

## BUYERS GUIDE

### Introduction

- 1.1 This is intended as a general guide only but it does contain points of advice which are relevant to your purchase. If you are in any doubt about any specific issue please ask your Lawyer for further advice.
- 1.2 If you own an existing property but have not yet advised us please do so as soon as possible as it is important that we have full instructions on all matters affecting your move.
- 1.3 Our job is to ensure that your interests are protected and that the agreements that you make, in relation to what is likely to be your biggest financial commitment, are in your favour so far as can be achieved.

### Initial Steps

- 2.1 If we have sent you our letter of engagement for your signature and return, please note that we will not be able to start work on your behalf until we have this document back with us together with any funds requested to cover initial search fees and costs.
- 2.2 **Do not** agree to pay any deposits direct **nor** enter into any written agreement with your Seller or anyone seeking to represent the Seller without having discussed the matter with us first. You could be putting yourself into the position of being bound by a contract that may be contrary to your interests.
- 2.3 If you need finance to assist in the purchase you should take steps to obtain your mortgage offer as soon as possible. We will be glad to point you in the right direction, if you wish. As solicitors we are duty bound to always provide independent advice in such matters.

### Caveat Emptor (i.e. let the buyer beware)

- 3.1 We draw to your attention that it is up to you to satisfy yourself with regard to the state and condition of the property and its services and fittings in all respects. If you do not have a survey carried out and do not find out about any problems with the property until after exchange of contracts it is too late to do anything about it and any expenses incurred as a result thereof are your sole responsibility.

### Survey

- 4.1 We strongly advise you to obtain an independent Surveyors report and valuation on the property you are to buy, whether or not you are to obtain a Mortgage. Your Mortgage Lender will carry out a valuation of the property for which you will have to pay a fee. However, this valuation should not be relied upon by you as constituting a thorough survey of the property. Whilst it may reveal any structural or other problems with the property it will not necessarily do so. Furthermore, it may well be that your mortgage application includes a disclaimer whereby your Mortgage Lender will not be under any liability to you in respect of the valuation and that no responsibility whatsoever will be implied or accepted by reason of the Valuer's inspection or report. Only an independent Surveyor will be personally responsible to

you and take your particular requirements into account. An independent Surveyor will cost you a little more, but when compared with the investment being made and the potential risk involved this extra expenditure is extremely worthwhile.

- 4.2 It is surprising how even on a survey of a comparatively modern property a report can highlight defects and potential expenses you may not otherwise be aware of. Once you become aware of any such potential problems or defects then you can negotiate further with the seller.

### **Insurance**

- 5.1 Buildings insurance cover on the property, and its cost, becomes your responsibility when you contract to buy the property. If this is **not** dealt with via your lender or Landlord (in the case of a Leasehold flat), then you will require your own policy. **It is your responsibility to provide us with the appropriate instruction or confirmation that you have arranged your own Buildings Insurance. If you are obtaining a mortgage, your lender may require a letter to be signed by your insurance company or broker on their behalf and this letter must be returned to us duly signed and completed prior to exchange of Contracts. Should this not be attended to, your lender will not release the funds for the purchase and we cannot accept responsibility if this is not dealt with prior to exchange of Contracts. You may consider it appropriate to allow your lender to insure the property for at least the first year to obviate any difficulties that might arise.**
- 5.2 Contents insurance is a separate issue, though it may be offered as an extension of the buildings insurance policy. It must be for you to determine the amount of cover required and to ensure that the policy has commenced.
- 5.3 If you require any advice on these points then as independent advisers we will be glad to assist.

### **Estate Agents Details**

- 6.1 If an estate agent is involved in the sale of the property you will have received a copy of the agents details. Please check the details very carefully to ensure that they are accurate and represent the agreed terms of purchase. If there are any discrepancies please let us know straight away.

### **Legal Work Prior to Contracting to buy**

- 7.1 Before you can contract (exchange) the following steps must be completed:-
- 7.1.1 Receipt of satisfactory draft contract from sellers solicitors
  - 7.1.2 Receipt of satisfactory replies to all enquiries on the property.
  - 7.1.3 Receipt of satisfactory results of searches; this will cover
    - a) Development, Planning, Building Regulations, Road Schemes and Charges, Grant Conditions, Compulsory Purchase Orders and Public Rights of Way

- b) Additional searches as required depending on the nature and location of the property.

