

RESIDENTIAL PROPERTY

A SELLER'S GUIDE

THRINGS

SOLICITORS

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Introduction

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INTRODUCTION

Selling a property you have been living in or you own should be a straightforward process, but how does it really work and what can you do to speed up a property sale? It is important for all parties concerned to have some understanding of the conveyancing process.

Things' Private Property team makes the process as straightforward as it can be for you. This guide has been prepared to highlight some key points and considerations to assist with your understanding of the process and some of the complexities which may arise.

With our specialist knowledge and experience we will give you clear and comprehensive advice on all aspects of the conveyancing transaction. You will find our approach both professional and friendly. We are here to work with you to ensure your property sale proceeds smoothly and we will keep you informed at each stage as your transaction progresses.

WHAT CAN A SELLER DO TO GET READY?

Even before you find a buyer for your property or instruct an estate agent, you may appoint Things as your solicitors. We are able to provide you with a comprehensive estimate of all costs and disbursements which will be incurred in your conveyancing transaction. Costs are our fees and disbursements which are monies that we pay out on your behalf, such as obtaining copies of your property title and other documents from the Land Registry.

The conveyancing process can be expedited if we receive early instructions and deal with our compliance requirement at an early stage. There is some information we will ask you to provide which will enable us to deal with our compliance requirements.

You may be buying a new property and it is important to advise us of all the terms you have agreed with both your buyer and your seller.

IDENTIFICATION

Money laundering regulations require legal firms to have procedures in place to prevent financial crime.

The requirements apply equally to new clients and to those who may have been long-standing clients with the firm.

We will need to obtain information to establish that you are who you say you are and that you live where you say you live. This will help us to ensure that nobody but you is using your identity. In the case of a corporate structure, trust or similar legal arrangement, we will also need to take steps to understand the ownership and control structure of the company, trust or arrangement and to apply measures to verify this.

We will ask for photographic evidence to confirm who you say you are. Typically, this will be by way of passport, photocard driving licence or shot gun certificate etc. We will make and retain a certified photocopy of this document for a period of five years. We may also ask for evidence of your address by way of a recent utility bill or similar.

We will also undertake a search with a third party company which provides identity verification services for the purposes of verifying your identity. The company and the firm will keep a record of the search. This may result in an electronic ID check footprint being left on the search subject's credit reference file. However, this footprint does not adversely affect a credit reference file and is not used by lenders to inform credit decisions.

The firm is charged a fee for the verification search fee. It does not generally seek to make any charge for carrying out an electronic search but reserves the right to do so if circumstances are such that additional enquiries must be undertaken as a result of the search. In those circumstances details of the further charges will be provided in advance.

Although clients may find the money laundering regulations inconvenient, it is worth noting that the regulations are aimed at consumer protection and the maximum penalty for firms or individuals who fail to apply them are severe.

SOURCE OF FUNDS

Current financial regulations oblige us to verify the source of any material payment being made to us from a client. If we are to receive funds from you, we may have to ask you some questions about how the funds have been accrued to comply with the regulations.

WHAT DOES AN ESTATE AGENT DO?

The short the answer is that they sell your property or find you a new one to buy however an experienced estate agent can be a great help with negotiations between a buyer and a seller from a practical position rather from the legal side of the transaction.

Finding the right estate agent for you

An estate agent will be able to give you an expert view on how much your property is worth. Setting a price too high will not attract buyers but setting the price too low will not benefit the seller. It is important to do your research first so you have a figure in your mind for the type of property you want to sell or buy.

There are free online instant valuations available and details of recent property prices can be obtained from the Land Registry. If you are selling your property it is a good idea to obtain valuations from three or four different estate agents and to be aware that some firms may use the strategy of over-estimating the price of your property to try to secure you as a client. A good agent will have experience of what features buyers in the area are looking for and be able to tell you whether it is worth making changes to improve the appeal of your property to achieve a higher price. They should have good local knowledge of the area and experience in selling properties. Recommendations from friends, family and colleagues is a good starting point too.

Selling a property

The estate agent is responsible for everything relating to your property sale including marketing, showing potential buyers around your home, dealing with enquiries and negotiating offer to ensure that the seller gets the best price for their property. Once the sale has been completed the estate agent is the point of contact for the seller to hand over the keys to the buyer and for the buyer to collect these. The estate agent can assist you with organising an Energy Performance Certificate for the property (see page 31).

Buying a property

The estate agent will accompany you on your property viewing (unless the seller is conducting viewings themselves) and should have a good knowledge of the general locality with information on transport, shops and schools. When you make your offer to buy a property the estate agent will contact the seller and explain the reasons for your offer.

During the transaction

The estate agent will deal with the negotiations between the seller and the buyer to agree the price, the timescale and any problems which might occur during the sale and purchase process. If there is a chain of transactions involved then the estate agent will monitor the chain and speak with the various other estate agents involved to try and line up all the various transactions to exchange and complete at the same time.

Your solicitor will deal with the legal aspects of your sale and your purchase. If there are questions which arise or need to be addressed with your seller or your buyer then the estate agent is the person to deal with these points. The estate agent will deal with any price re-negotiation for you, agree the contents being sold or purchased and the prices (if any) of items. They will organise appointments for surveyors and contractors to attend at the property, if necessary.

Estate agents are able to speak to other estate agents in the whole chain and solicitors involved to line up transactions and to report to the seller or buyer on what may be causing a delay in the chain.

WHAT INFORMATION OR DOCUMENTS DO I NEED TO SELL MY PROPERTY?

There are many things a seller can do to be ready for the sale of their property. To start with, there are questionnaires, often referred to as protocol forms, which a seller must complete early on in the conveyancing process which provide general information to a buyer and a buyer's solicitor:

- Property Information Form
- Fixtures, Fittings and Contents Form
- Leasehold Information Form (for a leasehold property)

If a seller considers the questions in the protocol forms at an early stage, the seller can put together and, if necessary, locate any relevant paperwork a buyer may require. The forms help a seller to see what information and documents are required at the outset of the sale.

