



GUIDE TO HOME BUYING & SELLING

INTRODUCTION

This guide is intended to explain the legal steps taken in the sale and purchase of houses and flats and to highlight some of the special terms that property lawyers (**conveyancers**) use. This *Guide* relates only to the sale and purchase of freehold and leasehold residential property in England and Wales.

It also contains important information and advice and we recommend that you read it carefully. Where advice is given in this *Guide*, we recommend that you consider that advice carefully and act on it; where we advise you strongly, we urge you to act on that advice.

THE CONVEYANCING QUALITY SCHEME

We are members of the Law Society's Conveyancing Quality Scheme (CQS) which provides a recognised quality standard for residential conveyancers. Membership of the CQS provides an assurance of quality and service to our clients as well as to professional regulators, lenders and insurers. This assurance based upon:

- (a) the integrity of our Senior Responsible Officer and other key conveyancing staff;
- (b) our adherence to good practice management standards; and
- (c) adherence to prudent and efficient conveyancing procedures.

FREEHOLD OR LEASEHOLD

If you are the **freehold** owner, you own the property outright.

If you are the **leasehold** owner, someone else (the **landlord**) owns the freehold and you have a long lease (typically granted for 99 years or longer) and you pay a low annual rent (**ground rent**). You will probably also have to pay **service charges** which are contributions towards the yearly cost of insurance, maintenance and repairs and which will generally include **sinking fund** contributions (to build up a fund for meeting major repairs or replacements), especially if the property is a flat or maisonette in a block of similar properties.

For legal reasons flats and maisonettes are usually leasehold.

On new housing developments freehold properties are sometimes subject to payment of an annual rent and/or service charge (**rentcharge**) as a contribution to the cost of providing essential amenities to the development.

Leaseholds and rentcharged freeholds involve more legal work and require specialist legal expertise. The documents are longer and more complicated and there is always the need to involve the freeholder/rentcharge holder and, usually, a managing agent, on a transfer or other disposition. Because of that additional work and complexity, we charge you more for dealing with a leasehold or rentcharged freehold.

Whether you are selling or buying a leasehold or a rentcharged freehold, you will also need to budget for fees payable to the freeholder/rentcharge holder for registration of the transfer of ownership. When selling a leasehold or rentcharged property the managing agents will charge a fee for providing essential information about the management of the property. Such fees can be as high as £300 so, if you are buying a leasehold or rentcharged property, you do need to be aware that you will incur a similar charge should you sell.

PRIVATE TREATY OR PUBLIC AUCTION

Most residential property in England and Wales is sold by **private treaty**, usually through an estate agent. Because these sales are subject to contract, buyers have time to make proper enquiries about the property and to put in place any necessary financial arrangements before a binding contract is entered into.

Property may also sold by **public auction**. If a bid is made at auction and accepted by the auctioneer by the fall of the hammer, a binding contract is made there and then. This presents particular hazards for an unprepared buyer.

This *Guide* includes some general information and guidance to sellers and buyers who are considering selling or buying property at auction. Auctioneers' requirements vary and it is not practicable for us to give detailed guidance here. If you are thinking of selling or buying at auction we strongly recommend that you contact us immediately so that we can advise you fully and enable you to prepare properly for the auction.

It is usual for sellers' conveyancers to attend the auction to deal with any last-minute enquiries, to assist potential buyers with the papers and to ensure that the contract is properly completed once the auction has taken place.

BEFORE EXCHANGE OF CONTRACTS

Estate agents – sale by private treaty

Whether you are selling or buying a property, it is likely that you will have arranged the sale or purchase through estate agents on a private treaty basis.

When a sale is agreed the estate agents will report the details to the seller, to the buyer and to their respective conveyancers.

We will normally contact you on receipt of the estate agents' notification.

Whether you are selling or buying it is a good idea to keep in touch with the estate agents and to keep them informed of what is happening. The estate agents can often help to resolve problems and to move things along, especially if you are in a chain of buyers and sellers.

Estate agents – sale by public auction

If you are selling, we will normally liaise with the auctioneers and prepare the contract and other documents that may be appropriate.

You will normally agree a **reserve price** (i.e. the minimum acceptable price) with the auctioneer. Having done so, you should keep the reserve price confidential. If no bid is made at or above the reserve price, the auctioneer will withdraw the property from the auction and it will remain unsold.

