



The Sale of Residential Property

Selling a house can be a stressful and complicated process. If you currently live in the house you will have to pack up your home and you may want to co-ordinate your sale with the purchase of another property, or face a move into temporary accommodation. This Guide explains the key parts of the sale process and some of the terms used by your solicitor or estate agent, which may be unfamiliar to you. There is a separate Client Guide dealing with the purchase of residential property. The whole legal process of buying and/ or selling land and property is often referred to as “conveyancing”.

Please read this Guide carefully; it is particularly important that you read the final section entitled “Email Security and Anti-Fraud Precautions”.

Do I need to appoint a Solicitor?

In England & Wales the professionals who deal with conveyancing are solicitors and licensed conveyancers. We have several teams of experienced personnel dealing with the sale and purchase of residential property under the supervision of our conveyancing solicitors. In this Guide we refer to the person who handles your conveyancing as “your solicitor”.

If you try to deal with the legal aspects of the sale of your house yourself it is likely that you will face a number of problems. If you have a mortgage that needs to be repaid on your sale, the buyer’s solicitor will require absolute certainty that the mortgage will be redeemed out of the proceeds of sale. This requirement can generally only be met if your solicitor can give the appropriate professional undertaking at completion of the sale.

The legal process is complex and requires the assembly, preparation and agreement of several important legal documents, which could have significant financial and practical implications for you. If you do not instruct a solicitor the Buyer’s solicitor and the Land Registry (which is the agency responsible for the registration of all property transactions in England and Wales) will each require full identification evidence from you.

What does your solicitor do?

The solicitor’s job is to make sure you are able to sell your property as easily as possible. We will guide you through the complex sale process (set out below), deal with any questions that may come from the buyer’s solicitor and generally try to ensure that you and the buyer are able to proceed as quickly as possible to exchange contracts and then complete.

Your solicitor will liaise regularly with the buyer’s solicitor to ensure that they are making suitable progress with the purchase of your property, including any legal work associated with the buyer’s mortgage and any linked transactions (as your buyer will often have their own house to sell). We will contact on your behalf local authorities, management companies, landlords, insurance companies and anyone else from whom information or assistance is required.

Video Guide

We have worked with the Conveyancing Association to produce a video aimed at guiding you through the process of moving. To view this, please follow this link - <https://www.youtube.com/channel/UC4ISUmK1-s0DeJhHmE-eY8Q>

My property is leasehold – how will this affect the sale?

If the title to your property is leasehold it will be necessary for us to contact third parties in order to obtain information about such matters as the ground rent, any service charges payable, the management of any common areas, arrangements as regards repairs and insurance etc. Typically there will be a landlord and a management company, and managing agents acting on their behalf. The lease may also contain specific requirements relating to the disposal of the property or consents required from the landlord for insurance or alterations to the property. In many cases the buyer will have to enter into a deed of covenant with the landlord or management company.

The arrangements applicable to the sale of leasehold flats, or leasehold houses on developments with communal car parking, private access roads or landscaping, can be particularly complicated. The need to obtain all the required information and secure co-operation from the relevant parties can sometimes delay the sale process.

The relevant parties will all generally charge a fee for providing us with the information or documents that we need. Once we have details of the fees being charged, we will contact you to obtain payment or to ask that you make the payment to them directly if that will be faster. The fees vary from company to company, but can be as much as £500.

What happens when I instruct you on the sale?

- Once you instruct us to act we will issue to you our client engagement documents which contain our fee estimate or quotation. You must sign and return these to show that you accept our terms. You will also be asked to supply the relevant identification evidence for money laundering and anti-fraud purposes.
- We will ask you to complete and return our sale questionnaire so that we have the basic information we require about the sale property and any special terms agreed with the buyer.
- We will ask you to complete a Fixtures and Fittings form which lists all the items to be sold with the property, and those items you will take with you. This will form part of the contract of sale.
- We will review your legal title to the property and obtain any title and other documents that the buyer's solicitor is likely to require. At this stage we may also have to contact third parties for other essential information (eg if the property is leasehold)
- We will prepare the contract paperwork and send this to the buyer's solicitor.
- We will help you to deal with any questions or enquiries that the buyer's solicitor might raise.
- We will contact your lender(s), if applicable, to obtain details of any deeds that they hold and the amount currently outstanding on any mortgage or other loan secured on your property.
- We will liaise with the buyer's solicitor and you to discuss potential dates for exchanging contracts and completion.

