

# A GUIDE TO BUYING AND SELLING HOUSES



## **DISCLAIMER:**

This summary is for general guidance only and is intended only as an outline of the work we do in buying and selling a house. It is not a comprehensive guide to the law or to all matters involved in buying and selling a property, and must not be relied upon as such. We do however advise you to read it as it contains useful information - we will act on your behalf on the basis we have advised you to read it.

## **1. Phrases used in conveyancing**

### **"Deposit"**

This is the amount the buyer pays the seller on exchange of contracts towards the purchase price. It is not in addition to the purchase price, but it is part of it. The remainder of the purchase price is paid on the completion date. So for instance, if a deposit of 10% is paid, the remaining 90% of the purchase price is paid on the completion date.

The amount of the deposit is not normally more than 10% of the purchase price, and in many cases is lower. If you are buying and selling properties, it may be possible to use the deposit you receive on your sale (from your buyer) for the deposit you use on your purchase (subject to your seller accepting the amount). In some cases the seller of the new property you are buying may require a larger deposit than you receive on the sale of your own property, and in such cases, you may need to find additional money to fund the deposit on your purchase. If you are only buying then you will need to find the deposit from your own monies.

### **"Exchange of Contracts"**

This is the moment you are legally bound to complete your sale and/or purchase. Your solicitor will only effect exchange of contracts when you have given authority to do so. In most cases, you need to sign the contract before exchange of contracts can take place. You simply signing the contract does not mean exchange of contracts has taken place - your solicitor deals with actual exchange of contracts.

### **"Completion Date"**

This is the date that the buyer pays the seller the purchase price, and the seller gives the buyer vacant possession of the property. It is on this date that ownership of the property passes from the seller to the buyer. The completion date is agreed and fixed before exchange of contracts.

If you will be away between exchange and completion, please let us know before we exchange contracts so that appropriate arrangements can be made. You should, as a matter of routine, let us know when you will be away and for how long.

## **2. What we do on your behalf**

### **a) The sale of your existing property**

- i. Your deeds are obtained so that copies can be sent to your buyer's solicitors and a draft contract prepared. We therefore need from you as quickly as possible your bank/building society details and mortgage account number.
- ii. We ask you to fill in various standard forms and questionnaires regarding your ownership of the property and what items you will be leaving at the property when you move, and what you will be taking. We will send you these standard forms.

- iii. A draft contract, copies of your deeds and the forms you have filled in are then sent by us to your buyer's solicitor. We will then respond to any further queries your buyer's solicitor has.
- iv. Your buyer's solicitor will in turn check that the property is legally sound, make sure the buyer has a satisfactory mortgage offer, and conduct various searches against the property, for instance a Local Authority search which deals with matters such as planning, roads and other local matters.
- v. Once the buyer's solicitor is happy with these various matters, a completion date and deposit need to be agreed.

ONCE ALL OF THE ABOVE HAVE BEEN COMPLETED, YOU SHOULD BE IN A POSITION TO EXCHANGE CONTRACTS ON YOUR SALE. HOWEVER, IF YOU ARE ALSO BUYING A NEW PROPERTY, EXCHANGE OF CONTRACTS ON YOUR SALE WILL IN MOST CASES NEED TO BE AT THE SAME TIME AS EXCHANGE OF CONTRACTS ON YOUR NEW PROPERTY UNLESS YOU ARE GOING INTO TEMPORARY ACCOMMODATION.

#### **b) The purchase of your new property**

- i. The seller's solicitor sends to us a draft contract, copy title deeds and various standard forms regarding the new property and the items which are to be left or removed. The contract will probably contain a clause in which you acknowledge that you are not relying upon any statements made except those made in writing by the sellers solicitors and contained in the replies to the enquiries. If you have been given any information by the seller or the sellers estate agents which is important to you, please let us know well before contracts are exchanged so that we can obtain written confirmation.

We will not actually see the property and therefore rely upon you to report to us any unusual features or obvious defects or discrepancies and this must of course, be done before contracts are exchanged. You should ensure by your own inspection that the boundaries on site accord with the Land Registry title plan which we will show to you before exchange of contracts. If you are buying the property for any particular purpose or because of any particular advantage that the property might have, then you should inform us in writing so that we can check that such purpose or advantage can be legally enjoyed.

