

MARTIN & NIERADA

CONVEYANCING GUIDANCE NOTES

BUYING OR SELLING A HOME

Both buyers and sellers should read these notes. Since there are more steps involved in buying, they describe the procedure involved in a purchase but it will help a seller if he or she knows at what stage the transaction has reached, especially before contracts are exchanged. At certain relevant points the notes draw particular attention to a seller's position. In any case you may be involved in both a sale and a purchase.

SYNOPSIS OF PROCEDURE

A. Up to Exchange of Contracts:	1. Finance 2. Survey 3. Local Authority Search 4. Our work regarding Title etc.
B. Exchange of Contracts:	Chains - Re-inspection – Insurance
C. Up to Completion	Money – from you and from your Building Society or Bank.
D. Completion	What if you are late?
E. After Completion	Financial Benefits, not just burdens.

A. UP TO EXCHANGE

Until contracts are exchanged either party can re-negotiate the price, deal with others or even pull out of the transaction altogether - and without any liability to others. North of the border things are different. Things are changing a little with the advent of "lock-out agreements" whereby a seller promises a buyer a clear run for a period of time before dealing with others. Nevertheless, the most common question is: "How soon can we exchange?". Our answer?: "It depends more on others than it does on ourselves.". Why?

1. FINANCE

Probably the most usual cause of delay.

For example, the bank or building society needs references for you but has it received them from your referees? It needs a valuation of the property you are buying but has it appointed its valuer yet? The valuer has inspected but has his report been received? Until you know you can finance your purchase you must not exchange. In practice that means that in order to exchange you must receive a written mortgage offer on your purchase and if you are selling, we must receive instructions to repay your Building Society or Bank mortgage.

Upon exchange the buyer must pay a deposit of 10% of the purchase price. If he needs a mortgage which is greater than 90% of the price it is usual for a reduced deposit to be accepted by the seller but he does not have to. So if you are a buyer and cannot provide a 10% deposit, let us know at the outset.

Law Society rules are such that we can use only cleared funds. Our bank requires five working days to guarantee clearance of cheques - including building society cheques. Alternatively you may instruct your bank to telegraphically transfer the deposit to our bank. The same applies to monies we need from you on the day you move. It will charge you for this service but it has the virtue of being both instant (because the monies are cleared funds on receipt) and safe (they cannot get lost or delayed in the post). The advantages are obvious but make sure you have the monies in your bank account in the first place; if they are on deposit or in a savings account switch then over and alert your bank as to how much you will need to transfer to us.

If you are both buying and selling it may be that we can negotiate the use of the deposit which we receive from your buyer to pay part or even the whole of the deposit that you have to pay on exchange on your own purchase but we stress this as a matter of negotiation and every transaction is different.

2. SURVEY

Yes, you should have a survey. A valuation is not a survey. A valuation is primarily for the benefit of the bank or building society. Frequently the two are carried out by the same person, nominated by the bank or building society but you can appoint your own surveyor.

Until the surveyor has reported you do not know whether you are buying trouble, so appoint him straight away. Often survey reports raise more questions than they answer. If you are not sure exactly what the surveyor means, ask - and get him to put his answer in writing. No ifs or buts, is the property structurally sound?

3. LOCAL AUTHORITY SEARCH

Again, we are in the hands of others and this time we are at their mercy. Strictly no queue jumping. Some local authorities are quicker, more responsive and more thorough than others but you must remember this - the search is made against the property you are buying, not against the allotments behind it to see if they are going to become a housing estate. This property: did this property have permission to build its garage or add an extension? Remember also that we will not normally have seen the property - so let us know if, for example, the property appears to have been extended or has been the subject of significant structural alterations or additions. We can then confirm that planning permission has been obtained.

Other questions deal with such matters as public drainage, road widening, dilapidation notices and so on.

So if you have a specific query, a suspicion about the allotments, talk to us first. It may be best to telephone the Council yourself and speak to them from your own knowledge of the property and the area. We can then draft a specific enquiry. Don't rely on the seller telling you what is what. In any case he or she may not know.

