



## **CLIENT GUIDE IN PROPERTY TRANSACTIONS**

### **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.

### **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, often not evident on an inspection of the property nor disclosed on the title deeds. For example, someone may have a right to occupy part of the property but not be there when you inspect; a neighbour may have a right to enter the property to inspect and repair drains.

The public too may have rights. For example there may be a public footpath across the property; a Local Authority could have rights in respect of compulsory acquisition or unpaid charges for making up a road. The planning authority or the highway authority may have schemes which could affect the environment of the property.

As we do not visit the property being sold / bought we rely upon the seller / buyer to advise us from their own knowledge / inspection of the property as to any such matters affecting the property being sold or revealed from the inspection of the property being bought.

It should also be borne in mind that property is rarely sold by reference to a binding detailed plan and a guarantee cannot be given as to the precise position of boundaries. Whenever possible a plan identifying the property will be provided but it should be checked with the boundaries on the ground and any discrepancy advised to us.

Then there is the question: Does the seller really own the property and if so is he free to sell it? If the

seller inherited the property were the correct steps taken to transfer legal ownership to the seller or is it still outstanding and in someone else's hands?

If you are selling / buying a property, for its full value, used / to be used as your main residence then there should be no tax implications, other than Stamp Duty Land Tax on the purchase, arising from the transaction. If the property is not / will not be your main residence please immediately advise us so that we can give consideration as to how best to help you to receive appropriate tax advice. Please note that otherwise we will not be providing tax advice as regard to this transaction.

### **What happens in a Conveyancing transaction?**

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

#### ***Pre-Contract***

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;

#### ***Between Contract and Completion***

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 the buyer is entitled to move in);

#### ***After Completion***

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".

#### **Pre-contract**

**The Buyer:** You have found the property you want, and the seller has accepted your offer. Some of the most difficult and responsible work has to be done by us at this stage. The making of "local searches" 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. We ensure you do not "exchange contracts" before you have all the money needed to pay for the property 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.

#### ***Mortgage Offer***

When you receive your mortgage offer you should check the conditions carefully. Please especially look out for conditions relating to the charge of penalty interest on early repayment of your mortgage or a requirement by the lender for notice of your intention to redeem your mortgage. Also look out for any deductions that may be made from the advance cheque i.e. guarantee insurance premium. Such

deductions will have to be financed by yourself and will be referred to in our completion statement.

### ***Joint Purchase***

If the property is to be purchased in joint names the type of joint ownership must be stated in the document that is prepared at this stage to transfer ownership.

A decision has to be made whether you should buy the property as **joint tenants** (which means that during your joint lifetimes you are each considered to own one half in the value of the property but on the death of either of you the whole of the property will be transferred automatically to the survivor) or whether you should buy the property as **tenants in common** (which means that you will each own a distinct share to be declared by you. When a tenant in common dies the share passes by Will or intestacy – the share can be bequeathed by Will to the other tenant in common or to anyone else.)

In reaching this decision you should consider carefully the contribution being made by each of you both to the purchase price and following completion to the mortgage expense, if any, and to repair/improvements to the property as well as obligations or potential obligations, moral or legal, that either of you may have to members of your family or other persons.

Unless you give instructions to the contrary it will be assumed that you do not feel there are interests which need to be protected and accordingly the documents will be prepared on the first basis, that is that you own the property as **joint tenants**. This does not prevent you changing your minds later and holding the property as **tenants in common** but if you do so you will then be treated as owning it in equal shares and not according to what each of you may have contributed in money.

If you need further advice upon this aspect of the purchase then please contact us as soon as possible and in any event, prior to exchange of contracts. If it is decided that you will hold the property as **Tenants in Common** we will put you in contact with one of the practitioners in our Wills and Probate Department to advise you upon whether you need to amend any existing Wills or indeed make Wills for the first time.

### ***Survey***

When you purchase a property you do so entirely at your own risk and this is where you will hear the expression “caveat emptor” or “buyer beware”.

We are not qualified to advise upon the nature of the structure the, quality of construction of the property nor of the services leading to and from the property. Such matters are dealt with by a Surveyor and if you have not already done so we strongly recommend that you instruct a Surveyor to survey the property you are buying. In the case of a purchase of land i.e. a building plot we would strongly recommend that you instruct a Land Surveyor to ensure that the land that you are purchasing

is suitable for your proposed development.

In the event of you requiring a mortgage you may feel that a Lenders Valuation is sufficient and that a survey is not required. However the Lender's Valuer will only value the property and under no circumstances can this valuation be classed as a survey.

### **Radon**

Many properties in Cornwall are at risk from Radon gas emissions. The level of gas can vary from area to area and even between properties. Further advice can be obtained from the National Radiological Protection Board but it is generally impossible to have a further test conducted within the timescale before exchange of contracts, as it can take up to six months. If this is a matter of concern to you, please let us know so that we can discuss your requirements.