- ii. We will apply for a Local Authority search (see below) and raise any questions of a legal nature that arise as regards the property, and any other matters which may arise from the papers supplied or the Local Authority search result.
- iii. Your bank / building society will (if applicable) send a copy of your mortgage offer for your new property to us. This will contain conditions which must be met prior to the mortgage monies being released on the completion date. We will therefore liaise with you to ensure that all conditions in your mortgage offer are met, or will be met, before the completion date. It speeds matters up if you can please return items such as direct debit mandates as quickly as possible to your mortgage company. In addition, where a life or endowment policy is required with your new mortgage, the quicker you can arrange such matters the better. You need to read through your mortgage offer (and associated terms and conditions) carefully to make sure you understand it, are happy with it and can comply with it. You should note in particular any redemption penalties and rates of interest quoted.

You must tell your lender about any discount, contribution towards stamp duty or deposit being offered by your seller, for example, where you are buying a new build from a developer.

Any persons over the age of seventeen who will not actually be on the mortgage, but will be living at the property after completion must sign the Lenders waiver form confirming their consent to the mortgage. You must notify us as soon as possible of any such occupiers. They usually have to sign it in front of a solicitor. If it is signed in front of us then they will be advised of their right to obtain independent legal advice should they so wish. You must make sure that they will be available to sign the forms, prior to completion.

- iv. Once we are satisfied legally with the property and all conditions in your mortgage offer have been or will be met, the completion date and deposit need to be agreed with your seller's solicitor.

### **(c) The Chains**

If you are buying and selling then instead of being at the end of the chain you will be a part of it and therefore very dependent upon both your buyer and your seller (and those above and below them) being ready to proceed so as to enable you to proceed.

A chain can only move as quickly as the slowest member (unless someone is prepared to break it and move into temporary accommodation) so despite the fact that you may be ready to exchange on your sale and purchase and may well have been in to sign the contracts in readiness for exchange, other members of the chain may not be in a similar position. Unfortunately, therefore, you will have to wait until all of the other members are ready. We will do all that we can to keep you informed as we are as anxious as you to complete as quickly as possible. However, delays are often unavoidable. We suggest you liaise closely with the Estate Agents who should have detailed knowledge of where each link in the chain is in terms of readiness or otherwise to exchange. Your estate agent is the person who can "chase the chain" above and below you.

IF YOU ARE IN A CHAIN THEN EACH SEPARATE TRANSACTION WILL, IN ALMOST ALL CASES, NEED TO HAVE THE SAME COMPLETION DATE AND THE DATE MUST BE ACCEPTABLE TO EVERYONE IN THE CHAIN. YOU SHOULD CHECK YOU CAN GET A REMOVAL COMPANY BEFORE AGREEING TO A PARTICULAR COMPLETION DATE (BUT WE CANNOT ADVISE YOU TO BOOK REMOVALS UNTIL EXCHANGE HAS OCCURRED IN CASE THE DATE IS VARIED AND YOU INCUR CANCELLATION FEES) YOU SHOULD ALSO NOTE THAT YOU SHOULD KEEP THE INSURANCE POLICY ON YOUR EXISTING HOUSE INSURED UP UNTIL THE COMPLETION DATE, AND THAT YOU MUST ALSO INSURE YOUR NEW HOUSE FROM EXCHANGE OF CONTRACTS - YOUR NEW HOUSE WILL BE AT YOUR RISK FROM EXCHANGE OF CONTRACTS. ANY LIFE POLICY YOU USE IN CONJUNCTION WITH YOUR NEW PROPERTY SHOULD BE IN FORCE AS FROM EXCHANGE OF CONTRACTS.

### **3. The Local Search and Other Searches**

- i. The Local Authority Search we will carry out is specific against the property you are purchasing and does not reveal any entries relating to adjoining properties as separate applications for searches would need to be made against each of those properties. If you are at all concerned as to the possibility of building works going on nearby or as to the use of neighbouring land, you must contact the Planning Department direct to satisfy yourself there are no proposals or plans for nearby property which would interfere with your use or enjoyment of the property. Please also remember you are not buying a view - surrounding land can be altered or redeveloped.
- ii. Please note that as of 1st April 2002, the installation of a replacement window, roof light or roof window or specified type of glazed door must either have Building Regulation Approval or be carried out and certified by a person who is registered under the Fenestration Self Assessment Scheme by the Glass & Glazing Federation.