The cost of an official search is as variable as the speed with which local authorities deal with applications. A "personal search", one which is carried out by a specialist search agent, is an option. It will cost not less than £100.00 which is not a lot more than some official searches and the result is known in a matter of days - sometimes hours. But often, the information available on a "personal search" is more limited.

Whether an official search or a personal search is the better option we take the money off you before instigating the search. Apart from £100.00 of general expenses this is the only money we require from you when first instructed. Everything else (apart from the deposit which is paid to the seller upon exchange of contracts) is payable towards the end of the transaction, just before you move.

4. OUR WORK REGARDING TITLE ETC.

Whilst the bank, the building society, the valuer, the surveyor and the local authority are hopefully performing their functions, we are dealing with the seller's solicitors. They should have received the deeds so they can draft and send to us a contract (sellers, please note; the sooner we have your deeds, the sooner we can send out a contract, so complete the questionnaire and let us know where they are).

Having received a draft contract from the seller's solicitors we may need to re-negotiate part of it. We examine the title and check it for any nasty covenants, or other encumbrances, for example: - there may also be a lease to examine and service charges to investigate. We shall need to raise enquiries of the seller's solicitors on the documents which they have sent us. If there are any specific questions on a practical as well as of a legal nature which you wish us to raise, instruct us. Don't rely upon what the seller or his estate agents tell you. It is what the contract says that counts. If you are buying, the law places an obligation on you to check everything: "buyer beware....."!

All this requires the co-operation of the seller and his solicitor. If they appear to be slow, there may be a reason - read on.

B. EXCHANGE OF CONTRACTS

Next to delays by the bank or building society in issuing a mortgage offer or the Local Authority providing a search, the most common cause for delay is "the chain". The seller who is selling to you may be buying from someone else and that someone else in turn may be buying and so on. A "chain" of transactions has developed. A contract to purchase must usually be exchanged simultaneously with a contract to sell, otherwise the seller may unwittingly find himself the owner of two properties! It is frustrating - but nevertheless hard fact - that your transaction can only progress at the speed of the slowest person in the chain.

This is where a good estate agent can make all the difference. If we are also acting as your estate agent, we can speak to both buyer and seller directly and follow the chain of transactions. We can tell you what is happening elsewhere in the chain and very often break a deadlock, such as one that might arise over completion dates that everyone must agree upon. The completion date is a crucial part of the contract, and needs to be agreed by everyone before we can exchange.

Just before contracts are exchanged it is prudent to pay another visit to the property, especially if it is vacant. Is it still in the same condition as it was when you first viewed it? Have squatters moved in? If you are not satisfied instruct us to put a "hold" on the exchange because once contracts have been exchanged the property is at your risk - you cannot withdraw without incurring severe financial penalties.

Which leads on to insurance. The property must be insured the moment contracts are exchanged. If you are getting a mortgage it is likely that the bank or building society will be insuring the property - but as from when? Check with your building society as soon as you receive your mortgage offer. Some insure from when their offer is issued, others need to be notified once contracts are exchanged. Notify them once contracts are exchanged if they require it. If you are not getting a mortgage you must insure the property yourself. If you want us to do this, instruct us.

So just when can we exchange? The answer?

When:

- a) the bank or building society has instructed us and given you your mortgage offer - and you and we are satisfied with its conditions and
- b) the surveyor has reported to you and clarified any queries and
- c) the local authority has issued its search which does not show anything which will materially affect your enjoyment of the property.
- d) we are satisfied with everything the seller's solicitors have sent us.
- e) the seller's solicitors (and the chain) are ready to exchange - after all, in conveyancing it sometimes takes a chain rather than just two to tango!
- f) you have re-inspected the property and
- g) our bank has received **cleared funds** for payment of the deposit.

Significantly, of the seven points listed above there is only one - d) - and possibly another - a) - where we are in control.

