



CONVEYANCING GUIDE

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CONVEYANCING

1. INTRODUCTION

This basic Guide explains some of the words and phrases used in conveyancing, the main steps in the transaction and the reasons for them. A short, written explanation like this cannot and is not intended to cover all the points, which may arise. Please discuss any worries with us, so that we can try to resolve them.

2. CONVEYANCING - WHAT IS IT?

Conveyancing is the name given to the process of transferring ownership of land from one person to another. It is important for the Buyer to ensure that the Seller really owns the property and, if he does, that he is free to sell it. It is equally important to see that the property has all the rights and easements* it needs.

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 be created in relation to it. They are not always evident on an inspection of the property. For example,

- someone other than the Seller may have a right to occupy it; or
- a neighbour may have an easement over the property; or
- it may be subject to covenants* e.g. preventing building or requiring maintenance to be carried out; or
- the public may have rights e.g. there may be a public footpath across it; or
- the Local Authority could have rights, for example, there could be a compulsory purchase order or a road scheme which could affect the property.

These are only a very few of the issues which need to be dealt with.

3. WHAT HAPPENS IN A CONVEYANCING TRANSACTION?

There are four main areas to consider:

- ***Before Exchange of Contracts****
- ***Between Exchange of Contracts and Completion****
- ***On the day of Completion***
- ***After Completion***

These stages are explained in more detail below.

4. BEFORE EXCHANGE OF CONTRACTS

* See Glossary

This is the stage after agreement in principle is reached, but before the seller and buyer are bound by contract to proceed with the matter.

If you are the Buyer

- You have found the property you want, and the seller has accepted your offer.
- If you need a mortgage* you must apply for it at this stage. The Lender will carry out a valuation* of the property before issuing a mortgage offer.
- If you are having the property surveyed (which we strongly recommend) you will need to organise the survey* at this stage.
- Your solicitor will receive the draft contract and copies of the title documents, plans and other information from the Sellers solicitors. This is when the necessary searches and enquiries need to be made. These will include local searches,* and may also include commons registration searches,* parcels index* and coal mining searches.* We also recommend drainage* and environmental searches.*
- Your solicitor will review the information received, investigate the title,* raise any further matters which need to be looked into and when satisfied, will report to you.
- Whilst your solicitor will ensure that the Lender's requirements set out in the mortgage offer can be complied with, it is not part of the solicitors duty to advise you on the suitability of the mortgage product. You should seek your financial adviser's advice on this.
- Usually you must insure the property from exchange of contracts. If this has not been done by your lenders you will need to arrange this.
- If life insurance is required, it should be put in place immediately before exchange of contracts.
- You will need to let your solicitor have the amount of the agreed deposit in advance of exchange of contracts. Cleared funds are needed for this, so that either a cheque must be provided in good time to clear or the funds will have to be transferred by telegraphic transfer.
- When you and your solicitor are satisfied on all matters, the contract can be signed, a date for completion agreed, the deposit paid and exchange of contracts can take place. After exchange of contracts both parties are legally bound and there is no going back.

If you are the Seller

Having decided to sell, the sooner you instruct us the better. We can then obtain your title deeds and assemble a package of the documents and information which will be required by the buyer's solicitors so that no time is wasted once a buyer is found.

- We will ask you to complete some forms to give information about the transaction, the property and the fixtures and fittings that are included in the sale. These will provide the information to be sent to the Buyer's Solicitors with the draft Contract.
- Having found a buyer, we will send a package of information and documents, including a draft contract to the buyer's solicitors.
- Once the buyer's solicitor is satisfied,† he will approve the draft contract and we will ask you to sign it. When everyone is ready, a date for completion will be agreed and contracts will be "exchanged".

* see glossary.

† see previous section.

5. BETWEEN EXCHANGE OF CONTRACTS AND COMPLETION

At this stage the following steps will be taken.

- If this has not already been done, the Buyer's solicitors will prepare the mortgage deed and have this signed by the Buyer. He will also prepare the Transfer* and have this approved by the Seller's solicitor and signed by the Seller. Sometimes the Transfer will also need to be signed by the Buyer.
- As we approach the date for completion, the financial details will be worked out. The buyer will be asked to provide the balance of the purchase price including costs and disbursements and his mortgage advance monies will be requested. Cleared funds are always required.
- Just before completion the Buyers solicitor will carry out final searches.*
- The Seller will be informed of the amount due to him after redemption of any mortgage and payment of costs including any estate agents fees.
- When completion has taken place, the Buyer will be entitled to take possession of the keys and occupy the property.