The Property Information Form and Fixtures, Fittings and Contents Form (and Leasehold Property Information Form in the case of leasehold property) will be passed to the buyer through the buyer's solicitor. They will rely upon your replies in deciding whether to proceed and, if so, on what terms. It is therefore very important to ensure your replies on these forms are full and correct. Any information that you give directly to the buyer must also be full and correct. If you really do not know the answer, you must say so.

Incorrect or even misleading replies may result in the buyer being entitled to claim damages/compensation or even refuse to complete the purchase from you after exchange of contracts.

Where a property is located on an estate and there are shared facilities such as roads, services and communal areas, and you pay a rent charge or service charge for the use of these facilities, it may be necessary to obtain information from the manager of the estate. The manager may need to complete Freehold Management Enquiries to provide information of the costs, expenses applicable to the estate. We would ask you to supply us with a copy of your last rent charge or service charge demand contact details for the manager. Please refer to (page 12) for further detailed information on estate rentcharges.

DO I NEED ANYTHING EXTRA IF I AM SELLING MY FLAT?

If you are selling leasehold property, there will be additional information which will need to be supplied to a buyer relating to the management of the building. General information on the management of the building will need to be completed on the Leasehold Information Form together with:

- Contact details for the landlord
- Contact details for any managing agents

It is usually necessary to obtain a sale management pack from the managing agents (or landlord) or for the managing agents (or landlord) to complete a landlord's questionnaire but the result is the same. The seller is responsible for the cost of this and the managing agents (or landlord) will require their fees to be paid before providing the information. It is useful to find out the cost and the time the managing agents (or landlord) may take to supply the information. As you will appreciate, the information can become out of date if it takes some time to agree the sale of the property, so it is usually recommended that the information is requested once you have agreed the sale of your property.

If your building is managed by one or more of the leaseholders who live in the building (and this is sometimes the case where the building is owned by the leaseholders collectively such as ownership of a share of the freehold), you should find out who will be the "freeholder/landlord's" representative to liaise with your solicitor regarding the management of the building. This should not be you.

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What is a service charge retention?

What do I do if I have a mortgage?

Should I have the deeds to my property?

Do I need consent from anyone to sell my property?

What is an estate rentcharge?

I have made alterations to my property - what papers do I need?

WHAT IS A SERVICE CHARGE RETENTION?

This may be applicable to the sale of a leasehold property and a buyer may require a service charge retention to be held by the seller's solicitor. If the previous years' service charge accounts for the building have not been audited, or completion of the sale of the property falls midway through a service charge year, the buyer's solicitor may require the seller's solicitor to hold a retention from the purchase monies in respect of any balancing service charge payment. This may be due from the seller for the period of their ownership of the property until the date of completion of the sale of the property.

For example, if the service charge year runs from 1 January to 31 December and you sell your property in, say, September, once the service charge accounts for that year are finalised and audited then if the final service charge for that year exceeds the amount of service charge budget for that year an extra payment may be due from you for the period of your ownership of the property until the date of completion. This will be calculated on a pro rata basis.

A service charge retention may be held by a seller's solicitor for several months depending on the speed in which audited service charge accounts are available. Any shortfall is paid to the buyer's solicitor and the balance returned to the seller.

WHAT DO I DO IF I HAVE A MORTGAGE?

In almost every case when a property is sold, all mortgages or loans secured against the property must be repaid on completion. We will not deal with any debt or loan which is not charged upon the property title. It is useful for a seller to obtain details of the amount outstanding on the mortgage. We will obtain a formal redemption statement from your lender prior to completion of the sale of the property and make arrangements for this to be repaid from the sale monies. However, there is a question in the protocol forms asking whether the price of the property is sufficient to repay the mortgage, so having this information readily available will be useful for you.

SHOULD I HAVE DEEDS TO MY PROPERTY?

If your property is registered with the Land Registry, and the majority of properties in England and Wales are, a copy of your registered title to your property will be available from the Land Registry. The property register may refer to other documents which affect the property title. The Land Registry should have copies of these, but this is not always the case. We will ask you if you hold copies of the missing documents, but if not, it may be necessary to provide a buyer with indemnity insurance in respect of any unknown covenants or rights over the property which may affect the buyer's use of the property. The cost of an indemnity insurance policy for this would usually be the responsibility of the seller. Please refer to (page 31) for further information on this.

The property may not yet be registered at the Land Registry. There are some properties which still have unregistered titles. The sale of a property with an unregistered title will trigger first registration of the property title with the Land Registry. If the title to your property is unregistered, it is important for you to locate the title deeds to your property. You may have these or they may be held by your lender (if you have a mortgage) or by the solicitors who have dealt with the property in the past and may have purchased the property for you. It is essential to locate the title deeds as soon as possible and for a solicitor to review your title to ensure you have all the documents you need to sell the property.

DO I NEED CONSENT FROM ANYONE TO SELL MY PROPERTY?

If your property is located within an estate, you may be paying an estate charge for the maintenance and lighting of roads and common areas such as gardens. Please refer to (page 12) for further information on this. It is useful to collate copies of any invoices you may have received and to have available the contact details to whom payment is made. With some leasehold properties it may be necessary to obtain the landlord's prior written consent to the sale of the property. The landlord's requirements for providing its consent are usually set out in the lease. The landlord may request references from the buyer to ensure the buyer will be a suitable leaseholder. Once the landlord is satisfied with the buyer, the landlord's solicitors will issue the landlord's consent to the sale, which is known as a "licence to assign". The seller will be responsible for the landlord's costs (including the landlord's solicitors' fees and sometimes managing agent's fees) for dealing with the licence to assign. It is useful to obtain contact details of the relevant parties who will be dealing with the licence to assign and ascertain details of the fees which may be charge.

WHAT IS AN ESTATE RENTCHARGE?

In the past roads, services and other shared communal areas on new housing developments estate were frequently adopted and maintained by the council. Estate rentcharges are frequently being used on new developments to deal with the cost of recovering the costs of maintaining any privately shared areas, roads and services from the owners of freehold properties that have the right to use such shared areas.

An obligation to pay a contribution towards the cost of maintaining the communal facilities is known as a positive covenant and unlike restrictive covenants the burden of positive covenants does not run with the land. This means that when a property is sold by the original owner such obligation does not automatically pass to the new owner.

