



SVETLOVA LLP



**CONVEYANCING &
BUYING PROPERTY**

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A GUIDE TO CONVEYANCING & BUYING PROPERTY

In the United Kingdom property buying process, a legal process of transferring ownership of a property from the seller to the buyer, is usually carried out by a solicitor.

The whole property buying process from the moment of instructing the lawyer to the moment you receive the keys to the property and the property is registered in your name is handled by the solicitors.

Whether you are selling or buying a home, it is good idea to know what is involved, and to understand how the property buying process works.

HOW LONG WILL IT TAKE?

The process usually takes approximately 6-12 weeks.

INSTRUCTING A SOLICITOR

Having decided to buy or sell a property you will need to instruct a solicitor to transfer the legal ownership of the property.

The solicitor will send you a Letter of Engagement which outlines their fees, terms of business and confirms you have instructed them to act for you.

You need to fill in, sign and return all requested documents as quickly as possible to give the solicitor the authority to start acting on your behalf and to collect the important information needed to buy or sell a property.

WHEN SHOULD I INSTRUCT MY SOLICITOR?

If you are selling speak to your solicitor before you put your house on the market. If you are buying make contact before making an offer.

ENQUIRIES AND SEARCHES

The solicitor will write to the other side to confirm they are instructed. Buyer's solicitor will request a copy of the draft contract and any other details, such as the property's title and the property forms.

The buyer's solicitor will examine the draft contract and supporting documents and if necessary raise enquiries regarding the property or paperwork with the seller's solicitor.

Although the solicitor will deal with the paperwork on your behalf, you will be required to go through the standard forms and let the solicitor know if you have any queries or concerns.

The buyer's solicitor will also order property searches, including a Local Authority Search, to ensure there are no issues with the property or other factors you should be aware of. These provide essential information about the property, such as property boundaries, any existing disputes, planning constraints or permissions, draining, environmental issues and right of way.

Some searches are mandatory, others will be recommended by the buyer's solicitor and others will be required by the mortgage lender to protect them from any liabilities that the property may have.

- Local authority searches - checks local planning issues, local road and rail schemes, whether the road is adopted etc.
- Land Registry searches - these confirm that the seller is the legal owner of the property
- Water authority searches - confirm that the property is on mains water, is connected to drainage.
- Environmental searches - checks a wide range of environmental factors such as local contaminated land.
- Chancel repair searches/indemnity policy - these make sure that the property isn't affected by an obligation to contribute to local church repairs
- HS2 search - checks whether the property will be impacted by the HS2 route

Searches usually take around 2 weeks but can take much longer if the Local Authority is overloaded.

MORTGAGE

If applicable, the buyer will need to get the mortgage in place. The buyer's solicitor will receive a copy of the mortgage offer and go through the conditions.

Buyers will have to sign mortgage documentation and return it to their solicitor. Lender might raise additional enquiries.

Before exchange of contracts can take place the lender will request Buildings Insurance for the Property.

PRE-EXCHANGE

The buyer and the seller will agree on a date and time to exchange contracts.

The buyer will be asked to sign and return the contract to their solicitor so that it is ready for exchange. The buyer will be requested to make arrangements to transfer the deposit funds, usually 10% of the purchase price, into buyer's solicitor's account so that it is cleared in time for an exchange.

A completion date is agreed between the two parties, being the date when the balance of the purchase price is sent to the seller's solicitors and transaction is completed.

EXCHANGING CONTRACTS

Once the signed contract and the deposit are received by the buyer's solicitors the contracts will be exchanged.

One exchange of contracts both solicitors read out the contracts over the phone to make sure the contracts are identical, date the contracts and then immediately send them to one another in the post. The deposit funds are transferred to the seller's solicitors. The completion date will also be set by writing the date in the contract.

Once the contract have been exchanged both parties are legally committed to proceed with the transaction. If the buyer does not complete the purchase on the set completion date, the buyer will lose the deposit.

The buyer's solicitor will send a financial statement, known as a completion statement to the buyer detailing the balance required from the buyer to complete the purchase, which will need to be cleared into the solicitor's bank account at least one day before completion. The statement will also set out the solicitor's fees, disbursements, stamp duty and any other relevant costs.

PRE-COMPLETION

Both parties will be asked to sign the transfer deed a document transferring legal ownership of the property on completion and return it to your solicitor.

COMPLETION

Completion is usually set around midday on the specified date, although in practice takes place when the seller's solicitor confirms that they have received all the money that is due.

Once this happens the seller should drop the keys at the estate agents for the buyer to collect. At this stage property buying process is over, and the buyer can move in to the property.

