

**THIS DOCUMENT CONTAINS IMPORTANT ADVICE PLEASE READ CAREFULLY****INTRODUCTION**

The process of buying or selling a house is one that most of us only have to endure, on average, every 7 years. As a consequence it would be quite wrong to assume that a client will understand the process unless it is explained.

We hope that you find the following information informative and helpful. If you do have any questions on this, or any other aspect of your sale or purchase, please do let us know at the earliest opportunity.

**Please** do spend a little time reading these few pages as they do contain important information and advice that could save you significant time, money or worry.

**BUYING A HOUSE**

Having found your ideal home, you will want to be living in it as quickly as possible, so what stands between you and that goal? Time, money, Mortgage Lenders, Surveyors or the Seller, but hopefully not your conveyancer. We are acting as YOUR adviser and it is in both our interests to complete the transaction efficiently and effectively.

So why does it sometimes feel as though it is taking forever? There can be any number of reasons so it is best to look at a "Normal" transaction to see what really happens and at some situations where difficulty or delay can arise.

1. After visiting the Estate Agents, Web-sites and properties you have found the property that you want, made an offer and the Seller has accepted it "Subject to Contract" (a list of commonly used terms is at the end of this document in the "Jargon Buster").
2. The Seller's Estate Agent will then notify the Seller's and Buyer's Conveyancers of the agreed price and any other relevant terms.
3. The Seller's Conveyancer will then obtain the Seller's Title documents and such other information as is necessary to send us the "Draft Contract Package".
4. Once we have considered the Draft Contract Package we will be able to tell you which Conveyancing searches are appropriate. Please note there are a number of different types of searches available and when we have seen the Draft Contract Package we will be able to advise you which searches are required or advisable. We will be able to advise you of the costs and if you instruct us to carry out any such searches we will request money on account from you to cover those costs.

Please note the Local Search ONLY covers the individual property searched. It will not tell you about any planning permissions that have been applied for in respect of neighbouring properties.

If you have any concerns in this respect we would advise you to speak to us or to the local planning officer directly. There is a planning search which is a search which gives details of all recent planning applications and decisions within a radius of 250 metres from the property. It includes information of telecoms masts, details of footpaths and rights of way and extensive local neighbourhood information. It also provides a description of land use policies which may give an indication of the type of development that could be allowed by the Local Authority in the future.

A Water and Drainage Search will tell us if the property has mains services and the route of those services.

An Environmental Search report centred on the property that you are buying provides environmental information to identify potentially contaminated sites in an area of up to 500 metres from the site boundary. It also includes details of potentially contaminated historical land uses within the same area, and a flood map showing the area that may be subject to flooding again up to 500 metre radius from the site boundary. The result of this search comes with a professional opinion of a chartered environmental surveyor confirming that in the surveyor's professional opinion any matters revealed by the search are unlikely to have an adverse affect on the value of the property.

Please note that there are other searches available e.g. chancel repair, coal and mining etc. For further information on additional searches and the associated costs please talk to your solicitor.

5. At this time we will also read through the papers received and raise "Pre-Contract Enquiries". The nature of these enquiries will depend on the individual property and the paperwork that is initially supplied. We will for example check the planning and building regulation history of the property and check that there are no restrictions that will prevent you using the property for the purpose that you intend. It is also common for developers to require that their consent is obtained before there are any additions made to the property and this restriction can apply permanently. If there have been any alterations to the structure of the property or if you may wish to make some in the future please let us know as soon as possible. We will also check to see if there are Damp or Timber treatment guarantees in force. Please note due to the unfortunate frequency that treatment companies go out of business or seek to avoid the guarantees we strongly recommend that if your survey shows that further work is required that you check to see if the company is still trading and if it is to obtain written confirmation from the company in question that they will fix the problem after you have bought the property.
6. During this period you will be deciding who has the best Mortgage Offer for your particular circumstances, filling in numerous forms and paying a valuation fee. PLEASE NOTE: Paying a valuation fee and the subsequent report that is produced gives you very little security if the property later proves to be in need of urgent repair! The valuation fee is paid by you purely for the benefit of the Mortgage Lender to comfort THEM that they are not lending too much money. Even though you are paying the fee, the Valuers contract is with the Lender and even if he is negligent you are unlikely to be able to obtain compensation. For this reason we always recommend that you obtain at least a "Home Buyers Report". If you advise the Mortgage Lender that you want a House Buyers Report before they carry out their own valuation it is normally possible for the Surveyor to carry out both jobs at once and you can save significantly on their

fees. If the property is not of a standard construction then a "Full Structural Survey" would be recommended. If your survey shows that the property has at any time been affected by subsidence you should proceed only very cautiously if at all. A subsidence history may permanently affect the saleability and insurability of the property.

