

# GUIDE TO BUYING AND SELLING

Buying or selling your home are amongst the most important decisions you will ever make and require a great deal of thought at every step between deciding on a move to the hiring of a removal van. They also require vital legal formalities and the purpose of these notes is to assist you to understand those formalities.

## 1 THE BUYER'S OFFER

If you are buying a property it is wise to make the offer subject to a Survey and Contract. This allows you to have a change of mind and not continue with the purchase if, for example, an adverse Survey is obtained or a Mortgage cannot be secured. When you make an offer to the Seller or the Seller's Estate Agents ALWAYS make the offer subject to Survey and Contract. NEVER sign a document at this stage without first obtaining your Solicitor's advice.

## 2 THE CONTRACT

The Seller's Solicitor draws up a document known as the Contract. This document gives full details of the Agreement reached between the Seller and the Buyer. It sets out the purchase price, the names and addresses of the Seller and Buyer and describes the property. It also states whether the property is Freehold or Leasehold. The Contract will also include any Special Conditions which have been agreed between the Seller and Buyer, for example, whether the Seller will carry out any repairs to the property before the completion date.

## 3 NATIONAL CONVEYANCING PROTOCOL (OR TRANSACTION)

This is a Scheme recently introduced by the Law Society and which has been adopted by Keith Park & Co and a large percentage of Solicitors Firms nationally. The steps involved in the sale and purchase are carried out in accordance with this Protocol, the aim of which is to ensure that the Seller's Solicitors provides the Buyer's Solicitors with as much information as is possible about the property at the outset of the transaction. This helps to narrow the time gap between the agreement on the sale or purchase and the actual exchange of Contracts. Unless you write to the contrary we shall assume that you have no objection to us using this "Transaction".

## 4 LEASEHOLD PROPERTY

This arises when a property is let by the owner of the Freehold to the owner of the property for a period of years usually 999 years. The Lease will be a long and fairly complex document. The important Clauses contained in Leases usually include those relating to the term of years, the Ground Rent and the Lessee's Covenants which are restrictions on use and obligations applying to the property.

## 5 JOINT OWNERSHIP

When two or more people buy property they can buy as "Joint Tenants" or "Tenants in Common". Most people who buy property do so as "Joint Tenants". This means that if one co-owner dies his or her share in the property automatically passes to the survivor. The alternative is a Tenancy in Common which is more appropriate for co-owners who have no personal relationship. If a Tenant in Common dies then that person's share does not pass automatically to the survivor but forms part of the Estate of the deceased person and passes under their Will or Intestacy.

A Tenancy in Common may also be required if the Buyers are putting in unequal deposits and the person putting in the larger amount wishes to ensure that he or she retains a proportionate part of his or her share in the property when it is sold. If an unmarried couple are purchasing a property they may wish to instruct us to prepare a Cohabitation Agreement/Trust Deed, which can include details of their intentions should they split up and the property is sold.

## 6 PROPERTY INFORMATION

When instructions are received from you to act on your sale, a Questionnaire will be forwarded for you to complete. This contains questions relating to your property for example, enquiries such as to the ownership of the boundary fences, disputes with your neighbours, availability of Guarantees etc. This information is then supplied to the Buyer's Solicitors when the draft Contract is sent out. It is vital that you read the front page of the Questionnaire before completing your replies and if you have any Guarantees, Reports, Planning Permission etc in your possession you should forward such to our office when returning the Questionnaire.

## 7 FIXTURES FITTINGS AND CONTENTS

If you are selling, we will send you a Schedule for your completion and return with the Property Information Questionnaire. In the "included" section you should list all items which you have agreed with the Buyers are included in the agreed sale price. Anything which you are selling as an extra sum should be listed separately. Be particularly careful also in listing those items which you wish to take with you to your new home. The Schedule will form part of the Contract and you will not be able to change your mind about what is included or excluded after exchange of Contracts without the Buyer's consent or possibly being required to compensate the Buyer.

## 8 LOCAL SEARCH

This is a standard form of enquiries made with the Local Authority in which the property is situated. The Search will disclose, amongst other things, whether there are any relevant Planning Permissions or Improvement Grants and whether any road fronting the property is maintained at the cost of the Highway Authority or is privately maintained. It is important that you realise the limitations on the results of the search. The search will primarily only be against the property you are acquiring. Whilst some matters, e.g. possible road developments within 200 metres of the property are covered, no planning information that does not specifically relate to the property you are acquiring will be revealed. If you are concerned about possible development in the surrounding area, you should contact the local Planning Authority direct. If you have any further queries about what is and is not covered by the search, please let us know.

