



### **Buying and Selling your Home**

Conveyancing is the whole service that a solicitor provides when you decide to buy or sell your home. In this fact sheet is a series of Questions and Answers about this service. Conveyancing is not easy; parts of it can be extremely complex; nevertheless the basic service can be described in straightforward language.

What does the solicitor do?

First, you should get in touch with your solicitor and discuss your purchase or sale. Then, if you are selling he or she will prepare a contract for the sale. The solicitor will also deal with all questions asked by the buyer's solicitor, make sure that the sale money is collected and paid to you or used to buy your new home, and that your own mortgage is paid off. If you are buying, the solicitor checks the contract and explains it to you and makes further investigations before you are legally bound to go ahead with the purchase. Next, he prepares the Transfer Deed to transfer the property into your name, also any Mortgage or other documents. Finally, he arranges for completion of the sale, handing over money and receiving the Title Deeds. All this work is explained later, in more detail.

What is it going to cost?

The cost will be in two parts: the payments the solicitor makes for you; and his own charge for work done by him and his staff. The payments he makes may include Government Stamp Duty (1 % on many purchases) and fees payable to the local Council and to the Land Registry. The solicitor's own charge used to be on a scale, until this was abolished in 1973. Now his charge depends on the amount of work he does, the value of the property, the complexity of the transaction, whether the Title is 'Registered', and other factors. Is this too vague for you? Then be sure to ask your solicitor for an estimate in advance.

How long is it going to take?

In an ideal world most sales are completed two weeks (Although this can vary) after contracts are exchanged. If you are buying it is unwise to exchange contracts until you have made definite mortgage arrangements and have a professional survey and your solicitor is satisfied with all enquiries he has made.

If you are selling it is unwise to exchange contracts until you are certain about your moving arrangements, including the purchase of your new home. A delay may be in your interest; your solicitor can advise you about this.

The technical points that can arise:

Here are some:

A building on the land may have been erected without planning permission. There may be a 'statutory tenant' in part of the house. There may be some flaw in the title to the land, or other problems, e.g., - a mortgage not paid off - a previous document wrongly completed - a 'Land Charge' created by the seller - a spouses right to remain in the property - a threatened road development, or compulsory purchase.

There are many other hazards. Your solicitor is there to advise

How can I best finance my purchase?

You may need borrow money to buy your new home. You may be able to get a mortgage from a Building Society, an Insurance Company, your employer, the Local Council or some other source. The best method varies from one person to another. Your solicitor will advise you; he understands the tax implications of your purchase, and will help you to obtain the maximum advantage. He can also discuss 'bridging finance' with the local Bank, whose manager he will probably know. For example, suppose that you are selling your present home a few days after you buy the new one. There will be a money 'gap' that has to be 'bridged' for a week or so, and the Bank will help you with this, especially if they have your solicitor's professional undertaking - or promise - to pay the money from the sale to them.

What is a deposit and why do I pay it?

The seller of land wants to be certain that the buyer means business. Therefore he asks for a deposit, often but not always 10% of the price of the house, when contracts are exchanged. There is no point in paying the deposit until then. The deposit is paid to your solicitor.

How safe is my deposit?

Your deposit if held by a solicitor is very safe indeed. You have insurance protection in respect of fraud and negligence and The Law Society governs the solicitor's profession generally. Solicitors are governed by Laws, Regulation and rules which dictate how clients money is to be controlled.

How do I choose an estate agent to sell my house?

Your solicitor can advise you on a reputable local firm. The words 'estate agent' do not mean that the agent has any professional qualifications, though of course many firms are fully qualified; for example are members of the Royal Institution of Chartered Surveyors.

What does the estate agent do, and what does he charge?

He will try to sell your home at the price you name, and will advertise it in the local papers. There are no nationally fixed fees, so ask the Agent about this; in many areas, fees are around between 1% and 2% of the sale price.

Agents do not normally receive a fee unless they succeed in selling the house for you, but there are exceptions to this rule. Ask your solicitor about them.

What about a survey of the House?

If the house is new, and covered by a National Housebuilders Council (NHBC) Registration Certificate, you may not need a survey. The NHBC certificate offers a ten year protection period. The older the house the more essential it is to have it surveyed - by someone properly qualified, and independent. Again, your solicitor will help you with this.

Some people think that a survey by the Building Society is all that is necessary, but this is wrong. The Building Society surveyor will check the value of the house, and spot any very obvious defects. A full survey is much more detailed, and this is what is necessary for older properties. If you are a seller and have a recent survey of the house in your hands, it may be worth your while to allow the buyer to see it.

For more information please request our fact sheet on surveys.

You mentioned Planning Permission. What does this mean?

Most new buildings, and additions to buildings require Planning Permission from the Local Council before they are erected. If the home you are buying has a garage which was put up without Planning Permission, then the Council may order you to take it down. It is your solicitor's job to find out about this type of risk. If you are buying on the basis that you are going to alter an existing house, tell your solicitor. He will find out whether you will need Planning Permission. It may be necessary to delay exchange of contracts until you are sure about this.

What about rights of way, and neighbours' rights?

