

## PEPPERELLS SOLICITORS

### SPECIAL PROVISIONS, TERMS AND CONDITIONS FOR CONVEYANCING TRANSACTIONS

Please note that the following provisions, terms and conditions are to be read in conjunction with our General Terms of Business and engagement/client care letter.

#### 1. Responsibilities

##### Pepperell's Solicitors' Responsibilities:

In line with our responsibilities as your Solicitor in this matter, we will endeavour to:

- Provide you with regular up-dates on the progress of your matter;
- Notify you of any developments that affect the overall cost of your matter;
- Respond to all communications within a reasonable time; and
- Advise you, where relevant, as to whether the expected outcome justifies the overall costs and any other risks.

##### Your Responsibilities:

As a client of Pepperell's Solicitors, you will have the responsibility to:

- Provide us with clear and timely instructions, including the provision of our "Client Particulars Form" duly completed where this is submitted to you.
- Notify the firm if any of the information you have provided, at any stage, is false, inaccurate or misleading;
- Advise us of any change in your circumstances that may result in you being unable to pay our fees;
- Respond to all communications within a reasonable time

#### 2. **Timescales and Completion Dates**

##### Timescales

As far as timescales are concerned, it is very difficult to provide a realistic estimate at the outset but ordinarily you could expect to achieve a completion of a conveyancing transaction, which involves a mortgage lender/mortgage funding in particular, within six to eight weeks. Please be aware that conveyancing timetables are subject to a range of external factors and circumstances which are beyond our control, although we will look to achieve a realistic timetable with you and the solicitors acting for the other party. You must appreciate that any sale transaction represents a purchase transaction for the other party so that even if you are not involved in a purchase, the length of time the sale may take is linked to the requirements which a buyer must fulfil and the time that may take. We will advise you of and explain any reasons for any significant delays and advise you if any additional unforeseen or excessive work becomes necessary.

##### Completion Dates

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Until contracts have been exchanged, the completion date is not fixed and the agreement to sell or buy a property is not legally binding.

During the course of your matter, we may discuss with you tentative completion dates in readiness for exchange of contracts. However, any tentative dates should not be treated as final confirmation of the completion date. Please note that you will also need to ensure that you have buildings insurance in place to enable you to exchange contracts (see "Buildings Insurance" section).

In returning to us a Contract signed by you, unless you expressly withdraw such authority in writing, you irrevocably authorise us to proceed to exchange contracts on your behalf.

As soon as we have exchanged contracts we will telephone and/or write to you confirming that exchange has taken place and the completion date that has been agreed. Until this time we would advise against making firm arrangements to physically move, book removal vans, book time off work or commit to alternative accommodation. This is why we also suggest that you allow enough time between exchange of contracts and completion to organise removals etc. and allow us to deal with the completion arrangements.

In accounting to you for any monies due to you after a completion, such monies will be paid to such of you who are our clients in this transaction. If we are requested to pay out such monies other than to such of you for whom we are on record as acting, we will require prior written authority.

#### 3. Outline of the work

A broad outline of the work we will undertake on your behalf is as follows:

##### **On a sale:**

- Supplying information to you and those involved with the transaction;
- Checking the title of the property you are selling;
- Preparing documents, the sale contract and deeds relating to your sale;
- Dealing with questions and enquiries raised by your buyer's Solicitors;
- Reporting and providing information to you relating to the property you are selling;
- Exchanging contracts, following any necessary negotiations on the terms;
- Approving the transfer deed to the buyers;
- Completing your sale and accounting to you for the proceeds or receiving from you any monies required to complete the sale;
- Dealing with all post-completion matters, particularly repaying any outstanding mortgages or loans.