You can expect to be responsible for the auctioneer's costs relating to the auction even if the property fails to sell.

You must tell the auctioneer (and us) if you have any special requirements as to the completion date.

If you are buying, you should register your interest with the auctioneer and find out the name and contact details of the seller's conveyancers from whom we can obtain more information about the property. You must be careful to settle on the maximum price you are prepared to pay, taking into account any buyers' premium or other contribution you may have to pay towards the seller's auction costs and your own legal costs and disbursements. You should keep your bidding limit confidential. We can help you prepare a suitable budget.

Contract

Once the estate agents have reported the sale, the seller's conveyancer will issue the contract and other documents to the buyer's conveyancer.

If you are selling, we will ask you to complete and return our sale questionnaire. We will also ask you to complete and sign the *Property Information Form (TA6)* and *Fixtures, Fittings and Contents Form (TA10)* and, if leasehold, the *Leasehold Information Form (TA7)*. These questionnaires form part of the contract and must be completed fully and carefully to ensure that no mistakes are made.

We will issue the contract along with the completed questionnaires to the buyer's conveyancers.

If you are buying, we will ask you to complete and return our purchase questionnaire. The seller's conveyancer will send us the draft contract, evidence of the seller's title and completed property questionnaires.

We will then be able to arrange the property searches and deal with any additional enquiries that may be needed as a result of our checking the documents provided by the seller's conveyancer.

If you are hoping to buy at public auction, we strongly recommend that you instruct us to make the same kind of enquiries and searches as we would if you were buying the property by private treaty. In those instances where the necessary information is provided by the sellers' conveyancer, we can usually complete our enquiries quickly. If there is no, or only limited, information available (and that can be expected if the property is being sold, for example, by a mortgage lender following repossession) there may be insufficient time before the auction to carry out full enquiries. In such cases we will advise you as to the likely risks and what might be done to mitigate them. You should also inspect the property carefully and consider arranging a professional survey.

Buyer's property searches

Property searches are requests for information held by various authorities about the property. The purpose of them is to find out information which may have a bearing on your decision to buy the house or flat – or your lender's decision to lend money. They are very important and, in view of the risks, we strongly advise you to ask us to carry out comprehensive searches when buying.

The type of search made depends upon the area in which the property is situated and we will advise you and recommend the searches which should be made. If you are getting a mortgage, the mortgage lender may specify which searches they require us to make.

Property searches include:

A local search - which will provide information obtained from local authority records on such things as planning, grants, responsibility for roads etc. Be aware that this search is specific to the property searched against and does not normally give any information about possible developments within the locality of the property nor whether the property is, or may be, contaminated.

A mining report - which provides information about mining activity in the locality and whether the property is, or has been, affected by past or present mining.

An environmental report - which gives information on environmental issues (e.g. past industrial activity, flood risks, ground conditions) which may adversely affect the property or land in its vicinity.

A flood risk report – in view of the increased incidence of flooding from surface water as well as rivers, we now recommend that this report is obtained for all properties, and strongly recommend doing so where the environmental report reveals the likelihood of flood risk. It contains an assessment and detailed flood risk information and includes an insurability rating and information on past insurance claims.

A commons registration search – which will indicate whether the property is affected by registered common rights.

A water / drainage search - which will identify whether or not the property is connected to mains water and mains drainage and includes plans showing the location of publicly maintainable sewers in the vicinity of the property and the location of any mains water supply.

A planning search – which will give information about planning applications and planning uses in the area of the property you are buying.

A chancel repair liability search - which will indicate whether the property is situated in a parish where property owners may be responsible for contributing to the costs of chancel repair works (which can be a considerable expense).

We will discuss with you (or report to you on) the results of these searches before contracts are exchanged. If any search contains information which we consider may be adverse to your interests (or those of your mortgage lender) we will tell you.

Mortgage and other financial arrangements

If you are buying, you may well have arranged a mortgage and/or a private loan or investment from a relative.

A mortgage is a loan which is secured against the property. We will normally be asked to act for your lender in dealing with the mortgage security. The terms of our instructions are very specific and if, for example, any problems crop up with the property or there are any unusual features about your purchase we are obliged to report the facts to the lender to obtain its approval before taking any further steps.

