

CONVEYANCING TERMINOLOGY AND PRINCIPLES : PROPERTY PURCHASE

This document is designed to help you to understand what we will do on your behalf, how long the process will typically take and will point out some key points for you to consider.

1. **Seller's Ownership** – we will confirm that the seller owns the property you are buying, that any mortgages secured on the property are paid off and we will point out to you any restrictions on use of the property. It is most important to advise us if you intend to use the property for any other purpose other than to live in, in order that we can advise you on any other implications (there will often be restrictions on using a home for business purposes, for example).
2. **Boundaries** – it is not our policy, and it is not within routine conveyancing costs, to make a personal inspection of the property and its boundaries. Consequently we rely on you to tell us of anything unusual and in particular to tell us: -
 - (a) If any of the boundaries are unmarked (i.e. there is no fence, wall, hedge or clear boundary division) or irregular;
 - (b) If there is any sign at the property of any other person who has rights of access over the property (for example is there a gate in a rear boundary to another property or is there a shared driveway or any other shared access with a neighbour);
 - (c) If there is any unusual feature like an upstairs bedroom which extends over an adjoining property; and
 - (d) If the plan of the property does not appear to match the physical situation on the ground;
3. **“Let the buyer beware”** - the general rule when purchasing a property is that a buyer is obligated to investigate all aspects of the property and to carry out all checks and make all investigations that are deemed necessary in order to satisfy oneself as to the property. A seller is only obligated to disclose to a buyer any “latent defect” in title. A latent defect is one which the buyer could not have discovered by any reasonable inspection of the property. The following may be examples of latent defects in title:
 - (a) A right of way, which would not be apparent from an inspection of the property;
 - (b) A right of drainage;
 - (c) A right for underground pipes to cross land;
 - (d) A restrictive covenant (something you have agreed not to do on the property); or
 - (e) A tenancy.

A buyer will purchase a property as he finds it. The onus is therefore on you to check that the property is satisfactory and that everything is in working order and sound, be it the structure, the roof, the central heating system and the electrics etc. As well as having a survey carried out, please consider arranging for qualified people to check that the central heating, electrics, plumbing and drains are all in good working order. It is incredibly difficult (and sometimes not possible) to renegotiate the price or pull out of the deal after exchange of Contracts. Remember the fee you pay to your mortgage provider may only be for a valuation report, and not for a full survey upon which you can rely. There may be defects in the property which are not covered by the valuer, and often a valuer will not check the roof / foundations or check whether the utilities are all in good working order. We always advise a buyer to have a survey carried out.

4. **Building Alterations / Extension** – it is important that you tell us as soon as possible if there have been any physical alterations at the property since it was first built. For example, if you notice that the property benefits from a loft conversion, garage conversion, extension or if any internal alterations of a structural nature have been carried out (creating openings or knocking through into other rooms) please let us know. This will enable us to investigate the quality of the work (by identifying any guarantees) and will allow us to check whether all necessary consents and authorities were obtained.
5. **Property Searches** - the seller will provide us with some information on the property but it is vital that enquiries are made of the relevant authorities as a means of adding to the property investigation. The searches we always advise a buyer to carry out (and where a mortgage is being obtained these are often mandatory) include:
 - (a) **Local authority search** – we will carry out standard enquiries of the Local Authority, which give information about the property, particularly in relation to planning matters, the adoption of roads and details of any compulsory purchase or enforcement action that has been taken or is the process of being taken against the property / its owners. Please note however that this search does not necessarily tell you about neighbouring properties. If you have a particular concern, please speak to us. If there is adjoining land which is unbuilt upon, you may wish us to make additional enquiries or visit the planning offices yourself so as to establish whether a development or building could take place on that land.
 - (b) **Water and Drainage search** - we will carry out a search of the local water / drainage authority to make sure the property benefits from a connection to mains drainage and sewage and to find out if there are any drains within the property boundary (which others might have rights to use). If there are any public drains running in the property boundary, we will need to make sure that these have not been built over (by an

extension or erection of a conservatory for example). The building over of drains is heavily regulated.