This issue can be dealt with in one of two ways:

Deed of Covenant

Where each new owner enters into a deed of covenant with the owner of any shared areas where they agree to pay a contribution towards the cost of maintaining the same. The legal effect of this deed is to create a direct contractual relationship with the management company enabling the management company to sue the buyer should the buyer be in breach. Generally, a restriction is registered on the property's title requiring the buyer to obtain a certificate from the management company before the change of ownership of the property can be registered with the Land Registry.

Estate Rentcharge

Estate rentcharges are being used by developers as an alternative to deeds of covenant for enforcing positive obligations and/or obtaining contributions towards the cost of managing shared areas.

We will advise you on how the shared areas of the estate are managed together with the implications and how these affect the property you are buying.

I HAVE MADE ALTERATIONS TO MY PROPERTY - WHAT PAPERS DO I NEED?

If you have carried out alterations to your property such as building an extension or conservatory or changing the internal layout of property your buyer will require copies of all the relevant consents, inspection reports and any warranties. Frequently, sales of properties are delayed because a seller cannot find all the paperwork for works they have carried out to their property. Sometimes the seller has obtained the relevant planning permission or building regulations approval but not obtained the building regulations final completion certificate for the works carried out. If you find yourself in this position, you should discuss this with your solicitor.

With a leasehold property usually the prior written consent from the landlord is required before certain alterations can be carried out to the property. This is known as a licence for alterations or a licence to alter. If you may have carried out works without the relevant consent from your landlord, you may be able to obtain the landlord's retrospective consent to the alterations carried out but this will depend on many factors. It is important to address this matter as early as possible and to discuss this with your solicitor.

It is useful to collate as much information as you can and obtain copies of:

- Planning permissions
- Listed building consent (if applicable)
- Building regulations consents and final certificates
- Building regulation certificates for a new boiler (and any guarantee)
- NHBC certificate and warranty (or the equivalent) for properties built within the last 10 years
- Licence for alterations from the landlord (if applicable)
- Guarantees for any of the works
- FENSA certificates for any replacement windows or doors
- Central heating service report
- Electrical inspection certificates

In summary, the more information the seller is able to provide to the buyer at the outset the less additional enquiries will be raised by the buyer's solicitor and the quicker a transaction can proceed.

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What happens?
How long will it take?

WHAT HAPPENS?

There are two important dates in the conveyancing transaction. The first is what is known as the exchange of contracts and the second is completion.

Exchange of Contracts

When contracts are exchanged, the seller and the buyer become legally committed to the sale and purchase of the property. Until that time, either party can walk away from the transaction. Once the contracts have been exchanged neither party can legally withdraw from the deal without severe financial penalties. There are a number of matters which have to be dealt with before the exchange of contracts and these will be explained a little later.

Completion

Completion is the date on which the buyers are entitled to have possession of the property, and the date on which the seller is entitled to receive the money and must vacate the property. There are a number of important things which happen on completion and again these will be explained a little later.

Up to Exchange of Contracts

Once the parties have agreed a price, usually through the estate agents, the matter is entirely subject to contract. This means that neither party can legally insist on the transaction proceeding as the contracts have not at this stage been exchanged.

The seller's solicitor prepares a contract package for the buyer's solicitor that includes details of the property title, property information forms and a fixtures and fittings form completed by the seller. If the property is leasehold, the seller's solicitor will include copies of the lease, buildings insurance and service charge information.

The buyer's solicitors carry out the necessary searches. The buyer should arrange their survey and make arrangements for their new mortgage (if a mortgage is being obtained). The lender will carry out a valuation of the property to ensure the value of the property meets its criteria to enable the mortgage to be provided to the buyer.

Signing the Contract

Once all the information and replies to any enquiries have been supplied to the buyer's solicitor, and the terms of the contract have been agreed, the parties will be able to proceed to exchange of contracts.

1. Deposit - Usually on exchange of contracts the buyer will pay a deposit to the seller which is usually 10% of the purchase price. A reduced deposit may be proposed and this will be negotiated by the buyer's solicitor and the seller's solicitor. If you are buying and selling, the deposit paid by the person at the bottom of the chain is usually passed up through the chain. This means that one or more parties are likely to be accepting a reduced deposit. Please be aware that if a reduced deposit is paid by the buyer, the seller can normally claim the balance of 10% from the buyer if there is a later problem. If you are selling and accept a reduced deposit, you will normally be entitled to the balance of the 10% if something goes wrong. Please bear in mind that you may have to sue the buyer for the balance.

2. Buildings Insurance - You should continue with your buildings insurance; this should not be cancelled until after completion of the sale of the property has taken place.

When everything has been finalised, the seller and the buyer each sign one copy of the contract. It is important to note that signing the contract is not the same as exchange of contracts. Both parties will sign their own copy of the contract some time before the exchange of contracts. It is only on exchange of contracts that the deal becomes legally binding.

The Exchange of Contracts

Once the buyer's and the seller's solicitor are satisfied that everything is in order, they will arrange an exchange of contracts, at which stage the date for moving (the completion date) is inserted in the contract so that both parties are then legally committed to that date. It is also wise to bear in mind that a gap of at least seven days (preferably longer) should be left between exchange of contracts and completion, since neither party is guaranteed a particular completion date until the formal exchange of contracts has taken place.

Between Exchange of Contracts and Completion

Following the exchange of contracts, all parties involved are aware that the matter is to be completed on a particular day. The solicitors on both sides will be busy dealing with various administrative tasks, including obtaining a redemption statement from the seller's lender if there is a mortgage on the property. By the completion date, the buyer's solicitor will have received sufficient money from the buyer and their lender to enable them to pay for the property.

Completion - The Big Day!

All the financial transactions are conducted through the solicitors' client accounts where money belonging to clients and the bank or building society is kept entirely separate from money belonging to the solicitors. The buyer's solicitor will, on the completion date, transfer to the seller's solicitor sufficient money to buy the property. In return for the money, the buyer's solicitor will receive the legal transfer document, together with all the other relevant documents for the property.

In return for the money, the seller's solicitor authorises the seller or their estate agents to hand over the keys to the buyer. It is important for the seller to be aware that they should not authorise the release of a key until they know that we have received the money for the property. On the completion date, the seller's solicitor will repay any mortgages on the property and provide proof of payment to the buyer's solicitor.

