

**LABRUMS**  
SOLICITORS LLP EST.1990

Informational Guide

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# Information On Buying & Selling Property



Buying or selling a property is probably the most important financial transaction you will undertake in your lifetime. Our aim, as a firm, is to mitigate risk for you and give you peace of mind when you buy, what is potentially, your most valuable asset. This guide aims to answer some of the questions you may have relating to your sale and/or purchase.



## **The Legal Stages of Buying and Selling a House**

- The seller's solicitor obtains details of the seller's legal title and prepares a draft contract which is sent to the buyer's solicitor. The contract basically describes the property, including any known restrictions, rights of way, etc. and also stipulates the price.
- The seller is required to complete a "Property Information Form" relating to their property and the solicitor considers the legal title and sends the documents to the solicitor on the other side. The form deals with a number of issues including the ownership of fences, what building works have taken place requiring planning permission and/or building regulations. The sellers also complete a "Fittings and Contents Form" which details the items which are included in the sale price.
- The buyer's solicitor requests searches from the local authority and raises enquiries from other information providers. These are designed to discover, among many other things, whether there are road schemes affecting the property and if there are planning permissions etc. When the relevant council or third party return a search result, the buyer's solicitor will then be in a position to approve the draft contract. It may have been necessary to make amendments to it and obtain the approval of the seller's solicitor to those amendments.
- The buyer's solicitor has to check the seller's ownership of the property to ensure that the seller is legally entitled to sell. This is done by examination of copies of the seller's legal title.
- When the contents of the contract have finally been agreed, each solicitor sends a copy to their respective clients to be signed. A buyer will only be able to exchange contracts when all enquiries have been satisfactorily answered, all searches have been returned, and their financial arrangements have been finalised, such as a mortgage offer made and accepted as well as satisfying source of funds. In addition, a buyer may have to synchronise the purchase with the sale of their own property.

## The Exchange of Contracts is a Crucial Point in the Transaction

Until contracts are exchanged, either party is legally free to withdraw from the transaction **without any penalty**. After exchange of contracts, both parties are legally committed and if the buyer did not proceed, they could lose their deposit.

Exchange takes place when the buyer's solicitor sends their client's signed contract to the seller's solicitor, together with funds in respect of the deposit, which is usually 10% of the purchase price. The seller's solicitor then forwards the contract signed by the seller to the buyer's solicitor and at that stage there is a **binding contract** in existence.

After the exchange of contracts, the buyer's solicitor draws up the transfer document which will pass legal title to the buyer on actual completion and makes final Land Registry or Land Charges Registry Searches. If appropriate, the buyer's solicitor will report on title to any Bank or Building Society and request the mortgage advance. The buyer's solicitor then asks their client for the remaining balance to complete. On completion, they date the transfer document and subsequently receive the counterpart dated transfer document from the seller's solicitor (to enable the buyer's solicitor to register the buyer as the new owner of the property at the Land Registry).



## Why Does it Take so Long?

The length of time taken to obtain a mortgage offer is on average between two to six weeks, but it can be longer. Before making any offer, the lender will need to arrange and study a valuer's report and take up your references. If you are involved in a chain of sales and purchases, all dependent on each other, every person in the chain may have to both arrange a mortgage and find a purchaser for their own house. Since all sales and purchases are interdependent, contracts are not exchanged in any one case until all are ready and, as a rule, all have to be completed on the same day.

## **The Chain can Only Proceed as Fast as the Slowest Person in the Chain**

The most frequent delays arise as a result of someone in the chain not being able to sell their house or having difficulty in obtaining a mortgage. Since October 1999, the Council of Mortgage Lenders has imposed on all solicitors additional duties in relation to the perfection of their mortgage securities. These additional obligations have led to an increase in the time taken for completing the legal formalities relating to mortgages.

## **What Will my Estate Agent do During the Course of the Transaction?**

In most cases it pays to employ an estate agent. They will usually be better than you at assessing what your property is worth and can reach a far greater number of prospective purchasers than you can through advertising privately. They will find a buyer more quickly at a price which, after deducting commission, will usually put as much in your pocket as you would get from a private sale. We are more than happy to recommend an estate agent to you and discuss whether more than one agent should be instructed.