- (c) Mining search – we will make enquiries of the Coal Authority as to any past mining activities if the property is in a mining or former mining area. The search will reveal whether there have been any subsidence issues arising as a result of any mining and will reveal whether the property is located within an area in which future coal mining is planned / likely.
- (d) Environmental / flood search – we will carry out a search to ensure the property is not deemed to be contaminated. This is important as under new legislation a landowner is potentially responsible for any clean-up costs where land is polluted from previous uses. The search will reveal any past uses (i.e. commercial uses) and will reveal whether or not the property is located within a flood risk area which will have an important impact on whether buildings insurance is available.
- (e) Other searches - there are other searches that may be appropriate for us to consider obtaining depending on the location of the property, such as utility searches (if the property has overhead power lines / underground pipelines affecting it), commons searches (if the property is located near a village green or common land), and tin mining / Cheshire brine searches (if the property is located in an area where this may be relevant) to name but a few.

It is the policy of HSR Law to carry out, in every instruction where a purchaser is obtaining a mortgage, a Local Authority Search, a Water and Drainage Search, an Environmental Search (with flood risk assessment) and, where appropriate, a Coal Mining Search. This is the standard search package that we quote for.

6. **Your Mortgage** – if you are buying with the help of a mortgage we will have to prepare a report to your mortgage provider confirming that the terms of the transaction (and the property itself) complies with a variety of standard minimum lending requirements. We would emphasise the following points: -

- (a) It is normally your responsibility to insure the property from exchange of Contracts (see below). If you are not arranging this through your mortgage provider then make these arrangements provisionally at an early stage so that you can source the right arrangement for you. It can sometimes be the case that if the property is located in a flood risk zone or was previously used for a possibly contaminant use, that the premium might be very high. Occassionally insurance might not be available at all. Please note that the interest of your mortgage provider will need to be noted on the policy;

- (b) It is your responsibility to ensure that you are totally happy that the mortgage you have either chosen, or been advised on, is right for you and your purposes. You need to make sure that you can repay the mortgage each month, and be sure as to how you are going to repay the capital on the mortgage if you are taking an “interest only” mortgage.
- (c) If you are taking an “interest only” mortgage, you should make sure that if you are repaying the capital at the end of the mortgage term, that you understand how you will do this and if you are repaying by means of some financial investment such as an endowment policy then it is important that this will be put in force at the right time. In addition you should monitor the performance of any investment regularly to ensure that you have sufficient funds.
- (d) **IT IS VERY IMPORTANT TO REMEMBER THAT A FAILURE TO KEEP UP WITH YOUR MORTGAGE REPAYMENTS COULD SEE YOUR HOME REPOSSESSED.**

- 7. **Acting for you and your Mortgage Provider** - if you are purchasing the property with a mortgage, we will often be asked to act for your mortgage provider as well as you. We will owe the same duty of care to them, as we do to you. This is completely standard practice, but from time to time solicitors find themselves in situations where a conflict may arise. For example, if a buyer is planning on subletting the property but does not wish the mortgage provider to know, a solicitor might have to consider whether he or she can continue to act. Similarly, a buyer might have borrowed money from family or friends to fund the purchase, but similarly not want the mortgage provider to know. Again, a solicitor will be put in a conflicting position here and may have to cease to act. It is important for you to note that where a conflict arises, we may not be able to continue acting and this could prejudice or delay your completion. We would always advise upon total honesty and transparency in all dealing and we would urge you not to place your legal adviser in a conflicting position.
- 8. **Life Cover** – linked to your mortgage, if you have been advised upon, or deem it appropriate to have some form of life cover with your mortgage, you should ensure that arrangements are made at an early stage so that the policy can be put in place at the right time.
- 9. **The way in which you own the property** – if you are buying the property with another person(s) then you will be asked by us to sign a separate form to choose the type of ownership you wish. You can own the property as either joint tenants or tenants in common and our note entitled Joint Ownership Information Form provides further information on this.