After Completion

As far as the seller and the buyer are concerned, once the completion has taken place, they will have reached their goal. The seller will have their money and the buyer will have the house and probably a mortgage to pay.

This is a general guide to a basic form of transaction, which we hope you have found to be helpful. Although the administrative and legal procedures in each transaction are similar, every single piece of property is different and it goes without saying that all sellers or buyers have their own particular expectations and requirements. The information above is by no means exhaustive and there are a host of other points which crop up in any one transaction from time to time. If you are in doubt about any particular item, it is essential that you ask us before taking action.

HOW LONG WILL IT TAKE?

There are many factors which may affect the timeline for your sale and every transaction is different.

Unfortunately, it is impossible to give a fixed timescale. If there is one buyer and one seller, i.e. no chain of transactions, the legal process could potentially be completed within six to eight weeks of an offer being accepted. This is, of course, subject to the wishes of the parties and prompt appointment of their legal representatives to start the proceedings. This timescale would also be strictly reliant on the quick arrival of the searches and buyer's mortgage offer (if applicable) and whether any possible title defects can be quickly resolved.

In a chain of transactions with several people moving at the same time and dependent upon each other, the whole chain can only proceed at the speed of the slowest person in the chain.

For example, if someone is waiting for the result of a search, or awaiting a survey or specialist report on the property, everyone in the chain will be held up until these issues are resolved. We will do our best to resolve any outstanding issues as quickly as we can, but please bear in mind that some matters can only be resolved by the parties involved.

It is also sensible to bear in mind that although one or both parties may wish to meet a particular deadline for moving, it cannot always be achieved despite the best of effort on all sides.

If there is one issue in the whole conveyancing process which, day in day out, week in week out, causes more frustration, irritation, anger, annoyance and worry, it is the question of completion dates. We understand that people have deadlines to meet due to job changes, holidays, changes of schools for children etc. You should not set a date for your move until everyone in the chain of transactions, with which you are involved, is in a position to exchange contracts.

As an example, to give you an idea of the process and timing we have provided a timeline for a typical and straightforward house sale.

| Seller | Seller's Solicitor | Buyer | Buyer's Solicitor |
|--|---|---|--|
| Weeks 1-4 | PRE-EXCHANGE | | PRE-EXCHANGE |
| Instruct solicitors | Carry out ID checks on seller and send out engagement letter with Property Information Forms. | Instruct solicitors. Arrange survey of the property and arrange mortgage finance. | Carry out ID checks on buyer and send out engagement letter requesting monies on account for search fees. |
| Complete and return Property Information Forms together with documentation relating to the property. | Obtain evidence of seller's legal title to the property and draft the contract. Send documentation to the buyer's solicitor. Obtain redemption statement for any existing mortgage. | Pay monies on account for searches. | Receive contract papers from the seller's solicitor. Request usual conveyancing searches. Review contract papers and raise and send to the seller's solicitors any enquiries arising from the documentation received. |
| If required, answer additional enquiries raised by the buyer's solicitor as requested by the seller's solicitor. | Answer any additional enquiries received from the buyer's solicitor (where necessary with some input from the seller). | Confirm to buyer's solicitor that survey results and terms of mortgage offer are acceptable. | Receive search results and raise further enquiries if necessary. Receive buyer's mortgage offer. Prepare and send full report on the contract papers, searches and mortgage offer to the buyer. Approve contract with seller's solicitor and prepare draft transfer and SDLT return. |
| Sign contract, transfer and any other documentation required. Agree completion date. | Receive approved contract from buyer's solicitor and arrange for seller to sign contract, transfer and any other documentation required. | Receive report and confirm that findings are acceptable and happy to proceed. Sign contract, transfer and any other documentation required. Arrange to send cleared funds to buyer's solicitor to cover deposit due on exchange of contract. Agree completion date. | Arrange for client to sign contract, transfer, mortgage deed, SDLT return and any other documentation required. |

| Seller | Seller's Solicitor | Buyer | Buyer's Solicitor |
|---|---------------------------|--|--|
| Week 5 | EXCHANGE CONTRACTS | | EXCHANGE CONTRACTS |
| Seller legally bound to sell the property to the buyer. | | Buyer legally bound to buy the property from the seller. Buyer to arrange buildings insurance from exchange of contracts. | |
| Complete and return Completion Information Form to buyer's solicitor. | | Arrange to send cleared funds to buyer's solicitors in time for completion. | Send Certificate of Title and request funds to the buyer's lender and request any balance due from the buyer. Send Completion Information Form to seller's solicitor. |
| Obtain final redemption statement from existing lender. | | | Carry out pre-completion searches. |

| Seller | Seller's Solicitor | Buyer | Buyer's Solicitor |
|--|--------------------|-------|--|
| Week 7 | COMPLETION | | COMPLETION |
| Discharge existing mortgage and send signed transfer to buyer's solicitor with any other title documentation. Pay selling agent's fees. | | | Submit SDLT return and pay SDLT. Submit application to the Land Registry to register the buyer as proprietor of the property. Deal with miscellaneous post-completion matters. |

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What are the differences between freehold and leasehold properties?

What are searches?

Environmental matters - what do I need to know?

Why does the buyer need a survey and a mortgage valuation?

How long does it take for the buyer to obtain a mortgage?

WHAT IS THE DIFFERENCE BETWEEN FREEHOLD AND LEASEHOLD PROPERTIES?

Freehold tenure

This form of ownership, referred to in legal terms as 'freehold tenure', means that the building, as well as the land it stands on, is owned outright, in perpetuity. This form of ownership is commonly seen in houses.

Freehold owners have far greater freedom over the use, improvements and additions to their property, restricted only by the covenants reserved in the title deeds, or matters prescribed by legislation, planning and building regulation laws, as applicable.

Property owners are directly responsible for maintaining the interior of their home, as well as the main structure of the building, the roof and all services within the boundary of their property.

Quite often, especially in large modern estates, freehold owners may also be required to contribute by way of an 'estate charge' (or 'service charge') to the maintenance and upkeep of the shared amenities, services and private roads, along with other occupiers of the estate (see (page 12) for further information).