POST COMPLETION MATTERS

The buyer's solicitor will make an application to register the property in the buyer's name at the Land Registry, an official register of the ownership of land and property in England and Wales.

If applicable, the buyer's solicitor will also:

- Pay stamp duty land tax on the buyer's behalf.
- Send a copy of the title deeds to the buyer's mortgage lender, who will hold them until the loan is paid off by the buyer.

Once the property is registered the buyer can collect all the original documentation from their solicitor.

FREQUENTLY ASKED QUESTIONS

What is exchange of contracts?

On exchange of contracts the completion date (moving date) is confirmed and the transaction becomes binding. Contracts are exchanged between solicitors, on the telephone. You do not need to be present for the solicitors to exchange contracts.

How is the exchange deposit payment made?

In the UK all the payments in relation to the property transactions are made through the parties' solicitors. The exchange deposit is transferred to the buyer's solicitors by the buyer and it is then transferred to the seller's solicitors on exchange.

The deposit will be held by the seller's solicitor as either stakeholder or agent.

If it has been agreed that the deposit will be paid to the seller's solicitor as stakeholder for the seller, the seller's solicitor will hold the deposit on behalf of both parties. They cannot pass it to either the buyer or the seller without consent of the other, at least until completion or if there is default by either party.

Therefore, if the matter cannot be completed for any reason which is not the buyer's fault, then the deposit can safely be returned to the buyer. If, however, the inability to complete the matter is due to a fault on the buyer's part, then the deposit can be released to the Seller.

If the parties have agreed that the deposit is held as agent for the seller, the solicitor may pass the deposit to the seller at any time, usually as soon as the deposit has been paid.

Are my deposit funds protected?

Solicitors are required to keep a client's money safely and separately from their business's money, typically in a specially designated client account at a bank or building society. That way, if the business were to go bust, the money in the client account would be off limits to any creditors of the business.

The Financial Services Compensation Scheme protects deposits if a bank or building society fails. In addition, solicitors are required to have professional indemnity in place to protect against possible losses. Therefore, your money is safe with the solicitors until completion of the purchase.

Can I let the property?

If you are buying with a mortgage you must get the consent of lender before letting your property. If you own a leasehold property you must check the terms of the lease to make sure that letting is permitted.

Can I extend my property?

There can be restrictions preventing extensions or requiring consent of another landowner. Larger extensions require will most certainly require local authority planning permission and any structural work will also need building regulations approval.

Some areas are designated conservation areas and special planning restrictions apply which often prevent extensions. You should notify the solicitor of any extension plans before you commit yourself to a purchase.

Do I need buildings insurance?

The responsibility for the insurance of the property is passed to the buyer with effect from the moment contracts are exchanged. Therefore, the house becomes the buyer's responsibility as soon as the contracts are exchanged and this is the date from which you need to have valid insurance policy in force.

It is not advisable to wait until you move in to buy the building insurance policy. If the property sustains any damage between the exchange of contract and your moving date, you will still be committed to buying the property and the buyer will be responsible for carrying out the repairs. Therefore, the buyer has to make sure that there is an existing building insurance cover or obtain an insurance cover from the moment you exchange contracts.

There is no legal obligation to have buildings insurance, however, if you are taking out a mortgage, your mortgage provider will usually insist that you have it. If you don't have a mortgage, there's no obligation for you to have buildings insurance. However, it is advisable to always have an insurance cover in place.

What does buildings insurance cover?

Buildings insurance covers:

- Your home's structure (walls, windows, roof, etc)
- Outside fixtures (fences, sheds and garages)
- Permanent fixtures and fittings (including the bathroom suite and kitchen units)

Depending on the insurance policy, it will protect you from a range of eventualities, such as:

- Fire, floods, storms
- Subsidence and/or heave
- Fallen trees or lampposts

I am looking to buy a property with another person. What are different types of ownership?

Joint Tenants

In the UK the property can be held by individuals as joint tenants or tenants in common.

When you co-own a property as joint tenants, each co-owner owns the whole of the property and neither owner has a specific or identifiable share. As a joint tenant, you don't own specific shares in the property, and you cannot leave part of the property to someone else in a will. If one of the co-owners dies, the property automatically passes to the other co-owner. This is known as 'right of survivorship'.

You can't re-mortgage or sell the property without the agreement of all the other owner. However, if there is a dispute, an owner can apply for a court order.

Tenants in common

Under a tenancy in common, each co-owner owns a specific share in the property. These shares don't have to be equal size. It is up to you to decide how much each share will be.

You can give away, sell or mortgage your share. The right of survivorship does not apply, tenants in common can each leave their share of the property to whoever they like in their will.