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## Buying Your Property



Welcome to a **Better Way**

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# Buying Your Property

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## Our Retainer

This factsheet sets out what we will do and what you are responsible for doing on a straightforward purchase of residential property. Unless otherwise agreed in writing, this forms the basis of our cost estimate for your purchase. If any unusual complications arise and/or you ask us to do any additional work outside the scope of what we describe here, it will not be covered by our estimate but will be subject to an additional charge. In that event, we will explain to you the basis on which we will calculate that additional charge and provide you with a separate cost estimate.

## Summary

The legal process of selling and buying houses is called conveyancing. A conveyancing transaction consists of two main stages. The first is the initial investigations and searches leading, when everything is satisfactory, to a copy of the formal sale/purchase contract being signed by each party and then being exchanged with each other. Until contracts are exchanged, both parties can change their minds and withdraw (although some legal costs will still be payable). The second stage is the final legal work and arrangements leading up to completion of the purchase on the date that is agreed on exchange of contracts.

## Timescale

The legal aspects of a purchase normally take about six to eight weeks to complete, but transactions may take considerably longer than that where they are part of a chain involving buyers and sellers with different timescale and mortgage requirements, all of which must complete on the same day. A purchase may also be delayed for other reasons – if, for example, anywhere in the chain, there is a defect in legal title to a property, any planning permissions or building regulations approvals are missing, a buyer's survey reveals a structural problem, a mortgage offer is delayed, or any party's circumstances change. Conversely, where time is of the essence and the transaction does not depend on a lengthy chain, it may be possible to expedite the work so that it is completed in less than six to eight weeks.

Please note that a date for completion of the purchase cannot be fixed until contracts are exchanged, which is when seller and buyer become legally committed to complete the transaction. If you have any specific timescale in mind please tell us about it and, if it is realistic, we will work hard to achieve it but, as there are so many variables that are beyond our control, this cannot be guaranteed. You should not make any firm arrangements for removals, utilities etc until contracts have been exchanged and a completion date has been agreed.



# The First Stage

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## Up to Exchange of Contracts

### a) Mortgage

If you are applying for a mortgage to fund part of your purchase, it is essential that you arrange this as soon as possible as we cannot exchange contracts until a satisfactory written mortgage offer has been received. When we receive a copy of your mortgage offer we will check its terms and conditions and take any action specifically required. Not having a formal mortgage offer is a common reason for delay in conveyancing transactions.

It is your responsibility to ensure that you can afford to meet your mortgage commitment, both during the lifetime of the mortgage and at the end of the term, taking account of the fact that interest rates and house prices go up and down. If you find that cannot pay your mortgage on time every month you should contact your lender without delay to discuss possible options. If you default on your mortgage payments without having done this, your lender may take action to re-possess your home. Although we will advise you on the legal effect of the terms of any mortgage offer that you receive, we are not authorised by the Financial Conduct Authority so cannot advise you on the suitability of any mortgage or other financial product for your needs and you should obtain advice, if required, from an independent financial adviser or mortgage broker.

### b) Survey

If you are applying for a mortgage, the lender will want the property valued by a surveyor. This involves a cursory inspection to check that the property will provide adequate security for the proposed loan. There is usually no redress against a seller for defects discovered after a purchase and we recommend that you commission a full structural survey, or at least a homebuyer's report, to check for defects such as subsidence, damp, rot etc, especially if the property does not have a current NHBC certificate. This is your responsibility. A survey may be combined with a lender's valuation report by arrangement with your lender for the sake of convenience, or you may prefer to instruct a different surveyor. You can find a surveyor in your area by visiting the Royal Institution of Chartered Surveyors' website at <http://www.rics.org/findasurveyor>

### **c) Searches**

When we receive your instructions to deal with the purchase, we will start making the investigations necessary to check that there are no legal problems associated with the property that you want to buy once the seller's solicitors have prepared the draft contract and we have the Title papers for the property.

These normally include:

- Local authority search to check the status of the roadways servicing the property, any issues with the Local Authority and the planning history for this property. This search does not cover applications for planning permission affecting adjoining or nearby properties or plots of land. We can carry out a separate planning search for you to check this and this usually costs about £45 plus VAT. Please let us know if you would like us to do this for you. Alternatively, you may make your own enquiries of the local authority planning office.
- Water and drainage search, to check that the property is properly connected to mains, foul and surface water drainage and mains water.
- Environmental search, to check that the land has not been contaminated by previous industrial use; this is important because of the potential liability for clean-up costs, but the search will not be necessary in all cases.
- Mining search in areas where there is or has been tin, clay or coal mining activity, to check that there is no risk that the land and structural integrity of any building on it has been compromised, for example by mine shafts.
- Chancel repair liability search to check whether the property is in a parish where there is a risk of potential liability to contribute to the cost of repairing the chancel of the local parish church; if so, insurance is available to cover the risk.
- Commons registration search – this is not usually relevant unless you are buying a property in the countryside or near a village green or open space. This checks to see if there are any rights of grazing or access for others over the land.
- Company search – again, this is not relevant in all cases but we would usually carry out checks at Companies House if you are buying a flat for example and there is a management company involved.