If the property is to be occupied by any adults other than the persons actually buying the property, the lender will require an occupier to sign a document waiving any occupation rights. Different requirements apply to buy to let properties.

We are not able to advise you about the financial terms of the mortgage. You should be sure to check the conditions carefully with your mortgage adviser and make certain that you are completely happy with them and understand the conditions of loan that apply.

If you are buying with a loan provided by the same mortgage lender as is the lender on the property you are selling, the lender may waive early repayment penalties that would otherwise be payable on repayment of the existing mortgage. Mortgage lenders call this 'porting'. Note that it is normally necessary for us to pay, or at least reserve funds for payment of, the early redemption penalty in order to ensure (as we must) that the existing mortgage is fully repaid and the necessary release documentation issued. You must, therefore, be prepared to budget for this liability when completion takes place and to seek repayment from the mortgage lender.

If funds are being provided by a relative you must tell us because the arrangement may need to be specially documented, in order to provide security for your relative and because we are obliged to notify your mortgage lender of such arrangements. Depending on the type of private arrangement we may well advise your relative of the necessity of taking independent legal advice.

Condition and compliance with planning and building regulations

The seller of a house does not normally give any guarantee about its condition, about any service installations or the adequacy of any services to or within it. If there are any defects or faults with the property you, if a buyer, will normally have no recourse against the seller.

If there are breaches of planning control or building regulations you may be liable to rectify them, even if you were not responsible for them in the first place. Although we will make enquiries, those enquiries will not necessarily establish whether breaches exist or, indeed, if any work done is compliant with building regulations.

If any alterations have been made to the property or if there has been a change of use of the property or of any part of it (e.g. incorporation of adjoining farmland into the garden) you must tell us - whether you are selling or buying - so that we can initiate enquiries and advise you as to steps you should take. This may include arranging a professional survey or structural engineers' report. Non-compliant building works may be dangerous and should always be investigated. Less serious breaches can often be covered by a suitable indemnity insurance policy.

If you are selling or buying, and you suspect that there may be a breach of building regulations, please do not contact the local authority without checking with us first. To do so could invalidate a building regulation indemnity policy if there is already one in place or make it impossible for us to obtain one if there is not. It might also prompt the local authority into bringing enforcement action to compel the seller to carry out work to remedy the breach.

Drainage, Sewers and Septic Tanks

If the property drains to the mains sewer, recent legislation means that former private sewers will have been transferred to the drainage authority on 1 October 2011. Whilst this is likely to be beneficial in most instances, there are statutory provisions which are intended to prevent building over or in close proximity to a publicly maintained sewer or drain. New installations are likely to comply but it is possible that existing sewers/drains may have been built over or that buildings are closer to them than regulations permit. In such cases you should assume that the drainage authority will require sewers to be re-laid in order to comply with regulations.

Recent legislation also affects discharges from septic tanks. Existing septic tanks may not comply with that legislation and in such cases it is likely that the installation will have to be replaced. Replacement can be extremely expensive. Consequently, if you are buying a property that is connected to a septic tank you must tell us so that we can make appropriate enquiries on your behalf.

Survey

If you are buying, we strongly advise you to obtain a building survey by a Chartered Surveyor (MRICS or FRICS) and to arrange specialist checks of services' installations (electricity, gas, water and foul and surface water drainage). A building survey should identify any defects or faults with the property, thus enabling you to renegotiate the price, or withdraw from the purchase, or budget for the cost of repairs, as appropriate. A building survey should also identify changes of use or improvements to the property which might have necessitated planning permission or compliance with building regulations. Chartered Surveyors offer a range of different types of survey and you should take advice from your surveyor as to which would be suitable, having regard to your needs and the type of property you are buying.

If you arrange a survey, we strongly advise you to ask the surveyor to:

- (a) ensure that he reports on the drainage arrangements and checks whether any part of the property is in close proximity to, or built over, a sewer or, if the property is connected to a septic tank, to identify its location and advise whether the outflow is to a watercourse, whether directly or indirectly.
- (b) report on any alterations, improvements or replacements that may have planning and building control implications.
- (c) unless you are arranging a mortgage, to provide you with an insurance valuation.
- (d) send us a copy of his report so that we can consider any legal implications noted in the report.