## **Do I Need to Have a Survey Carried Out on the Property I am Purchasing?**

The property will be sold to you with all its faults. You will not normally have any legal grounds for complaint against the seller if you find defects in the property after contracts have been exchanged. We strongly recommend that you instruct an independent surveyor. They will be able to advise you on whether you are paying the right price for the property, whether there are any defects, the existence of any contamination on, or under, the property and the route/condition of all utility services. A surveyor's report is good value for money and may assist you in obtaining a reduction in the purchase price in the event of any defects being found.

Please note that a building society's surveyor or bank's surveyor owes you no duty at all and their concern is only to see that their client's loan is adequately secured. We shall be pleased to further discuss the matter with you and recommend a suitable surveyor for the type of property you are purchasing.

## Buying New Property

Before making an offer for the property, you should check with the builder, or the site office of the builder, that a structural guarantee or similar product will be available. You should also insist on obtaining test certificates for any electrical or gas installations and guarantees for any built-in appliances, together with operating instructions.

Finally, you should request written confirmation that the energy measures designed into the property comply with the Standard Assessment Procedure (SAP) rating calculation provided to the local authority. SAP is a method of determining the energy efficiency of the building. It should be noted that like new cars, new properties often sell at a premium. The value of the house may drop before moving, in line with the local property market.

## Flooding

If the property you are hoping to buy fronts onto a river, or is situated within a flood plain or other area which has been subject to historic flooding, you should make your own enquiries to ascertain the likelihood of a further recurrence of the problems. In some cases, a property with this type of problem may be, or become, uninsurable and therefore unsaleable. It is now possible, for instance, to view the Environment Agency's flood plain maps for particular areas online. It is imperative (and a requirement of your lender should you have one) that you can obtain buildings insurance on normal terms and costs despite flood risk.



## Neighbourhood Statistics

It is also possible to view, compare or download statistics online for local areas on a wide range of subjects including population, crime, health and housing. By using this service you will be able to create a profile of the area in which the property you are hoping to purchase is situated ([www.neighbourhood.statistics.gov.uk](http://www.neighbourhood.statistics.gov.uk)).

## Contaminated Land

Please refer to our separate guide “Environmental Issues When Buying a Property” for more information.

## Will I Have to Pay Stamp Duty Land Tax?

Stamp Duty Land Tax is a tax on transactions involving land and interests in land where “the purchaser” has paid or provided “chargeable consideration”. Chargeable consideration is, for example, payment of money. However, chargeable consideration could also involve consideration given in money’s worth. The consideration could be given directly or indirectly by the purchaser, or any person connected with them.

The legislation is now a tax just like any other and carries with it all of the legal consequences that you would associate with the collection of tax, such as penalties for non-payment, interest and even the threat of imprisonment in the case of gross fraud.

A Land Transaction Return (LTR) includes a declaration that the return is complete and accurate to the best of your knowledge. By signing the schedule sent to you with our Client Care letter, you will be giving us your authority to file the LTR online on your behalf. Responsibility for the information supplied to Revenue and Customs will remain with you.

Under the legislation, the liability to pay tax falls on you personally and the tax must be paid at the same time as the LTR is submitted to the Inland Revenue. The LTR must be completed and returned within 14 days of legal completion, or earlier in certain circumstances. Interest is payable on unpaid tax and penalties may also be incurred. Failure to deliver a LTR is liable for a fixed rate penalty of £100.00. You are permitted to amend the LTR for a period of up to 12 months after the last date for filing of the LTR.

Please note that if any LTR is fraudulently or negligently delivered and no action is taken to correct the return, you will be liable for a tax-gearred penalty of 100% of the tax differential between the returned amount and the correct amount.

Please note that as the persons required to deliver the LTR, you must retain any records used by you in the preparation of the LTR for a period of 6 years from the completion date. As your solicitors, we will be retaining our files for at least 7 years, but some of the information that will be required for the LTR may be in your possession, therefore, there is a legal obligation on you to retain relevant records. Please note that a failure to preserve relevant records could render you liable to pay a penalty of up to £3,000.00, subject to certain exceptions.