### **d) Preliminary enquiries**

On receipt of the draft contract and other documentation from the seller's solicitors, we will go through this and ask them some questions about the

property and the seller's legal title. They should be able to answer some of these questions themselves but may need to refer back to the seller on others.

### **e) Problems**

Sometimes a more difficult issue may arise that needs to be raised with the seller's solicitors, for example a defect in title or missing planning permission or building regulations approval, or your survey report may reveal a structural defect. This type of issue may require additional work to resolve. Sometimes, if it cannot be resolved, the answer may be for the seller to buy an insurance policy for your benefit, or you may ask for a price reduction (although the seller is under no obligation to agree to one).

### **Acting for your lender**

If you are buying with a mortgage, we may also be instructed by your lender to act for them. This means that you do not have to pay additionally for your lender's own solicitors, but it is not always possible. Lenders are reducing the number of firms on their panels and some may insist on instructing their own solicitors. If the lender's mortgage is not a standard mortgage, or in certain other circumstances, we may not be able to act for both of you. You should be aware that, if we act for both you and your lender, we owe separate duties to each of you as clients. This means, amongst other things, that, if you tell us something that we think your lender should know, then we are under an obligation to disclose that information to your lender and, if you don't agree, we would have to stop acting for you.

### **The Deposit**

You will have to pay a deposit to the seller's solicitors when contracts are exchanged and you must make the necessary arrangements in advance. The deposit is normally 10% and is normally held by the seller's solicitors as stakeholder, which means that the seller cannot use it until the sale is completed, when it will be released to the seller as part of the purchase price, together with any interest earned on the deposit between exchange and completion. If you fail to complete the transaction after contracts have been exchanged you will forfeit the deposit to the buyer (and other expenses may also be claimed from you). If the seller fails to complete the deposit will have to be returned to you. If you are borrowing more than 90% of the total purchase price the seller may accept a lower deposit on the basis that the balance of the 10% will be payable if you fail to complete.

If the seller needs to use your deposit for the purpose of paying a deposit on a related purchase, the seller's solicitors may ask to hold the deposit as your agent instead of as stakeholder, which would allow them to do this. This is normally acceptable subject to certain safeguards.

### Insurance

The risk associated with owning the property (for example of flood, fire etc.) passes to the buyer on exchange of contracts. It is therefore necessary to insure the property from when contracts are exchanged. If you are buying with a mortgage and are insuring through your lender they will usually arrange this, but you do need to make sure that this is the case. If you are not insuring through a lender you will need to arrange your own insurance from exchange of contracts, but you will have to comply with any conditions and stipulations imposed by a lender and we will ask you to provide details of your policy for approval by a lender. If you are buying a leasehold property (normally flats) or a new build, this will usually not be necessary as the Landlord normally insures the whole building.

### Report on title

When we have completed our investigations, we will usually meet you to go through the papers or prepare a written report explaining the outcome of those investigations. You will probably know about most of it already as we will keep you informed as we go along, but our report on title will confirm the position on all material issues. We will invite you to a meeting to go through the report and discuss any potential issues, but if that is difficult we can send you the report and go through any queries with you over the telephone. As we will not have visited the property, it is your responsibility to check that details such as boundaries and rights of way on paper match what you have seen on site and let us know if there are any discrepancies.

### Joint ownership

If you are buying jointly with one or more other people, you will have to choose between two different forms of joint ownership before we prepare the draft transfer, so you should decide on this by the time that contracts are exchanged. You may choose to be either of the following:

**a) "Tenants in common"**, which means that each owner has a defined percentage share which may or may not be equal, and if one of them were to die that owner's share would form part of their estate and be disposed



of under the terms of their will or intestacy. This may mean that it would be necessary for the property to be sold to enable the deceased owner's estate to be distributed. A declaration of trust must be inserted in the transfer (or done separately) to reflect the owners' respective beneficial shares and we will discuss this with you.

**b) "Joint tenants"**, which is nothing to do with renting but means that all the owners own the whole of the property jointly and if one of them were to die their interest would pass automatically to the survivor(s) irrespective of the terms of any will or intestacy; this is usually chosen by people in a long-term relationship who want their co-owner(s) to inherit. However, if the relationship between joint tenants were to break down and any party were to change their mind about the other(s) inheriting their share, it is quite straightforward to change the arrangement and become tenants in common instead.

### Exchanging Contracts

When we are satisfied with the seller's legal title to sell the property and that the property meets your requirements, the seller and buyer will each be asked by their respective solicitors to sign one copy of the contract, and for their preferences for a completion date. Provided that you have received your mortgage offer (if applicable) and everyone in the chain is ready to proceed, we can then exchange contracts, which means that we hold the copy signed by the seller and the seller's solicitors hold the copy signed by you. The deposit is paid to the seller's solicitors at the same time. As soon as we exchange contracts, you become legally obliged to complete the purchase on the agreed date.

