

CONVEYANCING

At Richard Wilson & Co the sale and/or the purchase of your property is not “just another legal transaction”. We never forget the human aspects and appreciate that moving home can be extremely stressful. In addition to ensuring that the legal formalities of the transaction are dealt with efficiently, we will do all we can to make sure that the transaction proceeds smoothly, thereby causing you the minimum amount of stress. Our staff will, at all times, be approachable and understanding. The purpose of this guide is to give you an outline of the process involved in moving home and we hope that, to a certain extent, it unravels the mysteries of the conveyancing process. We believe that it would be useful for you to read this guide at the start of the transaction and then refer to it at the appropriate stages. If you have any questions at any stage in the transaction, please let us know.

PRE-CONTRACT

1. Until contracts are exchanged, either the Seller or Buyer can withdraw without any penalty other than wasted expenses.

2. The Seller's Solicitors prepare a Contract (which sets out what is being sold and the terms of the transaction) in duplicate and send it together with copies of the title documents to the Buyer's Solicitors. The Contract is called a “draft contract” at this stage because the Buyer's Solicitors may wish to amend it.

3. The draft contract can only be prepared if the Seller's Solicitors have the title deeds. It is therefore important to ensure early on that the Seller has instructed solicitors and has either handed over the deeds, or given the solicitors details of his lender so that the solicitor may obtain the title deeds.

4. When the Buyer's Solicitors receive the draft Contract and copies of the legal title, they take the following steps (at the very least):

- (a) Investigate the legal title
- (b) Apply for and check the result of the searches made
- (c) Check the Contract
- (d) Check replies to the Property Information Form.

Investigating Legal Title

This is one of the most important parts of the transaction.

(a) If you are selling, we have to prove to the Buyer's Solicitors that the legal title to your property is satisfactory and deal with any questions raised by the Buyer's Solicitors on the legal title.

(b) If you are buying, we examine the title to ensure that the Seller is the rightful owner and that there are no legal defects in the Seller's title which could interfere with your use and enjoyment of the property or cause a problem on any future resale.

Searches

1. A Local Search is a questionnaire which is sent on a Buyer's behalf to the Local Authority. The Local Search will tell us if the Local Authority is aware of any legal

matters which affect the property such as: Whether the property is charged with an outstanding payment; Is subject to a Compulsory Purchase Order; details of Planning Permissions relating to the property and any breaches of Planning Permission that the Local Authority may be aware; Whether responsibility for maintenance and repair of the road lies with the Local Authority; New roads or widening schemes in the vicinity of the property.

2. The replies to the Local Search are very important and contracts should not be exchanged until they are received.

3. Additional enquiries and searches may be required. Is the property connected to a public sewer and, if so, where is it. The District Council publishes formal plans of its proposals for the area and keeps records of public footpaths, National Parks, pipelines and radon gas precautions among other matters. The Council can also be asked whether there are any local traffic schemes proposed but not yet put into operation. Under much of England and Wales, including large parts of Oxfordshire and the far west of Berkshire there are extensive seams of coal, so a search of the Coal Board may be appropriate. If you are concerned whether the property may be at risk of flooding, the Environment Agency should be able to advise. If you feel any of these matters (or others) might be relevant to a property you intend to purchase, let us know.

Information Forms

1. The Seller will complete Property Information Forms giving information on such matters as: Whether the

property has the benefit of any guarantees i.e. damp proofing, woodworm etc. Whether there are any tenants in the property. Responsibility for boundary walls, fences etc., this information may not be contained in the title deeds. Whether there are any disputes with third parties affecting the property.

2. If buying, and there are any particular matters which concern you, please draw these to our attention in order that we may raise them with the Seller's Solicitors.

3. If selling tell us of anything a prudent buyer might want to know - and tell us if anything new arises before completion.

4. The Seller should also complete a Fixtures Fittings and Contents Form to clarify what is included or being removed. It will form part of the Contract.

