

## GUIDE TO CLIENTS IN CONVEYANCING MATTERS

### 1. Introduction

This guide is intended to explain some of the terms used in conveyancing matters, the steps which are usually taken (and the reasons for taking them), and the factors which affect when such steps are to be taken.

Please read the notes and they will help you understand the process. This explanation cannot cover all the points which might arise. We would be happy to discuss with you any other enquiries you may have.

### 2. What is "CONVEYANCING"?

Transferring the ownership of land is not like transferring the ownership of, say, a car. Land remains where it is forever, and in the course of time new rights and obligations may be created in relation to the land. Often such rights are not evident on an inspection of the property. For example, a neighbour may have the right to enter the property and dig up the drains in order to clear his drains. Also, the public as a whole may have a right over the land, for example a public footpath across the property. The local council might have acquired the right to compulsorily purchase the land, or the highway authority may be considering building a road, which would affect the environment of the house, you are thinking of buying.

There is also the question of whether the Seller really owns the land, and whether he is free to sell it. If he has inherited the property, it may be that the correct steps have not yet been taken to transfer legal ownership to him.

The matters mentioned above are only a few of the "snags" which might arise, and it is the duty of your solicitor to discover if such snags exist and advise you about them.

Conveyancing is the word used to describe transferring ownership of land from one person to another, and the solicitors for the Seller and Buyer are each obliged to safeguard their client's interests.

### 3. Expressions Used

#### *a. Local Authority Search*

A "search" is made in the registers maintained by the district council in relation to such matters as planning decisions and road charges. The expression includes the enquiries made in different departments of the council concerning a wide range of other matters, which might affect the property. Apart from roads affecting land within two hundred metres of the property, the search will only give information about the property itself. The search does not give information about other property, for example the development of neighbouring land. Therefore if you were concerned about the possibility of development (or any other matter) relating to other property in the neighbourhood you would make your own enquiries before you consent to commit yourself to the purchase.

The Search will not provide information relating to any planning applications in respect of other properties. For example if the next door neighbour applies for planning permission for an extension this will not be revealed in the search.

***b Mains Drainage Search***

Local Authorities no longer provide replies to a general enquiry to confirm if the property is connected to the public drainage system. We now have to enquire direct to the Water Company

***c Environmental Search***

This search will reveal what possible contamination a plot or a site has. This is now an important issue as owners of the land are now potentially liable if contamination to land causes financial loss or damage to health even if the owner may not be responsible for the contamination. If you have any reason to suspect that the Land may be contaminated please let us know and we will carry out this search.

***d Seller Property Information Form and Additional Enquiries***

These are a series of questions addressed to the Seller, who has to answer these from his own knowledge. The enquiries relate to such matters as disputes with neighbours, work done on the property requiring building regulation approval, or rights that other people have over the property.

***e. Exchange of Contracts***

This is the point at which both parties become committed to proceed with the sale/purchase. Literally it is the exchange of one copy of the contract signed by the Buyer for another copy of it signed by the Seller.

The Seller through his solicitor will have to prove that the Seller owns the property and exactly what is included in the sale. The Buyers' solicitor has to be satisfied with all the enquiries and would have to receive confirmation that the funds are available to complete the purchase. A failure to complete the deal after contracts have been exchanged will have severe financial consequences for the party in breach of the contract and therefore we would not exchange contracts until all enquiries have been dealt with and clear searches have been received.

***f. Deposit***

This is the amount that is payable to the Seller at the time that Contracts are exchanged. The Standard Conditions of Sale require a 10% deposit to be paid on exchange. However the Seller may accept less, but if the Buyer does not complete the Seller is entitled payment of any unpaid balance up to 10% of the Purchase price immediately. If the Purchase is not completed at all and the Seller can show that the Buyer is responsible for this, then the Seller will forfeit the deposit. If you have paid less than a 10% deposit you will remain liable to the Seller for the difference.

