

Buying Or Selling Your Home

A Simple Guide



DW Solicitors

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There is often a misconception that the process merely comprises of the lawyers checking the title and ensuring the seller has good title to sell the property. The lawyers acting on the purchase need to consider a number of other matters and factors.

The lawyers, in addition to checking the seller's title to the property, also carry out various due diligent searches to ensure that the property is not subject to any adverse matters.

The searches include a Local Authority Search, a Water Board Search, Environmental Search and a Chancel Repair Liability Search. There may, in addition, be other searches that may be implemented, depending upon the location of the property.

The lawyers, in addition to carrying out the title and search checks also need to coordinate the purchase with any related sales and/or purchases.

It is common for the sale of the property that the buyer is purchasing to be dependent upon the buyers selling his/her own property and the seller buying a property. This can give rise to a whole chain of sales and purchases upon which the client's purchase is dependant.

Unfortunately, it only takes one of the transactions in that chain to fail to cause the entire chain to break, unless bridging finance is taken out by the seller who suffers the abortive transaction.

DW Solicitors would not normally advise any client to take out bridging finance in such circumstances if there is any uncertainty that the client would not procure a new buyer without delay, as the client may otherwise be in the scenario whereby the client is paying a Mortgage and also the bridging loan finance. In most cases, that can only be sustained by the client for a short period.

DW Solicitors would seek to clarify that there is sufficient funding for the purchase.

Often, in addition to the purchase being dependant upon the proceeds of the related sale, often it is also dependant upon (unless the purchase is wholly a cash purchase) a satisfactory Mortgage Offer.

We would seek to substantiate that any conditions set out in the Mortgage Offer will and can be satisfied in sufficient time for the monies to be released to procure completion. That needs to be done before contracts are exchanged.

If it is not done before exchange of contracts, the client may find himself/herself under an obligation to proceed with the purchase, but unable to finance it as a consequence of the Mortgage Offer not coming to fruition as a consequence of the client not being able to satisfy the conditionality in the Mortgage Offer in sufficient time to procure the release of the Mortgage funds.

There are two parts to the conveyancing transaction, the period up to exchange of contracts and the period between exchange of contracts and completion.

Simultaneous exchanges and completions would normally need to occur with every property in the chain at the same time given that generally the majority of the transactions in the chain will be reliant upon all of the transactions in the chain occurring.

In addition to all of the transactions in the chain exchanging simultaneously for the purpose of funding issues, it is generally also relevant for all sales and purchases to be exchanged simultaneously to avoid the risk of the client being left homeless. There is the possibility that if a party exchanges on their sale intending to exchange on the proposed purchase as soon as possible after that, the seller of the property to be purchased may change his/her mind. In that event, the selling client could be left homeless without any recourse against the proposed seller.

DW Solicitors would, prior to exchange of contracts, seek to establish that the client has insurance in place. Under English Law, it is the land that is being purchased. The fact that there is a building on it is, to an extent, irrelevant. Upon exchange of contracts, an obligation is imposed on the buyer to buy that parcel of land and that obligation is not normally affected if the building situated on the land is damaged, destroyed or burnt down in the period between exchange and completion subject to whatever courses of action there may be under the Agreement for breach of contract. It is, for that reason, essential

that building insurance is taken out on exchange of contracts for the property being damaged or destroyed.

Clients are also advised to give some consideration as to what happens in the event of one party dying or becoming incapacitated prior to the matter completing. We, as a practice, are not authorised to give advice on the types or the providers Insurance Policies, but do suggest that this is something that does need to be considered and that clients need to liaise with their financial advisor in respect of ensuring that they are sufficiently protected.

We consider how your property is to be held. There are two ways that properties can be held, jointly or in common. This is detailed further in our note on "How to Hold a Property".

In considering how the property should be held, it is emphasised that for inheritance tax purposes it can sometimes be more tax efficient for the property to be held on an "in common" basis. If it is decided to hold the property on an in common basis the clients would need to make sure that they make provision for their interest in the property passing in accordance with their Will.

This is particularly important in respect of unmarried couples, who would not have any financial provision under the intestacy rules to any of their partner's estate where he/she dies without making a Will. This is detailed further in our note on "Why Should I Make a Will".

Often clients, in particular who are divorcees, would wish to have their respective interest in the property documented in a Trust Deed, especially if they have children from an earlier marriage or one party is providing a large deposit. This is considered in more detail in our note on "Trust Deeds".