We also strongly advise you to arrange professional inspections by registered tradespeople of the electricity, gas and space heating installations. This is as much for your own safety as to establish the condition and standard of those services

Mortgage valuation

If you have arranged a mortgage, your lender will carry out a professional valuation of the property. Unless you specifically ask for it, that will not include a survey. The Council of Mortgage Lenders makes it clear in its handbook that:

- (a) there may be defects in the property which are not revealed by the inspection carried out by the lender's valuer and there may be omissions or inaccuracies in the report which do not matter to the lender but which would matter to you.
- (b) where the lender provides a copy of the valuation report you should not rely on that report in deciding whether to proceed with the purchase. They recommend that you obtain a more detailed report on the condition and value of the property, based on a fuller inspection, to enable you to decide whether the property is suitable for your purposes.

New home warranties/guarantees

New homes, or those built within 10 years, will normally have some form of warranty. Generally, those warranties are automatically transferred to a subsequent owner.

Other warranties and guarantees may be provided in respect of improvements or repairs carried out to the property. Such warranties/guarantees, if valid, may need to be formally transferred. We may not be able to verify whether or not such guarantees are valid nor to effect a satisfactory transfer of its benefits.

Problems

Unfortunately, problems often arise. These fall into two main categories - problems with the legal title and problems with regulatory requirements (e.g. breaches of planning control or building regulations or as mentioned above in respect of septic tanks). Title problems usually arise as a result of poor or missing evidence of ownership or use of services or through breaches of obligations affecting the use or occupation of the property.

You should tell us if you see or hear of anything which might suggest the existence of a problem so that we can investigate it.

We are well used to identifying and dealing with such problems. The solution often includes providing an insurance policy to provide the buyer with an indemnity to cover the specific risk or, in the case of a regulatory breach, ensuring that the seller carries out any necessary work or makes an allowance to you so that you can do so.

If problems of this kind arise we will advise you how best to deal with them and, if appropriate, the likely additional cost of doing so.

EXCHANGE OF CONTRACTS

When contracts are exchanged, a legally binding contract is made for the sale and purchase of the property at the agreed price and, normally, with a fixed date for completion.

If you are buying, we will not advise you to exchange contracts until:

- you are satisfied with the condition of the property (following your survey or otherwise)
- we have received satisfactory mortgage instructions from your mortgage lender and are able to comply with its conditions
- your other financial arrangements are made
- the property information provided by the seller is satisfactory
- the property searches are satisfactory
- the contract is approved
- the seller's title (i.e. proof of ownership) is satisfactory

- a completion date has been agreed
- if you have a related sale, that your buyer is able to exchange contracts.

Normally we will see you before the contract is signed to go through the papers and to discuss the information that has been obtained. If we are not able to see you in person then we will provide you with a report.

A **deposit** will be payable on exchange of contracts. This will normally be 10% of the price. Very often we will be able to use the deposit received from the sale of your existing house but, if not, you will need to pay the deposit to us before exchange of contracts can take place.

Auction: If you intend to buy at auction you should ensure that the items listed above have been satisfactorily dealt with before you bid. If you make a successful bid, exchange of contracts takes place at the fall of the hammer and you cannot change your mind afterwards. If you are successful in your bid, you will be required to sign the contract and to pay 10% of the hammer price as the deposit to the auctioneer or, if the auctioneer so directs, to the seller's conveyancer before you leave the auction room. You may also have to pay an administration fee or buyers' commission to the auctioneer.

If you are selling, we will not advise you to exchange contracts until:

- a completion date has been agreed
- you are happy that the sale money will be sufficient to discharge the mortgage(s)
- you are satisfied that all occupiers will vacate the property on or before the completion date
- if you have a related purchase, that your buyer is able to exchange contracts.

If everything is in order we will then deal with exchange of contracts on your behalf.

In a sale by private treaty we will deal with the legal formalities of exchange of contracts for you. You are not expected to be at our office when exchange of contracts takes place.

Insurance

Unless insurance is being provided by your mortgage lender, you must make sure that you arrange comprehensive buildings insurance to the full rebuilding value of the property with effect from the date of exchange of contracts. This is because the insurance risk passes to you on exchange of contracts. Normally, there is no legal obligation on the seller to maintain insurance after exchange of contracts.