7. The results of any searches and pre-contract enquiries will be received and checked. It is not at all unusual for further enquiries to have to be raised at this stage. The Seller may not have anything to hide but we must be quite sure that everything is in order, not only on your behalf but also on behalf of the Mortgage Lender. We will usually act for your Mortgage Lender as your interest in obtaining a property with all the paperwork fully in order, is the same as theirs. Before exchanging Contracts, you will need to consider arranging buildings insurance. You may do this independently or in conjunction with your Mortgage if you are obtaining one. The important point to note is that the date that you will "assume risk" for insurance purposes is usually the date of exchange of Contracts. Although the seller may continue to insure the property, they are often under no contractual obligation to do so and if, for example, the property should burn down between exchange of Contracts and Completion, you would still have to buy the property! If you are arranging insurance independently of the Mortgage Lender, you will need to have completed and have had accepted all the proposal forms so that you can put the property on risk on the day of exchange of Contracts. Also, if you are arranging your insurance independently of a Mortgage Lender, it is essential that you request the insurance company to fax to us confirmation of the insurance details. This is because it will be a part of our normal mortgage instructions that we are required to confirm to the Mortgage Lender that the property is insured in accordance with the terms of their mortgage offer.
8. At this stage we will either ask you to call in to "sign Contracts" or if you prefer we can send you a written report, if attending is inconvenient. Whilst all the people in the "chain" will have their own preferences for when they would like to physically move, it is not until this time that any firm dates can be discussed sensibly.
9. When everyone in the chain is ready we can proceed to "exchange Contracts". This is when the "Deposit" is paid. In practice the person at the bottom of the chain, often a first time Buyer, will pay to his Solicitor up to 10% of the purchase price and this deposit will be passed up the chain. Difficulties can be encountered when the person at the bottom of the chain is getting a Mortgage for 95% of the purchase price or more because the money actually available to pass up the chain will represent only a very small percentage of the value of the property at the top of the chain and those people in the middle of the chain frequently do not have the cash to top it up. The Agents and the Conveyancers involved should check in advance of exchange to make sure that there is no last minute hitch in this respect.
10. When Contracts are exchanged there is a legally binding agreement to "Complete" on a fixed date. Failure to Complete can result in being liable to pay:-
  - 10.1 interest on the difference between the deposit and the purchase price
  - 10.2 damages, for reasonably foreseeable additional expenses incurred,
  - 10.3 if you paid less than a 10% deposit it is a standard term of the form of Contract used that the difference between what was actually paid and 10% of the purchase price becomes

payable if the matter is not eventually completed. This situation is rare but indicates why you should not exchange contracts until everything is in place.

H M Revenue and Customs have altered the way that Stamp Duty Land Tax is collected, requiring you to complete a not insubstantial tax form. As a part of our service, we will complete the form for you but it is an absolute requirement in **all** cases that we must hold sufficient funds to pay the Tax for you on completion.

The Chancellors Budget Statement, made on 24 March 2010, introduced relief from Stamp Duty Land Tax for Purchasers of residential properties up to £250,000 where a Purchaser or all the Purchasers are first time buyers and intend to occupy the property as their only or main home. This relief is "time-limited" to two years (25 March 2010 and before 25 March 2012).

To benefit from this relief, in addition to occupying the property as your only or main home you must not, either alone or with others, have previously acquired a major interest in land which includes residential property, or an equivalent interest in land situated anywhere in the world including previous acquisitions by a financial institution.

11. Your Conveyancer will now carry out the "Land Registry and Bankruptcy Searches", report to the Mortgage Lender requesting the net Mortgage amount, draft the "Transfer" document, prepare the bill and "Completion Statement" and arrange for the Transfer and Mortgage document to be signed. Please note: It is possible to exchange contracts and complete on the same day but all the above work would need doing in advance of exchange of contracts. The practical problems are that until contracts are exchanged anyone can change their mind and pull out leaving you with a bill from your Conveyancer, the loss of the deposit that you paid to the removal firm, problems with your employer about changing the dates you were intending to take off work and numerous other problems besides. Unless there are truly urgent circumstances we strongly recommend that you have a completion date at least 5 clear working days after exchange and for preference 10 days. The vast majority of cases that do not complete on the date specified in the Contract do result from there being a short exchange to completion period simply because, for example, a document goes astray in the post and there is no time left to put matters right.
12. On the Completion Date, your Conveyancer will send the balance of the purchase price to the Seller's Conveyancer by Telegraphic Transfer. It is normal to request that the funds from your Mortgage Lender arrive one working day before the completion date. This is because we will need to send the money as early as possible on the morning of completion due to the fact that it can take several hours for the banking system to get the money into the Seller's Conveyancers' account. When there is a chain of transactions it can be quite late in the afternoon before the Agents can be notified that the money has arrived safely and that the keys to the house can be handed to you.
13. After you have moved in, we will deal with paying any Stamp Duty Land Tax and will register your ownership of the property. It is a standard Mortgage Lenders requirement that all Stamp Duty Land Tax, Land Registration and other fees are paid to your Conveyancer in cleared funds by the completion date. Please note that the banks require up to seven clear working days to clear a personal cheque and Bankers Drafts are not technically cleared funds for this purpose. After registration has been completed we will notify you and send a copy of the title for future