The Buyer will need to pay the deposit in cleared funds before contracts can be exchanged. If you are selling a Property at the same time as buying this one, we should be able to use the deposit payable by your Buyer, but you may have to add some money to this if the deposit you get is less than the amount that your Seller will accept.

***g. Mortgage***

This is a document recording the loan of money, such loan being "secured" on the property. If payments under the mortgage are not maintained, the lender, (usually a building society or bank), will have the right to take possession of the property and sell it.

***h Transfer***

This is the document transferring ownership of land where the land is registered at the Land Registry (see below).

***i. Completion***

This is the actual transfer of ownership on payment of the balance of the purchase price. This is day when the actual move takes place. This normally occurs between two and four weeks after the exchange of contracts. The completion date is fixed at the time exchange of Contracts takes place. However you must bear in mind that if you are in a chain of transactions, exchange of contracts can only take place once every person in the chain is ready to exchange and the completion date must be acceptable to all parties in this chain.

The Seller must have cleared all his belongings from the property and will have to leave a set of keys with the Estate Agents. The Buyer has to ensure that the funds have been paid to us at least one day before to ensure that the transfer can take place by 2 pm on the completion date

Completion must be on a week day and NOT a week end or Bank Holiday.

***j. Registration of Title***

Ownership of unregistered land is proved by showing its recent history as recorded in the "Deeds". For example A sells to B, who dies, leaving it to C. Proof of ownership (or title) to land now has to be registered at the Land Registry, following completion of a purchase. The Register records ownership and all important details of rights and liabilities.

**4. What Happens in a CONVEYANCING Transaction?**

There are three main stages and each is explained briefly. These stages are:-

**Before Exchange of Contract**

i. The work carried out after the agreement is reached in principle to buy/sell, but before the Seller and Buyer are legally bound to proceed with the matter.

**Between Exchange and Completion**

ii. The stage between "exchange of contracts" (when the parties become contractually committed) and "completion" (when the money changes hands in return for the keys and transfer of ownership, this being the day the Buyer is entitled to move in).

## **After Completion**

iii. After "completion", when the formal aspects of the transaction are completed. This involves payment of Stamp Duty Land Tax , and sending documents to the Land Registry for "registration of title" and in turn depositing any “deeds” with the Lender.

## **5. Before Exchange of Contract**

### **a. The Buyer**

You have found the property you want and the Seller has accepted your offer. We carry out "local searches" and "preliminary enquiries". We then summarise for you the information obtained about the property and advise you as to the meaning of the provisions in the draft sale contract. We also ensure that you do not commit yourself to the purchase by exchanging contracts before it is guaranteed that you have available all the money needed to pay for the property at "completion". We shall contact your lenders and your Buyer's solicitors (if you have a related sale). Once all these elements have come together, we shall ask you to sign the contract and pay the agreed deposit to us, so that contracts can be exchanged.

The property which you are purchasing is being sold in its present state and condition without the benefit of any representations by the Seller as to its state of repair or structural soundness. If after completion you discover that your new property is or the equipment sold with it unsound it is highly unlikely that you would have a claim against your vendors for breach of contract.

It is up to you to discover whether there are any physical defects in the property. The Seller is not required to point out any such defects. For this reason, it is advisable to have a survey carried out to discover whether the property has any fault, which may not be readily apparent to you when you view the property.

If you are obtaining a mortgage from a Bank or Building Society, they will be instructing their own Surveyors to survey the property and they should allow you to see a copy of their Surveyors report. However this may only be a short valuation report and will not tell you much about any defects that there may be. You are therefore advised to obtain your own survey.

