

## GUIDANCE NOTES ON CONVEYANCING TRANSACTIONS

Buying a home, especially for the first time, is an exciting, if a little daunting, prospect. We are pleased that you have chosen us to give you independent legal advice and to protect your interests in what is probably the biggest investment you will ever make.

We believe that a good relationship between us and our clients is essential to a successful transaction and we hope the following will be of use to you, whether you are a first time buyer or whether you already have your feet on the property ladder, by shedding some light on the general procedure, from a legal point of view, bearing in mind no one transaction is ever the same!

### **“Conveyancing is the art of communication”**

AT THE OUTSET we will need to know

- contact details for you, and if any of the details you give us change, please let us know straight away
- your identification, “ID” – please see required details in our “Terms & Conditions”. We need your full names not just the name(s) you commonly use.
- you should advise us of any factors that may influence the exact time you want to buy the property eg. school holidays or to coincide with a job move. Also if you are planning to go away on holiday or a business trip, please let us know and leave us details of where you can be contacted
- how you are planning to pay for the property ie. a mortgage and how you will provide for the deposit on “exchange of contracts” (usually between 5% to 10% of the purchase price)
- if you intend to buy the property with someone else, and if so, their full details
- if you are selling a property, we will need the full address including postcode and if you have a mortgage on the property, your lender’s details and especially your mortgage account number/s

Conveyancing can be divided into three stages, the first involves work up to “exchange of contracts”, the second is between exchange of contracts and “completion” (i.e. moving date) and the final stage covers mainly, behind the scenes formalities such as dealing with the Inland Revenue Stamp Duty Land Tax Return and registration at the Land Registry.

### **Stage 1**

If you are selling a property you will have already instructed a firm of Estate Agents to place the property on the market. You should give them our details so that they can prepare their "Memorandum of Sale" to send to all parties concerned and once we have this confirmation we can then prepare and send out a draft Contract and supporting documents to the buyer's solicitors.

If you are buying a property, having received details “Memorandum of Sale” of the property you intend to buy from the Selling Agents we will contact the seller’s solicitors requesting a draft Contract and any other supporting documentation. On receipt of these papers we will send you a copy of the “File plan” (i.e. the plan registered at the Land Registry) and ask you to check it carefully with the physical boundaries of the property you intend to purchase. If you think there is any discrepancy please let us know immediately.

If the property you are buying is “leasehold”, particularly common when buying a flat, there will also be detailed lease terms and conditions. On receipt of a copy of the Lease we will check it to ensure there is nothing adverse i.e. “flying freehold” or a prohibition on keeping pets, things which might deter you from buying it or indeed your lender from lending.

Where you are buying a house or flat, we will also send you a copy of the “Fixtures, Fittings & Contents” form and again you should check this carefully and let us know if you do not agree with anything stated. Also, if you agree with your seller to purchase any additional items, which are not included in the sale, please let us know what they are and how much you have agreed to pay.

If you have a property to sell, either independently or simultaneously with your purchase, we will prepare the draft Contract and supporting documentation to send to the purchaser’s solicitors. We will send you forms to complete such as “Seller’s Property Information Form” and “Fixtures, Fittings & Contents” form. These forms are important as your replies form part of the Contract. Once completed they are sent to the purchaser’s solicitors and they may then raise “Enquiries” arising out of the information supplied, or indeed not supplied. As above, if you have agreed with your purchaser to sell any additional items, which are not included in the sale, please let us have the details.

If the property you are selling is leasehold we will also have to obtain, either from your landlord or managing agents/management company, details of maintenance/service and insurance charges. Your landlord or management company usually charge a fee for providing this information, which you will have to pay for upfront before they will provide the necessary information. These fees vary

considerably but are often in the region of £100.00 plus VAT so you should budget for this expense early on in the transaction.

## **Searches**

If you are getting a mortgage your lender will require all necessary searches to be carried out and we will automatically arrange for these to be done. The three main ones being a Local Authority Search, a Drainage & Water Search and a ChancelCheck. Even if you are not getting a mortgage we would advise you to at least have these searches carried out.

A Local Authority Search is basically enquiries with the local authority, which should reveal any planning issues affecting the property, such as road improvements and details of any planning permissions granted on the property. Please note the Search is applicable only to the property you are buying and will not necessarily reflect any issues relating to adjoining or nearby properties.

A Drainage & Water Search is carried out to check the routes of drainage and water to and from the property, details of the supplies and any such services running under it in favour of others.

A ChancelCheck search is commissioned to reveal whether or not the property you are proposing to purchase may be affected by a potential “Chancel Repair” obligation to the local parish church. Such obligations stem from mediaeval times where land, previously owned by the Church to fund the local rector, had been sold and the new owner took on the repairing obligation attached to that land. Basically, any property located within the boundaries of a Parish where such a liability exists could be “caught”. The penalty is financial in that it involves having to pay for the upkeep and repair of the chancel of the local parish church.