Finally, freehold owners are generally free to sell their property without having to seek permission to do so or incurring any fees for obtaining such permission. Where a property forms part of a larger estate, there may be restriction on the property title requiring the consent or a certificate of compliance to be provided to the buyer of the property. Usually, the buyer would be required to enter into a deed of covenant with the manager of the estate, whereby the buyer covenants to observe any restrictions, obligations or conditions affecting the property as set out in the property title. In turn, the manager will provide the buyer with a consent or a certificate of compliance which enables registration of the buyer's purchase of the property with the Land Registry. The manager is able to ensure the seller is up to date with any payments due from the seller for the period of the seller's ownership.

Leasehold tenure

Leasehold ownership will be governed by the terms (rights and obligations) of the lease granted for the property. A leasehold owner is commonly referred to as a 'leaseholder', 'lessee' or 'tenant', and the landlord (the freeholder) will own the building and the land it stands on.

Here, you will own the right to reside in your property for a defined number of years. That number will be determined by the length of the remaining term of the lease, and will reduce as the time passes by. This is why leasehold properties are often described as 'wasting assets'.

At some point in the future the remaining term (also known as the 'unexpired term') will reduce to a point at which it may have a negative effect on the value of the property, its saleability or ability to obtain mortgage. Whilst it may be possible to extend (the term of) the lease by exercising statutory rights or by private negotiation with the landlord, due consideration should be given to the significant costs of a lease extension.

You will be required to pay ground rent to the landlord, which may be a nominal sum (or a 'peppercorn rent' of no financial value) or the sum may be more significant, especially if the lease provides for periodical increases.

Unless the lease states otherwise, repairs, services and maintenance arrangements for the common parts, main structure, roof and external grounds, as well as the buildings insurance, will be arranged and coordinated by the landlord, or a management company set up for this purpose. The cost of the repairs and running of the services will be passed on to all leaseholders by way of 'service charges'.

You will still be responsible for looking after your own property internally and for paying the council tax and the cost of the utilities. You will also need to arrange your own contents insurance.

The lease will have various limitations on the use of the property, which may include a complete restriction on some activities or certain actions may require specific consent from the landlord and/or management company. Common matters that fall into this category include having pets, hanging your washing over the balcony, installing external aerials or satellite dishes, subletting or restrictions upon future sale of the property.

If you wish to undertake certain internal alterations or extensive works within the property, you will also be required to seek written permission from the landlord. This is likely to involve a payment of an administration fee and in some cases, you will need to bear the costs of the inspection by the landlord's surveyor. The landlord should not unreasonably refuse your request for consent, unless the terms of the lease specifically prohibit your proposed alteration. This requirement is in addition to compliance with matters prescribed by legislation, planning and building regulation laws, as applicable.

There may be a requirement to seek the prior written consent from the landlord to the sale of the property which is likely to involve a seller of the property paying for the landlord's legal and management fees for dealing with the formal consent (which is known as a licence to assign). Depending on the terms of the lease and the buyer's situation, a landlord will require a buyer to provide additional comfort that the service charge will be paid by the buyer. The landlord may require the buyer to lodge a security deposit and enter into an agreement whereby the landlord may use the security deposit to pay the service charge in the event that the leaseholder does not pay service charge when due (this is known as a security deposit deed or rent deposit deed).

In addition to the above, when you sell the property your buyer will require you to obtain management information from the landlord, the cost of which you will be responsible to cover. In some leases, a payment of an 'exit fee' to the landlord may also be required. Exit fees are often set as a percentage of the property's sale price.

WHAT ARE SEARCHES?

There are a number of searches which a buyer's solicitor will undertake for the property. Brief details of these searches are set out below. Some of the searches listed are only applicable to certain types of properties. Whether certain searches are carried out will depend on the location and nature of the property. Some lenders will require a specific set of searches to be carried out.

Local Searches

These searches look into information held by the local authority and ask many questions relevant to the property, its title and its use. For example, the search should reveal whether the road to the property is 'adopted' i.e. maintained at public expense by the Highway Authority; whether planning permissions was granted for building works carried out to the property; if there any tree preservation order on any trees at the property. The speed the local authority deals with providing search results differs across the country.

Index Map Search - A check at the Land Registry to see if the property is registered.

Coal Search - A check for underground mining etc. Used where the property is in a coal mining area or former coal mining area.

Tin Search - As for the coal search but for tin mining or former tin mining areas.

Brine Search - A check to see if the property is affected by former brine (salt) workings.

Commons Registration Search - A search to check whether any part of the property (or any access to it) is registered as common land.

Highway Search - A search to identify the precise extent of the adjoining roads/paths/verges which are adopted and maintainable at public expense. If the road is not adopted and is private, rights of way are required and the cost of maintenance would normally fall to the owners of properties having such rights.

Water Search - A search to check house drainage and fresh water supply arrangements. It does NOT address flooding. This also shows whether any sewers/drains run across the boundaries of the property which could affect any future building you may wish to do on the land/property.

Planning and/or Infrastructure Searches - These types of searches provide planning and neighbourhood information for the immediately surrounding area and help to reveal any potential surprises, for example:

- Plans to construct a telecommunications mast
- Planned route for the High Speed 2(HS2) rail network
- A new local nightclub causing late night noise and disturbance
- Plans for a new housing development, a supermarket or a factory nearby, which may affect the current view from the property.

Radon Gas Search - An enquiry to the relevant Health Protection Agency to see if the property is known to be affected by radon gas.

Chancel Repair Search - A search to check if the property may be liable to contribute to the cost of repairs to the chancel of a church. This search may sometimes show inconclusive results; therefore, it may often be more beneficial to obtain a chancel repair indemnity insurance in lieu of a chancel search. We may recommend this course of action if it will be more cost-effective for you.

Environmental Search - An environmental data search can be used to establish the risk of land being contaminated, by collating information from regulatory bodies, floodplain data and a review of current and historic land uses. An environmental data search does not include a site visit or testing of soil or groundwater samples.

ENVIRONMENTAL MATTERS - WHAT DO I NEED TO KNOW?

