

COMMERCIAL
PROPERTY LAW

RESIDENTIAL
PROPERTY LAW

ANCILLARY
LEGAL SERVICES



Kelly & Co.
property solicitors



HOME BUYERS LEGAL GUIDE

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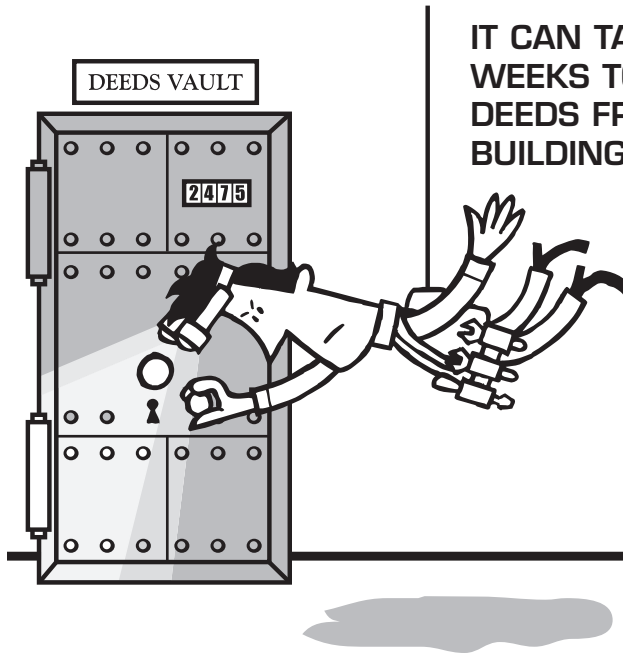


HOMEBUYERS LEGAL GUIDE

There are a few ways in which you can help us:

1. Please try to telephone between 10.00am and 4.00pm to enable incoming and outgoing post to be processed. We send out or receive thousands of letters in a year!
2. Send us an email! These will be answered the same day.
3. If you telephone and are unable to speak to the person dealing with the matter please wait for him/her to return your call. We may wish to make some enquiries in order to return your call and give you information. We may be waiting for someone to telephone us back. We will endeavour to return your call on the same day.
4. We would prefer to meet you at our offices when you sign the contract however we act in property transactions all over the country and can deal with you by post if you prefer.
5. If you wish to attend the office please telephone first and make an appointment.
6. Thank you for instructing us. If you have been pleased with our service please tell your friends. If not please tell our senior partner, Patrick Kelly.





IT CAN TAKE TWO OR THREE WEEKS TO OBTAIN THE DEEDS FROM ANY BANK OR BUILDING SOCIETY!

By the time you read this you may have accepted an offer for your present home or made an offer for a new home. You may even have agreed your new mortgage "in principle". You may well be told you are now "ready to go" and that there will be a few weeks "hold up" while the lawyers deal with the conveyancing.

THERE ARE TWO STAGES TO YOUR CONVEYANCING

1. The time from when you make or accept an offer up to SIGNING AND EXCHANGE OF CONTRACTS.

Before exchange takes place either party can seek to re-negotiate the price, sell to someone else, buy a different property, or just decide not to sell or buy at all. Any costs incurred at this time are at the expense and risk of the person incurring them. Therefore if the owner of the house you want to buy changes his mind about selling to you before contracts have been exchanged you will not be able to claim from him (for example) the cost of the survey you had carried out.

2. The time between EXCHANGE OF CONTRACTS AND COMPLETION

Once contracts have been exchanged both parties are legally bound and the price and the completion (i.e: moving) date are fixed. If either party then tries to change the terms of the contract without the agreement of the other they are in breach of contract and can face expensive legal action.

WHY ARE THERE TWO STAGES?

We have these two stages because if there is anything unsatisfactory about the transaction either party has the opportunity to pull out without facing a lawsuit. All sorts of things can happen which might cause a buyer or seller to change his mind.

