

## GUIDE: Purchasing a property explained

We hope that the following comprehensive outline of the legal side of a purchase will be of assistance to you. Obviously, your own purchase may be slightly different, so if you have any queries, contact us.

### On your instruction

Once you have instructed us to act for you, we will write to the solicitors acting for the Seller of the property to ask them for the contract documentation. Once the contract documentation is received (including a plan of the property) it may be necessary for us to put in hand various searches. These searches will not be made until such time as payment is received from you and will take the relevant authorities 2 -3 weeks to process. You may wish to delay payment of the search fees until you have received a satisfactory survey/mortgage offer.

The Seller's solicitors should also provide a list of items to be included in the sale price and a copy will be sent to you to check. This document will form part of the contract and it is important that you do check it carefully.

### Valuations/Surveys

Generally under English Law, the Seller of a property is not obliged to reveal any defects to you. It is up to you to find them by your own inspection and survey. We recommend you should have a full survey carried out rather than a basic valuation so that you can understand the property's state and condition. Full surveys can be expensive and if it is not possible to have one, you must ensure that you inspect the property yourself and test as

many items as possible (such as the central heating, electrical and water systems) prior to exchange of contracts. Once exchange of contracts has taken place, should report any defects that become apparent.

Likewise, if your survey reveals that work will be necessary to the property, you should obtain estimates so that you are fully aware of what it will cost you to put the property into a good state. If you are having a mortgage and the problems revealed are severe, it may be that your lender will make a retention. This will normally be for the amount that they think it will cost in repairs. You will then have to carry out the repairs to the satisfaction of the Lender's Surveyor and then the balance of the monies will be released to you. It may be that you will need to have the works done between exchange of contracts and completion in order to have the full mortgage advance released to you if you are unable to make up the purchase price from your own funds.

## Types of Valuation

### Basic

Please bear in mind that a basic valuation is a very brief examination carried out on behalf of your lender. This will only act as a check that the property is worth what your lender is lending on it.

### House Buyers Report

An alternative is an RICS House Buyers Report. This is a "halfway house" between a valuation and a full survey. This will give you more information on the state and condition of the property and whether any detailed reports need to be obtained e.g. for damp proofing.

## Full Survey

A full Survey can be expensive but is by far the most detailed. This is obviously appropriate if you are buying an older house or one that has not been well maintained. If in doubt, do obtain expert advice before deciding which survey to have.

## Extensions/Alterations to the Property

If the boundaries of the property are unclear, appear to have been altered or if the property has been extended, renovated or converted in any way, you must inform us at the earliest opportunity so that we can find out whether the necessary Building Regulation and/or Planning Consents have been obtained from the Local Authority. If not, your lender may refuse to lend on the property. Obviously, the earlier you raise this with us, the earlier any potential problems can be identified and resolved.

## Estate Agents

If the property you are buying is being sold by Estate Agents, they may ask you to pay a deposit to them. This will be returned to you if the purchase does not proceed to exchange of contracts. You are under no legal obligation to pay this sum.

The Estate Agents will deduct it from the account they send to the Seller following exchange and we will deduct it from the amount you pay to the Seller on completion. If you do make a payment of this kind, please ensure that you inform us so that we can take it into account.

Under no circumstances should you make a payment direct to the Seller, even if there are no agents involved. All payments should be made through ourselves to ensure that you do not unwittingly commit yourself to the purchase. Likewise, you should not sign any document without referring to us first.

## Local Search

This initial search will reveal whether the property is likely to be affected by road schemes, compulsory purchase etc. However, it will not give any information relating to adjoining properties or undeveloped land in the area. If you are concerned about what may happen in the future, you should approach the planning department of the Local Authority, who should be able to give you an idea of whether there are any applications pending at the present time and whether they would treat applications in the future favourably. It is possible to raise additional enquiries on the Local Search regarding public footpaths or bridleways which may cross the property, traffic schemes (ie the making of one way streets pedestrianisation, etc) advertising, pipelines and other matters. These will not normally be raised by us and if you particularly require this information, please contact us as soon as possible. An additional fee will be payable to the Local Authority in this regard.

## Joint Ownership

If you are buying a property with another person, it is very important you give consideration as to how you wish to hold the property between you. No matter how good your relationship is with the other person, disputes and problems can arise at a later date and it is far better that you have made it clear at the outset as to your respective entitlements.

There are two choices of the way in which you can hold property – Beneficial Joint Tenants and Tenants in Common. These are explained below.

### Beneficial Joint Tenants

Each of you is treated as owning the whole of the property rather than a specific portion. If one of you dies, the house is automatically owned by the survivors regardless of whether the person who has died has made a Will. If you were to split up and sell the property, the net

proceeds of sale would be split equally between you regardless of what contributions each of you has made to the purchase price or the running costs of the property.