What happens if you identify a problem with the title to my Property?

Occasionally we may notice there is defect in your legal title which could cause a problem or delay your sale. We will normally try to rectify this on your behalf but it is possible that this will involve extra work for which we will make an additional charge. If so, we will discuss this with you before incurring any extra costs.

In some cases we cannot rectify the problem but it may be possible to take out a defective title insurance policy which will effectively compensate the buyer in the event that the defect in your title leads to a problem in the future (eg if you have no legal right of way over a path that you have used for many years to access your rear garden or there is an old restrictive covenant which has never been enforced.) A defective title policy may be necessary to enable your sale to proceed and will often be demanded by the buyer's solicitor or lender as a condition of the contract. In most cases, we will not be able to identify that a policy is necessary until part way through your transaction. If we do so we will notify you and provide with full written details of the circumstances, the reasons why such an insurance policy is necessary or advisable, and the costs involved so that you can make an informed decision on whether you wish us to proceed to arrange such an insurance policy on your behalf.

Most of these policies are obtained by us through a small panel of insurers so we can obtain these policies on-line without delay. We do not normally conduct an analysis of the market where the insurance premium is £350.00 or less. We do not receive any commission for arranging such policies but if appropriate we may raise a fee in our final account to you for the additional administration involved. You should ask your solicitor if you require further details on indemnity policies obtained in this way.

However, in high value transactions or more complex situations the amount of the insurance cover required may result in a much higher premium and in those cases we will normally seek at least three insurance quotations either directly from reputable insurers known to us or via a broker. The work undertaken by us in obtaining quotations and arranging the relevant insurance policy will be charged at our normal hourly rates.

Will all the mortgages and loans on the property be settled when I sell it?

When we check your legal title we will identify all the mortgages and any other loans or financial liabilities which are registered against your title at the Land Registry. If you have owned the property for over 30 years or the property has not been transferred on the open market during that time your title may not be registered at the Land Registry and we will have to examine the title documents and make other searches to ensure that we have identified all mortgages, loans and other financial liabilities which have been legally secured against your property. We will then contact the relevant lenders and other parties to establish how much is owing and, provided there are sufficient sale proceeds to do

so, we will pay them off at completion and obtain any documents required to evidence that they have been redeemed. This ensures that your buyer receives a clear title to the property and your liability for these mortgages and loans is settled in full.

However, if a loan or other debt has not been legally secured against your property it will not be settled by us. Therefore, if you have any other loans or debts that you have agreed to pay off when your property is sold (eg credit card or Hire Purchase debts) you must settle them yourself. If you are in arrears with a mortgage or loan or have other financial difficulties legal action may already be underway to obtain an order for possession or a charging order etc, which could result in a restriction or order being registered against the property whilst the sale is ongoing. This could seriously prejudice your sale. You must notify us immediately if you are facing this sort of financial difficulty.

What is Exchange?

The term “exchange” is shorthand for exchange of contracts. The contract is the legal agreement between you and the buyer for the sale and purchase of the house. There are two copies; one copy is signed by the buyer, one by the seller. If an adult occupies the house with you but is not named as a seller (because they do not have any legal title to the property) they may be required to sign the contract as evidence that they know about and agree to the sale.

Exchange will only take place when both parties wish to be legally bound by the contract. A completion date is fixed in the contract and the two copies of the contract are swapped between the respective solicitors. In many cases both your solicitor and the buyer’s solicitor will be trying to co-ordinate your sale and a number of other linked sales and purchases in the “chain”. This means that all the relevant buyers and sellers in the chain of connected transactions must be in a position to exchange at the same time. This is often the cause of aggravating delays which we cannot easily prevent.

You should never arrange moving dates, take time off work or book removal firms in readiness for moving without first checking with us that everything is ready and that contracts have been exchanged with a firm completion date (sometimes referred to as the “contractual completion date”).

Will the buyer pay a deposit at exchange?

The buyer will be required to pay a deposit (usually 10% of the purchase price) at exchange and this money will normally be held by us until completion takes place. However it may be possible to agree with the buyer’s solicitor that the deposit monies can be used to pay the deposit on any new house that you are buying at the same time (if that is the case).

What if I change my mind once exchange has taken place?

Once contracts are exchanged the agreement is binding and cannot subsequently be altered save with the agreement of both parties.

