

# Christopher Hall Conveyancing

## Guide to Conveyancing

### **Introduction**

This guide is intended to explain the stages and some of the terms used in conveyancing matters.

This explanation cannot cover all points which may arise during a conveyancing transaction and does not constitute legal advice. We would be happy to discuss any particular enquiry you may have, whether in connection with the conveyancing process, your own matter or any other property related query.

### **What is “Conveyancing”?**

Transferring the ownership of land is not like transferring the ownership of personal property, such as a car. Land remains where it is for all time and over the years new rights and obligations may be created in relation to the land. Often, these rights are not evident on inspection. For example, a neighbour may have a right to go onto the property in order to repair or clean a drain or the property may be listed, or in a conservation area, which would restrict alterations or additions to it.

There is also the matter of whether the seller is really the owner the property and entitled to sell. For example, if he has inherited the property, it may be that not all the necessary steps have been taken to transfer legal ownership to him.

“Conveyancing” is the word used to describe transferring the ownership of property from one party to another and the conveyancing process is explained below.

### **The Conveyancing Process**

There are essentially 3 main stages in the conveyancing process. These are:-

- Pre-contract
- Between **exchange of contracts** and **completion**
- Post **completion**

## **Pre-contract**

This is the work carried out after the agreement in principle to buy/sell the property but before the parties are legally bound to proceed with the matter. A seller's solicitor, having received instructions to act, will prepare a draft contract to be approved by the buyer's solicitor. This will be accompanied by evidence to legal title (i.e. proof the seller is entitled to sell the property) which will come from the deeds to the property or from documents from HM Land Registry. The "contract package" will also include the **Seller's Property Information Form** and a **Fixtures, Fittings and Contents Form**, both of which will have been completed by the seller.

Upon receipt of these documents, the buyer's solicitor will approve the contract or propose amendments. He or she will prepare a draft **transfer deed** which is sent to the seller's solicitor for approval together with any pre-contract enquiries he or she may wish to raise. **Searches** will be put in hand and a report will be prepared for the buyer to summarise all of the information obtained and to explain to the buyer what rights and responsibilities come with the property. If a **mortgage** is being obtained by the buyer, the solicitor will report to the buyer on the terms of the mortgage offer. It is at this time that all documents will be signed by the respective parties.

Once all enquiries have been answered, satisfactory search results obtained and all necessary documents signed, **exchange of contracts** will take place. Due to the binding nature of the **exchange of contracts** you should only instruct your solicitor to proceed once you are sure. You may wish to confirm your removal arrangements before exchange and, if buying, ensure your insurance company will put your policy on risk.

## **Between exchange of contracts and completion**

Following **exchange of contracts**, the seller is obliged to sell and the buyer obliged to buy on the date agreed for **completion**. Contracts are exchanged when the seller's and buyer's solicitors speak, normally over the telephone and, using an agreed formula of words, formally exchange contracts fixing the **completion** date. The solicitors acting for the respective parties then send their Client's part of the contract to each other in the post, together with the **deposit**. The parties are only committed from the point of exchange of contracts, not when the contract is signed. Preparations are made by the respective parties for moving on the **completion** date.

On the day of **completion** the buyer's solicitor will send to the seller's solicitor the balance of the purchase price due. This often is sent by way of a bank telegraphic transfer and the money can arrive with the seller's solicitor at any time during the day but normally will have been received by lunchtime. The **standard conditions of sale** provide that the matter should be completed by 2.00pm and so the money should be received and the seller should have moved out of the property by this time. Meter readings should be taken and the relevant phone and utility companies advised of the move, if not already done. The seller can cancel their insurance on the sold property and arrange re-direction of mail.

Once the seller's solicitor has received the balance of the purchase monies they will **release keys** to the property and the buyer can then gain access.

## Post Completion

Following completion, a seller's solicitor will send the good copy **transfer deed** together with what title deeds and documents are available to the buyer's solicitor. They will also pay any estate agent their fee, **redeem the mortgage** (if any) and forward any proceeds of sale to the seller.