It is important to insure the property for the correct amount, hence our strong recommendation that, unless provided by your mortgage valuer, you obtain a chartered surveyor's valuation for this purpose.

Joint ownership

If you are buying the property jointly with someone else (e.g. with your spouse or with a partner) you should read these notes carefully before answering the joint ownership question in the questionnaire we send you. These notes assume two co-owners but the same principles apply where there are more than two co-owners.

As you are buying the property together, you will each be a co-owner. As co-owners, you can hold the property in one of two ways:

As joint tenants.

As tenants in common.

"Joint tenants" and "tenants in common" are ways of describing **joint ownership** of property and should not be confused with a tenancy which exists where a tenant rents a property from a landlord.

Joint tenants

If you hold the property as joint tenants, both of you will together own the whole of the property. You will not each have a specific share in the property and will not be able to leave a share of the property in your will.

If you sell the property, or if you separate, it will be presumed that you both own the property equally, regardless of your respective contributions to the purchase price. On the death of one co-owner, their interest in the property would automatically pass to the remaining co-owner without any further action. The surviving co-owner would then own **all** of the property. This is known as the "right of survivorship".

Married couples or those in a civil partnership commonly use this method of co-ownership because the right of survivorship makes it straightforward to inherit each other's share in the property.

However, there may be reasons not to become joint tenants. For example, if one of you has made a larger contribution to the purchase price of the property and you want this to be recognised if the property is sold or if you separate. A joint tenancy is also not suitable if you have a family from an earlier marriage and wish to leave your interest in the property to them, instead of it passing by survivorship to the other co-owner on your death.

Tenants in common

If you hold the property as tenants in common, each of you will own a specified share in the property. Your shares may be equal, but they do not have to be.

Your share of the property can be passed on to another person, either during your lifetime or under your will. If you do not have a will at the time of your death then your share will pass in accordance with the rules of intestacy.

If you wish to hold the property as tenants in common, then you should sign a declaration of trust. A declaration of trust is a document that formally records that you hold the property as tenants in common and sets out your respective shares in the property. If you sell the property, or if you separate, the declaration of trust will be referred to in order to work out your entitlement to the sale proceeds from the property.

Holding the property as tenants in common may be appropriate if you have children from previous relationships and would prefer them rather than your co-owner, to inherit your interest on your death. Holding the property as tenants in common in unequal shares may be desirable if you have made unequal contributions to the purchase price of the property.

Next steps

How you wish to hold the property must be your own decision and is something that you should keep under review following the purchase of your property. If you decide to hold the property as joint tenants but then wish to split your interests, you can "sever" the joint tenancy and turn it into a tenancy in common at any time.

You should be aware that if you decide to hold the property as joint tenants:

- Either party can sever the joint tenancy without the other's agreement.
- The joint tenancy may be severed automatically in several situations, including where one party becomes bankrupt.

It is important to decide and tell us now how you wish to hold the property, to avoid any uncertainty in the future. If you have any queries regarding the ownership of the property please do not hesitate to contact us. Please confirm your instructions by completing section 5 of the accompanying *Purchase Questionnaire / Sale and Purchase Questionnaire*.

Other interests

If, for example, some of the purchase money is being provided by a relative we will advise you on how to structure the ownership in order to identify and protect everyone's interests. This will require a formal and separate declaration of trust. In these cases we will charge you an additional fee for dealing with these arrangements.

AFTER EXCHANGE OF CONTRACTS

Traditionally, there was an interval of four weeks between exchange of contracts and completion. Today that period is often very much shorter and, sometimes, completion will take place on or within days of exchange of contracts. Consequently some of the steps referred to below may well have been dealt with before exchange of contracts to ensure that they are done in time. If you buy or sell at auction the completion date is usually about one month after the date of the auction.

If you are buying, we will prepare the transfer and mortgage documents for your signature and carry out any title searches that may be required.

We will prepare a financial statement for you and, if any further money is required from you, will ask you to pay that to us as set out in the accompanying letter of engagement.

If you are selling, we will notify the estate agent of exchange of contracts and will arrange with your mortgage lender(s) to provide us with a mortgage redemption statement made up to the completion date.

Whether you are selling or buying there are many preparations that must be made before the completion date. Quite apart from planning the removal, you will need to notify the water, gas and electric companies of the change of customer and to arrange for the service meters to be read. You will also need to notify the rating department of your local authority and the drainage authority/Environment Agency, if you pay any separate drainage or environmental permit charges. You will also need to cancel or change bank standing order arrangements.