When the searches come back we will check them and if necessary we may need to further investigate matters revealed by them.

Having seen the property and the surrounding area it would be useful if you could let us know if you suspect such things as flooding, mining or contamination. We act for clients all over the UK buying property, so please do not assume that we know local peculiarities or geographical features that are unusual. There is a whole menu of optional searches now available e.g. Environmental Searches, Searches of service providers, Commons Registration Search, Mining Searches, Flood Reports etc. If you do not know the area very well a useful search is PlansearchPlus, which provides Planning, Neighbourhood and Local Amenity Information. Generally, we will only carry out the usual basic searches and those required by any lender but if you do wish us to carry out any additional searches, especially if you are aware of any problems in the area such as flooding, please let us know as soon as possible and we will advise you as to the suitability of any such searches and their cost.

## **Enquiries**

We will raise "Preliminary Enquiries" of the seller's solicitors arising out of the papers they have sent us or the results of our Searches and sometimes, depending on these replies, additional enquiries may be asked. If you are selling we will have to reply to your purchaser's solicitors' Enquiries as mentioned previously.

If the property is leasehold we also have to raise enquiries with the landlord, landlord's managing agents or the management company. These enquiries concern service charges and management costs such as insurance, which you will have to pay in the future.

## **Mortgage**

We are on the "Panel" (i.e. instructed to act on behalf of the lender) of many lenders including Santander UK plc and most of the country's main lenders. However, we are not on the panel of the Lloyds Banking Group (e.g. Halifax, Lloyds TSB or Birmingham Midshires) as they have a restricted panel of solicitors. If when giving our details to your mortgage broker or lender, you are told that we "cannot act for you" as we are not on their panel, this is in fact incorrect. It has recently come to our attention that applicants are often misled in this respect in an attempt by lenders to influence the choice of a borrower's solicitor in many cases against their best interests.

In those circumstances, let us know immediately and we will give you the details of a solicitor who is on their panel and can act for them for you to pass onto your broker or lender. We will then continue to independently look after your interests alone.

You will need to have your "mortgage offer" issued by your lender (sometimes called "mortgagee") prior to "exchange of contracts". Your lender will send us a copy of your mortgage offer, together with their instructions to us, and a mortgage pack including the "Mortgage Deed" (sometimes called a "Legal Charge") for you to sign. We will write to you, usually after exchange of contracts, with our mortgage notes and any documents you need to sign in readiness for completion.

If you are selling a property with an existing mortgage, we will request a "Redemption Statement" from your lender early on in the transaction so that you can see exactly what you will be expected to pay to redeem the mortgage on completion. This statement may reveal "early redemption penalties" for example, which you may not be aware of. It is important that you check this statement carefully and if you have any issues raise them with your lender direct and let us know the problem. A final Redemption Statement will be applied for after exchange of contracts when the completion date is definite.

## **Survey/Valuation**

If you are obtaining a mortgage your lender will require an independent valuation of the property. They will appoint their own surveyor to carry this out and you will pay for it, usually on application. Remember this is a valuation and not a survey and you cannot rely on it.

Please let us have a copy of the valuation your lender sends you as soon as possible, as we are required by lenders to check the valuation but they do not usually supply us with a copy.

We would strongly recommend that you have your own survey carried out, as it is up to you to satisfy yourself that the property is structurally sound before you buy it. If you would like us to put you in touch with a surveyor please do not hesitate to ask. Please let us have a copy of any survey you do commission as it can contain information that it is important for us to have.

## **Signing the Contract and Exchanging Contracts**

On your purchase, when we have finished carrying out all our investigations, we will prepare our “Report on Title” and send you the Contract and Stamp Duty Land Tax Return for your signature. We will also ask you to provide us with the deposit money. Sometimes your purchaser will pay us a deposit that we can use, if you are selling at the same time.

If you are happy to proceed, we will arrange to “exchange contracts”. This is the crucial moment of the agreement between you and the seller. You will have had discussions with your seller regarding a “completion date”(NOT a Saturday, Sunday or Bank Holiday!) and when all parties in the chain have agreed it, we have your signed Contract and deposit money and your mortgage offer, if applicable, then contracts can be exchanged. Literally we get the contract your seller has signed and the seller’s solicitors have the part you have signed. Once contracts have been exchanged both sides are legally committed and your deposit is at risk if you do not complete.

Whether you are buying and or selling, we would mention that you should not enter into any commitment relying upon the exchange nor finally book a removal company until we have confirmed that contracts have been exchanged. It is not a good idea either to book holidays near your proposed dates for exchange and completion, as you will need to be available.