6. ON THE DAY OF COMPLETION

- The lender releases the mortgage monies to the Buyer's solicitors who pay the balance of the purchase due to the Seller's solicitors by telegraphic transfer.
- The Seller must vacate the property and remove all items not included in the sale, including all rubbish from all parts of the property. Usually the Seller must vacate by 2pm at the latest although where there is a chain of sellers and buyers this may be 1pm.
- The keys will usually be left by the Seller with the estate agents, who will only hand these to the Buyer when the Seller's solicitors confirm that they have received all the monies due from the Buyer.
- Traditionally, completion should take place by 1pm but because the transfer of the monies is under the control of the Banks, the actual time for completion may vary considerably.

7. AFTER COMPLETION

- What remains to be done is almost entirely in the hands of the solicitor. As Seller's solicitors we shall account to you, the Seller, for the balance of the purchase price after paying off any mortgage, estate agents and ourselves.
- If we are acting for you as a Buyer, there is rather more to be done. We shall send the Transfer to the Inland Revenue for its detail to be entered in their records and any necessary stamp duty paid. We also deliver all necessary documents to the Land Registry with an application to register the Buyer as the new owner and the Lender (if any) as the mortgagee.
- When we receive the registered deeds we shall lodge them with the lender. If there is no mortgage, we shall deal with the deeds as you wish. We are happy to keep them for you in our Strong Room. We shall send you a copy of the completed registration at the Land Registry. This may take some weeks.

* see glossary.

* see glossary.

8. HOW LONG WILL IT TAKE?

It is impossible to say! The time taken to carry out the searches and check title has been steadily reducing with the increasing use of technology and it is now rare for any of the basic steps to hold up a transaction. You should, however, allow at least 4 weeks from the delivering of the papers to the Buyers solicitor or if later, when you instruct us to carry out the searches, for the searches and enquiries to be completed, in some places, notably in London searches can take as long as 6 weeks. What usually takes the time however, is to organise all of the parties in the transaction to be ready quickly, including having any mortgage offer in place. Human beings delay, change their minds, go on holiday, have doubts and fail to make quick decisions. If there is a chain of transactions, particularly if it is lengthy, all of these are likely to contribute to delays. We endeavour to move matters forward at the pace you want and so as to meet any target dates which you have set, but you must bear in mind when setting dates that they must be realistic. A conveyancing transaction is a little like a convoy - it moves at the speed of the slowest. The timescale between exchange of contracts and completion will depend upon the requirements of any mortgage lender involved and the wishes of all the parties in the chain.

9. JOINT OWNERSHIP OF PROPERTY

If the property is to be owned by more than one person, your solicitor will ask you to complete on the Client Instruction form which type of ownership you have decided to have. There are two types of ownership Joint Tenants or Tenants in Common. It is important for joint owners to decide which type of ownership they are to have.

- **Joint Tenants**

If Property is owned by joint tenants, the shares in the Property are always equal and if one or more owners dies then the share of the deceased owner passes automatically by the Law of Survivorship and not by Will to the remaining owners or owner in equal proportions. The whole of the Property is therefore ultimately owned by the person who survives longest.

Examples

(A) A father, mother and adult daughter purchase a Property and choose to be joint tenants. They each own a one-third share of the Property. If the Property is sold each is entitled to a third of the proceeds of sale (after payment of any mortgage and costs). If father dies, then the Property is automatically owned by mother and daughter whose shares are increased from one-third to one-half. If mother also dies, then the daughter becomes sole owner of the whole of the Property.

(B) An unmarried couple purchase a Property and choose to hold it as joint tenants. The relationship breaks up and before the parties can deal with the Property he dies. She becomes, due to the Law of Survivorship, the owner of the entire Property. She is then the sole owner of the property and has a right to deal with it as she pleases. She will not need to give any part of it to his family.