If you are selling you will probably know about these, so tell your solicitor about them. It often happens that two neighbours have a right to use a common driveway; or the drains from a row of houses may collect water which flows into a common sewer; or an old house next door has windows which you cannot obstruct by a new building. It may be necessary to mention some of these rights in the contract. If you are buying and there are 'restrictions' or 'easements' mentioned in the contract, your solicitor will explain how they will affect you legally. You do not want to buy a home which has restrictions preventing you from using it the way you want. Your solicitor will also explain about the ownership of fences, and who has to repair them.

and tenancies?

It is absolutely vital to buyers that they should know of any type of tenancy affecting the house or land they are buying. That dear old lady you met when looking round the house could turn out to be a 'statutory tenant' - with protection under the Rent Acts-and not the seller's mother, as you had thought. Your solicitor will of course demand vacant possession of the house on completion, but do ask him about anything that gives you cause to worry.

and fixtures?

This is very important. The normal rule is that anything fixed permanently to the house, such as a bath or built-in cupboard, will belong to the buyer. The seller, on the other hand, can take away carpets and curtains, even light bulbs. It can be well worth while for both the buyer and seller to agree on a price for these items. Discuss this with your solicitor, because it may enable him to reduce the amount of Government Stamp Duty you have to pay on your new home.

I've heard of a thing called a 'search'. What does it mean ?

As you would expect, there are several enquiry forms to be filled in and sent to other people. This is the buyer's solicitor's job. He may send these enquiry forms - called 'Searches' - to the Local Council, to the Land Registry and to the Land Charges Registry. He will send other enquiry forms to the seller's solicitor. These enquiries may seem pointless in many cases, but they are not. If your solicitor doesn't ask questions, there is a risk that an important snag may never be noticed. The seller doesn't have to tell you everything about the property, so he must be asked. You may have heard the phrase: Caveat Emptor - let the buyer beware. Your solicitor will advise you whether he is satisfied with the answers he has received and whether he considers further enquiries are necessary for your protection.

What actually happens when Contracts are exchanged?

There are two copies of the contract. The seller signs one, and the buyer the other. When both are ready to commit themselves legally, the buyer's solicitor sends the copy signed by the buyer to the seller's solicitor, and receives in exchange the copy signed by the seller. The transaction is then legally binding. At the same time the buyer's solicitor makes arrangements for the payment of the deposit. The contract has many detailed clauses, and your solicitor can explain them to you. Often contracts are exchanged by your solicitor over the telephone.

and What Happens on completion of the sale?

In simple terms, the money is handed over in return for a legal document transferring the 'title' to the land from the seller to the buyer. The buyer can then move into his new home. In fact, the completion is not quite as simple as this. If you, as the buyer, are getting a mortgage, then the Building Society has to be represented at completion. Your solicitor can normally take on this job as well, and this reduces the cost to you. Then of course there is the move. Keys have to be handed over, furniture shifted; if there is coal in the shed, or oil in the tank, the buyer is expected to pay for it. Arrangements must be made for you to pay the right proportion of the General Rates and Water Rates. Your solicitor will arrange all these details for you - though of course you will deal with the actual move yourself.

I'm buying a lease. Does this make any difference?

It certainly does. You will be paying a rent - large or small - and very likely a 'maintenance charge' to cover the cost of cleaning the building and keeping it in repair. Also, the Lease will have many clauses which will affect

you. Can you keep pets, can you use one room as an office, can you leave your car in the driveway? Who decides how the maintenance charge is calculated? All this is set out in the Lease.

Please read it carefully and discuss it with your solicitor. If you are buying or selling a Lease, think carefully; have the Tenant's covenants (his promises to the Landlord) been kept? Is the flat painted? Are the Landlord's fixtures in good repair? If not, is the buyer taking on an unfair liability?

Can I get a Council Grant for repairs?

Possibly. Tell your solicitor what repairs or improvements you want to do. Do you want to install a bathroom, for example?

What about Insurance ?

Certainly. First, there is fire insurance. The Building Society will want you to use their Insurance Company (though in most cases you don't have to) to insure the building. But what about comprehensive insurance, for your furniture, your clothes, jewellery, car and so on? Then Life Insurance, and Mortgage Protection Insurance. Maybe you need this; maybe you don't. You probably need independent advice on what insurance you need and can afford. Ask your solicitor about this.

As a buyer, is there anything else I should consider, over and above the house itself?

Yes, there is. Is your new home to go into the joint names of husband and wife? You will now be the owner of the largest asset you have ever owned; so what about your Will? Have you made one, to provide for the family if you should die? Have you thought about Inheritance Tax? It is easy to forget these questions, but they are important to your family as well as to you. Your solicitor is not only a conveyancer; he also understands the law about Wills, Taxation and Marriage. You should seek his help on every aspect of your purchase.

Do solicitors give an after-sales service?

They do. Their charges will include the ordinary tidying-up after the sale has been completed, for example, the legal receipt for the repayment of the seller's mortgage and registration of the title at H M Land Registry. If you have title deeds your solicitor will be pleased to offer deposit facilities usually at no extra cost. If problems arise at a later date, the solicitor will be glad to deal with them

SGC Solicitors use the Law Society Transaction Scheme.

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