There is quite a lot of work for us to do between exchange and completion.

We will:

- Draft the transfer document, get the seller's solicitors' approval, send it to you for signature (in front of a witness) and return to us, and send it to the seller's solicitors to obtain the seller's signature
- If you have arranged a mortgage:
  - Send you the mortgage deed to sign and return to us or arrange for you to come in to sign it
  - Provide the lender with a certificate confirming that we have checked the legal title and found it to be in order
  - Check that any special mortgage conditions have been met, and
  - Arrange for the mortgage advance to be available by the day of completion. We will ask the lender to arrange for us to receive cleared

funds the day before completion. Depending on the lender, this may involve providing us with a cheque four working days before completion or an electronic transfer of funds the day before completion. You should be aware that the lender might start charging you interest from the date of issue of their loan cheques or the date of the electronic transfer.

- If you are buying leasehold property, arrange for liability for ground rent and service charges to be apportioned between you and the seller as at the date of completion.
- Undertake some final searches to check that nothing has changed since our initial searches and that there is no record of any relevant bankruptcy proceedings against you.
- Send you our bill, accompanied by a completion statement showing all the costs and expenses associated with your purchase, and how much you need to send us in order to complete your purchase. When you receive the completion statement, you should check that you agree with the figures in it.

If you have any queries or concerns about the figures it is essential that you raise them with us immediately.

It is your responsibility to:

- Provide us with any sum of money identified in the completion statement as being required to complete the purchase in time to ensure that we hold cleared funds in our client account by close of business on the working day before completion. If you are paying by cheque, we will need eight working days for cheque to clear before we can use it on your purchase.
- Make arrangements for utilities to be provided at the property on the day of completion and notify relevant authorities and service providers of your change of address.

# Completing Your Purchase

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On the day of completion, we will:

- Provide the seller's solicitors with the balance of the purchase price (giving credit for the deposit paid on exchange of contracts) in exchange for the signed transfer and any other relevant deeds and documents, including an undertaking to discharge any mortgage and to send us the certificate of discharge. The money will be transferred electronically to ensure that it arrives as early as possible on the day of completion – although it will still take several hours and may arrive late in the afternoon if we have to wait for the money to arrive on a related sale first.
- Pay our bill from the money that we hold for you. You will need to arrange your own insurance from exchange of contracts, but you will have to comply with any conditions and stipulations imposed by a lender and we will ask you to provide details of your policy for approval by a lender. If you are buying a leasehold property (normally flats) or a new build, this will usually not be necessary as the Landlord normally insures the whole building.

Unless otherwise agreed with the buyer's solicitors, you will be able to move in as soon as the money arrives in the seller's solicitor's account and they release the keys; the seller should have moved out by 12 o'clock noon and left the keys with their estate agent.

## After Completion

As soon as we receive the transfer paperwork from the seller's solicitors, provided that you have let us have all the details we need, we and provided us with the funds to pay any tax due, we will deal with Stamp Duty Land Tax on your behalf. The amount of tax payable is calculated by reference to the purchase price of the property. Once that has been done, and when we have received the certificate of discharge of any mortgage (which occasionally we may have to chase up), we will register your purchase and any mortgage at the Land Registry.

This must be done promptly to protect your interests and those of your lender. The record of your ownership will be held electronically at the Land Registry and no paper certificate will be issued.

## If something goes wrong ...

This is a brief overview of what to expect if something were to go wrong and is not a full or complete analysis of the parties' legal rights and obligations. If it were to happen in your case, we would discuss the position with you and advise you on your options and the costs implications. Dealing with delayed completion or failure to complete is not covered by our retainer or our cost estimate and will therefore be subject to an additional charge.

Either party can withdraw from the transaction at any time up to exchange of contracts without incurring any liability to the other party. Both parties may, however, have to pay their solicitors for work done and expenses incurred up to that point.

Once contracts have been exchanged, both parties are legally committed to the transaction. Thankfully, it is rare that transactions are delayed or do not proceed to completion after contracts have been exchanged. However, it does happen occasionally, and the contract will provide some protection if something goes wrong.

If completion is delayed by the seller, we would have to take some procedural steps to make time of the essence of the contract in order to force the seller's hand and fix a second and final date for completion. We may in the meantime be asked to return any mortgage money to your lender pending agreement on a revised date for completion. If the seller withdraws after exchange of contracts, you will be entitled to the return of your deposit plus any interest earned on it, and may be entitled to sue the seller.

If completion is delayed by you, the seller would have to take similar procedural steps to force your hand and fix a second and final date for completion. If you withdraw after exchange of contracts, you would forfeit the deposit and could be sued by the buyer for any losses and expenses incurred as a result of your failure to complete to the extent that they exceed the amount of the deposit.



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