

## Selling Guide

This information guide is intended to provide you with a brief outline of the work involved in a property transaction and to offer a brief insight into the mechanics and terminology behind it. It is by no means a comprehensive guide to the law, nor to all matters involved in conveyancing transactions. However, it contains useful information which we hope will assist you to understand the process more clearly. If you have any questions about the contents of this information guide, please do not hesitate to contact us and we will be happy to assist.

### The Contract Package

The legal process involved in buying or selling a property begins with the contract package. The first step in any sale transaction is to prepare the contract package to send to the Buyer's Solicitors, which includes the following:

#### *Title Documents*

These are either the original Title Deeds or Official Copies of the Registered Title and Title Plan (depending upon whether the property is unregistered or registered) and, if the property is leasehold, a copy of the Lease.

Copies of these are sent to the Buyer's Solicitors to prove the extent of the property and land being sold. Also, to prove that you are the owner of the property and have the legal right to sell it. In law, we call this 'deducing title'.

#### *Sale Contract*

The Sale Contract is a formal written agreement between you and the Buyer that you will sell and the Buyer will buy the property at an agreed price. It is our responsibility, as the Seller's Solicitor, to draft (write) the Sale Contract and all of the clauses contained in it. Once drafted, the Sale Contract is sent to the Buyer's Solicitors to either approve, or to amend and return. Once the clauses in the Contract have been agreed, matters work in such a way that two parts of the Contract are printed, both identical. One part will be signed by the Buyer whilst the other part will be signed by you. The signed documents are then held on file until both parties are in a position to proceed.

#### *Property Information Forms*

There are a standard set of forms used in every residential sale transaction which the Seller completes and provides to the Buyer. They are:

- a Property Information Form;
- an Additional Property Information Form;
- a Fittings and Contents Form;
- and, if the property is leasehold, a Leasehold Information Form.

We will send you these forms at the beginning of the transaction and it is important that you answer the questions as completely and accurately as possible as the Buyer is entitled to rely on the information you provide. If any reply to a question is inaccurate or misleading, you may be liable in the civil offence of misrepresentation or even guilty of the criminal offence of fraud (fraud by false representation or fraudulently failing to disclose information). An inaccurate but honest reply is unlikely to give rise to a liability in either offence but nevertheless, care should be taken.

The Property and Additional Property Information Forms contain questions relating to ownership of boundaries, disputes about the property, occupier's interests (for example, Tenants), building works, adjoining property rights, guarantees, and details of Notices received from a Local Authority or governing body which affect the property. The Leasehold Information Form contains additional questions relating to the Landlord, the ground rent and the service charges.

The Fittings and Contents Form in particular, will be attached to, and form part of, the Sale Contract, and so will become legally enforceable. Care should be taken to exclude any items on the Fittings and Contents Form which you do not wish to be included in the sale.

If you have items which you wish to exclude from the sale but would like to offer for sale to the Buyer separately (such as a washing machine or television), you can make a note of these on the form, together with the suggested price. In law, these additional items are called 'Chattels', and if the Buyer wishes to buy them from you, a 'Chattels Price' is agreed and inserted into the Sale Contract. This sum will be paid in addition to the sale price for the property.

#### *Planning Documents*

If you have had your property altered or extended in any way (for example a conservatory or loft extension), the Buyer will want to ensure that the building works were completed in accordance with all relevant Planning Permissions and Building Regulations. Copies of these will need to be obtained and provided to the Buyer's Solicitors, to prove that the modifications are both sound and not in contravention of planning laws.

## Enquiries

When the Buyer's Solicitors have had a chance to read through all the contract documentation and to go through it with the Buyer, there are a number of questions which they will want to ask. This part of the transaction is called 'raising enquiries'.

The nature of the enquiries can be wide-ranging, and may be a combination of general questions appropriate to every property, and specific questions about the particular property being sold. Usually, the enquiries are sent at the start of the transaction. Upon receipt, we refer to you for the answers to those questions we cannot answer ourselves, and then return the answers to the Buyer's Solicitors, together with any further documentation they have requested.

