

NOTES FOR CLIENTS BUYING A PROPERTY

These notes contain important information about buying a property, and we ask you to read through them carefully. They form an integral part of our conveyancing service, and we hope that the information provided will enable you to understand better what is happening during the process and the documents you will receive from us during the transaction.

The notes start with an overview of the conveyancing transaction and then move on to a more detailed discussion of certain key areas. If you require any additional information or if you have any queries on this note please contact us and we will be pleased to help further.

A. THE BASICS

In a nutshell, the legal stages in a purchase are as follows:

Stage 1:

- we receive a contract for the purchase of the property in draft form from the seller's solicitors, completed property information forms and copies of all relevant deeds and documents
- we apply for the necessary searches
- you make your mortgage application (if applicable)

Stage 2:

- we carry out a detailed investigation of the legal documents supplied to us by the seller's solicitors, and where necessary we raise further legal enquiries

Stage 3:

- when our investigations are complete, all search results have been received and your mortgage offer has been issued, we send you a legal report on the property

Stage 4:

- contracts are exchanged and a date is fixed for completion; from this moment you are legally committed to purchase the property
- we will send you a note explaining what pre-completion arrangements you need to make

Stage 5:

- your purchase is completed on the completion date and you are able to move into the new property. The purchase price and all legal and other costs (including stamp duty land tax) have to be paid on or before this date
- we register your ownership of the property at the Land Registry

We are often asked why there needs to be a gap between exchange and completion. The two stage process of exchange followed by completion is useful because it provides an opportunity for you to sort out the practical aspects of moving (e.g. arranging removals) in the knowledge that both sides are legally committed to a fixed completion date. It also enables us to make the legal pre-completion arrangements by reference to a fixed date.

B. SURVEY

The principle of “buyer beware” applies to the sale and purchase of all types of property. This means that the seller is under no duty to inform the buyer of any defects or other problems with a property; you will be buying the property in whatever state it is in at the moment of exchange of contracts. It is for this reason that you should give serious consideration to getting a survey done before you are legally committed to the purchase.

There are three types of survey:

1. **Mortgage Valuation Survey:** If you are getting a mortgage, your lender will ask a surveyor to go and look at the property. He will only be concerned with whether the property will be good security for the amount of the mortgage. Some lenders will now allow you to see the results of their surveyor's inspection but you must appreciate that it is not a full survey of the property; the inspection is very limited in its scope, and if the lender's surveyor has overlooked any defect you cannot assume that you will be able to sue him.
2. **Homebuyer Valuation and Survey:** This report is carried out by a surveyor under a scheme introduced by the Royal Institution of Chartered Surveyors. The aim is to provide a concise and readable account of the general condition of the property. It is cheaper than a full survey and is a useful way of highlighting any serious problems at the property.

3. **Full Structural Survey:** This will involve a detailed examination of the property. A full survey can take several hours although, even with the seller's co-operation, there may be parts of the property which are hidden, inaccessible or unexposed. The surveyor ought to draw your attention to what he has not been able to investigate.

Please note that the drains, the central heating system, the wiring and gas and electrical installations are normally outside the scope of a survey and you may need to have them inspected separately. Remember that the sellers will not be liable to you if on completion it is found that any of the services or appliances (or, for that matter, any other parts of the property) are defective or not working.

C. NHBC BUILDMARK COVER

If you are buying a brand new property or one built within the last ten years, it is likely that the property has the benefit of cover under the Buildmark scheme of the National House-Building Council (NHBC). There are other similar schemes but NHBC is by far the most common. The legal report which we send you will tell you whether there is NHBC cover for the property you are buying. Briefly, the Buildmark scheme provides the following cover:

1. When the property is being built: The builder is responsible for completing the home to NHBC standards. After exchange of contracts if, because of insolvency or fraud, your builder does not start or complete building your new home, NHBC will reimburse your deposit or arrange for the home to be completed in line with the NHBC standards. NHBC will pay up to a maximum of 10% of the purchase price or £100,000 whichever is less.
2. In the first two years after construction: NHBC requires that the builder must put right at his own expense any defects which arise as a result of his not keeping to NHBC's standards of materials and workmanship. If the builder does not repair the defects, the owner of the property will have the benefit of the NHBC's resolution service and a right to compensation even if the builder is insolvent.
3. In the third to tenth years after construction: NHBC insures you against major damage due to a defect in the structure of the property and against any defect in the below-ground drainage system. It does not insure ordinary repairs or defects which do not cause major damage.

