

CONVEYANCING GUIDE

INTRODUCTION:

We have provided this Guide in the hope that it may explain some of the terms used in Conveyancing, the steps that are usually taken (and the reasons for taking them) and the factors, which dictate when these steps are to occur.

What is “conveyancing”

“Conveyancing” is the name given to the process of transferring ownership of land from one person to another, the solicitors for the Seller and Buyer each being obliged to safeguard their own clients’ interests.

Transferring the ownership of land is not like transferring the ownership of, say, a piece of furniture or a car.

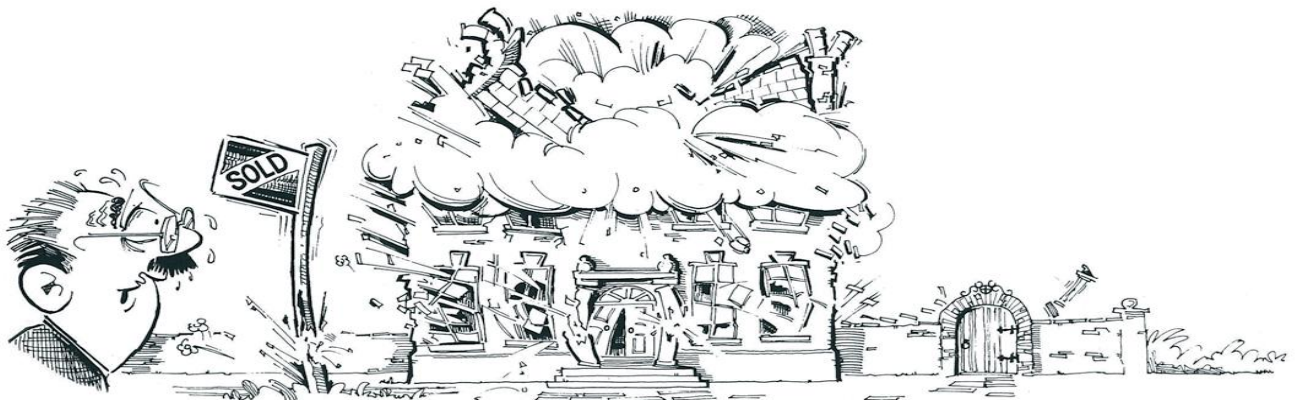
Land is always there and in the course of time many rights and obligations may have been created in relation to it but are often not evident on an inspection of the property alone.

For example, someone may have a right to occupy part of the property but not be there when you call or a neighbour may have a right to enter the garden and dig up the drains in order to inspect or clean his own drains.

The public too may have claims - perhaps there is a responsibility to contribute to the repair of the parish church (rare but possible); the Local Council could have rights in respect of an Improvement Grant or unpaid charges for making up the road. The Planning Authority, or Highway Authority are, perhaps, considering schemes which would affect the environment of the property you are thinking of buying.

Then there are the questions: “Does the Seller really own the property, and if so is he free to sell it?”; “If the property was inherited, were the correct steps taken to transfer the legal ownership to the Seller, or is it still outstanding in someone else’s hands?”; “Is the Seller separated from his wife/ her husband and does the other party have the right to prevent a sale?”.

These are only a very few of the snags which can arise and which it is our duty to discover and advise you about.



WHAT HAPPENS IN A CONVEYANCING TRANSACTION?

There are three main stages in any transaction:-

- Stage 1** The work carried out before exchange of Contracts.
- Stage 2** The stage between exchange of contracts (when you become contractually committed to buy or sell) and the completion date (being the date when the legal formalities are completed and the day on which you are either legally bound to move out of your present property or entitled to move in to your new property)
- Stage 3** The work carried out after the transaction is completed, when the transfer deed is submitted to the Inland Revenue for Stamp Duty to be paid (if applicable) and when the application is made to H M Land Registry for your purchase of the property, together with any mortgage over the property, to be registered.

These various stages are explained in more detail below.

STAGE 1

The Buyer

You have found the property you wish to buy and the Seller has accepted your offer. The Seller's solicitors will send us a copy of the Seller's legal title documents and Contract.

We will then need to examine the contract and remove any conditions within the contract, which we consider to be against your best interests. We also need to conduct a number of searches on your behalf. We will ask you to let us have funds in order to conduct these searches: -

1. The Local Search
2. Drainage Search

We shall then examine all of the paperwork supplied and raise any enquiries we consider necessary to safeguard you.

We shall also be examining a number of standard documents in relation to the property, one of these is the Fixtures and Contents form. This will include the items to be included in the purchase price and this will form part of the Contract document. This is normally all complete before we get your mortgage offer.

It is also our duty to ensure you do not "exchange Contracts" before you are certain that you will have all the money you need to pay for the property before formal completion.

Your mortgage lender will normally also instruct us, to ensure that all matters which the lender asks us or you to deal with are done prior to proceeding to exchange of Contracts.

Upon "Exchange of Contracts" a deposit is payable, this is normally 10% of the purchase price. This often causes Buyers concern, either because all of their finances are presently tied up in the current property or they are first time Buyers who are obtaining a high percentage of the purchase price by way of mortgage.

There are various ways of dealing with the problem of deposits which we shall be happy to explain to you and we regard it as one of our duties to ensure that, unless absolutely unavoidable, no Buyer has to borrow money to pay a deposit. If you have a related sale, we shall automatically request your Seller's solicitors to accept whatever deposit is being offered by your own Buyers as the deposit against your purchase. If you are a first time buyer it would be usual for the deposit to represent the difference between the purchase

price and the net amount of the mortgage you will be taking plus, in some cases, all legal costs and disbursements if the figure offered is particularly low.