##### **On a purchase:**

- Carry out local searches and preliminary enquires of the seller;

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- Summarise the information obtained about the property and advise you as to the meaning of the provisions in the draft sale of contract;
- **PLEASE NOTE THAT IT IS YOUR RESPONSIBILITY TO ENSURE THAT YOU HAVE AVAILABLE ALL THE MONEY NEEDED TO PAY FOR THE PROPERTY AT COMPLETION OF THE PURCHASE;**
- Amend/approve the draft contract;
- Ask you to sign the contract and pay the agreed deposit to us so that contracts can be exchanged;
- Check the title of the property and prepare the document to transfer ownership to you and prepare the mortgage (if any);
- At completion, the money is passed to the seller's solicitors in return for the Deeds and signed transfer document. At that point you will be entitled to occupy the property and take possession of the keys;
- After completion, we send the transfer or conveyance to HMRC for its details to be entered in their records and any necessary Stamp Duty Land Tax to be paid;
- When HMRC return the document we then deliver it to the Land Registry with an application to register title;
- On return of the title document we lodge it with the mortgage lenders, or if there is no mortgage, we would deal with the title document as you wish.

#### 4. Conflict of Interest

As your representatives we are under a duty to act in your best interests and to ensure that we protect your confidential information and that we tell you about any information that we have that may be important to your transaction. If we act for another party to a transaction we will owe similar duties to them as well.

Therefore, we need your consent for us to represent you and any other party in this transaction and for you to acknowledge that our duty of confidentiality to the other party will outweigh our duty to tell you about such information. We will not disclose your confidential information to the other party without your consent. If there is any information which you give us which you consider to be confidential, then you must expressly advise us in writing that such is confidential, failing which we shall be at liberty to utilise that information in acting in the transaction. This will usually apply where we are asked to act for your mortgage lender or assume professional obligations and duties to them. In those situations you are taken to agree that we may act for them as well as you, unless you specifically notify us that you do not wish us to do so.

We would not act in that manner if we did not feel that it was in your best interests and should circumstances arise that mean our duties to both parties conflicts in such a manner that we could not act in your best interests then we would advise you and the other party of the situation and make suitable alternative arrangements. Although in many respects the interests of the buyer and the lender are the same (in particular they both want the property to be acquired with a good and marketable title) there are circumstances in which

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a conflict of interest may arise because information comes into our hands which you would prefer us not to tell the lender, such as:

- (a) the price is lower than you told the lender (because this means that the property is worth less than the lender thought)
- (b) you are receiving a cash back payment or other inducement from the seller (again because this suggests that the property is worth less than the purchase price)
- (c) you have decided to let the property rather than occupy it personally
- (d) your financial circumstances have changed – for instance you may have lost your job (because you may not be able to keep up the repayments on a reduced income). Since we owe a duty of confidence if a conflict of interest arises, we will ask for your permission to disclose the circumstances to the lender. If you withhold permission we must cease to act any further in the transaction either for you or for the lender and return the lender's papers advising the lender that a conflict of interest has arisen. This signifies that something unusual has occurred and the lender may withdraw the loan offer.

It is for the above reasons that we do not ordinarily act for any other parties to the transactions, that is to say the seller or the buyer (as the case may be). If asked to do otherwise we would need to undertake a risk assessment and you would need to expressly agree.

We could only potentially consider that it is in your best interests for us to act for the other party and that those interests outweigh the risks of a conflict of interest for the following reasons:

- You both wish the transaction to complete quickly and smoothly;
- You have already agreed the key elements of the transactions so no negotiating remains;
- You have a similar level of understanding of the legal process;
- Us representing both parties will hopefully mean that the legal work can be completed quicker without waiting for the other party's solicitors;
- You are selling to/buying from family members which reduces the risk of conflicts occurring throughout the transaction

If exceptionally we agree it would be possible for us to act for you and the other party then we would first need express written authority from both parties. We would not start work for either party until we have received consent to do so.

#### 5. Your Mortgage and Mortgage Lender

Whilst we may act for you and your mortgage lender and can explain the implications of a mortgage or mortgage offer for you, we are not authorised to give investment advice or advise you upon the suitability of the type of mortgage you may be contemplating or may

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have been offered. If you require such advice, you should consider obtaining the same from an independent financial adviser.