Some of the main causes of concern for buyers of residential property are:

- Land contamination
- Flooding
- Landfill
- Mining / subsidence
- The existence of radon (a naturally occurring radioactive gas)

If you think your property may be affected by one or more of these matters, please advise your solicitor immediately.

WHY DOES THE BUYER NEED A SURVEY AND A MORTGAGE VALUATION?

You may hear the Latin words “caveat emptor” - buyer beware!

It is the buyer's responsibility to check the property is structurally sound and in a good condition before contracts are exchanged. A survey may identify any structural or other defects likely to give rise to problems and expenditure in the future.

A lender will require valuation report to be carried out. This is usually prepared for mortgage purposes and most lenders will require one before an offer is made. A valuation report is not a survey and the report is limited in scope generally only containing information:

- type of property
- age of property
- type of construction
- general observations about the state of repair

HOW LONG DOES IT TAKE FOR THE BUYER TO OBTAIN A MORTGAGE?

The buyer may buy the property with the assistance of a mortgage from a bank or building society (“the lender”). The buyer will need to supply the lender with personal information, information on the buyer’s financial circumstances and details of the property the buyer is considering buying. The lender will carry out credit searches for the buyer. If the buyer is able to satisfy the lender’s criteria personally for mortgage finance to be provided, the next step is for the lender to commission a valuation to be carried out of the property. Once all the information on the buyer and the property has been obtained, the lender’s credit team reviews and decides whether to provide the buyer with a mortgage to assist with the purchase of the property. All being well, the mortgage offer is then issued to the buyer. This can take several weeks.

5

Do I need to pay Capital Gains Tax?

What is an Energy Performance Certificate?

What happens if someone does not complete?

What is indemnity insurance?

DO I NEED TO PAY CAPITAL GAINS TAX (CGT)?

Capital Gains Tax (CGT) is a tax on the profit when you sell (or 'dispose of') something (an 'asset') which has increased in value. It is the gain you make that is taxed, not the amount of money you receive.

You may have to pay CGT if you make a profit ('gain') when you sell (or 'dispose of') property that is not your home, for example:

- buy-to-let properties
- business premises
- land
- inherited property

There are different rules if you:

- sell your home
- live abroad
- are a company registered abroad

You will need to work out your gain to find out whether you need to pay tax. We have a specialist team to assist with this - please ask us if you think this may apply to you.

You should note that the rules have recently changed and a return must be submitted to HMRC (if applicable) within 30 days of completion of the sale of your property whether or not the seller has any CGT liability.

WHAT IS AN ENERGY PERFORMANCE CERTIFICATE?

All buildings in the UK which are available to buy or rent must have an energy performance certificate (EPC) giving the property an energy efficiency rating from A (very efficient) to G (inefficient). EPCs are intended to give an indication of how costly it will be to heat and light a property and its likely carbon dioxide emissions. An EPC is accompanied by a report recommending any cost-effective improvements that might be made to the property to achieve a better rating.

We are not qualified to advise you on the energy efficiency of the property.

WHAT IS INDEMNITY INSURANCE?

An indemnity insurance policy is taken out when there is a technical problem affecting the title of a property and circumstances make it appropriate for insurance to be taken out to cover the risk of the technical problem turning to a real, practical problem.

Such policies provide for a specified sum assured and can be taken out on the payment of a one-off premium. The level of the premium payable depends on the amount of the sum assured and the level of the risk involved as assessed by the insurance company. The benefit of the policy can be transferred to subsequent owners of the property but a “top-up” policy to cover the then current value of the property may be required at that time.

We will source an appropriate policy through an insurance broker. Although the broker does not approach every insurance provider in the market, it does consider what it reasonably believes to be a sufficiently large number of products to be representative of the market.

The following points may invalidate a policy:

- If someone seeks to take action against you in respect of the defect or indicates in some way to you that there may be a problem, you must tell the insurance company straight away and provide full details of the situation. The insurance company will have the right to decide how the matter is dealt with. You must not take action or discuss the matter with the person causing the difficulty, unless the insurance company says you may do so.
- You must not disclose the existence of the policy to anyone other than a genuine potential buyer and/or their professional advisors.
- You must not say or do anything that is an acknowledgement of liability or seek to negotiate terms or agree to settle matters between you and the person causing the difficulty. If there appears to be any sort of problem over the defect, we would recommend you simply say that there is evidently something on which you need to take legal advice and you plan to contact your solicitors.
- If a claim on the policy is made, and the insurance company can show that the claim came about in whole or in part, directly or indirectly as a result of something you have done (or failed to do) it is very possible that the insurance company may be able to cancel your claim.

For example:

- If there is a restrictive covenant policy because an extension has been built without the consent of a neighbour, the policy may, in effect, be cancelled if there are further works of alteration or extension to the house at some time after you have purchased it.
- If there is a defective title policy because an area of garden is not shown on the property's title, the policy may be cancelled if you change the use of the land for example by building a conservatory on it.

If your property has a defect covered by a title indemnity insurance policy, take legal advice before engaging on activities that draw attention to your house and/or might lead neighbours to object (even if that would be unreasonable of them) or check with the insurance company that what you are planning to do will not cancel the policy. Confirm the position to them in writing and make sure they confirm the position to you in writing. In addition, if the policy is invalidated through breach of conditions, you may (in certain circumstances) find it impossible to arrange a replacement policy as and when you sell your house. Even if you can do so, there will be a premium payable and it may be higher than usual because of what has happened. You may, of course, buy a property with a title indemnity policy already in place. The points above apply in just the same way.

Relationship with insurance providers

We are an ancillary insurance intermediary. That means we only arrange limited types of insurance and only to complement our primary activity of providing legal services.

We are not contractually obliged to conduct insurance distribution exclusively with one or more insurance provider. However, Thrings is not an insurance specialist and therefore our advice is not based on a fair and personal analysis of insurance products available on the market.

In making this recommendation, we are representing you: we are not acting for and on behalf of the insurer.

We do not have a direct or indirect holding of 10% or more of the voting rights or capital in the insurance provider we are recommending. Likewise, the insurance provider we are recommending (or its parent undertaking) does not have a direct or indirect holding representing 10% or more of the voting rights or capital in the firm.

Regulatory status

Thrings is an ancillary insurance intermediary.

