

# ShrewdMoves

## estate agent services

### Conveyance Guide

#### Marketing the Property:

It goes without saying that every conveyancing transaction begins with the seller deciding to put their property on the market for sale. They then engage the services of an estate agent to help them. The seller (or the estate agent on behalf of the seller) will have to then obtain an Energy Performance Certificate.

Once they find a buyer, the conveyancing process begins. The buyer and the seller will need their own independent conveyancing solicitor.

At this stage, both parties have not entered into any contract and hence there is nothing legally binding between them; either of them could walk away from the conveyancing transaction. There are several steps to be undertaken before a property is validly transferred from the seller to the buyer.

#### Taking Instructions

A conveyancing solicitor acting on behalf of the seller or the buyer should take instructions from their client. All instructions regarding costs, etc. will have to be in writing. And in order to comply with the anti-money laundering regulations, the solicitor will have to obtain proof of identity and proof of address from their client.

#### The Pre-Contract Stage

Although a seller is required to disclose defects in the legal title, there exists a caveat emptor principle that requires buyers to scrutinise well and look for potential problems regarding the property.

A conveyancing solicitor for the buyer has to ensure that a pre-contract stage package includes information about:

- The land that is to be sold and the terms under which the seller is selling the property.
- Evidence to show proof that the seller has legal title to the property.
- And the results of pre-contract searches (or any other information pertinent to the property) do not reveal anything adverse.

It may also contain copies of permissions obtained by the local planning authority to allow the buyer's conveyancing solicitor to check if necessary planning permissions are obtained for the property.

## Title

As earlier said, it is duty of the buyer's property solicitor to make a thorough search and verify all claims made by the seller as to the ownership of the property. This is especially important if the contract includes a clause where the buyer is forbidden to raise doubts about the seller's right to title. Any queries thus arising can be verified by raising questions by means of a 'requisition'. If the buyer's solicitor is not satisfied with the seller's answers, the buyer may at any time during the pre-contract period withdraw his offer without incurring penalty.

## Searches

It is now made very clear that the buyer has to ascertain all facts on the authenticity of the title before entering into the contract. Proof of ownership of titles can be found at Government registries which can provide plenty of information about the property.

In general, the seller's solicitor submits application to all concerned departments and presents the results of these to the buyer's solicitor along with the aforementioned pre-contract package.

Even if the seller has provided such details, it is the duty of the buyer's solicitor to verify if correct searches have been made, the searches are authentic, and that the results of such are satisfactory.

If the buyer's conveyancing solicitor makes the search application themselves, they have to send them to relevant authorities as soon as they get the go-ahead from the buyer to avoid undue delay.

The National Land Information Service (NLIS) is an Internet based one-stop-shop where information from a wide variety of public and other bodies can be accessed.

## The Buyer's Finances

The buyer's property solicitor is also required to check if their client has the financial strength to proceed with the transaction. If they do not have sufficient cash to purchase the property, there should be adequate proof that there exists an offer to finance the entire transaction, including costs incurred on stamp duty, land tax etc.

The buyer should also have sufficient cash to fund the deposit paid to the seller on entering the contract. Such deposit is usually 10 % of the purchase price and is apart from the money advanced by the lenders under the mortgage.

Traditionally, properties with higher values have attracted higher loan amounts, but after the credit crunch, banks have begun to offer such attractive discounts only to those buyers who can afford a large deposit of 25% or more.

## The Draft Contract

Once the buyer's solicitor is satisfied with the results of their enquiries, they then negotiate with the seller's solicitor on the terms of the contract. Once these negotiations are complete, they then inform the seller's solicitor that the buyer has agreed to the terms of the contract and is ready to enter into a binding contract with the seller.

The next stage is to prepare a final contract; 2 copies of this contract are prepared- one for the seller and the other for the buyer. Such a contract is inclusive of all the amendments agreed upon by both parties. Both parties sign the contract and exchange them. Such an exchange; i.e. the seller receiving a copy signed by the buyer and the buyer receiving a copy signed by the seller, marks the existence of the contract.

It is now common practise for the solicitors for the parties to the contract to agree over a telephone conversation that the contract should come into existence via an agreement between the solicitors on behalf of their clients. This is called, telephonic exchange, such an exchange takes place before the physical exchange effected by post. Following the conversation, each solicitor posts their part of the contracts to the other party's solicitor.

### **Exchange of Contract**

From the time when the contract is exchanged, both parties to the contract are legally bound to obey the terms and conditions. They cannot withdraw from the contract without incurring liability for breach of contract. For instance, if the buyer were to withdraw from the contract or fail to pay the stipulated amount, he forfeits the deposit money held by the seller's solicitor.