reference. It is important that you keep these documents safe as they may be required for a future sale.

14. **NEW HOUSES.** The Same general procedures apply but it is usual for the Developer to impose a condition requiring exchange of contracts within 28 days of the reservation of the Plot. Provided that the contract documents are delivered to us promptly and in good order this may be possible but there may be delays beyond your, or our, control if for example your own buyer has to arrange a sale. Most of the problems with new properties are either with the quality of the finish or delays in the construction of the building. All of the major developers contract documents state that you are NOT entitled to delay completion if there are minor finishing items outstanding and these may include laying the drive proper fitting of cupboards, decorating etc. Normally when the property is almost ready you will be given the opportunity to check over the property in detail. We recommend that where possible you take your surveyor with you especially if you have a concern over the quality of any workmanship. The Contract will usually say that the developer will build the property within a reasonable period but will not give a fixed date. Normally the builder will proceed as rapidly as they can but delays of many months are not uncommon.
  
15. **FLATS.** In addition to the usual work we will need to consider the terms of the Lease in detail and ensure that there are proper provisions in place for the long -term management of the building.
  - 15.1 Whilst some mortgage lenders will accept a lease with only 50 years left to run others will insist on at least 70 years being left. Whilst it is usually possible to have the lease extended to a more acceptable term the owner of the Freehold may be entitled to substantial compensation.
  - 15.2 It is also important to check that the lease grants the necessary rights of access to other parts of the building and that in practice the structure of the building as a whole has been correctly maintained. This is particularly important as a normal flat buyers survey will only give you an opinion on the flat itself and not the whole of the building.
  - 15.3 The accounts for the last three years will be checked to ascertain the likely running costs and we would normally expect to see a "sinking fund" being built up for long-term maintenance. We will also check to see if there are any major items of expenditure planned in the short term.
  - 15.4 The current insurance arrangements will be checked. It is usual for the whole building to be insured under one policy rather than each flat-owner having a separate policy.

## **SELLING A HOUSE**

Most Sellers are keen to see the job completed as quickly as possible. What then is involved and how can the time involved be kept to a minimum?

1. Contact your Conveyancer immediately when you decide to place your house on the market. If you do not have an Energy Performance Certificate available we can easily arrange for one to be completed for you. The Energy Performance Certificate needs to be commissioned (although not necessarily obtained) before the property can be marketed. Before we can send the Buyer's Conveyancers all the information that they will need we will have to assemble it from various sources. We may need to obtain your title documents from your current Mortgage Lender and whilst most are quite efficient some can take weeks to send them so the sooner we can ask for

these documents the better. The majority of Mortgage Lenders have now decided to store as little documentation as possible and are forwarding what they previously kept directly to the borrowers for safe keeping. If you have received anything from your lender please forward it to us as soon as possible.

2. The vast majority of houses in this Country have "Registered Title" and we can obtain usually 'on-line' a copy of the Title to your property from the Land Registry. We can prepare the Contract, which we will send to the Buyer's Conveyancers, together with copies of the Title, the Property Information Form and the Fittings and Contents Form.
3. It is a part of the "National Protocol" that we supply answers to a list of standard questions concerning such things as recent alterations to the house, who maintains the fences etc. The Property Information Form is filled in by the Seller personally, as is a list of Fittings and Contents. Clearly the sooner we can send the buyers conveyancer the completed forms the better. If you are selling a flat there is an additional Leasehold Information Form to be completed and we will need to provide details of the current and anticipated service charges, copies of the last 3 years accounts and current insurance details. Providing us with the latest receipts and details of the freeholder and/or managing agent at an early date will be of great help.
4. Once we have supplied the Contract, copy title and the completed forms, and any other relevant papers such as copy damp proof guarantees, the Buyers will raise any additional enquiries that they have and once these are answered they will be able to proceed to Exchange Contracts.
5. When Contracts have been exchanged we will have a fixed date for completion and will be able to request a final redemption figure from your Mortgage Lender, obtain your Estate Agents account and prepare the final completion statement showing the balance of money due to you.
6. On the completion date we will telephone your Buyer's Conveyancer first thing in the morning to make sure that they have everything in hand. Once the money is received by us we will telephone you and the Estate Agent to let them know that they can hand over the keys to the Buyer.
7. We will arrange for your Mortgage to be repaid and with your agreement we will usually pay the Estate Agents account and pay any monies which are due back to you. Finally, we send the Title Documents to the Buyer's Conveyancers.

