



PURCHASING RESIDENTIAL PROPERTY IN ENGLAND

A Legal Guide

1. PRELIMINARY

Most purchasers buy a house or flat through estate agents who advertise properties for sale locally and on the internet.

The estate agents act for the seller, who pays their commission. Their particulars will normally state the price asked for the property. When negotiating the price with either the seller or his agents, you should ensure that any offer is made “subject to contract”. This is important so that you do not inadvertently create an enforceable contract.

2. CONVEYANCING

Once you have found a suitable property to purchase and your offer has been accepted in principle, the conveyancing process begins. As your solicitors, we will receive a memorandum of sale, with details of the agreed purchase price and the seller’s solicitors, from the estate agents, who will also send to us the Home Information Pack and sales brochure. We will write immediately to the seller’s solicitors to request a draft contract and legal papers – the first distinct stage in a conveyancing transaction.

We will consider the draft contract, which will contain a description of the property, a statement of the price, and various conditions relating to the transaction. We will

also review the property information forms and other documents of title. We will also examine the title to the property which, in most cases, means studying copies of the entries of the title maintained at the Land Registry and, if the title is leasehold, a copy of the lease.

The Home Information Pack contains (as compulsory elements) a Property Information Questionnaire completed by the Seller, an Energy Performance Certificate, the Land Registry title, a personal or official local authority search, a water / drainage search and (if leasehold) a copy of the lease.

Thereafter, we prepare written additional enquiries based on our investigations, and on any survey sent to us and submit these to the seller's solicitors and request their replies.

Depending on the date and nature of the search within the Home Information Pack, it is also necessary for us to carry out a local authority search in order to ascertain crucial matters such as whether any necessary planning permissions have been obtained, whether there are any outstanding notices affecting the property or if any road schemes are threatened.

Once our investigations are complete, we will send you our comprehensive written report, together with copies of relevant documents. We will also send you the contract in its approved form, with a request for you to sign and return it. You will be asked to provide us with the deposit monies by bank electronic transfer (see later).

When a completion date is agreed with the seller's solicitors, contracts are exchanged. At this moment, you will be legally committed to purchase the property. Either the seller or the purchaser is free to withdraw from the transaction at any time before exchange of contracts without penalty.

The second stage of conveyancing (between exchange of contracts and completion) involves our preparing the transfer documentation and undertaking various title and other searches and, if you are borrowing part of the purchase monies, the preparation of the mortgage documentation and reporting on title to the lender.

On completion, you will pay the balance of the purchase monies to the seller and you will take possession of the property. It is at this stage that the legal ownership in the property passes from the seller to you.

There is no fixed time span for a conveyancing transaction. As a general rule, the pre-contract stage may take up to five or six weeks and the second stage between two and four weeks. However, provided both the seller and the purchaser are in agreement, and the parties' solicitors co-operate, it is perfectly possible to reduce considerably both the pre-contract and post-contract stages. Indeed, we have on occasions completed conveyancing transactions in less than a week after receiving instructions.

3. THE DEPOSIT

When contracts are exchanged, you will be required to pay a deposit to the seller's solicitors. This normally amounts to 10% of the purchase price although sometimes a seller will accept a lesser sum, e.g. 5%. The deposit monies will be held by the seller's solicitors either as "agents for the seller" or as "stakeholders". The former means that the seller is entitled to receive the deposit monies immediately contracts have been exchanged. The latter (which is more usual) is preferable as the seller will only receive the deposit on completion and his solicitor is obliged to retain the monies in his client bank account until then.

You should be aware that the seller is likely to be able to keep the full deposit monies if you default and fail to complete your purchase of the property, as well as retain other remedies against you.

4. **FINANCE**

You may be providing the whole of the purchase price from your own resources or you may need to take out a mortgage to finance your property purchase.

If mortgage finance is required, we suggest that you seek our advice before committing yourself to a particular lender. If necessary, we can put you in touch with mortgage brokers and independent financial advisers to help you find the best financial package to suit your particular requirements.

The lender will wish to be satisfied that your property will be adequate security for the loan. To this end they occasionally instruct separate solicitors to represent them, but in most cases, we will be instructed to act for the lenders as well as you. This has distinct cost advantages in addition to avoiding delays which might occur if the lenders are represented by other solicitors.

It is essential that you obtain a satisfactory written mortgage offer before you exchange contracts for the purchase of the property.

5. **SURVEYS**

We would recommend you to instruct a chartered surveyor to undertake a building survey of your property before you are committed to purchase it. If need be, we can suggest the names of some surveyors who are known to us. The advantages of obtaining a building survey report are:-

- The cost is negligible when compared with the money you stand to lose if the property is subsequently found to have a major structural fault.

- Your surveyor will provide you with details of works required to be carried out. He will also advise you of the approximate cost of carrying out the works. This information could be a vital negotiating tool and may enable you to persuade the seller to reduce the price of the property.
- Your surveyor may be liable to you in damages if you later discover a problem with the property which he omitted to mention to you. He will be insured against such claims.
- Your surveyor may notice damp, woodworm, dry rot, asbestos or other adverse issues which may otherwise go unnoticed.

If you are obtaining a mortgage, you may be tempted to rely on the lender's surveyor's report rather than incur extra expense by instructing your own independent surveyor. A word of warning: this is risky as you may have no legal recourse against the surveyor if you later discover a major problem which was not mentioned in his report. Furthermore, the survey element of his report will be minimal – the prime interest of the lender will be to obtain a valuation of the property to ensure that it is adequate security for a loan.

6. TAX

If you are non-resident in the UK you will have to consider the most tax efficient method of purchasing your property. For example, it is possible that on your death your property could be liable to UK Inheritance Tax. This may sometimes be avoided by using an offshore company as a vehicle for acquiring the property. Alternatively, depending on your circumstances, you might be advised to purchase the property jointly with another person. There are several possibilities and we will be pleased to refer you to one of our team specialising in tax and estate planning to advise on this important aspect of the transaction with you.

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This is intended only to be a brief guide to purchasing a property in England and is by no means exhaustive in its content. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances please contact us.