COMPLETION

Completion is the date on which, if you are selling, you **must** move out of the property and, if you are buying, you will be entitled to the keys to the property - which should be unoccupied and cleared of all furniture.

If you are selling, you should not hand over the keys to the property until we have received the purchase money from the buyer's conveyancer. If you are handing over the key direct, you **must** give us a telephone number on which we can call you to confirm that the money has been received. Otherwise you should leave the keys with the estate agents and we will contact them.

We recommend that you read the service meters on the day of completion and leave a copy of the readings for your buyer along with details of the utility companies and the account numbers.

You must move out of the property on the completion date and be prepared to hand over the keys at about midday.

Important note: We will not be able to complete your sale on the agreed completion date if it becomes apparent that either

- the sale proceeds are insufficient to discharge any mortgages, legal costs or liabilities to third parties and if we have not received from you cleared funds on or before the completion date to meet the shortfall or
- if you are putting money into the purchase, you have not sent us sufficient cleared funds in time.

If we cannot complete your sale for this reason, you will be in breach of contract (through failure to complete the transaction on time in accordance with the contract) and as a result you will incur liability to the other parties in the transaction.

If you are buying, please remember that we will not be able to transfer money to your seller's conveyancer until we have received all the money needed to purchase the property (including the mortgage advance from your lender, the money from the sale of your present house (if any) and any balance required from you). There can be delays but normally we are able to transfer the funds during the course of the morning of completion.

On completion, we will transfer the purchase money to the seller's conveyancer by chaps (same day electronic payment). This is normally a swift procedure and we will ask the seller's conveyancer to authorise the release of keys to you once the money has been received.

We recommend that you meet your seller at the house before completion so that he can show you where the stopcock is, how the central heating, security systems and other services work and to discuss the arrangements for taking possession on the completion date.

It is a good idea to arrange with the seller to read the service meters on the day of completion and to give you details of the utilities' suppliers and account numbers and a copy of the reading, if that information has not already been provided. This will help you transfer the accounts over into your name.

Note that we will deal with the legal formalities of completion for you. You are not expected to be at our office when completion takes place.

AFTER COMPLETION

When completion has taken place we still have much to do for you:

If you are selling we will:

- pay off any existing mortgage(s). Note that with some mortgage products it is not possible for us to obtain a definite repayment figure for the date fixed for completion. In those cases we will retain surplus funds until we are satisfied that the mortgage will be repaid and the necessary release issued.
- pay the estate agents' fees.
- hand over the title documents to the buyer's conveyancer along with any other papers that may be required.

If you are buying we will

- receive the property transfer and title documents from the seller's conveyancer.
- lodge the Stamp Duty Return Form with the Inland Revenue and obtain the SDLT Certificate (see below).
- notify the landlord/rentcharge holder and managing agents if yours is a leasehold/rentcharged property.
- deal with the registration of your title and any mortgage at the Land Registry.
- deal with any property guarantees.
- send you a copy of the title registration documents.

Once everything has been dealt with we will write to you to advise that everything has been completed satisfactorily. If there are any surplus funds we will account to you for the money we are holding (subject to the need to retain funds to meet mortgage repayment liabilities, as mentioned above).

DOCUMENTS

Since October 2003 titles are recorded electronically at the Land Registry and no title deeds, as such, are issued.

This means that old title deeds, where they exist, are no longer required to prove title but should be kept in case reference needs to be made to them. In many cases they will be of interest since they trace the history of the property.

Where titles are registered electronically, we will send any documents required by the mortgage lender to the mortgage lender. We will give you all other documents to look after.

STAMP DUTY LAND TAX (SDLT)

SDLT has replaced stamp duty and is administered by HMRC in the same way as income tax.

A return must be submitted and the tax paid within a short time of completion, failing which penalties are payable. We will ask you to sign a draft return as authority for us to lodge the return electronically once completion has taken place. This will avoid delays and risk of penalty.

CONCLUSION

House buying and selling is complicated and can be a time-consuming and worrying business. We have plenty of experience in dealing with the process and in resolving problems that can arise. You should feel free to contact us at any time should you need any help or advice.

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