If you are not obtaining a mortgage, then it is important that you make arrangements for a private survey to be carried out before exchange of contracts. If you would like us to make the necessary arrangements, we should be pleased to do so and await your instructions

### **Example of some problems that we can encounter when dealing on a purchase which have to be resolved before exchange :-**

- The person purporting to be the Seller is not the legal owner
- The land shown on the Land Registry Filed Plan is not the same as that actually being sold.
- There are no legal rights of way to the property or a garage or in the case of leasehold flat or maisonette over a staircase leading to the flat
- Important Documents may be missing
- Extensions or alterations to the property have been carried out without the necessary Planning or Building Regulation Consent from the Local Authority

- If you are buying a leasehold property the lease may be defective i.e. no one is responsible for maintaining the common parts or the lease contains terms that are unacceptable to you and the Lender
- The Maintenance Charge is exorbitant
- The Seller has not paid the Maintenance Charge and/or Ground Rent and any arrears may become your responsibility
- The Lender may not lend you as much as you wanted

## **b. The Seller**

After you have found a Buyer and agreed a sale price, we have to send a draft sale contract to the Buyer's solicitors. To do this we have to obtain the Deeds of the property. It can be a good idea to instruct us as soon as you have decided to sell the property. This is so we can obtain the Deeds and put together a package of the documents and information that will be required by the Buyer's solicitors, so that no time is wasted once a Buyer is found.

We have to obtain the Deeds to check the nature of your ownership and the existence of any rights or burdens, which must be revealed to the Buyer. When we have the Deeds, we shall prepare a draft contract and send it to the Buyer's solicitors.

The Buyer's solicitors will send us "preliminary enquiries" so as to discover from your own knowledge of the property whether any possible disadvantages affect the property. Once the Buyer's solicitor is satisfied, he would approve the contract and we would ask you to sign the contract. Contracts would then be "exchanged" and the deposit received, and at that stage a date would be fixed for completion.

## **6. Between Exchange of Contracts and Completion**

During this period the Buyer's solicitors will check the title of the property and prepare the document to transfer ownership to the Buyer. In some cases the "transfer" or "conveyance" need only be signed by the Seller. In other cases it must be signed by the Buyer too, for example where there are joint Buyers. We would advise you on this point.

Searches have to be carried out to ensure no other mortgages can be registered against the property except your own and a Bankruptcy Search must be carried out to satisfy your Lender that you have not been made bankrupt

The mortgage is prepared and its effect is explained to the Buyer before he signs it. An obligation to repay thousands of pounds at a rate of (perhaps) hundreds a month should not be entered into lightly.

As the date for completion is approached, the financial details would be calculated and the Buyer would be asked to provide the balance of the purchase price. At completion, the money is passed to the Seller's solicitor in return for the Deeds and signed transfer document. At that point you would be entitled to occupy the house and to take possession of the keys.

## 7. After Completion

As Seller's solicitors, we would account to you (the Seller) for the balance of the sale price after paying off any mortgage, estate agents and ourselves.

If we are acting for you as a Buyer, more work has to be done. We pay Stamp Duty Land Tax if the purchase price is over £60,000 at the rate of 1% of the price. Higher rates are payable on properties of £250,000 and over. This is a government tax and should not be confused with our fees.

The Inland Revenue send back the necessary certificate and we then deliver to the Land Registry the transfer with an application to register the title, and a cheque for the Land Registry fee. On the return of the title document we send any relevant documents to your Lender.

If there is no mortgage, we will only be issued with copies of the Land Registry Title. This is copy of the entries on Land Registry computer. It is no longer a critical piece of evidence of your ownership as duplicates can be obtained from the Land Registry for a small fee. You are no longer issued with "deeds" or a Land Certificate by the Land Registry. But there may be other important title documents that have to be retained safely such as a Lease or Planning Documents. We would be happy to look after them for you free of any charge.

## Conclusion

We deal with most normal conveyancing problems as a matter of course and more often than not you are not even aware that a problem has cropped up. Some difficulties are more problematic and whilst we are able overcome them this sometimes this takes more time and legal expertise. We will keep you informed as to what progress has been made and on occasions we will might require your assistance in signing documents or tracing missing papers or just generally chasing things up.

If you are concerned or worried or just need some information please contact us either by telephone or call into the office and we shall be happy to tell you what is happening on your case.