Following completion of this work you should obtain from the glazier a "Fensa Certificate" confirming that the correct procedure has been adopted and you will need to produce this Certificate when you come to sell the property in the future.

The installation of new boilers or water tanks after October 2004 must similarly have either Building Regulation Approval (obtained from the Council) or alternatively a Certificate confirming that the installer was a member of OFTEC (for an oil fired system) or HETAS (for a solid fuel system) or CORGI (for a gas fired system) and that the works comply with the requirements of the Buildings Regulations.

- iii. Any electrical repair or alterations works to residential property after 1st January 2005 need to comply with Part P requirements of the Building Regulations and be carried out by persons who are competent to do the work. Small jobs such as replacing a socket outlet or a light switch on an existing circuit will not need to be notified to a building control body (although there will be some exceptions for high risk areas such as kitchens and bathrooms). Any work that involves adding a new circuit or additional cabling to a dwelling will need to be either notified to Building Control, who will then inspect the work, or be

carried out by a competent person who is registered under the Self-Certificate Scheme. You should check to see that any contractor employed by you to carry out such work is appropriately certified and that they issue a certificate upon conclusion of the works. Failure to comply with these latest building Regulations is a criminal offence and local authorities have the power to require the removal or alteration of work that does not comply with the requirements.

- iv. It is probably apparent from the preceding paragraphs that there is a wealth of local government legislation concerning alterations to residential property. This legislation is constantly changing and (amongst other things) covers issues such as glazing, boilers and electrical work as referred to but also renewal of internal walls, chimney breasts, change of use and larger conversions or extractions. We would therefore advise that before undertaking any building works (structural or non- structural and both internal and external) that you contact the Local Authority to enquire what consents may be necessary. We believe this should be done even where your builders or contractors may say that consent is not required. In this way you remove the possibility of subsequent intervention by the council and will make it easier to sell the property in the future. Wherever possible you should ask the council to confirm their advice in writing and keep a record.
- v. When you are purchasing a property, we will carry out on your behalf searches with the Environment Agency and/or Landmark relating to environmental matters. The searches are divided into different parts and we would ask you to read each part carefully. Landmark searches are generally far quicker than those with the Environment Agency. We would advise you at the very least to have the Landmark search.

As solicitors, we do not consider ourselves appropriately qualified to comment on the results of the searches with the Environment Agency and/or Landmark specifically as any matter appertaining to the condition of the property or its location should be referred to your surveyor.

However, it may be of some assistance if we outline why we advise you do request that we undertake the Landmark search on your behalf. The Local Authority has a legal responsibility to keep a Register of any land within its boundaries which has become contaminated as a result of any past or present use. For example, there may be an old land fill site or a piece of land which may have been used for industrial purposes in the past.

If your search does reveal the possibility of pollution or contamination, then you must be wary of the property potentially being blighted and of any future remediation costs. As the land owner, the Local Authority could ultimately look to you to meet the cost of remedial work in cleaning up the land.

Apart from any council requirements the Landmark search should assist you in determining whether there are any potential contamination or health hazards in the vicinity of the property. This is a question for you to determine yourselves but if the search reveals anything that causes you concern (for example possible past contamination or pollution or the proximity to a factory or workshop), then we advise you to consult your surveyor for further advice and guidance.

- vi. We will also undertake a drainage search and will send you a copy to retain. The search will confirm whether surface and foul water is connected to the public sewage system and whether there are any known sewers running within the boundaries of your property. If there are, these should be shown on the plan to the search and you should note the position of the sewer as you will not be able to build over them (or close to them) without the prior written agreement of the Water Authorities (and in the case of a new property being built by developers without the developers consent). If an existing sewer/drain has been built over there should be a "building over" consent issued by the relevant drainage company.