A buyer's solicitor will pay any stamp duty land tax due, and make the application to HM Land Registry to register the property in the buyer's name and details of any **mortgage** to be secured against the property. Following completion of the application for registration, the title deeds and documents will be sent to the buyer's mortgage lender or, if there is no lender or the lender does not require the documents, to the buyer.

## What are Searches?

**Searches** are a list a standard questions raised with various parties. The answers, or search results, provide vital information regarding the property which is not obvious from inspection. There are a number of **searches** which can be carried out but we have set out below only the most common.

- **Local Search** – This is a search made of the registers maintained by the district and county councils. The search will reveal such matters as planning decisions or whether the road serving the property is maintained at public expense. The search does not give information about neighbouring land, for example if development is proposed, but we can carry out a specific planning search if this was an issue.
- **Coal Search** – This search is made with the Coal Authority and provides information as to whether the property is affected by past, present or future underground workings, for example subsidence from coal seams or a mine shaft. (This search is only required for properties in known coal mining areas.)
- **Water and Drainage Search** – This search is made with the utility provider and confirms whether the property is connected to the mains water supply, sewerage and surface water drainage networks. Plans are provided to show the position of adopted mains, sewers and drains which is important not only in ascertaining the length of any private connections (for which the buyer will be responsible) but also whether they run within the boundary of the property which has implications for further development, amongst other things.
- **Environmental Search** – This search is made with environmental data specialists and provides information regarding actual or possible environmental pollutants on or near to the property. This information is important, not only for health reasons but also because if there are pollutants you do not want to be liable for paying for any clean up operation. The search includes information in respect of flood zones. As flooding appears to be on the increase across the country and some insurers will not cover this risk, it is important to be fully aware.

Other searches, some quite specialised, are available and we are happy to discuss these with you and will recommend any such search should it be required during the course of the transaction. We have facilities to carry out searches electronically providing a quicker turn-around time for obtaining results than traditional paper methods.

## **Glossary of Terms**

This glossary is intended to explain the meaning of most of the expressions used or that you will come across during the conveyancing transaction. If however, there is anything you do not understand at any point, please raise it with your solicitor who will be happy to explain and answer your question.

### **Completion:**

This is the date set in the contract for when ownership of the property is transferred following payment of the balance of the purchase price. This is also the day on which most people actually move house.

### **Deposit:**

This is part of the purchase price and is paid upon exchange of contracts. It will normally be 10% of the purchase price.

### **Exchange of contracts:**

This is the point at which both parties become committed to proceed with the transaction. Literally it is the exchange of one copy of the contract signed by the seller for the copy signed by the buyer, normally following a telephone conversation between the seller's and buyer's solicitors.

### **Mortgage – also referred to as a Legal Mortgage, Legal Charge or Charge:**

This means the sum of money secured by the buyer on the property by way of a mortgage deed for the benefit of a mortgage lender. The fact the property is subject to a mortgage will be noted at HM Land Registry when making the application for registration.

### **Fixtures, Fittings and Contents Form:**

A form set out as a "tick-sheet" for the seller to mark to show which items are or are not included in the sale.

### **Redeem the mortgage OR Redemption:**

This means the repaying of any mortgage or other loan secured against the property. Often it is also referred to as "discharging" the mortgage.

### **Release keys:**

The estate agent or other party who holds a set of keys cannot hand them to the buyer, or "release" them until authorised to do so. Normally the seller's solicitor will authorise the release of the keys to the buyer.

### **Searches:**

Please see the section titled "What are searches?" above for more information.

### **Seller's Property Information Form:**

This form is designed to give everyday information about the property as understood by the Seller. There are a series of questions to which the seller is to provide answers.

### **Standard Conditions of Sale:**

These are the conditions which form the basis of the contract between the parties. They are not always set out on paper in the contract, but the contract will say that they

are incorporated. They are a set of terms that are balanced as between the buyer and seller and are considered to be fair. They are sometimes altered by Special Conditions which are shown at the back of the contract.

**Transfer deed:**

This document is sent to HM Land Registry following completion and it gives effect to the transfer of the property into the buyers name, as opposed to the contract which merely ties the parties into an agreement for the transfer of the property.