The binding nature of the contract means that all the investigation work (both legal investigations and searches, and also any physical survey) has to be completed before contracts are exchanged. All the buyer’s solicitor’s enquiries have to be satisfactorily answered prior to exchange. It will be too late to query anything after contracts have been exchanged. For better or for worse, you and the buyer are stuck with the transaction!

We will not normally exchange Contracts without checking with you first, but should there be any sudden change in your circumstances that might cause you to stop or delay your sale this must be reported to us immediately.

What happens between Exchange and Completion?

Following exchange we will contact your lender(s) and check the precise sum(s) which are required to pay off your mortgage and any other loans that are secured on your property as at the contractual completion date. If your property is leasehold we will have to check the final sums due in respect of ground rent and service charges and ensure we (or the Buyer’s solicitor) can deal with any specific sale notifications or other requirements of the lease.

We will then prepare our completion statement and send this to you. The statement will show:

- the sale proceeds and other sums we expect to receive from the Buyer at completion (including any deposit already paid to us);
- the final sum(s) required by us to pay off any mortgages or other loans;
- any other monies that we will have to pay on your behalf (eg ground rent arrears and service charges, landlord’s costs, estate agents fees etc);
- our own costs (a fully itemised Invoice will accompany the statement).

In many sales there will be a substantial balance shown on the statement as due to you after all the various deductions. If we are acting for you on the simultaneous purchase of another property all or a large part of this balance will in practice be transferred across to your purchase account for use in this second transaction.

We will also agree the Transfer documentation with the buyer's solicitor and arrange for you to sign this. Completion cannot take place if you have not signed this so it is essential that you are available at this time. If you expect to be away on holiday or business it may be possible to organise a Power of Attorney in which you appoint a trusted person (or your solicitor) to sign documents on your behalf but we must have advance notice and there will be an additional charge.

Negative Equity - what does this mean?

If the likely sale price of your house is not sufficient to cover all the sums which have to be repaid to your lender(s) this is often referred to as "negative equity". You must also bear in mind that there will be additional sums to be paid at completion such as legal costs and the estate agent's fees. Unless you have access to other funds to cover all the payments that will be due this will make it very difficult for you to sell the property. If you suspect that this problem will apply to you but you need to go ahead with the sale of your property it is essential you notify us right at the outset so that we can advise you and assess how best to proceed. It may be possible to negotiate an appropriate exit strategy with your lender(s) but this could take some time.

In the event that the sale price of the property is not sufficient to cover all the sums due to be paid at completion we will show on the completion statement the balance that we require from you. Any balance shown as payable by you must be paid at least three days before completion so that we are holding cleared funds for use on the contractual completion date. **SHOULD ANY MONIES BE OUTSTANDING FROM YOU ON THE DAY OF COMPLETION THEN WE SHALL BE UNABLE TO COMPLETE.** We cannot accept payment of this by cheque, only by a bank transfer.

What should I be doing between exchange and completion?

You should arrange to have any utility meters read, either on or shortly before the contractual completion date so that the relevant charges are correctly allocated between you and the Buyer and all the utility companies are aware that ownership of the property is changing. You should also notify your property and contents insurer(s) and the local rating authority of the imminent sale. You may have other service suppliers (eg telephone, satellite TV and internet etc) who should be informed. You are reminded that other authorities may also require notice of your change of address (eg HMRC, DVLC and your motor insurer).

You can arrange for your mail to be redirected to your new address for up to a year by completing the relevant Royal Mail form and payment of a fee. This is a very useful service and will ensure that you continue to receive all your important post, allowing you extra time to notify your change of address to friends and family and other agencies and companies with whom you have regular dealings.

Your property must be vacated and cleared of all contents (including rubbish) by the contractual completion date. You must therefore ensure that you have booked any necessary removals. Whilst school and bank holidays are often popular times to move house you should remember that removal companies will be correspondingly busy at these times and may be booked up weeks ahead. If you have agreed to leave or sell any items to the Buyer these must be left at the property. If it has been agreed in the contract that you will remove certain fittings such as fitted shelves or wardrobes, curtain poles etc you must make good any damage that you cause.

Buyers will appreciate it if you leave in the property any instruction manuals or other details and codes for alarms, boilers or other fitted appliances.

When does Completion of the sale take place and what happens?