#### **4. Authorising Exchange of Contracts**

- a) You should note that if you are unable to complete the purchase of your new property on the date provided in the contract the owner of the property will be entitled to charge interest on the balance of the purchase price and this is normally 4% above the relevant high street bank lending rate specified in the contract per day until completion takes place. If completion does not take place within a few days

(usually 10) of the agreed completion date, the owner will be able to cancel the contract and sell the property to another purchaser and keep the deposit.

If you have not paid a full 10% deposit the seller can also sue you to recover the balance of the deposit to make the deposit up to a full 10% deposit. They can also add to their claim (amongst other losses) any loss in price of the property should the property be sold at a lower price than that being paid by you. You should also understand that if your seller and/or any other party above in the chain incurs additional expense as a result of failure to complete on the agreed date, such as additional removal expenses or bridging monies, then their expenses may have to be borne by you.

- b) Before you authorise us to exchange contracts on your behalf, you should inspect the property to confirm that you are satisfied with regard to the condition of the same including the central heating and other installations and systems and that you are satisfied that you will obtain vacant possession of the property on completion and have agreed with the owner of the property direct as to the fixtures and fittings other than those referred to in the list attached to the contract (if any).
- c) You must provide us with either a Building Society cheque, bankers draft or bank transfer for the balance of the purchase monies, fees and disbursements at least one working day prior to completion. A bank transfer is preferable and we will provide our bank details upon request. Your bank may charge you a small transfer fee but that is preferable to the money being delayed. A deposit can also be paid by bank transfer.

The balance of the purchase monies must be provided from your own resources without further borrowing or gift from any other person or party.

If anyone else over the age of 17 will be living at the property (other than those acquiring the property and named on your offer of mortgage) then you must notify us well before completion.

- d) If you are selling and buying a property your sale and purchase are both part of a chain of linked property transactions in which all parties want the security of contracts which become binding on the same date. We will make arrangements with the other solicitors or licensed conveyancers involved to achieve this. This involves each property buyer offering early on the exchange date to exchange contracts at a time later that day when the seller is ready and that the buyer's offer is on the basis that it cannot be withdrawn or varied during that date. When you authorise us to exchange contracts we will agree to exchange contracts on the above basis and give any necessary undertakings to other parties involved in the chain and your authority cannot then be revoked throughout the day on which the offer to exchange contracts is made.

## **5. After Exchange of Contracts and before the Completion Date**

### **a) Your Sale**

- i. Your solicitor will obtain from your existing mortgage company a "redemption statement" showing what you need to repay on your existing mortgage(s). Your solicitor will also prepare a "completion statement" showing the deductions to be made from the sale price, which will normally be:
  - Agent's selling fee
  - Our fees and disbursements
  - Your existing mortgage
  - If leasehold, any outstanding ground rent or service charge or other fees due to your landlord or managing agents

The completion statement will also show what sums you require to complete on your purchase, taking into account extras such as:

- Stamp Duty Land Tax
- Land Registry fees

Any additional funds we need from you need to be in our account, at the latest, on the day before the completion date. A personal cheque takes at least five days to clear. A banker's draft clears the same day.

If you require a mortgage, we will not be allowed by your lender to complete your matter until we have received all additional money from you.

- ii. The buyer's solicitor prepares the "transfer" from your existing property which you will need to sign before completion.

#### **b) Your Purchase**

- i. We will submit a "report on title" to your new mortgage company to enable the mortgage advance to be released in time for the completion date. You should bear in mind before trying to arrange a quick exchange of contracts and completion date that some mortgage lenders require 5-7 days from receipt of the report on title to releasing mortgage monies. If you anticipate that you will need a quick exchange of contracts and completion date, the quicker you let us know the better.
- ii. We will prepare the transfer which you will need to sign before the completion date. You will also need to sign the "mortgage deed" with your new mortgage company before the completion date. We must have both of these in our possession prior to completion. We will fill in and submit a Stamp Duty Land Tax Return on your behalf. We also carry out a bankruptcy search against each of the borrowers named on the mortgage offer. If you have been made bankrupt in the past you must advise us as soon as possible and in any event well before exchange of contracts.
- iii. If you are buying a new build property we advise you to inspect the property before completion to ensure that the Builder has completed the property in accordance with its obligations in your contract with the builder and that there are no major defects.