Since 1st April 2000, Local Authorities are required to prepare a definite list of sites within their area where past uses have led to contamination. The Local Authority search specifically asks the Local Authority whether the site does have some history of use which could lead to contamination. As the Local Authority's obligation to compile a register has only just arisen, it is unlikely that any entries on the Local Authority search would appear against the property you are purchasing. This does not mean that the site is not contaminated, simply that the Local Authority has not yet investigated the position. If, when you come to sell the property, it does appear on the Local Authority's register then you may find it difficult, if not impossible, to sell your property. Fortunately, it is possible to carry out an environmental search which would highlight the history of the site of your property and details whether or not any potential sources of contamination exist within a 250 metre radius. At the moment it is not compulsory to carry out such a search but it is likely that the lending institutions will soon insist that environmental searches are carried out before they will accept a property as a suitable security. We would advise you strongly to carry out the environmental search at this stage and ask you to contact us should you wish a search to be carried out.

## 9 MINING SEARCH

This is an enquiry with the Coal Authority to ascertain the position with regard to mining (whether past, present or future) under the property the subject of the transaction and whether any recent claims for subsidence damage have been submitted. It will also reveal whether there are any disused mine shafts near to the property. If a Building Society or Bank is providing a Mortgage for the Buyer we will almost invariably be required by the Building Society or Bank to obtain the results of a Mining Search if the property is

thought to be within a coal mining area. If anything of an adverse nature is revealed, for example a disused mine shaft adjacent to the property, we will send a copy of the result of the Search to the Building Society or Bank who would no doubt refer the matter to its Valuer or Surveyor. Depending on the comments of the Valuer or Surveyor, the Mortgage Application could be turned down or if the Mortgage Offer has already been issued the Offer could be withdrawn. The presence of coal workings within close proximity of the property may also affect future saleability.

## 10 WATER SEARCH

The Law Society recommends that a drainage and water search (or CON29DW) is undertaken as part of every property purchase. The search helps to avoid costly mistakes relating to drainage and water assets and owner liability issues under and around the property. The search will be of interest to clients who are purchasing a property with the intention of developing or extending it in the future. Depending upon the location of water pipelines or sewers, such developments can be refused if the property is situated too close to these assets.

## 11 ENVIRONMENTAL SEARCH - Optional

An Environmental Search provides essential site history and other environmental information for properties in mainland Britain. The Report will help any homebuyer to make an informed decision about purchasing a particular property and whether it will provide a suitable environment and investment for the family. The Search is designed to satisfy the concerns raised by the Law Society and the Search provides a property specific map showing site history information to enable you to pinpoint potentially contaminative historical land uses. Environmental Data is an essential part of Residential Conveyancing and provides a comprehensive site history of information for all of mainland Britain and the location of potential risks in relation to a property and potential landfills and other factors affecting the actual site where the property is situated. We would strongly advise that you have an environmental report carried out prior to exchange of contracts taking place as the implications of contamination being found in the future and an environmental notice be served upon you remedial/clean up works can be costly to rectify. Should you wish us to carry out an environmental report on your behalf please instruct us immediately and we shall advise you of the cost.

## 12 DEPOSIT

On the purchase of a property it is normal to pay a deposit when Contracts are exchanged. It is traditional for the deposit to equal 10% of the purchase price (less any deposit that you may have paid to the Seller's Estate Agents). In certain circumstances, for example where a sale is also involved or a 95% Mortgage has been obtained, it is possible that the Seller may agree to accept a reduced deposit. A Buyer does however, remain liable to make the deposit up to 10% in the event of the Buyer failing to complete the transaction after Contracts have been exchanged and as a result of such actions the deposit being forfeit to the Seller. We will also require documentary evidence as to the source and origin of the funds to be utilised for the purchase where you are providing in excess of 10% of the purchase price.

## 13 EXCHANGE OF CONTRACTS

Once satisfactory Searches and information have been received and when the financial arrangements, such as the obtaining of a Mortgage have been concluded, the Contracts, which each party will already have been asked to sign, are then exchanged and the deposit paid. At this point the deal becomes binding and both parties are committed to the transaction. If the Buyer backs out after the exchange of Contracts then the deposit is forfeit and action may be taken by the Seller for Breach of Contract. If the Seller refused to complete, the Buyer may take action for Breach of Contract.

After exchange of Contracts you can make the necessary arrangements for your removals and contact the appropriate Service Boards to have your meter read on the completion date. If you have a telephone and are moving locally you may wish to contact British Telecom or Telewest Communications to arrange for the transfer of the number to the new address. It is not advisable to make any of these arrangements until after Contracts are exchanged, unless the completion date comes very shortly after the exchange date.