There are often other considerations. If one of the parties was particularly poorly, consideration would need to be given as to whether or not there should be a Power of Attorney granted.

There are, of course, some events for which no substantive safeguards can be implemented. By way of example, this could be the death of one of the parties. This is particularly significant, especially when the deceased is one of the sellers and the property is held on an "in common" basis, given that the sale could not, in that event, be

concluded until Probate or (if applicable) Letters of Administration are obtained.

The death of one of the sellers would not be a problem where the property is held jointly. In those circumstances, the property would automatically vest in the survivor. If both sellers die the purchase would not be capable of completing until the Estate of the deceased sellers has obtained Probate/Letters of Administration.

The position can also be complicated on a purchase where one of the buyers die if there is a proposed Mortgage, given that that would often trigger the revocation of the Mortgage Offer and leave the surviving buyer in a position of not being able to finance the purchase and left in breach of contract, if contracts had been exchanged.

This is another reason why it is imperative, in addition to building insurance, that consideration is given to Life Policies being put in place at the time of exchange of contracts. The Life Policy proceeds may then provide a pot of money which is required to finance the purchase. That would only, however, be viable if the beneficiary of the Life Policy was specified as being the other buyer as the insurance proceeds would otherwise form part of the deceased buyer's Estate which could not be released until Probate/Letters of Administration are obtained.

It normally takes in the region of 6 to 8 weeks to obtain Probate/Letters of Administration if the affairs of the deceased are not complicated and they are in order.

There is the additional consideration as to whether or not the proceeds of the Life Policy would be sufficient if the proceeds went into the Estate of the deceased. This is a particular problem in the case of unmarried couples where the value of the deceased's Estate exceeds the Inheritance Tax threshold as there would, in those circumstances, be scope for the Life Policy proceeds being taxed at the inheritance tax rate of 40%.

In most cases, even if the Life Policy proceeds are sufficient to fund the purchase, it is likely that they would be insufficient to provide a pot of money for potential claims. Claims may arise as a consequence of the client buyer not being in a position to complete the matter on the Completion Date and the Completion Date being delayed. In that event,

there may potentially be claims from a number of buyers and sellers within the chain for the costs and expenses that they suffer, in addition to interest penalties that may be imposed.

There is also the risk that if the buyer or seller is not able to complete the matter without delay that the other party may be able to terminate the Contract. Where the seller terminates the Contract because of the buyers default the buyers deposit is likely to be forfeited.

Where a contract is breached the innocent party does have the ability to serve upon the defaulting party a Completion Notice. That Completion Notice would, in effect, give the buyer/seller a specified period in which to complete, failing which the Contract would be terminated and in the case of the buyer's default the deposit forfeited and the innocent party having courses of action for any other (if any) damages that they can substantiate.

If the parties believe that there is any significant risk of any of these possible events occurring they should give consideration to proceeding on the basis of a simultaneous exchange and completion, whereby both contracts are exchanged and the matter completed on the same day. It does, however, need to be appreciated that proceeding in that way often causes difficulty, given that everybody involved in the chain would need to arrange removal people, without the certainty of contracts having been exchanged and accordingly run the risk of incurring wasted costs if the matter does not complete on the envisaged day of completion.

DW Solicitors keeps the client informed of matters as they progress. In the process, we provide a detailed Report to the client which takes the form of a booklet which would, among other things, advise the client on:-

The extent of the property being acquired

The provisions of the Contract that is proposed

The Seller's Title

The rights the property will derive the benefit of. Consideration would also be given as to whether any additional rights are required.

Rights that the property is subject to. These may include easements for the benefit of other properties for drains, sewers, water pipes and electric cables that may pass below the property that is being acquired.

Covenants, stipulations and restrictions the property is subject to or that it has the benefit of.

Replies to Enquiries and whether or not any guarantees and/or consents are required based on the various Searches that are obtained and the replies to the enquiries raised.

Guidance on the terms of the Mortgage Offer (if applicable) and the financing of the purchase generally. Where a Lender is involved, DW Solicitors would normally also act for the Lender without any additional charge to the client.

Anyone buying or leasing a property is advised to satisfy themselves generally by way of a survey as to the physical condition of the property they are proposing to buy or Lease.

These notes are not conclusive or comprehensive and should not be relied upon without advice on a particular matter. For further advice or guidance, please contact our office on **01604 624222**