### ***Searches***

Although we check to see if the property you are buying has planning permission we cannot guarantee that it has been built in accordance with that permission or that any terms and conditions (e.g. that the property should have wooden windows or a slate roof etc.) of that permission have been complied with. We can normally supply you with a copy of the planning permission but you should compare that with the actual building and boundary structures on the ground and advise us of any irregularities which we can, if necessary, then discuss with the Local Planning Authority.

If you are proposing to carry out any change of use or any building or other works at the property once purchased you should advise us and in all cases check with the Planning Department and Building Regulation Department of the Local Authority to see what permissions are required and whether they are likely to be granted. Please bear in mind that even minor work such as altering fences or erecting sheds may need Planning Permission and / or Building Regulation approval. It should not be assumed that minor works may be covered by a General Development Order which permits minor works without full Planning Permission. If you are buying a building plot you must check that the means of access to it, as required by the Planning Authority, is physically possible and that it is the means of access which is described to you by us as benefiting the property.

### ***Guarantees***

If the property you are buying has the benefits of guarantees e.g. double-glazing, woodworm etc. we will supply you with copies of such guarantees as are given to us by the seller's solicitors. Please be aware that no assurance can be given that a claim can be made or will be accepted under such guarantees for the company involved may no longer be trading or the particular conditions attached to the guarantee may not have been complied with. If the benefit of the guarantees is critical to your decision to purchase then please let us know and we will advise you further.

### **Insurance**

Generally it is the responsibility of the buyer to arrange buildings insurance to be “put on risk” as from the date of exchange of contracts and not from the date of completion. The reason for this is that the purchase contract generally provides for the risk in the property to pass to the buyer at exchange of contracts and requires the buyer to complete whether or not the property has been damaged or destroyed by an insurable risk. You are advised to obtain quotations and check the availability of building insurance at this stage so that it is available to be placed on risk from exchange. If you are arranging your own building insurance you are advised to check with any mortgage lender that the insurance complies with their requirements.

Once all these elements have come together we shall ask you to sign the contract and pay the agreed deposit to us (if not being provided by the buyer on a related sale) so that contracts can be exchanged and a date fixed for moving and payment “completion”.

**The Seller:** We shall need the deeds to check the nature of your ownership and the existence of any documented rights or burdens which must be revealed and passed on to the buyer. You will have to tell us as soon as possible where your deeds are held so that we can send for them and if you are holding ‘pre-registration’ deeds and documents you will need to send them to us.

When we have the deeds we shall prepare a draft contract and send it to the buyer’s solicitors usually with information in response to standard enquiries. The buyer should send us “additional enquiries” designed to discover from your own knowledge of the property any matter of concern to the buyer. Once the buyer’s solicitor is satisfied, he will approve the contract and we shall ask you to sign it so that contracts can be “exchanged” and a date fixed for moving and payment: “completion”.

### **The Seller and Buyer**

We will always discuss with you the arrangements for completion and particularly the date for completion. It is essential that you do not take any steps toward committing to a particular completion date e.g. arranging time off work, booking a removal van, giving notice to your Landlord if you are in rented accommodation or arranging carpet fitters etc. until the exchange of contracts has occurred thus creating a binding contract between yourself and the seller/buyer and we have confirmed this to you.

### **COVID-19**

We advise that you please read the pan-industry consumer guidance and the general government guidance on how to buy and how to sell. These can be found by following this link: <https://www.lawsociety.org.uk/support-services/coronavirus/coronavirus-covid-19-sector-specific-guidance-conveyancers/>

There are steps you should take to minimise the risks to your sale and/or purchase, to include:-

- Checking with your removers and the other party that the property will be vacated before the removers arrive.
- Consider deep cleaning of occupied properties
- Check with your buyer/seller/agent for handing over of keys following social distancing guidance.
- Check terms and conditions of the contract with removers.
- Check terms and conditions with your insurer, as you are still responsible for buildings insurance if contracts are exchanged and completion does not take place
- Consider whether additional clauses should be added to the contract of sale. The standard conditions of sale used in a property contract do not make provision for any COVID-19 related issues such as:
  - o market values changing
  - o mortgage lenders' withdrawal of mortgage offers
  - o buyers losing employment or their financial position, or that of a donor of a gifted deposit, might change
  - o someone in a household in the chain may need to self-isolate due to contracting the virus or symptoms or due to being notified by the NHS Test and Trace service
  - o You may be unable to arrange removals and even if you had booked a removal company, they may not be able to move you on the day, due to COVID-19.

