details of recent planning consents relating to the property. We will also carry out environmental searches due to recent contaminated land legislation (referred to in the firm's client care letter).

Enquiries

It is general practice for information forms to be completed by the **seller**. We will raise any other enquiries we deem appropriate, but please advise us as soon as possible if there are any particular enquiries you would like raised on your behalf. We raise additional enquiries in respect of the title to the property you are purchasing and the search results and property information forms received.

It is vital when selling a property that you accurately and truthfully complete the information forms. Inform your solicitor of any disputes or potential problems you may have with your neighbours so that we can inform your **buyer's** solicitors. If you do not mention any dispute or problem, your **buyer** may be able to bring a claim in damages for misrepresentation against you.

On a purchase, it is our normal procedure to provide you with a report containing the information obtained from our enquiries prior to exchange of contracts, and to send you the plan of the property as it appears from the deeds, so that you, and in particular your surveyor, can check and confirm that it accurately represents the property you are buying.



Fixtures and fittings

It is important to identify what items at the property are included or excluded from the overall purchase price of the property. We will obtain a detailed list of such items from the **seller's** solicitor prior to exchange. You should check this form carefully as this will be part of the contract, and you need to be confident it accurately reflects what is included in the purchase price.

We suggest that you view the property with the **seller** at an early stage, to discuss and hopefully agree such a list so that this does not cause any delay in exchange.

Survey

Many lender's inspections/surveys are no more than basic valuations and you may have no recourse against the lender's surveyor should you discover any defects after completion, which have not been reported in the inspection. We would strongly recommend that either you arrange your own survey report, which you should obtain before exchange of contracts, or that you pay an additional fee to the lender's surveyor to carry out a survey on your behalf. The surveyor will advise you of the different types of survey available.

Generally speaking, the **seller** is not legally liable to give any guarantees to the state and condition of the property. If your survey report shows problems which may be costly to repair, it may be possible for you to negotiate a reduction in the purchase price.

We recommend that you obtain advice from your surveyor as to whether further inspections by specialists are advisable. For example, check for woodworm, damp, dry rot, electrical and drainage problems, particularly where there is a cess pit or septic tank.

You should ask your surveyor whether the property is near a river and/or liable to flooding. If so (or if you are already aware that the property is in such an area), you should make immediate enquiries about obtaining buildings insurance for the property and be fully aware of any higher premium you may incur. We do raise standard enquiries with the **seller's** solicitors in relation to the possibility of flooding.

Leasehold

If you buy a flat, under present law it is generally the case that you will buy a long lease rather than a freehold interest in the flat. The legal process for purchasing a leasehold property is very similar to that for a freehold property, although it will also be necessary to examine the terms of the lease. Most leases are lengthy and complicated and terms need to be considered carefully, particularly in relation to repairs, insurance and service charge issues. We will report to you on the term of the lease and obtain required leasehold information.

You should pass a copy of the lease to your surveyor as s/he will need to know the extent of your repairing obligations, particularly to any "shared" roof structure or foundations and any communal areas.

Joint purchase

If you are buying in joint names, it is important that you take advice from us as to whether the purchase should be as "joint tenants" or "tenants in common". We will explain these terms and advise you on which of these may be right for you.

If you need a mortgage to assist you in buying the property, we strongly advise that you do not exchange contracts until a written mortgage offer is received, with terms and conditions acceptable to you, particularly as lenders requirements can be numerous and complex. If the mortgage requires that you have life insurance, then it is essential this policy is in place. We recommend you take out life insurance to repay the mortgage in the event of your death to protect your family, even if your lender does not require it as a condition of the mortgage, plus insurance to cover you for unemployment or ill health.

When buying a property you should arrange buildings insurance on the property as soon as contracts are exchanged (except in cases of a leasehold property or unless we advise you otherwise) as the contract usually makes the **buyer** responsible for insurance. If you are arranging insurance through your lender, insurance usually starts automatically on exchange of contracts. If you are buying with the assistance of a mortgage, or are arranging your own insurance in order to comply with one of the lenders standard requirements of us, it is essential that we have evidence (and details) of the insurance prior to exchange of contracts (to ensure it complies with such requirements).

Exchange of contracts

Until exchange of contracts, either party is free to withdraw from the transaction as there is no legally binding agreement. If a contract is issued to another interested buyer then the **seller's** solicitor must tell us as soon as a second (or further) contract is issued and we will inform you immediately. Such a situation would normally create a "contract race" where the first person who is ready to exchange contracts may get the property. It is not however, normally recommended that you become involved in a "contract race".

The **buyer** and **seller** are only legally obliged to buy and sell the property when the contracts are exchanged between the **seller's** solicitor and the **buyer's** solicitor and a fixed completion date has been agreed by both parties. We will not exchange contracts until we receive your specific instructions to do so and will let you know as soon as contracts are exchanged.

The "traditional" deposit payable on exchange is 10% of the purchase price, but a deposit of 5% is not uncommon. If you cannot provide the funds out of your own resources, you will usually find that your own bank is prepared to provide you with a bridging loan. If you are selling your existing property, we may be able to use the deposit received on your sale towards the sum required for your deposit. If you fail to complete your purchase after you have exchanged contracts you will normally lose the deposit you have paid and be obliged to pay the **seller** the balance of a 10% deposit immediately if a smaller deposit only has been paid. You may be liable for further losses which the **seller** may have incurred.