The Inland Revenue has the power to spot check LTR forms during a 9 month window, starting from the completion date. This process does not imply any wrongdoing on your behalf, but the Government have made it clear that in order to ensure that LTR forms are not completed recklessly or fraudulently, they will check LTR forms on a random basis. An enquiry can cover any aspect of the process and you may be called upon to produce documents in your possession or to provide any information. There are appeal procedures. Information powers under the legislation allow authorised officers of the Inland Revenue to request in writing from you any documents the Revenue reasonably believes contains information relevant to your liability for this tax.

## Endowment Policies

Endowment Policies build up over a set period of years by virtue of the money that you pay in during the term. At the end of this term, your policy matures and you get a lump sum which you can use to repay your mortgage loan. An endowment policy provides life insurance and sometimes other insurance benefits too. If you die before the end of the policy term, the life insurance should pay out a lump sum, which is guaranteed to pay the amount you originally borrowed. However, the amount you get when your endowment policy matures is generally not guaranteed. It depends on investment returns and how the endowment company has invested your savings.

Unfortunately, there has been much adverse publicity regarding endowments failing to repay mortgage loans. Contributions to endowment policies grow at different rates. The projection rates used for these purposes are based on how well the economy is doing and the level of inflation, and they are changed from time to time to reflect current conditions. In recent years there have been big falls in inflation and interest rates.

The fall in inflation and projected rates of return means that some endowment policies, particularly low cost or low start endowments, may no longer be on track to pay out a big enough sum at the end to repay the mortgage in full. Therefore, you should be very careful before entering into endowment mortgages or any other financial products. You should seek specific advice from an independent financial adviser on the suitability of such mortgages since we are unable to advise on such matters.

## The Proceeds of Crime Act 2002 & Money Laundering Regulations 2017

Under the Proceeds of Crime Act 2002 (POCA), significant duties are imposed on solicitors within any conveyancing transaction. By section 330 of POCA, it is a criminal offence for solicitors, and/or members of their staff, to fail to report offences, especially when a person knows, suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering.

In addition, under the Money Laundering Regulations 2017 (MLR), further regulations are now in place with regard to the receipt of monies by solicitors. Therefore, under the MLR, we must disclose suspicious circumstances either to the police or a nominated officer within this Firm. We may also be compelled to make post-transaction disclosures of such circumstances. It is as a result of this legislation that we are obliged to take the various precautionary steps set out in our Terms of Business with you.

## Capital Gains Tax

A liability to Capital Gains Tax may arise on the sale of a property. A seller should be aware of the possibility of potential liability when they are selling a property which is not their only or main residence. Similarly, a buyer who is purchasing a property for use other than as their principal private dwelling should be aware of a potential tax liability in the future when the property is sold. Please note that the impact on your purchase or sale of Capital Gains Tax and other taxes, other than Stamp Duty Land Tax, will be excluded from our responsibilities to you.



## What Should I be Doing now?

Before the exchange of contracts you should:

- Agree a price with the estate agents, but do not sign anything.
- Instruct a solicitor.
- Apply for a mortgage. If you run into difficulties, we may be able to assist you as we have connections with a number of financial sources.
- Consider with your financial advisor whether you need a “mortgage protection” policy or any other financial product .
- Arrange for a survey of the property you are purchasing.
- Agree a completion date with your solicitor. It is important that no moving date is agreed by you with other parties until you have checked with us that the date is viable in terms of the arrangements we have to make on your behalf.
- Advise us whether you intend to arrange home insurance yourself or take up the home insurance product offered by the lender.

Between the time that contracts have been exchanged and legal completion takes place you should:

- Keep in touch, but do not worry if you do not hear from us until a week or so before completion. We are working on your sale and/or purchase as you have instructed us to do.
- Make arrangements for the balance of the purchase money to be available a few days before completion. We will supply you with a completion statement setting out the amount you will need to send us.
- Be ready to sign the mortgage and transfer documents at short notice.
- Make arrangements for the move (please refer to our [“Moving House Checklist”](#)).
- Just before completion, you should contact us to finalise the arrangements for the keys.





## Further Help

If you require help with anything mentioned in this guide, contact one of the team at Labrums now:

01727 858807  
crt@labrums.co.uk

We look forward to hearing from you.

*These guidance notes deal in general terms with a complex subject. While we believe the contents to be correct, they should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation. You must always seek legal advice concerning any situations referred to in this guide and Labrums or its author can accept no responsibility for any loss suffered by any person as a result of acting in reliance upon the contents of this guide.*