Once contracts are exchanged there is no turning back - the buyer is legally committed to buying just as the seller is legally committed to selling and both parties must complete the contract on the Completion Date agreed between them and inserted into the contract.

Supposing you had got to the brink of exchange and then the chain collapsed? Yes, we would charge you for the work we had done. We do not operate on a "no deal, no fee" basis. If you wish to limit your exposure from the outset we offer an indemnity scheme: a payment of £50.00 plus VAT will provide cover against any legal fees for transactions that do not proceed. Please ask for further details.

C. UP TO COMPLETION

Money again. Remember the Law Society's rule about cleared funds. See paragraph under FINANCE on page 2. Remember that if our bank is not to receive monies by telegraphic transfer they need five working days in which to clear paper money - **including a building society cheque.**

If you are getting a mortgage loan we have to ask the lending bank or building society for the money when reporting to them on title. We have to certify that the title is good and marketable and state when we want the monies. Of course, timing is all important and it depends upon just how the lender provides the mortgage advance (by cheque or transfer) as to when we ask for the monies. If the lender, as a matter of policy, sends the money by transfer the matter is simple; we ask to receive the money the day before the completion date so that it is ready to go out first thing the next morning to the seller's solicitor's bank account.

However, if the lender sends out its mortgage advance to us by a cheque in the post (by post!) we have to try to persuade it to despatch the cheque so that we receive it in time for it to clear. That means we must receive it not less than five banking days before the contractual completion date. Remember, we are governed by very important Law Society rules here; we absolutely must not use the funds unless they are cleared, otherwise we are in breach of the Solicitor's Accounts Rules.

Most building societies who send the mortgage advance to us by cheque as opposed to telegraphic transfer do follow our request that we receive the cheque by a certain specified date notwithstanding that it is before - five days before - the actual completion date. Some societies will not co-operate so we have to give them an earlier date in order to give the bank time to clear the cheque. Some societies charge you interest on your mortgage from the date of completion. Others charge you from the date that they believe the cheque is received by us, even though it is "un-cleared". Each lender is different and you can be forgiven for wondering whether the financial institutions conspire together to make the whole issue of "cleared effects" and interest as complex (and inconsistent) as possible.

Of course, not all the money which we need in order to complete comes from the building society or bank. The balance comes from you. The same rules for cleared funds apply. The balance we need is not only the balance of the purchase price (plus apportionments of ground rent and service charge if you are buying a leasehold property) but also our fees and disbursements, the most significant of which are Stamp Duty and Land Registry fees. We collect all these at the same time. If we are acting for you as the seller, we deduct from the sale proceeds not only our fees but, if we are not acting as your estate agent, also the estate agent's fees (unless you tell us we may not) and any money needed to redeem mortgages. Of course, we send to you a full statement before completion so that you can check figures.

D. COMPLETION

The contract stipulates not only the date on which completion takes place but also the time of the day, usually some time between 1.00pm and 2.00pm. The reason for this is that banks stop sending money by telegraphic transfer after about 2.00pm. It is, therefore, imperative that the money which the seller is expecting arrives in his/her solicitor's account on time - literally no later than the "contract time". We are at the mercy of the banking system here. Fridays are a popular day to move and because of that, the banks often find their telegraphic transfer system over-loaded on that day. No one, it seems, has any "control" over just when the money arrives - that is when a bank official can confirm that a particular account has been credited with the money. The moral of this is not so much to avoid Fridays but to make sure that you get your completion monies to us in time for them to be cleared and ready to be sent out **first thing on the morning of completion.**

If you intend to send us money by telegraphic transfer (which we recommend) please let us have it the day before it is needed.

What if you are late? Things get nasty: The seller can charge interest on the balance of the price (usually 4% above the clearing bank's base rate) and claim interest for any loss they suffer. If they are

also buying another property and need your completion money to complete on their own deal, they may be passing down to you the claims that they receive from their own seller, and so on up the chain. They may have extra removal or storage expenses, bridging loan expenses, not to mention legal expenses. They can claim all these from you.