## 16 BUILDINGS INSURANCE

Once Contracts are exchanged the property becomes the Buyer's insurance risk. If a Mortgage is involved the Lender will make it a condition of the Loan that the property is insured and will usually offer to arrange the cover. The Buyer will of course be responsible for the payment of the Premium which may be unnecessarily expensive if it is added to the Mortgage and attracts the payment of interest. In the case of a cash transaction it is imperative that the insurance be arranged to take effect immediately Contracts are exchanged. We will ask that you provide us with details of your policy before exchange of contracts can take place.

## 17 CONTENTS INSURANCE

If you are buying a property with the assistance of a Mortgage the insurance, which will be arranged by the Lender, usually covers only the bricks and mortar of the property. It is essential that you arrange to cover your contents. Basic Contents Insurance covers the contents of your home if they are stolen or damaged by natural disaster over which you have no control. Under a basic Policy you can claim only the second-hand value of the goods. Some Policies provide new for old with accidental damage and all risks cover. These are more expensive but will cover the cost of replacing the lost or damaged items at today's prices. You must however, ensure that the value of your Contents Insurance covers the replacement cost. If you are under insured then in the event of a claim the Insurance Company will apply what is known as "averaging" and will pay only a proportion of the claim. For example, if the Insurance Company consider that you have only valued your contents at half of the value or replacement costs, then they will pay only half the claim meaning effectively you will receive only a quarter of the value of replacement cost. Again you should contact your Financial Advisor for full advice on all aspects of Contents Insurance.

A Buyer should also be careful when purchasing a Leasehold flat. If the Landlord is responsible for insuring the building it may not be the Landlord's responsibility for insuring the interior surfaces of the walls, floor and ceiling to the flat. In this case the Buyer should check whether these can be included on his Contents Policy.

## 18 FINAL FORMALITIES

On exchange of Contracts a completion date is fixed. This is usually in between two and four weeks after Contracts are exchanged but is a date to be agreed between all parties involved. The Buyer and the Seller will be asked to sign the final documents prior to the completion date so that they are available for handing over on the completion date. The Purchase Deed is normally called a "Transfer". If the purchase transaction is being financed by a Building Society or similar organisation we will normally be instructed to prepare the Mortgage Deed and ensure that they are signed and that the Loan monies are available on completion. The signed Mortgage Deeds must be in our possession before the Loan monies can be used for the purchase of the new house.

## 19 COMPLETION

The completion date is the day on which the Buyer's Solicitors hands over to the Seller's Solicitor the purchase monies less the deposit paid on the exchange of Contracts and in return receives the Title Deeds. The Buyer is then able to move into the new property. A Seller should not part with the keys to the property until completion has taken place and his solicitor has received the balance of the purchase money. For convenience it is often best for the Seller to leave the keys with his Estate Agent (if any) and for the Estate Agent to be instructed not to release the keys until the Seller's Solicitor advises him that completion has taken place.

## 20 POST COMPLETION

There are further formalities requiring attention after completion.

In the case of a purchase it is necessary to produce the Purchase Deed to the Inland Revenue to pay any Stamp Duty which is due. Stamp Duty is paid by the Buyer and if you are a Buyer it will be shown in the Completion Statement which we prepare and send to you following exchange of Contracts. After the Deeds have been stamped an application to the Land Registry is made to register the

## 14 MORTGAGE

Your sellers are not under a duty to disclose any physical defects in the property to you and you should therefore arrange to carry out your own survey of the property. We would recommend that you do not simply rely on your mortgage company's valuation because although this may be expressed to be a survey it is, in fact, merely a valuation for the benefit of your mortgage company only. If any works are required to the property as a result of an adverse survey, we would advise that you speak to your lender and obtain estimates as soon as possible via the estate agents. It will be your responsibility to satisfy yourself that the works have been carried out and acceptable to your lender prior to completion. If you confirm to us that the work have been done we will be happy to arrange a re-inspection, if necessary, but we regret that we are unable to deal with contractors directly.

In most cases, this firm will also be instructed to act for your Lender and we must comply with their instructions which will accompany your mortgage offer. We will report to the Lender on the property and on any other material matter affecting the loan. (If there is any conflict, we would not be able to act for both you and the Lender).