In agreeing to act not only for you but your mortgage lender, we assume professional obligations and duties towards them, by which we are bound and must discharge, notwithstanding that under the terms of the mortgage offer/conditions you will be responsible for our legal costs incurred or that you may not want us to take certain courses of action (please see the section on conflicts of interest). We will otherwise follow the mortgage lender's handbook of rules and regulations.

**It is your responsibility to make yourself fully aware of all the terms and conditions of the mortgage offer and mortgage deed and to note that a mortgage offer may ordinarily be withdrawn or varied at any time by a mortgage lender, even after an exchange of contracts.**

It is your responsibility to ensure that you have the means to repay the mortgage both during or at the end of the mortgage term or have put other appropriate arrangements in place.

Please note that we are generally forbidden by your mortgage lender to use the loan or mortgage advance monies for your purchase unless we have in our possession at completion sufficient funds to pay any Stamp Duty and/or land registration fees.

Please also note that in acting for you in a sale, you expressly authorise us to communicate or deal with all known existing mortgage lenders who have an interest in the property to be sold. You have a responsibility at the outset of a sale transaction to let us know of all loans, secured or unsecured, mortgages or charges which may affect the property.

It is also important that during the period of the sale you continue to make all necessary mortgage payments.

#### 6. Survey/Valuation

We strongly recommend that you carry out a physical inspection of the property(ies) to be purchased along with obtaining a professional survey. If you are taking out a mortgage to help you purchase a property your lender will require a valuation of the property as a minimum. Please note that a valuation report prepared on behalf a lender is not a full structural survey and may not have been prepared by a qualified surveyor. It may contain disclaimers which limit the valuer's liability in the event that defects in the property are subsequently discovered. There may be defects in the property which are not accordingly revealed by a valuer's inspection and it may contain omissions or inaccuracies which may not matter to a lender but which could be important to you.

You should be aware that a seller is not under any obligation to disclose defects in a property to a buyer. Any defects which may exist could affect the value or the future

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saleability of a property and any pre-existing defect may not be covered by buildings insurance or an NHBC warranty or equivalent.

If you do not arrange for a full structural survey or a Home Buyers Report, you should ensure that any heating systems and appliances which are to be included in the sale are in good working order. You should also check that the gas appliances and the electricity supply meet current standards. You will not have any recourse against your valuer/surveyor or seller if you discover faults in any of these items after your purchase except in limited circumstances.

#### 7. Joint Ownership of the Property

If you are buying the property with another person, it will be necessary for you to confirm how you wish to jointly own the property. Under English Law there are two main ways in which a house can be owned by two people buying a property together: 'Joint Tenants' and 'Tenants in Common'.

Purchasing a property as 'Joint Tenants' is the most common way and the effect of this is that the whole of the property belongs to both parties. On the death of either party, their share automatically passes to the surviving tenant; any instructions left, for example, in a Will, are not capable of overruling this.

If you purchase the property as 'Tenants in Common', each party holds a fixed share which can pass under their Will (or according to the rules of intestacy where the deceased did not leave a Will) to the people entitled to their estate. This form of ownership is very often used in partnerships or commercial transactions and it is less usual between husband and wife but may well be appropriate where, for instance, people are marrying late in life and are contributing unequally to the purchase of the property and wish to see their share preserved to go to their side of the family (perhaps to children by an earlier marriage) or where Inheritance Tax planning is involved. It is possible to specify different proportions to represent the contribution made i.e. 75/25 or 60/40 rather than 50/50. A Declaration of Trust can also be prepared to reflect your wishes.

Please let us know how you would like the property to be held. If you would like more information on this point, please do not hesitate to contact us.

#### 8. Buildings Insurance

Only when contracts are exchanged does a buyer acquire an insurable interest in the property to be purchased and the "risk" in the property passes to the buyer. Exchange of contracts marks the point at which the buyer should insure the property, unless other arrangements have expressly been put in place. The parties may agree something to the contrary, which should be properly recorded in the Contract. If, for example, the property

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is leasehold, the insurance provisions will almost certainly be determined by the terms of the Lease.