We are not authorised by the Financial Conduct Authority (FCA). However, we are included on the register maintained by the FCA so that we can carry on insurance distribution activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the FCA website at www.fca.org.uk/firms/financial-services-register.

WHAT HAPPENS IF SOMEONE DOES NOT COMPLETE?

If the buyer fails to complete the purchase on the completion date, the seller can serve a “Notice to Complete” requiring the buyer to complete the purchase by a specified date (being not less than 10 working days after the date of that notice); if you fail to complete by the specified date, the seller may keep your deposit and/or claim damages from the buyer. Alternatively, the seller might, depending on the circumstance, bring legal proceedings against you to compel you to complete the purchase. If the seller has a related purchase, you may also be responsible for any losses the seller suffers on that related transaction.

If the seller fails to complete on the completion date, you may serve such a Notice to Complete on the seller. If the seller fails to complete by the date set by the notice, you may treat the contract as at an end and demand the return of your deposit with interest. Alternatively, in some circumstances you might be able to bring proceedings to compel the seller to complete the sale. You may also have a claim in damages where you have suffered loss as a result.

6

Glossary - what do all these terms mean?



GLOSSARY - WHAT DO ALL THESE TERMS MEAN?

A brief explanation of some legal and other terms used in residential property conveyancing transactions.

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| Abstract or Epitome of Title | A summary or list of relevant title deeds proving the history of ownership of a property. |
| Adopted Highway | A road (and ancillary paths and sometimes verges) maintained by the local authority at public expense. |
| Advance | The original amount of the loan from a Bank or Building Society. |
| Assent | The name given to a transfer document by which the representatives of a deceased owner transfer the property to the person entitled. |
| Assured Shorthold Tenancy | A form of tenancy agreement which permits the landlord to secure possession of the property at the end of the agreed tenancy period. |
| Attorney | A person appointed to act on behalf of another person and sign documents on their behalf. |
| Base Rate | The rate of interest set by the Bank of England upon which most other interest rates are based. |
| Brine Search | A search to find out if a property might be affected by old brine (salt) workings near the property. |
| Building Regulation Consent | Approval by the local authority to the method of construction and materials used in building work. |
| Cashback | A sum of money (paid by cheque) by the Lender on completion of a mortgage (but only if this arrangement formed part of the mortgage offer). |
| Chain | A position in which Seller 1 sells to Buyer 1 and Buyer 1 sells to Buyer 2 etc thus creating a chain of connected transactions. |
| Commons Registration Search | A search to ensure the property is not registered as common land or part of a village green. If it is, other people may have rights over the land concerned. |

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| Completion | Final completion of the transaction when the Seller receives the money and the Buyer receives the keys. |
| Conservation Area | An area where there are some extra planning controls and considerations in place to protect the historic and architectural elements of the area. |
| Contract | The written legal agreement prepared in duplicate for respective signature by the Seller and the Buyer setting out all the legal rights and obligations agreed between them. |
| Conveyance | A document or deed used to transfer ownership of an unregistered property from the Seller to the Buyer. |
| Conveyancing | The legal process used to buy and sell land and property. |
| Covenants | Legal promises or obligations. |
| Deed of Covenant | A document or deed containing an agreement to pay or do something. |
| Deed of Gift | A document or deed used to transfer ownership of property from one person to another without any payment being made. |
| Deed of Guarantee | A document used where one person agrees to be responsible for someone else's debt or mortgage obligations should that person fail to carry out his/her own obligations. |
| Deed of Postponement or Priority | Where a Lender agrees that its mortgage will rank or take effect in priority after another lender's mortgage. |
| Deeds | Documents which establish ownership and confirm the Owner's title to the property. |
| Deposit | An agreed amount to be paid on exchange of contracts by the Buyer to the Seller as security for the performance of the Contract by the Buyer. |
| Disbursements | Payments made by Thrings on your behalf but for which you will be responsible. |

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| Easement | A right enjoyed by one property over another property. |
| Environmental Search | A search to see whether there is any indication that the property may be affected by contamination, flooding etc. |
| Equity | When talking of property and mortgages this normally means the difference between the value of a property and the amount owed on mortgage(s). |
| Exchange of Contracts | The formal exchange of the two identical copies of the Contract when the Seller and Buyer become legally bound to complete the transaction on an agreed date. |
| Fixtures, Fittings and Contents Form | A standard form in which the Seller specifies items in or affixed to the property which are included in the sale at the agreed price. |
| Flying Freehold | If at least a part of one property is built on top of part of another property (and the upper property owner does not own the whole building or land underneath the “flying” part) and the legal structure of the block is not leasehold, then a flying freehold will arise. This can prove to be a problem. |
| Freehold | Absolute title. |
| Freeholder | The person who owns the freehold. |
| Full Title Guarantee | The standard guarantee given by an absolute owner to the Buyer. |
| Further Advance | An additional amount loaned to an Owner after completion on broadly the terms of the original mortgage. |
| Ground Rent | This is the rent paid by a lessee to a lessor where a property is leasehold. It is often paid yearly. |
| High Loan-to-Value Fee | This may be charged by a Lender where a borrower borrows more than a certain (normally over 75 percent or higher) percentage of the value of a property. It is used to insure the Lender only against possible loss arising if the property is sold by the Lender after default on the mortgage by the borrower. |

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| Index Map Search | A search at the Land Registry to see if a property is registered or unregistered. |
| Land Charges Search | A search against a person's name at the Land Registry to see if that person has been the subject of any bankruptcy proceedings and (if the property is unregistered) to see if there are any mortgages or other adverse interests registered against the property. |
| Land Registry | An organisation controlled by central government which maintains a register of properties and their ownership in England and Wales. It now covers approximately 90 - 95 percent of residential dwellings. |
| Land Registry Fee | The fee payable to the Land Registry to register any change in the property details including a change of ownership. |
| Land Registry Search | A search at the Land Registry to check that nothing new has been registered against the property since the date the registers were last inspected. |
| Landlord / Lessor | Usually (but not necessarily) the Freeholder but certainly the person entitled to receive the ground rent from the Lessee or Tenant. |
| Lease | A document setting out the rights and obligations of the Landlord and Tenant (Lessor and Lessee) in the leasehold arrangements. |
| Leasehold | Where the ownership of property is for a limited period only. For example 99 years or 999 years. It will normally involve payment of an annual ground rent. |
| Legal Charge | See Mortgage. |
| Lender | A Bank, Building Society or other person or company who lends money to an Owner. |
| Lessee | The present owner of the leasehold property. This contrasts with the freeholder or landlord whose interest is subject to the lessee's rights under the lease until the lease term has come to an end. |
| Lessor | Another word for "Landlord". |