And if the seller withdraws from the contract or do not fulfil their obligations under the contract, they can be taken to court over this. As earlier mentioned, there does not exist any such legal binding before this exchange. It is this aspect of conveyancing that is widely criticised. It may take anywhere from six to seven weeks (in a residential transaction) from the time that they receive instructions to verify and ascertain facts pertaining to the ownership of land. If either party withdraws at the last minute, it can cause a lot of hassle to the other.

### **Post- Contract Stage**

Unlike the pre-contract stage, the post-contract stage is not time consuming. Traditionally, this was the phase where buyers used to raise doubts about ownership of title.

But modern day conveyancing procedures have made it mandatory for these doubts to be cleared at the pre-contract stage itself. Hence, after the exchange of contracts, the buyer is only required to raise 'requisitions' or doubts about procedural formalities. For instance, the buyer may enquire about the amount of money required to be paid by him to complete the transaction, details about who owns the keys to the property, etc. Such queries are usually sent to the seller's conveyancer through a standard form.

### **The Draft Transfer Deed:**

Even as the buyer's conveyancing solicitor is sending the requisition, they prepare a draft transfer deed and send it to the seller's solicitor for approval. A transfer deed refers to an agreement where both parties agree to carry out the contract. Thus, the transfer agreement activates the contract and brings the terms and conditions alive. The terms of the transfer deed should be such that they reflect the conditions specified in the contract; no new clause can be introduced at this stage. This transfer deed is then verified and approved by the seller's solicitor who notifies his consent to the buyer's lawyer when replying to the requisitions. The transfer deed can also be engrossed at this stage; i.e. preparing a copy including any agreed amendments. This is the copy that is

then signed by both parties.

Conventionally it was the duty of the buyer's solicitor to prepare the transfer deed and the seller's lawyer to prepare the contract. But today, both these jobs are usually undertaken by the seller's solicitor and provided to the buyer's lawyer at the time of sending the draft contract to avoid undue delay.

It is very important that the seller signs the transfer deed, or the legal estate on the land shall not pass. The buyer also signs, but sometimes under certain circumstances is not required to do so.

### **The Buyer's Lender**

It is also important that the buyer's lender safeguards their investment by scrutinizing the security for the mortgage. He does so by instructing the lawyer (either his own or the buyer's) to verify the title on the property offered as security by the buyer.

The procedure to verify the ownership of this mortgaged property is the same as explained above.

### **Acting for the Buyer and the Lender**

Although acting for more than one party is restricted under the Chapter 3 of the SRA Code of Conduct, Outcome (3.5), it does not stop a buyer's lawyer to act on behalf of the lender as well. In fact, it is common practice for the lender to engage the buyer's solicitor, especially if the said lawyer happens to be on the conveyancing panel of the mortgagee's company. A solicitor, conveyancing on behalf of the lender must perform the following:

- a) Prepare a mortgage deed to be signed by the borrower (buyer)
- b) Prepare a report explaining that the borrower (buyer) has proper legal title over the mortgaged property and also certify the same
- c) Investigate if bankruptcy claims were filed in the past or in the present to safeguard the lender so as to protect its money

It was explained earlier that on completion of the pre-contract stage, the buyer's solicitor sends a requisition asking for details such as the remainder of the amount to be paid. If such a requisition was not sent, the seller's lawyer sends a separate document called completion statement.

Usually, the balance amount promised as purchase price is the only amount required to complete the transaction. Of course, it also takes into account the money paid as deposit. The buyer's lawyer then informs this to the client through a statement of accounts.

They may also send a copy of the completion statement (whenever deemed appropriate) along with the solicitor's bill showing the conveyancing fees owed to him along with other disbursements to be paid in respect of the transaction.

A buyer usually finances their purchase either through a loan or by sale of another property. The statement of accounts will also include this; i.e. money provided by the lender towards the purchase of the property or proceeds of the sale of the buyer's present property (as the case may be).

On receipt of this statement of accounts, it is important that the client pays the balance amount (to be paid on completion of the contract) before the date of completion so that there is sufficient time to allow normal banking processes to take place. Similarly, the mortgage loan should also be collected promptly and deposited at the buyer's lawyer's client account.

The mortgage loan however is not paid by cheque, but is directly deposited to the said account. Such a prompt action ensures that the money is ready to be sent to the seller's solicitor's account on the predetermined date and there is no unnecessary delay.

### **Preparation for Completion:**

Once all procedural transactions are completed and the contract is ready to be taken to its logical conclusion, the buyer's solicitor makes a final enquiry to ensure that no last minute problems have occurred with the title of the property.