Upon sale if you have a fixed rate mortgage or have received a discounted mortgage we would advise that you contact your lender to see if any penalties will be incurred should you redeem your mortgage before a certain date. It is your responsibility to ensure that the early penalty/portability conditions are adhered to and please note that if your lender has agreed to waive all or some of confirmed by them in writing prior to exchange of contracts taking place.

## 15 SURVEYS

When a Mortgage is being obtained the Bank, Building Society or other such Institution will have carried out at your expense a Mortgage Valuation. It is also wise for a more comprehensive Survey to be arranged, either a House Buyer's Report or a full Structural Survey.

It is important to note the Lender's Valuation Report is for the benefit of the Lender and is only required by the Lender for confirmation that the property is adequate security for the Loan. Thus a not very detailed report would be carried out if the Buyer was paying £100,000.00 but the Loan was only for £15,000.00. In addition, as the Lender's Valuer does not have a Contract with the Buyer, following recent cases, it would be difficult for the Buyer to successfully sue the Lender's Valuer should the Lender's Valuer have been negligent in preparing the report.

For an additional fee it may be possible to arrange for the Lender's Valuer to carry out a more detailed Survey and Report at the same time as the Mortgage Valuation. A "House Buyer's Report and Valuation" is a concise and economical report on the condition of the property and includes a Valuation. The Surveyor will inspect the main structure including roof space, if accessible, and drainage. A "Full Structural Survey" is particularly useful for old or large properties.

The Surveyor will report on everything that is visible, the outside of the roof will be examined and a sample of floorboard will be taken up where practicable. The Survey will cover the structure of the building, outbuildings, nearby trees that may be the cause of damage and the services and drainage. In either case the Surveys may suggest that there should be further tests, for example if wet or dry rot is suspected or a defective damp course. We can put you in touch with an independent Surveyor or ask your Lender's Surveyor to carry out a further Survey on your behalf. We can also put you in touch with Specialist Firms providing other necessary reports.

You must always rely on your own and more importantly your Expert's Report and inspection of any property which you are considering purchasing. If there are any problems they must be discovered before exchange of Contracts so that you are in a position to re-negotiate the terms of the transaction or, if necessary, to withdraw. Nothing can be done about any defect which you discover after the exchange of Contracts as the Seller is under no legal obligation to compensate you. For these reasons we strongly recommend that you consider having at least a House Buyers and Valuation.

change of ownership. This may take several weeks for the Land Registry to sort out. Registration attracts the payment of a fee which again is calculated in accordance with the purchase price. This fee is also paid by the Buyer and again, if you are the Buyer, it will be shown in the Completion Statement.

Eventually the Deeds are returned to us and in the event of there being a Mortgage, are passed on to the Lender to be retained until such time as the Mortgage has been repaid. In the case of a sale any outstanding Mortgages must be discharged out of the sale proceeds before we account to you for the balance. Some mortgage lenders no longer require the title deeds to be deposited with them following dematerialisation. You may wish us to hold your deeds in our storage facility for safe keeping or alternatively we can forward the documents to you. It is advisable that the deeds are held by us in case the documents are lost or destroyed whilst in your possession as they will need to be produced to your solicitor in the event of a future sale.

You may wish to surrender an existing Life Insurance Policy upon completion of a sale. Before doing so however, we would recommend that you speak to your Financial Advisor regarding the advisability of surrendering such Policy. It may be in your long term interest not to do so.

## 21 ESTATE AGENTS ACCOUNT

In the event of a sale it is normal for the Estate Agent to forward to us his account for payment and this is usually paid by us out of the proceeds of the sale unless we receive your written instructions not to do so. Some estate agents contracts contain a clause regarding an early payment discounted commission rate. Please ensure that you read your contract carefully and should it contain a clause to this effect you must advise us immediately and provide us with a copy of the contract. We cannot accept any liability for late payment of your account if we are not made aware of such clause.

## 22 CONFIDENTIALITY

The information which we hold in connection with any business undertaken on your behalf is confidential and cannot be communicated by ourselves to any party without your consent. There are times when we need to pass on information in your best interests, for example in the case of a purchase the Selling Agent may wish to know the progress of the transaction and whether your Mortgage has been confirmed. If such information is not given the Agent may consider advising the Seller to re-market the property. We have included in the enclosed Instruction Form a general Authority to supply information as required in your best interests.

## 23 TAX IMPLICATIONS

Whilst we will be dealing with the legal aspects of this transaction to ensure that the legal estate is transferred validly, we are not in a position to advise you on any possible tax consequences of the transaction. If you are concerned that there may be such consequences, we would strongly advise you to seek the assistance of an accountant or contact us and we can recommend you to a Financial Advisor whose services you may or may not wish to use.



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