### **6. The Completion Date**

#### **a) Your Sale**

Your buyer's solicitor will telegraphically transfer (TT) direct to our bank account the balance of the purchase price due. You must not release your keys to your existing property to the buyer unless you have heard from us that we have received these monies. It is much safer simply to hand the keys to the estate agents who will not pass them to the buyer until we tell them to. We will pay off your old mortgage and pay the estate agent's fees from sale proceeds.

#### **b) Your Purchase**

The bank/building society providing your new mortgage will TT your mortgage advance to us on the completion date. We will then TT to your seller's solicitors the balance of the monies due on your purchase.

We will do this as quickly as we can, although delays in the banking system do occur over which we have no control. The keys to your new property will normally be held by the estate agents for the seller and these will not be released until such time as the seller's solicitor has notified the estate agent that the funds have been received from us.

You should arrange with the appropriate bodies direct to take over the services (gas electricity, phone etc) and have any meters read on completion, and you should also contact the council and water authorities directly.

### **7. After the Completion Date**

If you are buying a property we will arrange for stamp duty land tax to be paid on transfer to you of your new property and registration of you at the Land Registry as the new owner. A copy of the title deeds will be sent by us direct to your bank/building society. If you have a mortgage, we will send you the balance of deeds and documents which you should retain in a safe place in order that you can produce them when you come to sell the property in the future.

## **8. Buying in Joint Names**

### **Notes on Joint Ownership**

It is important to ensure that we receive your full instructions as to the manner in which you wish to hold the property. The important distinctions are as follows:

It is therefore necessary when taking the property in joint names to decide whether the property should be held as joint tenants or tenants in common. This decision need not be permanent as it is possible to switch from one form of ownership to the other. Where the property is held as joint tenants any one of the tenants can serve a Notice of Severance which technically divides the tenancy and creates a tenancy in common in equal shares. If the beneficial tenants in common wish to become joint tenants they need to make a Declaration of Trust to this effect, though this needs the consent of all of them.

#### **a) Joint Tenants**

There is where the joint owners are all equally entitled to the property. When one of the owners dies that person's interest in the property passes automatically to the surviving owners or owners. Thus if there are two joint owners and one of them dies, the survivor becomes automatically entitled to the entire interest in the property. Do not be confused by the use of the word tenants, as this has nothing to do with the tenants in the ordinary meaning of the words.

#### **b) Tenants in Common**

Under this arrangement the property is held by the joint owners in specific proportions, which may or may not be equal. There might for example be two owners each owning a half interest in the property or three owners having a 20%, 40% and 40% interest respectively. If one of the joint owners dies that person's interest does not automatically pass to the surviving owners but would form part of the property covered by his/her Will or by the Laws of Intestacy. Thus a joint owner under this method could make a Will leaving his/her interest in the property to the other joint owner or owners or leaving the interest to someone else altogether. Where a property is held under this method it is essential to have a Declaration of Trust which states the proportions owned by each of the joint owners.

#### **c) Factors to consider when deciding on which type of ownership to choose:**

- If the joint owners are not entitled to equal proportions of the value of the property, then they should not hold the property as joint tenants, unless they wish to become entitled to equal proportions.
- If the joint owners do not wish their interest to pass automatically on their death to the other joint owners they should not hold as joint tenants. There may be personal and/or tax reasons for this.
- If the joint owners wish to hold the property as tenants in common (usually because they own unequal shares in the property, or for tax reasons) but they do wish the surviving joint owner or owners to inherit their interest in the property, it is essential that the property is covered by the terms of their Will.
- If the joint owners are married it is important to note that the Court can on divorce make a property adjustment order and in those circumstances legal ownership of the property is not the deciding factor. A Court also has power on the application of a parent to transfer property or settle property for the benefit of a child of that parent. This applies whether or not the parents are married. In such cases, as on divorce, legal ownership is not necessarily the deciding factor.

The above summary has been produced to help you understand the distinction between the two types of ownership in order that you can decide how you wish the property to be held. It is important to realise that these notes are for guidance only and are not a definitive statement of the Law. Obviously this is something we will be discussing with you during the course of your transaction but if you have any queries please do not hesitate to ask.