Once all the above elements have come together we will contact you and ask you to come and see us. We will then go through the paper work with you and discuss your concerns, if any.

You have seen the property and may have concerns that need to be resolved. **This is why we wish to see you and run through things on a one to one basis.**

Once you are happy we will ask you to sign the paperwork in readiness for the next stage. Often we will also prepare and send to you a written report upon the property, so that you can check things through at home.

The Seller

You will have placed your property on the market, and agreed to sell the property for an agreed price.

We will obtain your deeds to check the nature of your ownership and to the existence of any rights or restrictions which must be revealed and passed on to the Buyer.

We will use the title deeds to prepare the draft Contract and supporting documents to send to the Buyer's solicitor

The Buyer's solicitor will require us to deal with some Pre-Contract Enquiries that are designed to obtain further information about your property.

We will be providing you with Property Information forms (as soon as we are instructed) to provide to the Buyers solicitors a full report upon your property. This of course will help to speed matters up and get the sale under way.

Once the Buyer's solicitor is satisfied he will accept the draft Contract and we will ask you to sign it. Contracts will then be "exchanged" and a date fixed for moving, called "the completion date". Obviously if you have a property to purchase then we must link this in with your sale, unless you ask us not to do so.

STAGE 2

It is at this stage that the Buyer's and Seller's solicitors have reached a position to Exchange Contracts. This is when you will be bound by a contract for the sale or purchase of your property. This is the legally binding bit of the transaction and great care must be taken at this stage.

The Buyers solicitors then usually prepare the final documents to transfer the ownership from the Sellers to the Buyers. This is a very important document and one that must be correct.

The Buyer's solicitors will also conduct the final searches against the property to protect you and in accordance with the Mortgage Lenders requirements, and ask for the mortgage monies.

The Sellers solicitors will need to approve the Transfer documents and reply to a number of final enquiries (from the Buyers solicitors) to ensure a smooth transfer of the property. We will also then need to obtain the final amount to repay any mortgage on your home and arrange for this to be repaid.

As we approach the date for completion, the financial details will be worked out (including the apportionment of any ground rent and/or service charge if the property is leasehold) and the Buyer will be asked to provide the balance of the purchase money less the deposit paid at exchange of Contracts. The solicitor will make detailed arrangements to hand over the purchase price in return for the deeds of the property. At this point the Buyer will be entitled to occupy the property and take possession of the keys.

STAGE 3

This stage is almost entirely in the hands of the solicitors. As Seller's solicitor we will account to you, the Seller, for the balance of the purchase price after paying off any current mortgage/s and any secured loans registered against the property, and must produce evidence the loans have been repaid.

If we are acting for you as Buyer there is rather more to be done. If Stamp Duty is payable, we will complete your Land Tax Return form and send this to the Inland Revenue; we do not make a charge for this, but must have your assistance in completing the form. There are serious implications for not sending the form to the Inland Revenue, the least of which is a fine. This is a government tax and is not our legal fee

We shall then deal with the registration of your ownership with the Land Registry. This involves preparing and sending a form to the Land Registry with the correct documents and with a fee payable to the Land Registry. Again, this is a government tax and should not be confused with our legal fees.

Upon return of the deeds we shall check them and they will be sent to your mortgage lender if required by them, or they will be placed in our safe custody. (We do not make a charge for holding your Deeds)

EXPLANATION OF TERMS USED

Exchange of Contracts: Literally, the exchange of one copy of the Contract signed by the Buyer for another identical Contract signed by the Seller. At this point both parties become legally committed to the sale and purchase.

Completion Date: This is the date fixed for the transfer of ownership and payment of the purchase price. On the completion date you have to vacate your present property, unless you are not selling one tied in to your purchase, and are entitled to move into the new one.

A Seller is not legally obliged to hand over the keys until his solicitor has actually received the purchase money from the Buyer's solicitor in his bank account. If there is a chain of transactions this can, of course, be the cause of some delay. We will keep you advised and this is normally completed by one o'clock.

Registration of Title: This is when we send the Transfer documents and mortgage deed and any other relevant documents to the Land Registry to transfer the ownership from the Seller to the Buyer. The Land Registry records ownership and all important details or rights, liabilities, mortgages, etc. Indeed this is now the only real confirmation of your ownership.

Local Authority Search: This is a search of the registers maintained by the Local and County Council in relation to such matters as road charges and planning and/or building regulation decisions. The expression includes the enquiries made of different departments of the Council to do with a wide range of other matters, which may affect the property. Please note however that the search only covers matters arising about the actual property being purchased and not about any neighbouring property.

Pre-Contract Enquiries: Pre-Contract Enquiries (sometimes called "Preliminary Enquiries") have a dual purpose. They are designed to obtain for a Buyer general information concerning the property, e.g. who owns the boundary fences, or whether there have been any disputes between neighbours and whether the relevant planning permission/building regulation consent has been obtained for any extensions or alterations to the property.

Deposit: This is part of the purchase price paid at exchange of Contracts. The contract normally set out that the deposit is to be 10% of the purchase price.

Transfer Document: This is the document that transfers the ownership of a property. The sellers will sign this document as confirmation that they have received the sale monies and consent to the ownership passing to the Buyers.

As a final point we would urge you to consider your Will at this stage. The purchase of your home is normally your largest asset and you should consider now what you would like to happen to this.

We can give advice and put in place your wishes. Please do not hesitate to contact us to discuss this further.

We also provide the following services

- Commercial Property
- Family Law
- Civil Litigation
- Wills & Probate
- Specialist legal advice for later life,

If you would like further help and advice please contact:-

Hannah Harper on 01634 854381 or <mailto:hannah@hawklaw.co.uk>

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