Contract

1. The terms of the draft contract are approved by the Buyer's Solicitors to ensure that the Contract fully protects the Buyer's interests. Once the terms of the draft contract are agreed, one copy is returned to the Seller's Solicitors for signature by the Seller.

2. If you are buying a leasehold property, there will be a Lease which is usually lengthy and detailed. We will check that it does not contain any unusual or onerous terms and does contain proper provisions for such matters as repairing and insuring the building.

3. If you are buying a new home which is being built, we will ensure that the Contract binds the builder to finish the job according to specification, to put right defects arising within a limited period after completion and, usually, to provide you with a National House Builders Council's Guarantee.

4. We will agree a completion date i.e. the day that you move into your new home, if you are buying and move out of your existing property, if

you are selling. This will often cause problems as there may be a chain of Buyers and Sellers spreading beyond your own purchase on the one hand and your sale on the other; everyone has to agree the same date. If you are buying and selling, we will synchronise exchange of Contracts on both transactions so as to ensure that you are neither homeless, or liable to own two properties at the same time.

CHAINS

If you are involved in a chain of transactions, you can only move as quickly as the slowest link in the chain. Only when every party in the chain has received their mortgage offer, their solicitors have received satisfactory searches and satisfactory replies to the Property Information Form and any additional enquiries, can the chain proceed to exchange of Contracts.

VALUATION/ HOMEBUYERS REPORT/ STRUCTURAL SURVEY

1. The general rule in English Law is "let the buyer beware". This means that hidden defects which come to light after you have exchanged Contracts are a Buyer's responsibility, not the Seller's. We recommend that a survey of the property should always be made before you exchange Contracts. It should reveal defects and potential expenses which you may otherwise not be aware of. If this happens before exchange of Contracts you may wish not to proceed, or perhaps a lower price could be negotiated - after exchange of Contracts it will be too late.

2. If you are buying with a mortgage, your Lender will require a valuation. This is not a survey and although you pay for the valuation, it is for the

benefit of the Lender and to ensure that the property is good security for the money it is lending you. It is based on a limited inspection and contains less thorough and detailed advice about the property compared to a Homebuyers Report or a Structural Survey. There may be defects in the property which are not revealed by the valuation report and although they may not concern the Lender, they could affect your decision to buy the property.

3. A Homebuyers Report is prepared in a standard format and will specify basic faults. A Structural Survey is extremely detailed and far more comprehensive than a Homebuyers Report. Therefore whilst a Homebuyers Report may be suitable for some properties, it may be inadequate for others; for older properties for example. If you are concerned about any item in the Homebuyers Report or Structural Survey, please draw it to our attention.

JOINT PURCHASERS

1. Where there is more than one Buyer, a property can be held by those joint owners either as "joint tenants" or as "tenants in common".

2. If the property is held as **joint tenants** and if one co-owner dies, his/her share of the property automatically passes to the survivor. Most husbands and wives who own property jointly, do so as joint tenants. If however the value of their joint estates (including the value of the property) exceeds the Inheritance Tax threshold, currently £312,000, it may well be worthwhile holding the property as tenants in common as there could be tax advantages. Please contact us for further advice.

3. If the property is held as **tenants in common** (which might be more appropriate for co-owners who have no personal relationship, or couples living together who are not married), and a co-owner dies, his/her share does not pass automatically to the survivor but passes under the terms of his/her Will. If the deceased does not have a Will, then his/her share passes to certain relatives under what are known as the "Intestacy Rules". If you wish the property to be held as tenants in common, we would strongly suggest that we prepare a Declaration of Trust deed setting out the terms of your joint ownership. The deed will, for example, specify your respective shares in the property, responsibility for outgoings and also deal with the position in the unfortunate event of a separation.

DEPOSIT

1. On exchange of Contracts the Buyer has to pay a deposit of 10% of the sale price. It is quite usual for the Seller to accept a deposit of 5% provided the contract protects the right to the full 10% if the Buyer defaults.

2. If you are selling only, the Buyer's Solicitors will insist that we hold the deposit as Stakeholders which means that we cannot release the deposit to you until the day of completion.