- Your survey might reveal that the charming 16th Century cottage you have always wanted is in fact riddled with woodworm and about to fall down at any minute.
- The local authority search might reveal that a new motorway is to be constructed and it will go straight through the back of the property you want to buy.
- We recommend that an "Environmental Search" is carried out on every purchase. The land your house is built on could have been contaminated years before by industrial use eg. chemicals or used as a landfill site. Following new legislation local authorities can force the current owner of a contaminated site to clean it up at their expense even though they knew nothing about the problem.
- The length of the lease on the flat you want to buy might be too short for you to obtain a mortgage on or might be too short by the time you come to sell for a prospective buyer to get the mortgage he needs.
- Personal situations can change unexpectedly eg. redundancy.

If anything like this happens before exchange of contracts it is simply a matter of telling the estate agents you are not proceeding.

ALRIGHT - BUT DOES IT HAVE TO TAKE THIS LONG?

No!!

IF you are not having a mortgage **AND** you do not care whether the property has woodworm/dry rot/subsidence **AND** you don't mind that because the seller owes money to all and sundry-his creditors will sell the house **AFTER** you buy it.....then the whole process can be ignored and you can move the same day IF, that is, the seller doesn't mind. But even if you have instructed Solicitors to act for you and your Building Society is carrying out a survey it can still seem to take ages.

The cause is what is usually called "the chain".

For you to exchange contracts the people who you are selling to and from whom you are buying must also exchange contracts, the people whom they are selling to or buying from have to..... and so forth. This is the "CHAIN". And like all chains the house moving chain is only as strong or as fast as the weakest or slowest link. So if anyone in your chain has not got a mortgage offer or disappears on holiday for two weeks or needs to wait to the end of the month for a cheque before paying a surveyor then the whole chain which includes you is slowed down or even broken.



The more people in the chain (and there is no real limit in theory as to how long a chain might be) the more things there are to be done and the greater the possibility of there being a delay.

WHAT HAS TO HAPPEN BEFORE I CAN EXCHANGE CONTRACTS?

There are three main stages

A Survey

B Mortgage

C Legal work-this is the "conveyancing"

Let us consider these in turn.

A. SURVEY

1 You should always have a survey carried out. Agree the fee with the surveyor before he inspects the property. The fee is a wise investment against the possibility of there being a defect in the property even if the property is new.

2 DO NOT rely on

(a) **your lender's survey.** First it is done for the lender and not for you so that the surveyor is only responsible to the lender. Secondly, it is not a survey but a valuation to find out whether the property is good security for the amount you want to borrow.

However it will probably save you time and money if you can instruct the lender's valuer to carry out the survey for you at the same time as the lender's valuation is carried out. Check first to see how much it will cost.

(b) **the owner revealing possible defects.** We ask as a matter of course for a completed property information form. The seller (assuming he tells the truth) can only answer to the best of his knowledge and there may of course be defects he does not know about.

3 Most surveys seem very worrying the first time you read them. Remember you pay the surveyor to be thorough and point out every defect. At the end of the survey the surveyor will say whether all in all the price asked is a fair one.



4 The survey report may state that a certain amount of work needs to be carried out. If you will have to spend more than you expected when you negotiated the price you will have a good reason to seek a price reduction which you should negotiate with the estate agent or the seller direct if there is no estate agent.

5. If the result of the survey is really bad you may be unable to obtain the mortgage you want and decide to buy another property. Tell the estate agent or the seller

B. MORTGAGE

What you and your solicitor need is a **written mortgage offer**.

AGREEING A LOAN "IN PRINCIPLE" IS NOT ENOUGH. YOUR LENDER WILL HAVE TO:-

- (a) Have their surveyor check the property (see Survey).
- (b) Usually obtain confirmation of your income.
- (c) Check that you are not seriously in debt.

This process can take anything from a few days upwards. If you think it is taking too long ask whoever is arranging your mortgage to find out if there are any problems.

Before too long you should receive a written offer of a mortgage. You will usually need to accept this offer, probably by signing and returning one copy to the lender. Before you do make sure you will have enough money to complete your sale and/or purchase (do not forget disbursements and your legal fees, agent's commission and removal expenses) and read any conditions on the mortgage offer carefully.