## Beneficial Tenants In Common

This allows each owner to have a specific portion of the property allowing you to take account of contributions towards the purchase price and running costs of the property. If one of you were to die, that person's share of the property would pass under their Will, not to the surviving owners. If you were to split up and the property were to be sold, the net proceeds of sale would be divided between you in the shares specified.

If you have dependents for whom you wish to make provision (such as children from a previous relationship) or you have made unequal contributions towards the purchase price etc it is probably better that you hold the property in this way. Obviously, you must make a Will to ensure that your assets (including your share of the property) actually goes to the right person (as opposed to under the rules for persons dying without making a will) and also that the shares are correctly specified.

You must discuss this with your joint owners so that you can give us full instructions when we meet to discuss the contract documentation. If you need any further information before coming to a decision, please do not hesitate to contact us.

## Contributions to the Purchase Price by other parties

If any other person (such as your parents) makes a contribution to the purchase price, that person may need assurance their interest is protected. We will need that person's written instructions as to whether the contribution is intended as a gift or whether it will be repayable from the proceeds of sale at a later date. If this is not recorded, it is possible (depending on how you hold the property) that if you were to split up, the proceeds of sale would just be divided between you without being able to take account of any sums which should be repayable to another person.

Again, if any other person is to make a contribution to the purchase price, you should advise us at the earliest opportunity.

## Your Lender

Please note that if you have a mortgage, we will be acting not only for you but also for your lender and will owe a duty to them. If for instance, the purchase price is renegotiated, the Seller makes an allowance to you for repairs, or there are to be adult occupiers of the property in addition to those persons actually owning the property, we will need to reveal this information to your lender. If you instruct us not to reveal such information, it will not be possible for us to continue to act for you and the lender.

Please note that we are required to check your identity and you will need to let us have the required identity documents at an early stage.

## Wills

If you hold the property as joint tenants as mentioned above, on the death of the first of you, the property will automatically vest in the survivors. However, on the death of the last owner, the property will go under that person's Will. It is therefore important that you make a Will to ensure that your assets do actually go to the person you want to have them, as opposed to under the Rules which apply if you do not make a Will.

If you own a property as tenants in common, it is equally important that you make a Will, as the property will pass under this and not to the surviving owners. It is relatively inexpensive to make a Will and we can put you in touch with the appropriate person in our firm in this regard.

## Completion Date

This is the date that the ownership of the property passes from the seller to the buyer. The seller and the buyer need to discuss dates between themselves and then notify their respective solicitors. Exchange of contracts is the time that a suggested completion date becomes final.

Please do not book holidays, removals etc., until exchange has taken place as suggested completion dates often change. It will not be possible to change the date once exchange has taken place. If for any reason you are unable to complete on the date specified, you will be liable under the Contract to pay interest and possibly expenses incurred by the Seller by way of compensation.

It is obviously vital that a realistic completion date is set and normally one to two weeks are required between exchange of contracts and completion to finalise the legal side. Please bear this in mind when discussing dates with the rest of the chain.

## Deposit

When solicitors refer to the 'deposit', this means the money that is handed over to the seller's solicitor upon Exchange of Contracts. This is usually 10% of the purchase price. However, many people do not contribute as much as 10% to the purchase, so reduced deposits are often agreed.

## Disbursement

These are sums of money, which appear on your account, which the solicitor will have paid on your behalf to, for example, government departments or agencies. The main disbursements today are:

## Stamp Duty

This is a tax charged by the government, which only affects you if you are buying for more than £250,000 after recent tax cuts. This threshold for stamp duty is even higher if you are a first-time buyer at £425,000.

## Land Registry Fees

Once completion of the purchase has taken place, it is necessary to register the purchase and mortgage (if any) at the Land Registry. This will be done for you by your solicitor, but the Land Registry will charge a registration fee for this and their fee is based upon the value of the property.

## Exchange of Contracts

This event creates a binding contract between buyer and seller. It is not possible to back out once contracts have been exchanged, at least not without risking serious financial penalties.

## Fixtures, Fittings and Contents Form

This is a list of the items at the property for sale, which are being taken or left behind. It is completed at an early stage by the seller and sent out to the buyer, so that both parties understand and agree to what is included in the selling price.



# Searches

## Local Authority Search

This is a questionnaire delivered to the local authority requiring information about a property in its area.

It covers such things as:

Planning consents and conditions attached to them

Whether the property is listed or in a conservation area

Whether the road serving the property is to be maintained by the council or the house owners.

The cost varies by area, but your solicitor will be able to advise you of the charge made by a particular council.

## Land Registry Search

The Land Registry is the Central body that keeps a record of who owns what land and under what conditions. A search is needed to check that there have been no changes in ownership or new mortgages or other liabilities registered against the title of the property you are buying.