The seller's conveyancing solicitor also takes necessary steps to ensure that the process ends without a glitch.

### **Discharge of the Seller's mortgage**

It is common for a seller to have a mortgage on the property they are selling. In such a situation, they have to ensure that such a liability is removed on completion. The contract is usually inclusive of such a clause (assuming that the buyer has investigated and enquired previously about such a liability).

The seller's solicitor must get details of the money required to discharge the mortgage (also called 'redemption' figure), and also ensure that he has charge of all the documents required to complete the transaction.

A form of discharge of the seller's mortgage is then prepared by the seller's solicitor. It may be noted that this lawyer also more often than not, represents the seller's lender in connection with the discharge.

### **Final Checks**

Even the most straightforward contract can throw up last-minute complications. In order to avoid such issues, both the seller's and the buyer's lawyers check their respective files to look for possible problems in future and make a checklist of all the things that will happen in the conveyancing transaction.

### **Completion**

As per tradition, completion was effected by the buyer's conveyancing solicitor by personally attending the seller's solicitor's office to hand over the rest of the money and to take charge of the transfer deed. But such a situation is not practical today. Hence, it is common for both parties to agree to complete the contract through post. The method of completion will have to be discussed and mutually agreed between both parties through the requisition sent by the buyer's solicitor.

If a completion through post was decided upon, guidelines issued by The Law Society (The Code for Completion by Post) will have to be followed. These guidelines state that the time at which this completion is to take effect will have to be decided over a telephonic conversation between both conveyancers, and the buyer's solicitor will have to give instructions on the formalities required to be done.

Here, the seller's lawyer acts as a temporary agent of the buyer's lawyer to carry out all the actions they were instructed to perform.

A seller cannot be expected to effect a completion of contract unless there is sufficient proof for payment. Thus, it is the duty of the buyer to make sure that on the morning of the completion day, they transfer the money from buyer's solicitor's account to the seller's solicitor's account.

Such a transfer is now made through electronic transfer. Thus a debit from one account reflects as a credit on the other account. This is possible even if both solicitors conveyancing the transaction operate from different banks and different cities. Traditionally this transfer was carried out through telegraphic transfer. Thus, it can be seen here, that no physical transfer of money takes place.

Once the payment reflects on the seller's solicitor's account they are informed by the bank. The next step is to then proceed with the formalities, i.e. to date the transfer deed, check the deed, and inform the real estate agent so that they can release the keys to the property to the new owner. The deed will then be sent by first class post to the buyer's solicitor. They should also be informed that the money was received and that completion has taken place as per instructions.

Although, the buyer & seller are not directly involved in the monetary transaction, the conveyancing solicitors should inform the status to their respective clients after the completion. The seller should be informed that the proceeds from the sale are now ready and the buyer should be informed that they can now take possession of the property.

## **Post Completion**

As said earlier, this is the stage where both the conveyancing solicitors are required to tie loose ends.

### **The seller's solicitor**

They contact the seller's lender to pay the money required to clear off the mortgage and then sends the receipt thus obtained to the buyer's solicitor to be shown as proof at the Land Registry Office.

They must then handover the accounts from the proceeds of the sale and also claim their fees for the conveyancing costs.

It is mandatory that the seller submits the accounts for the proceeds of the sale on the same day or as early as possible. Failing to do so would make the seller's property lawyer liable to pay interest on that amount under the SRA Accounts Rules 2011. Once the accounts are handed over, the file is then closed as per his records.

## The buyer's solicitor

The buyer's solicitor should now undertake to register the transaction at the Land Registry, because the buyer cannot claim legal title until this is done. In order to do so, the buyer's solicitor has to pay the stamp duty land tax (SDLT). This should be paid within 30 days of completion or face penalties and fines. Details of the transaction should then be informed to the HMRC in the form of a land transaction return. Such a return would include particulars of the seller, the buyer, and the price at which the property was sold.

The HMRC then issues a certificate as proof that all requirements have been completed and complied with. On receipt of this certificate, the buyer's solicitor then files for registration of title at the Land Registry.

The Land Registry then provides a TID or Title Information Document that contains a copy of the register showing the buyer that the property is now registered under their name. After checking the TID details, the buyer should then hand over the TID and other relevant documents either to the buyer or the buyer's lender (if the property was arranged through a loan).

Storage costs now deter lenders from receiving these documents; they now instruct that the documents be either stored with the solicitor or handed over to the buyer. Once they receive acknowledgement from the buyer or the lender and after ascertaining that all matters have been dealt with, they can then send the file for safe storage.