Sometimes the builder will appoint NHBC to inspect their site for compliance with Building Regulations in which case your Buildmark policy will also cover you against certain breaches of some Building Regulations if a danger is posed to the physical health and safety of the occupiers. Your insurance certificate will show if this cover applies.

The above is only a summary of the Buildmark cover. If you would like more detailed information on the Buildmark Scheme you can download the current Buildmark policy document by going to www.nhbc.co.uk.

The existence of NHBC cover should not be regarded as a substitute for a survey report on the property. Pursuing a claim against the builder or NHBC can be a frustrating and time-consuming business. Furthermore, NHBC will not be liable for any major damage or defect of which written notice could reasonably have been given to the builder during the initial two year period nor for anything affecting or caused by alterations or extensions to the property after the date when the Buildmark cover came into effect. Unless you are the first purchaser of the new property, you will only be insured against defects and major damage which appear for the first time after you buy the property. Accordingly a survey will always be a wise precaution.

D. INSPECTION BY YOU

Generally speaking, we will never see the property you are buying. For this reason it is essential that you inspect the property yourself and alert us to anything that appears worthy of further investigation.

You should check whether any tenant or lodger is living at the property and look for signs of any third party rights over the property e.g. a public right of way or a neighbour's right to use a path. If there appear to be any tenants or lodgers or third party rights please let us know immediately. If in doubt you might want to ask the seller.

We will always ask the seller's solicitors about occupiers and third party rights but we cannot be sure that we will always get the right answers so your own inspection will always be a useful exercise. You should also let us know whether, from your own knowledge of the property, it is on or near to a common or village green, a railway or underground line, an area of mining activity or next to a river or lake. In these cases we may need to raise further enquiries with the appropriate authorities.

On registration of your ownership at the Land Registry you will be required to make a declaration as to whether there are any third party rights affecting the property which are not mentioned in the title deeds. This means that you will need to tell us if you know of any rights affecting the property (e.g. a right of way for a neighbour) which we have not ourselves been able to unearth prior to completion.

E. MORTGAGE

This section of the notes is only applicable where you need to borrow money from a bank, building society or other lending institution to buy the property.

There are two main types of mortgage:

1. **Repayment mortgage:** Here the monthly payments comprise an element of capital repayment as well as interest payments. At the end of the mortgage term the whole of the loan will have been paid off. Depending on your circumstances it is often a wise precaution to take out a mortgage protection insurance policy or other suitable life cover to repay the mortgage in the event of death.
2. **Interest-only mortgage:** Here the monthly payments comprise interest payments only and no repayment of the capital sum is made until the end of the mortgage period. You will need to ensure that you have arrangements in place to repay the capital sum owing at the end of the mortgage term

F. SEARCHES

In most conveyancing transactions we will need to obtain the results of a Local Search, a Drainage Search and an Environmental Search before you exchange contracts. If a problem is discovered after contracts have been exchanged it will, generally speaking, be too late to do anything about it.

The following are the usual searches we need to carry out:

Local Search

This search will reveal obligations of a public nature which are enforceable against the owner of the property (e.g. tree preservation order, compulsory purchase order, enforcement notice for breach of planning). It will also give rather more general information about the property including details of roads, planning consents and building regulations approvals. We will explain the results of the search to you in our legal report on the property.

We must emphasise that the information supplied in a Local Search relates only to the actual site of the property and does not (except in the case of road proposals) deal with the areas around it. Thus, the Local Search will not say anything about development proposals for land in the vicinity of the property. The limited nature of a local search is often not appreciated by people buying a house. If you wish to make your own enquiries about planning consents or planning applications relating to land or buildings in the vicinity of the property, you can in most cases do this online by going onto the local authority's website. Most council websites will enable you to search for planning applications and this can provide extremely useful information about the immediate surroundings of the property you wish to buy.