- **Tenants in Common**

If Property is owned by tenants in common, the owners agree their shares in the property which do not necessarily have to be equal, e.g. 75% : 25%, or 60% : 40% etc. If one of the tenants in common dies the share belonging to the deceased passes under the will (or intestacy) of the deceased and does not automatically pass to any surviving tenant in common.

Examples

(A) A father, mother and adult daughter purchase a Property and choose to be tenants in common in unequal shares because although they obtain a mortgage the balance of purchase monies has been provided unequally. If the Property is sold, each is entitled

to his or her agreed respective share of the proceeds of sale (after payment of any mortgage and costs). If father dies, his share of the Property will pass to the person entitled under his will and not automatically to the surviving tenants in common.

- (B) The same couple, as in example B of Joint Tenants, choose to be tenants in common. He dies in the same circumstances. But his share of the Property passes in accordance with his Will (or if no Will was made to his next of kin as defined under the Intestacy Laws – perhaps his parents).

- **The Choice:**

Persons buying Property must decide whether they are to hold as joint tenants or tenants in common before their purchase is completed. Some considerations are:-

- The relationship, if any, between the owners of the Property.
- The stability of the relationship.
- The amount or amounts of money each has put into the purchase and associated costs of purchase.
- Whether any mortgage is discharged on the death of one of the owners under a policy of insurance.
- Respective responsibilities for discharging monthly mortgage payments.
- Whether children of the owners (including children from a former relationship) have been properly considered.
- Whether there is a tax advantage to be obtained if a Property is not the principle home of the owners and they pay tax at differing rates.
- Whether the net worth of the owners is sufficient for gifts to be made to children on the death of one of the owners in order to maximize the advantage of the inheritance tax exemptions.

WE WOULD RECOMMEND THAT YOU SEEK ADVICE ON POSSIBLE TAX IMPLICATIONS OF YOUR DECISION. INCLUDING INCOME TAX, CAPITAL GAINS TAX AND INHERITANCE TAX.

Registration of a purchase or Transfer of property will not be completed by HM Land Registry until such time as your solicitor has received your instructions.

10. MOVING CHECKLIST

Please note that we do not advise you to make firm arrangements with regard to any of the points mentioned below until such time as we have advised you that contracts have been exchanged and a completion date set.

Arranging the move

- If you decide to move yourself, investigate the costs involved. Where long distances and several journeys are concerned it may be worth hiring professionals.
- If you do use a removal firm, check the contract is clear on exactly what the firm will do and what happens if any of your goods get damaged during the move.
- If you are moving from a large city area to a smaller area, removers from the place you are moving to could be cheaper.

Things to do

- Hire removal boxes or tea chests for packing if they are not supplied by the removal firm.

- Start packing things you will not need before your move.
- Arrange for the professional disconnection of gas cookers and any other appliances you are taking with you (give seven days' notice).
- Arrange for final reading of gas / electricity / water meters (give 48 hours' notice).
- Arrange for your final telephone bill, and telephone connection at your new home.
- Cancel deliveries of paper, milk etc and pay off your accounts.
- Defrost the fridge / freezer. If moving with a freezer full of food, turn it up before the move.

Moving Tips

- Draw up a plan showing where you want your furniture. This saves the trouble of moving it yourself later.
- Throw out clothes and things you do not need
- On the day, pack one box with a kettle, tea bags, mugs, coffee, milk and snacks. Matches, kitchen roll, can-opener, sharp knife, cutlery, plates, screwdriver, candles, toilet rolls, light bulbs and a mobile phone charger are also a good idea. Keep this box with you, along with important documents, telephone numbers, cash and valuables and the keys to your new home
- Label boxes and tea chests showing which room they should be put in.
- On the day of the move, turn off water, gas, boiler and all appliances: make a note of the readings on the meters.
- Arrange with the Post Office to have your mail redirected to your new home.

Some of those to notify

- The local water, gas and electricity companies and the phone company.
- The Council Tax departments in the area where you live now, and the area you are moving to.
- The companies that handle contents and building insurance and car insurance. Make sure you are covered in your new home.
- The companies handling your pension and life assurance policies.
- The TV licence authority.
- The Inland Revenue and the DWP.
- The DVLA to change your driving licence.
- Your doctor, dentist and optician.
- Your employer.
- Friends and relatives.

- National savings/premium bonds.