## Coal Mining Search

This search may be undertaken in an area where coal mining has taken place to ensure that there are no records indicating that the property is at risk.

## Water Search

This search is undertaken to ascertain where the main drains are and to see whether the property is connected to them.

## Chancel Repair Liability Search

This search may identify whether the land on which the property is built carries a historical liability to contribute to the upkeep of the local parish church.

## Survey

This is a report carried out by a surveyor on the physical state of the property you are buying.

Generally under English Law, the Seller of a property is not obliged to reveal any defects to you. It is down to the buyer to discover any physical defects by means of inspections and surveys.

So, if you cannot afford a full survey, you should ensure that you inspect the property yourself and test as many items as possible (such as the central heating, electrical and water systems) prior to exchange of contracts.

If any defects become apparent after the exchange of contracts, it will be too late for you to try and renegotiate the purchase price or to require the Seller to put the defects right.

# Types of Survey

## Basic Valuation

A basic valuation is a very brief examination carried out on behalf of your lender. This will only act as a check that the property is worth what your lender is lending on it and not what you are paying for it.

## A RICS Homebuyers Report

This is a “halfway house” report, between a valuation and a full survey, which is prepared by a qualified surveyor. This will give you more information on the state and condition of the property and whether any detailed reports need to be obtained: e.g. for damp proofing and will also indicate the value of the property.

## Full Structural Survey

A full Survey can be expensive, but is by far the most detailed. This is obviously appropriate if you are buying an older house or one that has not been well maintained. If in doubt, do obtain expert advice before deciding which survey to have. As mentioned above, it can also be a good idea to have additional reports carried out in relation to damp proofing, central heating, wiring, plumbing etc to ensure that these are in good working order.

## Title Deeds

These documents:

Act as evidence that the person selling the property actually owns it.  
Set out any rights or obligations that affect the property.

The title deeds need to be handed to your solicitor. If you already hold a mortgage, then your bank or building society will be holding on to your title deeds. Your solicitor needs to know your mortgage account number and the name and address of the lender. (Note: some lenders charge a fee to send out your deeds, but this is normally added to your mortgage account).

## On receipt of your mortgage offer

Once we have received:

- A copy of your mortgage offer.
- All necessary documentation from the Seller's solicitors.
- The results of your searches.

We will make an appointment for you to come in and discuss your purchase. Normally, the deposit (being the difference between the amount you borrow on mortgage and the purchase price or alternatively 10% of the purchase price) will also be required at that meeting. We will discuss a suggested completion date with you and assuming that there are no queries which need to be resolved, you will be asked to sign the contract. Assuming the other parties in the chain are ready, we will then proceed to exchange the contracts.

## Exchange of Contracts

Exchange is the point at which you become legally obliged to purchase the property and it is at this time that a suggested completion date becomes final. Please do not book holidays, removals etc until exchange has taken place as suggested completion dates often change. It will not be possible to change the date once exchange has taken place. If for any reason you are unable to complete on the date specified, you will be liable under the Contract to pay interest and possibly expenses incurred by the Seller by way of compensation. It is obviously vital that a realistic completion date is set and normally one to two weeks are required

between exchange of contracts and completion to finalise the legal side. Please bear this in mind when discussing dates with the rest of the chain.

## Following Exchange of Contracts

We will request the mortgage money from your Lender.

Following completion, your Lender will write to you to inform you of the amount of your first repayment and when it is due. Any new Life Assurance will need to be put on risk with effect from the date of exchange and you must therefore ensure that any life policies you are having arranged are ready to be put into effect before committing yourself to exchange.

We draft a Deed of Transfer, which is approved by the Seller's solicitors. This will then need to be signed by you, along with the mortgage documentation. Further searches are made and it may be necessary for you to certify that entries revealed by the searches do not relate to you.

## Funds Required

Between exchange of contracts and completion, we will write to you with our bill and a statement showing the financial side of your purchase and the amount due from you in order to complete. It is vital that cheques are received at least 7 working days before completion so that we have cleared funds to be able to complete.

## On the day of completion

We send the balance purchase monies to the Seller's solicitors through the banking system. It can take some time for the monies to arrive and keys will not normally be released to you until the Seller's solicitors have received confirmation and receipt from their bank. It is

therefore better to arrange your removals for later in the morning so that you are not left waiting for the keys to be released.

## Following Completion

Title to the property will be registered in your name at HM Land Registry and once this has been completed, the title deeds will be sent on to your Lender. If there is no mortgage on the property, the title deeds may be held by ourselves in our strong room until such time as they are required by you. Normally, copies of the Registers of Title will be sent on to you which you should keep in a safe place to remind you of the covenants and other matters affecting the property.