10. **Exchange of Contracts** – at the time you sign the Contract it does not become legally binding. It only becomes binding on you when the solicitors agree to “exchange”. At the time you sign the Contract, the date of Completion will often not be known and will only be inserted into the Contract on the day of exchange. Upon exchange of Contracts the property becomes the responsibility of a buyer to insure; you should make sure any building insurance cover matches the reinstatement value set by your mortgage provider (if any) as this will be a condition of your mortgage. All usual risks should be covered (including fire, theft, subsidence, flooding etc - *this is not an exhaustive list*). Unless you have a special agreement with the seller, you will not be allowed to occupy or enter the property until the completion date.
11. **Damage to the property after exchange of Contracts but before the Completion Date**
- On exchange of Contracts, the property will become your risk. This is the standard contractual position adopted at English Law. If the property is damaged after exchange of Contracts, you will (save in limited circumstances) be obligated to complete your purchase of the property from the seller at the full purchase price. If you insure the property (as is recommended) you would make a claim for rebuilding / repair from your insurer (subject to any rights the seller’s insurers may have or look to impose to prevent circumstances in which the seller and buyer both try to recover losses). If the property is damaged between exchange of Contracts and the completion date, the mortgage provider is very likely to withhold some / all of the mortgage funds. It may agree to advance funds, secured on the damaged property, in order to pay for reinstatement works. However, the terms of that loan are likely to be different to those agreed for the originally intended mortgage (which was to be secured by a charge over an undamaged property of established value). The funds for reinstatement are likely to be made available only in tranches, as the work is completed, and the mortgage provider may charge a higher rate of interest, at least for the period until reinstatement is complete. There is, however, a common law obligation on the seller to exercise reasonable care when dealing with the property and so you might have a remedy against a seller where, between exchange of Contracts and completion, the seller itself causes damage to the property, allows trespass, or stops observing covenants or the terms of a lease.
12. **Breach of Contract** – once Contracts have been exchanged, you cannot unilaterally withdraw from completing the purchase, save in limited circumstances. If you simply change your mind, or cannot afford to complete your purchase, and wish to break the Contract, the following consequences could apply:-
 - (a) If the balance of the purchase price is not paid to the seller’s solicitors by a certain time on the completion date, a seller’s solicitors may serve a “notice to complete” requiring

- you to complete within a period of ten working days after the date of the notice. If this happens you could be charged penalty interest (payable on completion);
- (b) If you fail to comply with that notice to complete, the seller can withdraw from the sale and keep your deposit. The seller may also be able to claim damages from you for any other loss arising out of your breach of Contract (such as lost estate agent fees, removal costs, remarketing costs and other damages and costs). The seller can sell to anyone else after this time.

If the seller wishes to withdraw from the Contract after exchange, certain remedies would also be available to you, such as the return of your deposit (plus interest), the right to cancel the Contract (following service of a notice to complete to the seller) and in some circumstances a buyer can have the right to compel or force a sale.

13. **Completion date** – this is the moving date. This is the date on which the monies will be paid to the seller’s solicitors and you will be entitled to take the keys and move in. On the completion date, we would always advise you to check and read the utility meters so as ensure that you are taking over the supply on the correct terms, on the correct date.
14. **After Completion** - once you have completed your purchase, our job is still not complete. We will need to file a Stamp Duty Land Tax return at HMRC on your behalf and we will write to you during the conveyancing process regarding this. We will need to hold all Stamp Duty Land Tax and post completion registration fees and costs in your client account on completion in order to settle these sums immediately. We will make an application to register the purchase of the property and your mortgage at Land Registry. Land Registry will not complete the registration if the Stamp Duty Land Tax return is not completed. Land Registry will provide us with a document (much the same as the seller’s solicitors provide at the outset of the process) showing you as the new owner, the date of your ownership, the mortgage you have taken and will reference any joint ownership matters. We will send copies of these documents to you and retain the originals or send the originals to your mortgage provider as the case may be.
15. **Wills** – buying a house is a good time to review your existing Will to see that it meets your present circumstances. If you do not already have the security of a properly drawn up Will, then you should make an appointment with us to remedy that position.