3. If you are selling and buying, the deposit received on your sale can usually be used as a deposit on your purchase. If, however, the property you are buying is more expensive than the one you are selling, the deposit you receive on your sale may not be acceptable to your seller and you will have to make up the balance.

EXCHANGE OF CONTRACTS

1. The Contract signed by you is exchanged with an identical one signed by your Seller/Buyer. Both parties are now committed to the transaction. At this stage, the Buyer's Solicitors will send the deposit to the Sellers' Solicitors.

3. The completion date is the day you will be entitled to move into the property as a Buyer and will be entitled to the purchase price as a Seller. Prior to exchange of Contracts, a completion date will have to be agreed by all the parties to the transaction and their respective Solicitors. When Contracts are exchanged by the Solicitors, the agreed completion date is written into the Contract. Only when you hear from us that Contracts have been exchanged, should you finalise your removal arrangements.

4. Once Contracts have been exchanged, both parties are legally bound, and to withdraw after this point could have serious financial consequences. If a Buyer withdraws from the transaction after exchange, not only would he lose the deposit which he has paid, but he could be sued for damages for the Seller's losses and (conceivably) for the losses of other people in the chain of transactions. Similarly, a Seller who withdraws after exchange, could be compelled to sell the property and/or be liable to the Buyer for the losses incurred as a result of the breach of contract.

AFTER EXCHANGE OF CONTRACTS

1. The Buyer's Solicitors will prepare a Transfer (the document which transfers the legal title and which is subsequently submitted to the Land Registry by the Buyer's Solicitors to register the Buyer's ownership) and send it to the Seller's Solicitors for approval. Once the Transfer has been approved, it will have to be signed by the Seller, and often also by the Buyer.

2. We will carry out a Search at the District Land Registry to check that there have been no recent amendments to the Seller's title

which we do not already know about.

3. If you are buying with a Mortgage, we need to ensure on behalf of your Lender, that you are not bankrupt and will carry out a Bankruptcy Search at the Land Charges Department

4. If you are raising a mortgage loan, when we are satisfied all is in order we will report to your Lender confirming that the result of our investigations is satisfactory and request the funds in good time for completion.

5. We will require payment of any balance due from you at least five days prior to completion to allow for clearance and will let you know how much we may need.

6. If you are selling, we will write to your Lender requesting a statement of how much is still owed to it. We will also write to the Estate Agents requesting their Commission Account.

COMPLETION AND AFTER

1. If you are buying, on the day of completion we arrange for transfer of funds to the Seller's Solicitors to ensure you obtain vacant possession and the release of keys.

2. The procedure for completion is that the Seller gives the keys to his/her property to the Estate Agents on the day of completion. The Buyer's Solicitors arrange for their bank to transfer the balance of the purchase money to the Seller's Solicitor's bank. Once the Seller's Solicitors have received funds, they will notify the Estate Agents to authorise them to give the keys to the Buyer.

3. If you are buying and selling, as soon as we receive the monies from your sale, we will transfer the amount required to complete the purchase, to your Seller's Solicitors. Once the Seller's Solicitors receive the funds, they in turn will notify the Seller's Agents to authorise them to give the keys to the Buyer.

4. If you are selling, we will pay off your Lender and pay the Estate Agents their commission. Any credit balance in your favour will be sent to you immediately after completion with a statement showing all monies we have handled for you.

5. If you are buying, the Deeds are sent to us by the Seller's Solicitors and we arrange to pay the Stamp Duty on the Transfer. Thereafter, we will proceed to register you as owner of the property at the Land Registry and if you have bought with a mortgage, will also register your Lender's charge over the property. Once registration been completed, we will send you a copy of your registered title to the property.

6. If you have a mortgage, we send the deeds to your lender. If you do not have a mortgage we will be happy to look after your deeds for you, and make no charge for doing so.

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These notes relate only to the Law in England and Wales. They are by no means exhaustive but we hope they will help avoid some of the difficulties which may arise.

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