11. GLOSSARY OF TERMS USED

<i>"coal mining search"</i>	A written enquiry to the National Coal Board to enquire if the property is affected by old, current or proposed coal mining works. Similar searches can be carried out for other types of mining.
<i>"commons registration Search"</i>	A written enquiry to the County Council to enquire if the property is part of a common (in which case the public may have a right to walk on it) or is subject to rights of common (in which case it may be subject to ancient rights, e.g. to graze sheep).
<i>"completion"</i>	The date fixed for moving house and transfer of ownership, on payment of the balance of the price. Normally between two and four weeks after exchange of contracts.†
<i>"covenants"</i>	These are legal obligations or restrictions either requiring a property owner to perform certain tasks e.g. to repair a fence or contribute to the cost of such repairs or preventing him from doing something e.g. prohibiting commercial use or building.
<i>"deposit"</i>	Part of the purchase price paid by the Buyer at exchange of contracts, normally 10%. A reduced deposit of 5% of the purchase price will usually be accepted if a 95% mortgage is required. This will be held by the Seller's solicitor, unless the Seller has a related purchase when it will normally be possible to use the Buyer's deposit and "pass it up the chain". This is not normally possible when buying a new property from a developer. Once contracts have been exchanged, the deposit is non-refundable, and the Buyer may lose his deposit if he fails to complete. Additional compensation may also be claimed.
<i>"drainage search"</i>	A written enquiry of the Water Authority to find out the position of the nearest public sewer. It indicates whether the property pays a sewerage charge, but does not show how the property connects, if at all, to the public sewer.
<i>"environmental search"</i>	A search of a database to ascertain if the property is in an area affected by contamination, land fill, radon gas, subsidence and limited confirmation on the likelihood of flooding. The results cannot be guaranteed, and you should check wherever possible with relevant authorities and with your surveyor.
<i>"exchange of contracts"</i>	Literally, the exchange of one copy signed by the Buyer for another signed by the Seller. At this point the completion date will have been fixed and both parties become legally committed to proceed.
<i>"final searches"</i>	These are enquiries to the Land Registry to check that there are no alterations or matters affecting the title to the property of which the Buyer is unaware. If the Buyer is having a mortgage, there will also be a search to check that there are no bankruptcy entries in the Register.
<i>"local searches"</i>	Means the written enquiries sent to the Local Authority by the Buyers' solicitors. It is in two parts:- <ul style="list-style-type: none"> • A request for details of entries in the Registers maintained by the Council (for example details of planning consents, listed building notices, tree preservation orders and smoke control notices).

† See also paragraph 6 entitled "On the Day of Completion".

- A series of questions about the property (for example matters relating to road proposals, public health and breach of planning and building regulations).

No one should buy a property without having carried out a local search.

Apart from road proposals affecting land within 200 metres of the property, the Local Authority Search will only give information about the property itself. The search will give no information about other property, for example, proposals to develop neighbouring land or the existence of public footpaths. Both of these matters can be the subject of additional enquiries, for which the Local Authority charge an additional fee. Better still, if you are concerned about the possibility of development or any matter relating to other property in the neighbourhood, you should make enquiries of the Local Authority direct before you exchange contracts for the purchase.

"mortgage"

A loan of money secured on the property the terms of which are recorded in an offer of mortgage and in the mortgage deed, often called "a legal charge". If payments are not maintained or there is any other serious breach of the terms and conditions the lender may have the right to take possession and sell the property.

"map search"

A written enquiry to the Land Registry to find out if the land is already registered at the Land Registry and if so its title number.

"rights and easements"

These are legal rights to which the property may be subject or of which it may have the benefit, for example rights of way, passage for services, light or support.

"survey"

When carried out by the surveyor instructed by the Buyer, this will be a report on the condition of the property, either in full detail if it is a full structural survey, or in less detail if in the form of a "Homebuyers Report".

"title"

The right to the ownership of the property. This is usually recorded at the Land Registry.

"transfer"

The document transferring ownership of the property from Seller to Buyer.

"valuation"

When carried out by the Lender this is no more than a guide to the value of the property for the benefit of the Lender, who is only interested in knowing that the property is sufficiently valuable to pay off the mortgage if they need to sell it. It may not show up any specific defects.