## **Stage 2**

Following exchange of contracts we will apply to your lender, if applicable, for your mortgage money and we will let you have a “Completion Statement” setting out the financial position. We will also carry out final Searches and prepare the Transfer deed for the seller to sign. In some cases, it may be necessary for you sign this deed also and if so we will send it to you to sign in readiness for completion. If the

property is leasehold there may be additional documents for you to sign such as a Lease or Licence to Assign. If the seller has a share in the freehold title we will prepare a Stock Transfer form to enable such share/s to be transferred to you on completion. If you are obtaining a mortgage in relation to your purchase, we will also report to you on your offer and send you the “Mortgage Deed” or sometimes called “Legal Charge” for you to sign together with any other relevant documents required by your lender.

### **Buildings Insurance**

As soon as contracts have been exchanged you are liable for insuring the property you are buying. It may be that you have opted for your lender to arrange this, however it is your responsibility to ensure that buildings insurance is taken out. Your lender will specify in your mortgage offer the amount of insurance cover they require to be taken out, the risks to be covered (usually ALL risks) and the maximum amount of any excess under the policy. Usually the policy will have to be index linked. You may have to insure against public liability and obtain written confirmation from the insurer that they will notify your lender if the policy is not renewed or is cancelled.

We can recommend a broker, Stephen French on 0844 8734737 or e-mail [Starlaneins@aol.com](mailto:Starlaneins@aol.com) who can obtain the required insurance for you.

Please let us have a copy of your buildings insurance policy or written confirmation that the policy is on risk and, if applicable, complies with all of your lender’s requirements, prior to completion, as lenders will not allow us to use the mortgage funds to complete without it.

If you are selling you should not cancel your buildings insurance until after exchange. This is a bit of an anomaly because certain risks are the seller’s responsibility and others, the buyers.

### **Completion (Moving Day!)**

We recommend that you check the condition of the property you are buying just prior to completion (ie. monies being handed over). The seller must clear the property of all contents, except for those items included in the sale, and any rubbish should also be removed from the property including the garden and any sheds or outbuildings. If any fixtures and fittings are to be removed the seller must make good any damage caused. If you are in any doubt that you will not obtain “vacant possession” on completion let us know immediately.

Likewise if you are selling you must ensure that your purchaser will have “vacant possession”. Most contracts have a condition that completion (receipt of the monies) should be by 2 pm and ideally this is the time that you should vacate the property by.

On your purchase, we send the balance of the purchase money to the seller’s solicitors via the bank’s telegraphic transfer system (CHAPS) and when the money is received

by them they will let the seller and, if applicable, the Estate Agents, know so that the keys can be released to you.

If you are selling, on receipt of the monies from your purchaser's solicitors we will let you and if applicable, your Agents know, so that you or your Agents, can hand the keys to your purchasers as soon as you have vacated the property. If applicable, we will deal with redemption of your existing mortgage and pay your Estate Agent's commission account. If any monies are due to you these will be sent to you either by CHAPS or cheque whichever you prefer.

### **Stage 3**

Following completion of your purchase we will attend to the post completion formalities of paying the stamp duty and registering your ownership at the Land Registry and, if appropriate, the interest of your mortgage lender. Once registration has been completed, usually a few weeks, we will check the details have been registered correctly and send you a copy of the "Title Information Document ("TID") and File Plan recording you as the new legal owner of the property. "Deeds" technically no longer exist since "dematerialization" in October 2003 and the majority of lenders do not retain deeds but instead require you to keep them safely stored during your period of ownership. We will send you such relevant deeds or documents with the TID.

If the property is leasehold we will also deal with giving any required "Notices" to the landlord and or managing agents and we will ensure the landlord and or managing agents issue any share in the freehold to you.

If the property is subject to a current NHBC Certificate or similar Guarantee we will deal with "assignment" of the benefit of any remaining cover to you as the new owners.

As mentioned above, if you are selling and have a mortgage on the property we will redeem your mortgage on the day of completion and obtain from your lender a written form of confirmation that the mortgage has been discharged which we will pass to your purchaser's solicitors to enable them to register the purchaser as the new owner.

## **Related legal matters**

Buying a property may introduce other related legal matters such as

- if you are buying a property with someone you are not married to, you may need to enter into a “Deed of Trust”, which sets out what share of the property each person owns
- if you do not have a Will, you should consider making one; and
- if you do have Will, you may need to update it.

We would be more than happy to advise you about making a Will; most clients do this as soon as “the dust has settled”!

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## **NOTES YOU MAY WISH TO MAKE ABOUT YOUR TRANSACTION**