Drainage Search

This search consists of a number of standard enquiries sent to the water company for the area. The search result will tell us whether the property is connected to mains drains and mains water. It will also show on a plan where the mains drains and water supply pipes run in relation to the property.

This information can be useful in determining the length of any private drainage run. The water company is responsible only for the mains drains and the mains water pipes. You will be responsible for the cost of maintaining private drains and water pipes. If such private drains and pipes are shared with other properties (a combined system) then it is likely that the costs of maintenance will be shared with the owners of such other properties.

Environmental Search

In recent years there has been a growing awareness of the problems that can be caused by contaminative uses of land. Legislation has increased the powers of the Environment Agency and other authorities to require the owner of contaminated land to clean up (or "remediate") the land. Contamination can arise not only from new events (such as the pollution of a water supply by an industrial process in the vicinity of the property) but also from existing contaminants caused by a previous use of the land. As the buyer of property you will want to find out as much as you can about the land, in particular whether there may be contamination problems either actual or potential. Unfortunately, the discovery of contamination issues is not straightforward.

The Environmental Search which we carry out against the property is intended only to provide an indication of whether there might be contamination issues worthy of further investigation. The search is carried out by a commercial organisation which checks a range of data in relation to the property. It is only a desktop exercise and does not involve any inspection of the property. Accordingly the search result will only be as good as the written information available to the search organisation. The search cannot be relied upon as a definitive indicator of whether there is any contamination.

Chancel Repair Liability

In recent years there has been a growing awareness of the potential problem of chancel repair liability. In simple terms, if a property is situated within a parish with a medieval church, that property could be subject to an obligation to pay for repairs to the chancel of that church. In a court decision in 2003, a couple who inherited a farm found themselves liable to pay £95,000 towards repairs to their local church. Unfortunately, it is not always easy to tell when land is or is not affected by this liability.

In order to protect our clients, we can arrange an insurance policy to cover your property against liability for potential chancel repairs for a one-off premium.

G. DEPOSIT

Part of the purchase price has to be paid to the seller on exchange of contracts. The "normal" deposit is 10% of the purchase price although it is not uncommon nowadays for buyers to offer a reduced deposit of 5% of the price. Such an offer might or might not be acceptable to the seller. If you withdraw from the transaction after exchange of contracts you will lose the deposit and you may have to pay additional compensation to the seller for breach of contract. Note that, even in a case where the seller is prepared to accept less than a 10% deposit on exchange, he will still be able to sue you for the full 10% deposit should you fail for any reason to complete the purchase.

Please bear in mind that, if you are getting a mortgage, the mortgage money will not be available until completion so you will not be able to use any of that money for the deposit. You should consider at this stage where your deposit money will come from and please let us know if you foresee any difficulty in providing the deposit for exchange of contracts.

Note that if you are also selling a property the deposit you receive from your buyer can usually be used towards the deposit on your purchase. If your selling price is less than your buying price you may need to make up the deposit shortfall from your own resources.

H. INSURANCE

It is essential that the property you are buying is properly insured. The moment at which it becomes necessary for you to insure the property (or to have the property insured on your behalf e.g. through the building society) will depend upon the form of contract sent to us by the seller's solicitors - it will either be on exchange of contracts or on completion. We will let you know in our legal report whether risk passes on exchange or completion so that you can take steps to insure the property at the relevant time.

If you are buying the property with a mortgage the mortgage lender may arrange buildings insurance on your behalf. It should be apparent from your mortgage offer whether and on what terms the property will be insured by the mortgage lender.

If you are buying without a mortgage (or your mortgage lender is not insuring the property) it is absolutely essential that you have made arrangements before the relevant date (i.e. exchange or completion as mentioned in our legal report) for the policy to commence from the relevant date. We therefore advise that you make your insurance arrangements at an early stage but ask the insurance company (or your insurance broker

if you are using one) not to put the policy on risk until you so direct.