### **Between contract and completion**

#### **The Seller**

We will send you a completion statement showing precisely the sum due to you or required from you once Contracts have been exchanged. This will include our costs and expenses as estimated to you, Estate Agents Commission and mortgage debt. All mortgages and charges on the property will have to be paid off. We cannot make any payment from our own resources to make up any shortfalls in the monies required. We obtain redemption statements from your lenders which show the amount due to them to pay off their mortgages. We obviously treat these as accurate but if they are not or if the sale price does not cover the amount outstanding on mortgages we will require you to pay any shortfall to us and we will not be able to complete your sale until any cheque paid to us has cleared. If your sale is delayed, your purchaser may sue you for compensation and to force you to complete.. It is therefore most important that you check that you have sufficient finance to complete the transaction. Please refer to the advice given below as to our requirements for receiving cleared funds.

On the day of completion the buyer's solicitor will, as soon as possible, transfer funds to us and upon receipt we will advise you and arrange for keys to be released. The transfer of funds will be effected by the Bank CHAPS system which on occasions can take several hours for the Bank to clear.

Under no circumstances allow your buyer into possession / occupation of your property before completion and particularly before we have confirmed to you a receipt of the sale monies.

### **The Buyer**

We will send you a Completion Statement showing precisely the sum required to complete your purchase once Contracts have been exchanged. This is normally the purchase price plus our costs and expenses as estimated to you less your Mortgage Advance, any net proceeds from your sale and any deposit paid. We cannot make any payment from our own resources of money necessary to complete your purchase. You must ensure therefore that you have sufficient funds to pay the balance due to complete. If your purchase is delayed the seller will be able to charge you interest under the terms of the contract and indeed your seller could sue you to force you to complete and / or pay compensation and interest for late completion. Please refer to the advice given below as to our requirements for receiving cleared funds.

The "mortgage" is prepared and 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 some cases the "transfer" or "conveyance" only has to be signed by the seller. In others it must be signed by you as well, either because you must "covenant" with the seller to observe the "restrictions" or because there is more than one buyer and the transfer document contains a declaration of trust.

On the day of completion we will, as soon as possible, transfer funds to the seller's solicitors who will upon receipt arrange for release of the keys and forward to us the deeds and signed transfer document. At this point you will be entitled to occupy the property. The transfer of funds will be affected by the bank CHAPS system which on occasions can take several hours for the bank to clear. We would recommend therefore that you do not make arrangements with your removal company to move into the property early on the day of completion.

### **The Seller and Buyer**

You should arrange the final accounts for the Council Tax, water charges, electricity, telephone or any other services at the property you are leaving and also arrange the taking over of such matters on the property that you are buying. If you are buying a new house you should ensure that the usual services i.e. electricity, gas, telephone will be connected in time for completion. The estate developer will assist in this matter.

### ***Funds from you***

We can only accept payments of money from an account in your name and cannot take any money from any third parties.

### ***Cheque Clearance***

Provision of funds by cheque requires that the cheque is received in our offices by 1.30pm seven working days before the day on which the monies are to be used e.g. if completion of a purchase is to occur on a Friday the cheque for the balance of monies required from you must be received in our offices by 1.30pm the previous Wednesday.

Banker's Drafts, although guaranteed, are not cleared funds and therefore are subject to the above cheque clearance timescale.

Building Society cheques are neither guaranteed nor cleared funds and therefore are also subject to the above cheque clearance timescale.

Cash can only be received by us to a maximum of £500.00.

Provisions of funds by means of a Bank Transfer must be on the day prior to the day on which the funds will be used. Please note that funds transferred from a third party's account are not acceptable and there may be a delay of several days before such funds can be transferred back to the third party's account.

#### **After completion**

What remains to be done is almost entirely in our hands. As seller's solicitors we shall account to you, the seller, for the balance of the purchase price after paying off any mortgage, estate agents and ourselves. If we are acting for you as a buyer there is rather more to be done. We shall send a Stamp Duty Land Tax Return to the Inland Revenue for its details to be entered in their records and any necessary duty to be paid. The Stamp Duty Land Tax Return and payment of Duty must be sent to the Inland Revenue within 14 days of completion failing which penalty charges can be applied and interest charged for late completion. The Inland Revenue return a certificate and we shall deliver it to the Land Registry with the transfer or conveyance and the application to register the title. On the return of the documents we shall lodge relevant deeds with the lending institution and pass to you any they decline to store. If there is no mortgage we shall deal with the deeds as you wish.

#### **Explanation of terms used**

##### **Completion**

The date fixed for transfer of ownership, on payment of the price. Usually between two and four weeks after exchange of contracts.

##### **Conveyance**

The same as a Transfer where the property is not registered at the Land Registry.



**Deposit**

Part of the purchase price paid at exchange of contracts, usually 10%.

**Exchange of contracts**

Literally, the exchange of one copy signed by the buyer for another signed by the seller. At this point both parties are committed to proceed.

**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 exchange contracts on the purchase.

**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.

**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.

**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.

**Transfer**

The document which transfers ownership.