Additional enquiries will often be raised after the making of the initial enquiries, right up to Exchange of Contracts, as further information relating to the property or the transaction comes to light, or further points need to be queried. Again, the Buyer is entitled to rely on the accuracy of your replies so that they can make an informed decision about whether or not to proceed with the purchase.

If a defect of title is discovered by the Buyer, it is your responsibility, as the Seller, to correct it at your own expense. This is sometimes done by way of obtaining retrospective consent, as in the case of a breach of planning regulations, or by obtaining an insurance policy (called an 'Indemnity Policy'), which we can arrange on your behalf.

## Exchange of Contracts

Once the Buyer's Solicitors have completed their enquiries, are in receipt of the Buyer's mortgage offer and are satisfied with the results of their searches, we will make an appointment for you to come in and sign the Contract. If this is not convenient, we can go over any outstanding points via the telephone and post the Contract out to you for signature.

At this point, a Completion date will be suggested. 'Completion' simply means the date on which monies are paid over and ownership of the property transfers to the Buyer. Please remember that the Buyer's Mortgage Lender (if any) will require, on average, 5 working days notice to transfer the mortgage monies to their Solicitor's account, which needs to be taken into consideration when deciding upon a Completion date. Completion can also only take place on a weekday.

Once a Completion date has been agreed, this date is inserted into the Contract. The signed and dated Contracts are then 'exchanged', literally, so that we hold the Contract signed by the Buyer and the Buyer's Solicitors hold the Contract signed by you. This has the effect of creating a legally binding contractual relationship between yourself and the Buyer to sell and buy the property respectively, to be concluded on the agreed Completion date. You do not need to be present at Exchange of Contracts. However, we will need to be able to contact you by telephone on the morning of Exchange to obtain authorisation.

It is only on Exchange of Contracts that the deal becomes legally binding and you are committed to the sale. Up to this point, either party can walk away without penalty. It is not advisable, therefore, to book your removals or make other arrangements with regard to moving (eg: redirecting post or cancelling the telephone, etc.) until such time as Exchange of Contracts has taken place and a Completion date finalised.

It will not be possible to change the Completion date once Exchange has taken place so it is obviously extremely important that a realistic Completion date is set. Normally, one to two weeks are required between Exchange of Contracts and Completion to finalise the legal formalities although, of late, this time period has narrowed considerably. Indeed, it is not unusual to Exchange and Complete on the same day.

As a financial act of good faith, the Buyer will pay a deposit of 10% of the purchase price on Exchange of Contracts, the remainder to be paid on the Completion date. If you are selling and buying another property at the same time, it may be possible to utilise the deposit on your sale towards the deposit on your purchase. As is the normal course of events however, the house being sold is usually sold at a lower price than the property being purchased. It is possible the Seller of the property you are buying will accept the lower deposit without having to make up the difference from your own funds, but you should be aware that under the terms of the Sale Contract, you will still remain liable for the full 10%.

Exchanging Contracts does not actually transfer legal ownership (title) of the property into the Buyer's name, this is dealt with by way of a Transfer Deed (the Contract is merely a formal agreement that you will transfer ownership). The Transfer Deed is the document which will transfer the property out of your name into the Buyer's name and will be submitted to the Land Registry by the Buyer's Solicitors on Completion so that the Registers of Title can be changed.

It is the responsibility of the Buyer's Solicitors to draft the Transfer Deed between Exchange of Contracts and Completion, and to send it to us for approval. Once the form of deed has been approved, we will send a copy to you for signature.

## Completion

On the morning of the appointed day of Completion, the Buyer's Solicitors will wire the purchase monies (including any additional payment for chattels) through the electronic banking system to our client account. This whole process can take up to five or six hours although it is usual practice for monies to reach our account by around lunch time. Our bank will notify us as soon as funds hit our account and it is at this point that Completion takes place.

Upon receipt, we will immediately telephone you to inform you that we have the monies. We will also call the Buyer's Solicitors to confirm funds have arrived, and then call the Estate Agent (if applicable) to release the keys to the Buyer. If no Estate Agents are involved, please do not hand over keys to the Buyer until we have advised you that we are in receipt of the monies.