The completion date is the date when the remainder of the purchase price must be paid and you will be able to move. The completion date is fixed on exchange of contracts once you and the **seller** have agreed the date. The date for completion was traditionally about 4 weeks after exchange but it is up to the **seller** and the **buyer** to agree a date acceptable to both of them. It is advisable to have a minimum period of 10 to 14 days between exchange of contracts and completion to enable all the necessary legal work to be carried out on your behalf and to ensure, in particular, that the lender has sufficient time to send the mortgage advance to us in time for completion. Many lenders insist on at least 5 working days prior notice before releasing the mortgage advance funds. This period can, in case of necessity, be made shorter but we would like to have as much notice as possible.

On the day of completion, we transfer (by inter-bank transfer) the balance of the purchase price and any other money due to your **seller's** solicitor, in return they send us the title deeds of the property, together with a transfer document signed by the **seller**, transferring legal title of the property to you on the completion date. You should make arrangements with the **seller** or his agent, to collect the keys either direct from the **seller** or agent, as soon as we tell you that completion has taken place.

Before completion we will re-check the **seller's** legal title to the property, carry out searches at the Land Registry and conduct other searches required by the lender. Several days before completion we will send you a detailed statement of the amount of any further funds required to complete your purchase including Stamp Duty Land Tax (SDLT) Registry fees, disbursements and our legal costs which must please be paid to us before completion.

If you are simultaneously selling another property, we will make sure that the sale proceeds (or so much of such proceeds as is necessary) are used for the purchase. Delays in the bank transfer of funds on the completion date may occur and completion may not take place until early or mid afternoon on the completion date. Any money we need in excess of the proceeds of your sale and mortgage advance will need to be paid so that we receive cleared funds at least the day prior to the completion. You can arrange for your bank to make an inter-bank transfer to our client account on the day before completion. For us to avoid a breach of the Law Society's rules, it is essential that we receive cleared funds before completion.

We obtain a redemption statement from your lender(s) if there is a mortgage secured against the property you are selling and the amount required to redeem the secured lending will be taken into account in our completion statement. We redeem the registered charges on completion, subject to receiving the funds to do so.



Outgoings

If you are selling a property, we recommend that immediately after exchange of contracts you contact all authorities and supply companies (i.e. council tax, water rates, gas, electricity, telephone) to tell them that you have exchanged contracts and the date on which you are due to complete the purchase. This will enable them to calculate and let you know the amounts due from you, or to make funds of overpayments. The authorities will then send future bills to the [buyer](#).

After completion

Following completion we arrange for the SDLT (if any) to be paid to the Inland Revenue and for your ownership of the property to be registered at the Land Registry. After registration, the deeds required by your lender are sent to your mortgage company, although it is increasingly common for lenders to hold no title deeds at all and in this instance they will be forwarded to you for safekeeping. It is very important that these are kept safely and not lost. Your bank may have facilities for safe storage of title deeds. If you do not have a mortgage, all the deeds will be sent to you for safekeeping as they may be required on a future sale of the property. As mentioned, the Land Registry do store evidence of the title electronically also, however.

Fees

The payments we make for SDLT and Land Registry fees, local and other search fees, are fixed and we will notify you of the approximate amounts at an early stage. We will provide you at the outset with an estimate of our own costs on the assumption that the transaction goes ahead normally. These fees may have to be increased if there are unexpected problems. If a sale or purchase does not go through to completion, we would normally charge a fee to take into account the time spent and work carried out, although this is usually reduced if you proceed with another transaction. We do ask for our fees and disbursements to be paid before the completion date and, indeed, if you have a mortgage, we may not be allowed by the lender to use the mortgage funds to complete your purchase unless we hold all monies necessary to pay SDLT and Land Registry fees.

There will normally be other costs and expenses involved in moving house in addition to our legal costs, SDLT, Land Registry fees and other expenses. These include:

- a) Fees payable to your surveyor
- b) Removal charges

Don't forget to arrange the following:

1. Supplying to your lender, as soon as possible, all information they require for the purpose of issuing a mortgage offer, including payment of all valuation and other fees due to it
2. A survey of the property
3. Buildings insurance on your new property from exchange of contracts
4. Notifying the authorities and service supply companies of the completion date
5. Cancellation of any bankers order for a mortgage on your existing property after completion. Any overpayment you make on your mortgage account will be repaid to you by your lender
6. Cancellation of the buildings insurance on your existing property on completion and the transfer and/or arrangement for a new contents insurance policy for the new property
7. Arrangements for the removal company
8. Delivery of keys of your existing property to your selling agents when you have moved out
9. Collection of the keys of the new property from the [seller](#) or agent after completion of your purchase

We would also strongly recommend that you take early advice as to whether your sale or purchase necessitates a change to your Will. We strongly advise that you make a Will if you do not currently have one. Please let us know if you wish us to arrange for a member of our private client practice to give you advice in connection with this.

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