If you are buying a flat in a block it will sometimes be the case that the landlord or management company will insure the building. We will let you have this information in our legal report. You will still need to insure your own contents in this situation.

I. THE CONTRACT

Before contracts can be exchanged you will need to sign the contract for the purchase of the property. The contract will contain the terms agreed between you and the seller for the purchase of the property and you will need to read through the contract and check in particular that the price, the property and the parties are correctly stated.

There will often be a clause in the contract stating that you are not entitled to rely upon any statements made by the seller or by any representative or agent of the seller and that the only provisions of any legal effect are those contained in the contract and in written replies to enquiries which we have raised with the seller's solicitors. Accordingly, if there are any statements or promises that have been made to you by the seller or the estate agents (or indeed by anyone else) that you consider to be important and on which you are relying, please let us have details so that these may be specifically incorporated in the contract.

The contract will also refer to a rate of interest (the "contract rate") payable in the event of late completion. If you fail to complete the purchase on the due date interest at the rate mentioned in the contract becomes payable on the balance of the purchase price outstanding. The contract will usually refer to a specific rate of interest (this will be highlighted in the legal report which we send you). If the contract refers instead to "the Law Society's interest rate" or if no rate is mentioned at all the applicable rate of interest will be four percentage points above bank base rates.

When you receive the contract you will see that the contract date and completion date have been left blank. These dates will be filled in by us at the moment of exchange of contracts. The completion date will be the date agreed by you and the seller for completion of your purchase. It has to be a working day. As a rule, completion should be at least ten days after exchange of contracts.

J. STAMP DUTY LAND TAX

Stamp Duty Land Tax (SDLT) is payable by the buyer of property on the value of the transaction. The amount of the tax depends on the purchase price of the property. SDLT for residential property is charged at different rates depending on the portion of the purchase price that falls within each band.

The rates and thresholds are as follows:

Purchase price	SDLT rate
Up to £125,000	0%
Over £125,000 to £250,000	2%
Over £250,000 to £925,000	5%
Over £925,000 to £1.5 million	10%
Over £1.5 million	12%

Example: the SDLT on a purchase price of £275,000 is calculated as follows:

0% on the first £125,000 = £0

2% on the next £125,000 = £2,500

5% on the remaining £25,000 = £1,250

Total SDLT payable = £3,750

However if you are purchasing a second property or buying a new home and not selling your existing home, you may be subject to an additional 3% on top of the normal SDLT rates above. This is frequently referred to as the 'higher rates' of SDLT.

You should check with us or a specialist tax advisor to check whether the higher rates will apply to your transaction.

You should bear in mind that SDLT is only payable on the purchase price of the property and not on any additional amount paid for such items as carpets and curtains. This distinction can in certain circumstances lead to savings in SDLT. Before considering whether an apportionment might save you tax you should consider the following points carefully:

- You can only attribute a separate value to items which fall into the category of "chattels" i.e. items which are not fixed to the property. For example, carpets and curtains are generally regarded as chattels whilst fitted kitchen units are not. The distinction is not always an easy one to make, and a lawyer will sometimes have to look at decided cases to assist in classification.
- The value attributed to any chattels must be what the relevant items are really worth. This means genuine market value and not an artificially inflated price agreed upon between seller and buyer.
- The apportionment between property and chattels can only be made with the agreement of the seller. Any improper apportionment (e.g. attributing a value to a fixture rather than a chattel or attributing a value exceeding genuine value) can lead to criminal liability for both buyer and seller so both parties must be extremely vigilant to ensure that there is no impropriety in agreeing an apportionment.

If you think that an apportionment of the purchase price might save you SDLT you should discuss this with us at the earliest opportunity. The best approach is for you to make a list of those items included in the purchase which you consider to be chattels and to attribute a realistic value to each item. We can then submit the list to the seller's solicitor and try to reach agreement on apportionment.

These notes are believed to be accurate as at October 2018. They do not constitute legal advice save where they have been issued to a client of Field Seymour Parkes LLP in the course of a conveyancing transaction.