It is important that you make arrangements to have the meters read, etc., up to the date of Completion and also notify us of what arrangements you are making to hand over the keys (if they are not being left with the Estate Agent). The Buyer, having paid the purchase monies, is legally entitled to vacant possession of the property on the day of Completion so you must be able to move out by that date, including clearing rubbish and any unwanted articles from the property.

### *Repayment of Mortgages*

On Completion, it will be necessary for all mortgages and secured loans on the property to be repaid. Following Exchange of Contracts, we will obtain redemption figures in respect of all mortgages and will attend to repayment of these on your behalf on Completion. Please do not cancel direct debits or standing orders relating to mortgage payments until such time as Completion has taken place, as redemption figures are based on the fact that payment is maintained up to the date of Completion. If there is a shortfall, the mortgage will not be discharged which may result in serious financial penalties.

It is also particularly important that you inform us if your mortgage is linked to any business or personal overdraft facility or any other borrowing relating to a business.

### *Estate Agents*

If you are selling your property through an Estate Agent, they will be notified of Exchange of Contracts and will send their account to us prior to Completion. A copy of this, together with our own account, will be forwarded to you for your approval. It is usual practice for us to pay the Estate Agent on your behalf from the proceeds of sale, and we will rely on you to inform us if this is not to be the case.

### *Sale Monies*

As soon as we have received the purchase monies on the day of Completion, we will immediately transfer these to your bank account, less any sums required to pay our fees, the Estate Agent's fees and mortgage redemption monies. If we are able to transmit funds before the 3pm deadline, you will receive funds the same day, failing which the monies will reach your account on the next working day.

Please remember to let us have your forwarding address on Completion as we will still need to contact you about certain items, particularly if we have received a refund from your Mortgage Lender or refund on an insurance premium and need to forward you a cheque.

## Post Completion

Following Completion, we will send you a completion statement giving a complete breakdown of the financial side of the sale, together with our receipted account. If you have any life policies assigned to a Building Society or Bank in connection with the mortgage, these policies will be re-assigned and then forwarded on to you at your new address.

If we have repaid a mortgage on your behalf on Completion, the Mortgage Lender will send us signed Notice that your mortgage has been repaid in full, usually within one or two weeks. This Notice will be copied to the Buyer's Solicitor as proof that you have repaid all your financial obligations secured against the property. The legal formalities are then complete.

## Timescales

Without doubt, the overriding requirement in virtually every conveyancing transaction is that the matter is completed quickly. However, as you have seen, the process of buying and selling properties is far from simple, nor is it quick.

Whilst professionals from all sides of the industry are continually working together to find ways to speed up the process (the Land Registry are currently pioneering and testing a nationwide e-conveyancing platform), at present, the average timescales for completing a sale or purchase are as follows:

- Freehold property: 40 days
- Leasehold property: 60 days

The time varies from transaction to transaction depending on a number of factors, for example, how quickly the other Solicitors respond, how quickly the Buyer receives their mortgage offer, or how quickly the searches are returned from the Local Authority.

The reason leasehold properties tend to take longer is because of the additional time spent examining and advising on the Lease (often up to 80 pages long), and in waiting for information from the Landlord and the Management Company.

If there is a chain involved (X buying from you, who is buying from Y, who is buying from Z), this can also slow things down considerably. However, fast response times, consistent communication and the use of high-tech document production systems can speed things up dramatically, and, fortunately, we specialise in all three.

We also advise that if you are involved in a chain, liaise closely with the Estate Agent involved during the waiting period, as they will have detailed knowledge of where each link in the chain is in terms of readiness to Exchange. Your Estate Agent is by far the best person to chase the chain above, and below, as they are free to speak with all parties concerned whereas we are only permitted to speak with the Buyer's Solicitors, not the Buyer.

If you have any queries or questions regarding the sale of your property please contact Rebecca Soar, Head of Residential Property, on 01159 471 501 or email [rsoar@fraserbrown.com](mailto:rsoar@fraserbrown.com).



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