Completion is the stage in your sale when the Buyer has paid over the full purchase price to us and takes full legal ownership. You have to vacate the property at completion and the Buyer is entitled to move in. The completion date will have been fixed by agreement at exchange and set out in the contract for sale. Most of the legal process on the completion day will be dealt with over the telephone by the parties' solicitors and all the money due from the Buyer and any payments we have to make to your lenders will be transferred using same day bank transfers.

Ideally there will be an interval of at least two or three weeks between exchange and completion so that all the preparations for completion take place in an organised manner, but this doesn't always happen. Occasionally, exchange and completion will take place on the same day, which means the parties' lawyers (and you) will have to do absolutely everything required for completion before the exchange of contracts. The concern on a simultaneous exchange and completion is the lack of certainty. There is no guarantee that the transaction is going to happen until it does. That can be unnerving, especially if there is a chain of several transactions to synchronise: you and all the other parties in

the chain can be left waiting anxiously in removal vans, frantically telephoning the solicitors and estate agents and not knowing for certain if everything will come together and completion can take place!

It is not usually necessary for you to attend at our offices on the day of completion. The keys to your property should normally be left with your estate agent once you have moved out. Your agent will only release them to the Buyer once we notify the agent that completion has taken place. Please telephone us late morning or lunchtime on the relevant day to check whether completion has taken place. The contract will normally stipulate that completion must take place by a fixed time (usually sometime between 1 and 2.30pm). Provided we have your mobile telephone number we will try to make contact with you once the completion money arrives in our client account or to let you know if there is any delay.

What happens after Completion of your sale?

We will use the proceeds of sale to redeem (ie pay off) any mortgages that are secured against your property and pay your estate agent's invoice on your behalf. If your property was leasehold we will settle any outstanding ground rent, service charges or other fees due to the landlord or the managing agents, and organise any associated paperwork. We will pass any title deeds for the property that we hold to the Buyer's solicitor together with the Transfer documentation signed by you.

If there are no further transactions to be completed for you we will then transfer the balance of the completion money to you. In most cases we will organise this transfer within two working days after the day of completion. However, if you are purchasing another property then we will transfer the balance from your sale onto your purchase file. Once all the legal work relating to your sale has been dealt with we will close your file and write to you to confirm this.

EMAIL SECURITY AND ANTI-FRAUD PRECAUTIONS PLEASE READ THIS SECTION CAREFULLY FOR YOUR OWN PROTECTION

If you communicate with us by email, or ask us to email you, it is important that you understand that email is not a completely secure method of communication. Although we take all reasonable precautions to safeguard our own IT systems it is possible for others to intercept emails that pass between us. This means we cannot guarantee client confidentiality in these circumstances.

In some cases criminals have used email interception to defraud legal firms or their clients. Residential Conveyancing appears to be a high risk area for this type of fraud. The fraudster operates by intercepting genuine email correspondence between legal firms and their clients; at the appropriate point in the transaction the fraudster will issue one or more bogus emails which appear to come from a legal firm or party involved. These bogus emails can take various forms but will generally request that money is transferred to a stated bank account for the purposes of the transaction. The request will often appear very plausible but the account details provided are false. If the fraud is not detected the transfer is made to the fraudulent account and may not be recoverable. You should note that when you request a funds transfer your bank will not generally check for a match between the account name and account number supplied by you, nor will banks accept any responsibility if they make the transfer to the account number as you directed. Some of these frauds are very sophisticated, and people have lost considerable sums of money as a result. To help prevent this type of fraud:

- We will not normally notify you of our bank account details by email. If we require funds from you for a transaction we will ask you to telephone us, using the telephone number on our initial engagement letter, to obtain these account details directly from your solicitor;
- We are members of the "Safe Move" scheme – we will explain to you how you can use the scheme to verify that any bank account details supplied to you for this firm are genuine;
- We will NEVER send you an email notifying you of a last-minute change in our bank account details;
- Contact your solicitor immediately if you receive emails which appear to come from us (or any other party or legal firm) requesting you to pay money to a specified account. Do NOT use the telephone number on the suspect email as this may be false and the criminals might maintain the deception by answering it as if you have rung this firm. Do not authorise any requested financial transfer until you have verified that the request is genuine;
- We will verify any bank details you supply to us by email (where money is to be transferred to you). We will normally telephone you to check these details and if we cannot contact you we may delay the transfer until we can do so;
- We now verify any bank details supplied to us by other legal firms using a reputable external agency recommended by the Law Society.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.