If you are purchasing a property, you will be responsible, in the absence of any other express arrangements made, for effecting suitable insurance cover. This we would recommend is for the reinstatement value of the property (as to which you may need the advice of an insurance broker or adviser). If you are purchasing a property with the benefit of a mortgage, you are responsible for meeting any specific requirements imposed upon you by your mortgage lender as a condition of any mortgage offer.

#### 9. Indemnity Insurance

Sometimes investigations of title to the property or searches reveals that there is a defect, for instance the property may not be registered as absolute freehold or there is a potential chancel repair liability. In these circumstances in the absence of any other remedy you or your lender may require that we obtain insurance against any risk. The cost of this insurance is met by a single premium which may have to be paid by you. We will not have allowed for this in any quotation or estimate previously given to you. If insurance of this kind is required we will explain it to you under a separate insurance mediation procedure and notify you in advance whether you will be liable for the cost and if so, how much that cost will be.

#### 10. Stamp Duty Land Tax

All relevant property transactions must be notified to Her Majesty's Revenue & Customs (HMRC) by a buyer (not a seller), whether Stamp Duty Land Tax (SDLT) is payable or not. SDLT payable is variable, depending upon the individual circumstances relating to the purchase having regard to the identity of the buyer and whether or not the property is intended to be a main residence. Details of liability will be supplied separately.

It is your legal responsibility as a buyer to submit a Land Transaction Return form to HMRC and for it to be received by them within **14** days of completion together with any Stamp Duty payable. If the return is filed late you will have to pay a penalty of £100 for the first three months and £200 thereafter. You may also be liable for interest in addition or for a tax-related penalty, for example if you fill in the form incorrectly.

If we file a paper return on your behalf, you must personally sign the form and if there are joint purchasers, it must be signed by them all. Once the Land Transaction Return has been submitted and accepted, HMRC will issue a certificate with which we will then be able to apply to the Land Registry to register your transaction. You do not acquire legal title until the property is so registered.

We can complete the Return on a buyer's behalf based on information made available to us, but we do not accept responsibility for the accuracy of the information or for any

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penalty which may be incurred if insufficient time is allowed to us to complete and deliver the Return to HMRC or if it is returned for correction. We only act as agent for you in that regard. In lieu of a paper Return we can submit a Return online and this is our preferred practice. Unless you expressly state to the contrary, you agree that we may file online on your behalf as this will avoid delays.

You also need to be aware that based on information supplied to HMRC, they may conduct enquiries into the transaction with the consequence, ultimately, that you may be liable to pay additional tax. If we are then requested to undertake further work on your behalf in that regard, you will be liable for additional costs on a time spent basis.

#### 11. Payment Prior to Completion

Prior to completion of your purchase we shall send you a Completion Statement.

If there is money due from you to complete the transaction (including our fees) then we need to hold "cleared funds" **in full** the day prior to completion. We must receive payment of any sums made by cheque **at least** 5 working days before completion to allow for cheque clearance. Alternatively, you can make your own arrangements with your bankers for payment by same day bank credit transfer or BACS. Payments can also be made by debit or credit card payments. Please ask our Accounts Department for full details.

With regard to Mortgage advances we will require the advance to arrive the day before completion. If your lender operates a BACS automated payment system then we will use this service. Please note, some lenders make a charge for this service and/or charge interest from the date of drawdown.

#### 12. **Abortive transaction:**

If, for any reason, your matter does not proceed to completion, we may charge you for work done and expenses incurred up to that point. You may terminate your instructions in writing at any time. We will be entitled to keep all your papers and documents whilst there are monies owing to us for our professional charges and expenses.

You will be charged a percentage of any fee quoted to you or costs indication guide/estimate provided, depending on how far the matter has progressed. By way of illustration and by reference to the following five stages of the transactions in question, the following percentages will be applied:

1.	Pre-receipt of contract and searches	20%
2.	Enquiries raised and mortgage offer awaited	40%
3.	Searches and mortgage offer received	60%
4.	All pre-contract matters completed ready to exchange	80%

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5. Purchase complete 100%