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| Licence to Assign | Written consent from a Landlord to permit the transfer of the lease to the property to a buyer. There will be a covenant in the lease setting out any specific requirements the Landlord may have such as references to be provided by the buyer. |
| Limited Title Guarantee | A title guarantee given by a Seller who has limited knowledge of the property and cannot give a full title guarantee such as someone selling on behalf of a deceased owner. |
| Listed Building | A building is listed when it is of special architectural or historic interest considered to be of national importance and therefore worth protecting. |
| Local Search | A search submitted by Thrings to the local authority to ask a considerable number of questions about the property including (by example) information on planning permission(s) and whether the adjoining roadway is maintainable at public expense. |
| Managing Agents | Employed by the landlord or management company to manage and maintain the common parts of a building/area. |
| Management Company | A company which is set up to manage and maintain the common parts of a building/area (usually a block of flats). The management company will collect service charge to fund the costs. |
| Mining Search | A search to check whether the property may be affected by past or present coal mining and, in particular, the risk of subsidence. |
| Mortgage Deed | A document used when a Lender lends money to a Buyer or existing Owner. The document is registered against the property at the Land Registry and secures repayment to the Lender. |
| Mortgage Offer | This specifies the terms upon which the Lender is prepared to make the loan including the specific financial details and period of repayment. |
| Mortgage Term | The length of time agreed for the repayment of the loan. |
| Mortgagee | The Lender person or Company who benefits from the Mortgage security (e.g. Bank or Building Society). |

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| Mortgagor | The Property Owner (i.e. the Borrower) who enters into a mortgage deed in favour of a Lender. |
| Occupier's Consent | Any person who lives at the property who is not an owner (and so will not be signing the mortgage deed) will be asked to consent to the mortgage being taken out and agree to move out if the mortgage lender takes possession by reason of default of the owner. |
| Off-Plan | When a new build property is purchased by reference to its plans, as it has not yet been constructed. |
| Official Copies | Copies of the entries held by H M Land Registry which show the ownership of a property, and any matters affecting the property (if the property has a registered title). |
| Party Wall | A wall owned jointly with a neighbour and repairable at joint (and normally equal) expense. |
| Planning Permission | Approval by the planning authority to the construction (and extension/alteration) of a property or a change of its use. |
| Power of Attorney | A document by which someone appoints another person, to act as their attorney. |
| Private Road | A road which is not an adopted highway and accordingly not maintained at public expense. Property owners need to have particular (and preferably documented) rights over it as it is not necessarily a road which offers public access. |
| Property Information Form | A standard questionnaire completed by a Seller to give information about the property to the Buyer (e.g. who maintains boundaries and whether there have been any disputes). |
| Radon Gas Search | A search to see if the property is affected by naturally occurring radioactive gas which may if above certain safety levels, require preventative action to be taken (e.g. more ventilation in a property). |
| Redemption | The repayment of an existing mortgage or loan. |

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| Redemption Penalty | A penalty payment charged by a Lender if a loan is repaid within a period specified in the mortgage offer (some loan products only). |
| Registered Land | Property which has been registered at Land Registry. |
| Rent Deposit | A deposit required by a landlord where the buyer is unable to provide sufficient evidence of their ability to meet the annual service charge payable for a property or if the buyer is a company. The terms upon which the deposit is held by the landlord are set out in a deed. |
| Remortgage | Paying off one mortgage loan and taking out another with a different lender. |
| Rentcharge | Some freehold properties are required to pay a modest rent (despite being freeholds). It is sometimes created simply for profit but may be used as a legal device to ensure estate covenants are enforceable. |
| Reservation Fee | An initial payment to a Builder / Developer (or its agent) to reserve a new property. |
| Reserve fund | See Sinking Fund. |
| Security Deposit | See Rent Deposit. |
| Service Charge | A payment required by a Landlord (or managing agent) to cover the costs of insuring and/or maintaining a development or block of which the property forms part. |
| Sinking Fund | Funds set aside by a landlord (or managing agents) to cover the cost or contribution towards a large maintenance expenditure. |
| Stamp Duty Land Tax | A government tax payable on completion of the purchase of a property over a certain value. |
| Subsidence | Where a property moves due to poor construction or ground movement for geological reasons. |
| Tenant | For most purposes this is the same as “Lessee” (see above). |

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| Tin Search | A search to see if the property may be affected by past or present tin mining. |
| Title | An owner's actual right of ownership (whether or not the owner is in occupation). |
| Transaction | A dealing with property (e.g. sale or purchase or remortgage). |
| Transfer | A document which actually transfers ownership of a property from one person to another (as opposed to a Contract which may include an obligation to effect a transfer at a later date). |
| Transfer of Equity | A document transferring ownership of a part share or interest in a property from one person to another. |
| Tree Preservation Order | An order made by the planning authority specifying a tree or group of trees as protected and requiring that authority's permission to cut branches or fell them. |
| Unregistered Title | A title to a property which has not been registered at the Land Registry. The title will consist of old-style conveyances and other documents. |
| Vacant Possession | A Seller required to give vacant possession must (on completion) leave the property (including the garden and outhouses) empty of people, possessions and rubbish. |
| Valuation | A very simple form of survey designed to establish what the property is worth and nothing more. |
| Vendor | Another word for Seller. |
| Wayleave Agreement | A written agreement entered into with an owner to give a service provider (e.g. electricity or telephone company) a right for their cables to pass under or over their property. |

Beware: The word meanings in this glossary are necessarily basic and are subject to exceptions. They are not nor are intended to be legal definitions of these words. If you encounter these words within documentation in the course of a transaction and are not wholly certain of their meaning or effect, then you must ask us for appropriate advice.