If you have a serious problem of finding the money at completion and you delay, the seller's solicitors will serve a Completion Notice on you. The effect of this is that if you fail to complete within a given number of days (usually ten working days) the contract will be rescinded altogether. The seller can then sell to someone else and they can hold on to your deposit.

Late completion always involves much intensive (and tense) work and an estimate of our fees will not include our time in sorting it out, whether the fault is yours, the bank's, your lender's or the other party's, although in the last instance we would hope to recover from that other party any extra costs that you would have incurred to us.

But think positively! You will complete on time. The procedure is this; the seller's solicitors will be telephoned by their bank to say that the money has arrived and the solicitors will then call the estate agents to release the keys. You will therefore need to liaise with the estate agents to arrange collection of the keys. We will not know when this is likely to happen because the seller's solicitors will not tell us when they have received money.

E. AFTER COMPLETION

On the day of completion we will be sent the deeds by the seller's solicitor. We must attend to the payment of Stamp Duty to the Inland Revenue, serving notices on landlord's solicitors or on life assurance or pensions institutions, registering changes of company share ownership and so on. In most cases we must apply to the Land Registry to register your title and if you have a mortgage, the charge against your title in favour of your lender. When the Land Registry has completed its work we send the deeds to your lender as security for their loan. If you are not taking a mortgage then we will keep the deeds in our safe for you if you so wish. Otherwise we can send them to you for safe-keeping.

JOINT OWNERSHIP OF PROPERTY

English & Welsh law does not recognise the possibility that several people can have separate interests in a piece of land or a house so in every case where more than one person owns the property, the separate interest of the joint owners have to take effect in the proceeds of sale. In reality the property is held jointly by you under a legal creation known as a "Trust". Your separate interests are realised upon the sale of the property.

Where the purpose for which the house was bought has ceased because, for example, the relationship has broken down, the property must be sold unless all the joint owners agree to keep it. If there is a disagreement, the Court will normally order the property to be sold.

If you are involved in buying a property jointly, you should now consider the position if things go wrong.

As soon as we receive your instructions we will prepare the actual Legal document i.e. the Trust Deed for execution by you.

We have given the matter of Trust documents much consideration at this firm. We believe that an important aspect of our work is to act as "peacemakers". In a recent case in the Court of Appeal (Springette -v- Defoe) the Court heavily criticised solicitors for not thinking about the future when unmarried co-habitees buy property and in particular for not advising couples about the need to make provision for what should happen if their relationship breaks down and they separate. We hope this letter with enclosures provides a proper example of "preventative medicine". We believe that it is disastrous for parties who were once good friends and who are now separated to fail to reach a sensible agreement and consequently litigate. If you are buying jointly with someone else you have two choices:-

Joint Tenancy

In this case the Deeds do not specify what share the joint owners have in the proceeds of sale of the property and if there is disagreement when it is sold, the Courts would have to make a decision. If one of the joint owners dies, his or her interest passes automatically to the surviving owner. The right of survivorship overrides any Will the deceased owner may have. i.e. No matter what is put in the Will, the property will automatically pass to your partner(s). You can still, however, specify the life time position in a Trust document.

Tenancy in Common

In this case the Deeds can state what share the joint owners have in the proceeds of sale. In this case, when one of the joint owners dies, his or her interest in the proceeds of sale does not pass to the surviving owners, but passes by Will or intestacy to the beneficiaries as part of the deceased's Estate. Again the life time position can be specified in a Trust document.

Wills

Having bought the property you would be prudent to consider making or updating your Will and if you are buying jointly with someone else it would be prudent to enter into a Trust Deed setting out the terms on which both of you hold the property and what is to happen if one of you wants to sell. Ownership of property has important financial implications for both you and others and we are happy to advise you on how best to deal with these.

If you would like any further information on **Wills** or any other matter please do not hesitate to ask us.

We hope that your move takes place as smoothly as possible and that you will use our services again.

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