Quite often various amounts such as arrangement fees will be deducted from the mortgage advance so that when the day of completion arrives we will not receive the full amount of the loan. Remember

to allow for these deductions in your calculations.

Your lender may deduct a sum for the first year's household insurance, or the first month's interest. There may be a deduction for an indemnity policy.

This is the premium payable by the borrower to cover the difference between what the lender is prepared to lend on the security of your new home and the amount which is in fact being loaned.

Your lender may hold back a certain sum until you have carried out specified works to the property. This is called a "retention". If this was unexpected you may be able to negotiate a reduction in the purchase price and you should contact the estate agent or the seller direct if there is no estate agent.

Once you accept the mortgage offer the lender will give details to their solicitors to do their legal work. Usually the lender will instruct us to act for them which makes sense because we have already checked the title deeds and know all about your house purchase. Some lenders only instruct one particular firm of solicitors to act for them and this will cost you money.

C. LEGAL WORK

Your solicitor needs to do the following before exchange of contracts:

	ON THE SALE	ON THE PURCHASE
1	Obtain the title deeds to your property and usually upon receipt of the same a copy from the Land Registry	Submit the Local Authority and any other relevant searches once a plan is received from the seller's solicitors
2	Prepare and send the draft contract to the buyers solicitors	Receive and approve or amend the draft contract and a copy of the title from the seller's solicitors
3	Reply to the enquiries received from the buyers after consulting you	Check the papers received and send enquiries to the seller's solicitors
4	Receive one copy of the draft contract back from the buyers solicitors with any proposed amendments	Receive and check the replies to our enquiries from the seller's solicitors
5		Receive and check the searches
6		Receive and check details of any mortgage offer from your lender
7	Agree with you any unusual provisions in the contract	Agree the amount of the deposit, obtain a cheque from you and clear this through our bank account
8	Obtain your signature to the sale contract	Report to you with the contract and obtain signatures to it
9	Agree a completion date	Agree a completion date
10	Exchange contracts	Exchange contracts

C. LEGAL WORK

After contracts have been exchanged the following work is carried out:

	ON THE SALE	ON THE PURCHASE
1	Obtain repayment figure for your existing mortgage and details of commission due to your estate agent	Inform you of exchange and remind you to put in hand your life assurance and to insure the property
2	Obtain your signature to the transfer deed	Make further searches against the title and against you
3		Obtain your signature to the mortgage deed and obtain any funds required by you
4		Prepare the transfer deed for the seller to sign
5		Request the mortgage money from the lender
6	Complete the sale and receive the monies	Complete the purchase and pay the purchase monies
7	Send deeds to buyer's solicitors	Pay stamp duty and register your title
8	Pay off your old mortgage and your estate agents	Check registration
9	Account to you for any balance due	Forward the title deeds to the lender
10	Confirm release of keys to estate agent	

MOVING DAY

If you are buying and selling you should aim to be out of your old home by about 12 noon. The contract usually specifies a time by which you should be out (usually 1.30pm).

The purchase money is sent by telegraphic transfer direct from our client account to the seller's solicitors' bank.

If you have a related sale we must be sure that we will receive the sale monies from your purchaser's solicitors before we can send your purchase monies to your seller's solicitors. Usually these will have been sent by midday but delays do occur due to the large number of transfers involved, especially on Fridays. It is best therefore not to rely upon being able to move at a specific time although in practice most people move into their new homes around 2.00pm.

As we can not be certain what time the monies on your sale will be received we can not guarantee that any monies due to you will be available on the completion date itself. However we try to send out a cheque to you as soon as possible.



AFTERWARDS

If there are monies due to you on completion we will send these to you (or to your bank to discharge any undertaking given by us) as soon as possible.

Our job does not end when you move in. The deed transferring ownership of your new property from the previous owner to you will have to be stamped by the Inland Revenue, and then the deed sent to the Land Registry to have the previous owner's name removed and yours inserted. The Land Registry can take anything from two months upwards to complete the registration. When the deeds are returned we will send them to your Building Society or Bank if you have a mortgage. If there is no mortgage we have a deeds custody facility and are happy to hold the deeds for you and to your order. There is no charge for this facility.