## **JARGON BUSTER!**

(COMMONLY USED WORDS AND PHRASES)

### **Building Regulations**

Alterations to the main structure of the property will need to comply with the approved building standards applicable at the time of the works. We will check with the Council that the appropriate procedures have been complied with.

### **Chain**

If there are a number of property sales which are dependent on each other i.e. a seller will only proceed if he can buy a replacement property, then the linked transactions are referred to as a "Chain".

**Contract**

The document that sets out what property is being sold, the price, who the buyers and sellers are, together with the detailed legal obligations that are being entered into.

**Completion**

When contracts are exchanged a date will be agreed when the Buyer is to pay the rest of the money and the Seller is to move out, i.e. a date by which time the terms of the contract are completed.

**Completion Statement**

The detailed financial statement prepared after Contracts have been exchanged showing any monies that are due to or from you.

**Covenants**

These are restrictions or obligations which will continue to affect the property. For example it is common for a developer to place a restriction on a property so that any alterations to it will require his written consent.

**Disbursements**

The cost of things such as Search fees, Land Registry fees and Stamp Duty Land Tax that will need to be paid on your behalf.

**Easements**

This is the technical name for the rights that a property may have or be subject to, such as a right of way.

**Exchange of Contracts**

When everyone is ready to enter into a legally binding agreement the Conveyancers acting for each party will be holding a copy of the contract signed by their client. These copies are then dated and exchanged. There is now a binding agreement and if the terms of the agreement are broken the person at fault may have to pay a substantial amount of compensation.

**National Protocol ("TransAction")**

Some years ago the number of "Standard" Pre-Contract Enquiries that were being raised had become excessive. As a result the vast majority of Conveyancers now use the TransAction scheme under which a relatively short number of standard questions are asked. The only additional questions that should be asked should be in respect of legal matters such as rights of way. Whether the central heating has been serviced this year does not come into this category as it does not relate to the legal title to the property and a more relevant way of checking the heating would be to ask a qualified engineer to look at it.

**Planning Permission**

If a property is built, extended or its use is changed, this amounts to development for which the Council will need to give its consent under the current Planning legislation.

**Pre-Contract Enquiries**

Until contracts are exchanged the Buyer's Conveyancer will be asking a variety of questions about the history of the property, any changes made to it, any disputes that may have occurred with the neighbours and anything else that the Buyer may wish to know.

### **Searches**

There are numerous organisations such as the Local Council, the Coal Board and the Land Registry, who may have important information about such things as planned road widening, the locality of mine shafts, disputed boundaries etc. Depending on the area that the property is in, your Conveyancer will carry out a "Search" of the organisations records to see if there is anything that affects the house in question. The "Local" Search is required in almost every case. This is the Search carried out at the Local Council and will provide information about road maintenance, Planning Permissions, Building Regulations, Listed Buildings, Conservation Areas and similar matters. Most Local Councils take about two weeks to answer all of the questions, unfortunately some take longer. It is important, for this reason, to pay your Conveyancer the amount requested on account of disbursements promptly so that the application can be made early. Until the result is received it is not safe to proceed.

### **Subject to Contract**

For there to be a legally binding agreement for the sale of land the agreement must be in writing and signed by both sides. Until this situation is reached either side can change their mind without being responsible for any expenses incurred by the other side

### **Title Documents (Deeds)**

Historically this was a series of Conveyances (Transfer Documents) between previous owners proving that the person selling was the owner. Today the Owner is more likely to have a Title Information Document which is an electronic or computerised copy of the Entries relating to the property held by the Land Registry and which is a Government Guaranteed document confirming the current owner's ownership. It also sets out some of the rights and covenants that affect the property.

### **Transfer**

This is the document which, after contracts have been exchanged, is used to transfer the legal ownership into the name of the buyer.

### **Sinking Fund**

This is a fund which is contributed to by all the flat owners in the block so that there are monies available to deal with routine maintenance. Regular contributions should be made in advance so that necessary repairs are not delayed due to a lack of money being available.



## Dunn & Baker Solicitors – Here to help you

*Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.*