

CONVEYANCING GUIDE

Introduction

This guide is intended to explain some of the terms used in conveyancing matters, the steps which are usually taken (and the reason for taking them), and the factors which affect when such steps are to be taken.

This explanation cannot cover all the points which might arise. We would be happy to discuss with you any other enquiries you may have.

What is Conveyancing?

Transferring the ownership of land is not like transferring the ownership of, say, a car. Land remains where it is for ever, and in the course of time new rights and obligations may be created in relation to the land. Often such rights are not evident on an inspection of the property. For example, a neighbour may have the right to enter the property and dig up the drains in order to clear his drains. Also, the public as a whole may have a right over the land, for example a public footpath across the property. The local council might have acquired the right to compulsorily purchase the land, or the highway authority may be considering building a road which would affect the environment of the property you are thinking of buying.

The property may not have planning permission for the use you intend to put it to after your purchase.

There is also the question of whether the seller really owns the land, and whether he is free to sell it. If he has inherited the property, it may be that the correct steps have not yet been taken to transfer legal ownership to him.

The matters mentioned above are only a few of the snags which might arise, and it is the duty of your solicitor to discover if such snags exist and advise you about them.

Conveyancing is the word used to describe transferring the ownership of land from one person to another and the solicitors for the seller and buyer are each obliged to safeguard their client's interests.

Expressions Used

Local Searches

A Search is made in the registers maintained by the district council in relation to such matters as planning decisions and road charges. The expression includes the enquiries made in different departments of the council concerning a wide range of other matters which might affect the property. Apart from roads affecting land within two hundred metres of the property, the search will only give information about the property itself. The search would not give information about other property, for example the development of neighbouring land. Therefore, if you are concerned about the possibility of development (or any other matter) relating to other property in the neighbourhood you would be advised to make your own enquiries before you consent to commit yourself to the purchase.

Enquiries Before Contract

These are a series of questions addressed to the seller, who has to answer these from his own knowledge. The enquiries relate to such matters as disputes with neighbours, work done on the property requiring building regulation approval, or rights that other people have over the property.

Exchange of Contracts

This is the point at which both parties become committed to proceed with the sale/purchase. Literally, it is the exchange of one copy of the contract signed by the buyer for another copy of it signed by the seller. If either party did not proceed after exchange of contracts, then they would be held in breach of contract and liable to the other party for damages. Until exchange of contracts, either party may withdraw from the transaction without any penalty.

Deposit

This is part of the purchase price paid at the exchange of contract stage; normally 10% of the purchase price.

Mortgage

This is a document recording the loan of money, such loan being secured on the property. If payments under the mortgage are not maintained, the lender (usually the building society or bank) may have the right to take possession of the property and sell it.

Transfer/Conveyance

This is the legal document transferring ownership of land where land is registered at HM Land Registry (see below).

Completion

This is the actual transfer of ownership on payment of the balance of the purchase price. The completion date is set when contracts are exchanged.

Registration of Title

Ownership of unregistered land is proved by showing its recent history as recorded in the Deeds. For example, A sells to B, who dies, leaving it to C. Proof of ownership (or title) to land now has to be registered at HM Land Registry, following completion of a purchase. The Registers of Title record ownership and all important details of rights and liabilities.

What Happens in a Conveyancing Transaction?

There are three main stages and each is explained briefly. These stages are:-

- (I) The work carried out after the agreement is reached in principle to buy/sell, but before the seller and buyer are legally bound to proceed with the matter.
- (II) The stage between exchange of contracts (where the parties become contractually committed) and completion (when the money changes hands in return for the keys and transfer of ownership, this being the day the seller must vacate and the buyer is entitled to take occupation).
- (III) After completion when the formal aspects of the transaction are completed. This involves submitting documents to HM Revenue & Customs for the payment of stamp duty, and sending documents to HM Land Registry for registration of title.

Pre-Contract

- (a) ***The Buyer***

You have found the property you want and the seller has accepted your offer. We carry out local searches and Enquiries before Contract. We then summarise for you the information obtained about the property and advise you as to the meaning of the provisions in the draft sale contract. We also ensure that you do not commit yourself to the purchase by exchanging contracts before it is guaranteed that you have available all the money needed to pay for the property at completion. We shall contact your lenders and your buyer's solicitors (if you have a related sale). Once all these elements have come together, we shall ask you to sign the contract and pay the agreed deposit to us, so that contracts can be exchanged.

(b) ***The Seller***

After you have found a buyer and agreed a sale price, we have to send a draft sale contract to the buyer's solicitors. In order to do this, we have to obtain the Deeds of the property to check the nature of your ownership and the existence of any rights or burdens which must be revealed to the buyer and also assist you in obtaining an Energy Performance Certificate as part of putting together a package of documents and information required by the buyer's solicitors. Therefore, it can be a good idea to instruct us as soon as you have decided to sell the property so that no time is lost once a buyer is found. After reviewing the draft contract, the buyer's solicitors will then send us preliminary enquiries so as to discover from your own knowledge of the property whether any possible disadvantages affect the property. Once the buyer's solicitor is satisfied, s/he will approve the contract and the title and we will ask you to sign the contract. Finally, contracts will then be exchanged and the deposit received, and at this stage a date will be fixed for completion.

Between Contract and Completion

During this period the buyer's solicitors will prepare the document to transfer ownership to the buyer. The mortgage is prepared and its effect is explained to the buyer before he signs it. An obligation to repay thousands of pounds at a rate of hundreds a month should not be entered into lightly. In some cases the transfer or conveyance need only be signed by the seller. In other cases it must be signed by the buyer too, for example, where there are covenants imposed on the Buyer. We would advise you on this point. As the date for completion approaches, the financial details would be calculated and the buyer would be asked to provide the balance of the purchase price. At completion, the money is passed to the seller's solicitor in return for the Deeds and signed Transfer document. At that point the Buyer would be entitled to occupy the property and to take possession of the keys and the seller must vacate.

After Completion

As seller's solicitors, we would account to you (as seller) for the balance of the sale price after paying off any mortgage, estate agents and our fees.

If we are acting for you as a buyer, more work has to be done. We send details of the transaction to HM Revenue & Customs for its details to be entered in their records and any necessary stamp duty to be paid. We will advise you of any stamp duty payable on the transaction and collect the amount of stamp duty from you prior to completion. Stamp duty is a government tax and should not be confused with our fees. HM Revenue & Customs return a Certificate which we then deliver to HM Land Registry with the Transfer or Conveyance with an application to register the title and a cheque for the Land Registry fee. On the return of the title document we lodge the Deeds with the lenders. If there is no mortgage, we deal with the Deeds as you wish. We may store these Deeds for you or alternatively, you may wish to collect the Deeds and undertake your own responsibility for their safe storage. If held by you, the Deeds must be kept in a safe place as they will be required on any subsequent remortgage or sale of the property.