Such searches **do not** give information on proposed development on neighbouring land so if you have any queries on this aspect a further search will need to be made at the local authority planning office, perhaps necessitating a visit to inspect plans. Alternatively, we can carry out a Plan Search which supplies information for the property and surrounding area including plans to construct a telecommunications mast, a new local nightclub or the development of a supermarket or a factory nearby based on aerial photography, planning applications since 1997 within 250m search radius and the latest local plan policies. There are two levels of search available at a cost of £21 +VAT or £28 +VAT. Please advise us immediately if you would like us to carry out this additional search on your behalf.

- 7.1.4 Receipt from you of acknowledgement that your survey is acceptable -or otherwise.
- 7.1.5 Receipt of your mortgage offer and the lenders mortgage instructions.
- 7.2 Any one of the items in 7.1 above may give rise to the need to ask for more information which will need to be dealt with before you sign the contract.
- 7.3 Once we are satisfied on all matters under 7.1 we will be report to you concerning the transaction.
- 7.4 At this stage we will go through all the financial aspects of your move in detail and a deposit will be requested from you to enable exchange of contracts to take place (see 11 below).
- 7.5 The amount of work that is required involves dealing with a number of different people or institutions. We estimate the time usually taken from initial instructions to exchange of contracts to be between four to six weeks.
- 7.6 If you are buying a property, which forms part of a chain of property transactions, it will not be possible to exchange contracts for you until the last link in the chain is able to exchange. This could therefore affect your timescale.

### **Reporting to you up to Exchange of Contracts**

- 8.1 As you will now appreciate there are a large number of matters that need to be investigated to ensure that your interests are fully protected. We will keep you advised of progress on a regular basis either by letter or by telephone call.
- 8.2 Should you have any queries on any matter at any point please contact your Lawyer as soon as possible.
- 8.3 If your instructions change at any stage we will ask you to confirm those instructions in writing so that we can all be clear on what further steps are to be taken.

### **Our Responsibility to Your Lender**

- 9.1 If we are instructed by your lender to complete a mortgage to you, then we are also acting for

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your lender independently of you. Your lender is also our client and as explained in their terms and conditions you are responsible for their costs.

- 9.2 We have to ensure that the lender's interests are properly looked after. Also we have to advise the lender if there are any problems with the property, with the title to the property, and the terms agreed for the property purchase.
- 9.3 One matter which will concern your lender is whether there are to be any persons living in the property who will be over 17 of age on the date you move in and who will not be a joint owner with you. If there are to be any such persons it is essential that we are notified of their names, ages and addresses, if currently different to our own.

Since such persons could be treated in law as being eligible to claim an interest in the property, possibly in preference to your lender, your lender will require such persons to sign a form postponing any such rights until the lender has first been paid back all that has been borrowed. Therefore all such persons should be advised to seek independent legal advice on their position before actually signing such a form and we would need to write to them to this effect. It would be helpful if, as well as advising us of who such persons are, you could also show them this section so that they are aware of the steps that they will need to take in order that you are able to complete your purchase of your new home.

- 9.4 It may well be a condition of your mortgage offer that a life policy or policies are made available for assignment or deposit with the lender upon completion. If so the policies, or acceptance terms, must be in place before proceeding to Contract. This is because we will have to put any new policies on risk from the date of the Contract. We may also have the responsibility of obtaining the original policies for placing with the deeds after completion if required by your lender.

### **Signing your contract**

- 10.1 We will provide a full report to you and when you are satisfied we will obtain your signature to the contract.
- 10.2 Signing a contract and paying a deposit to us does **not** bind you to buy. However, once you are satisfied then we will proceed to exchange contracts on your behalf.

### **Exchange of Contracts**

- 11.1 Exchange means swapping the contract signed by you for the other contract signed by the seller and paying over to the seller the deposit. At this stage a completion date i.e. your moving date, is fixed and neither party can back out of the transaction or delay completion without suffering loss.
- 11.2 Such loss could include; (a) interest for late completion, (b) the deposit that you paid, (c) a claim for the balance of 10% of the purchase price if the deposit you paid was less than that, and (d) damages to compensate the seller and any other parties suffering loss involved in the chain of transactions.

11.3 **It is vital that you are satisfied that you can meet the completion date before you instruct us to exchange Contracts.**

#### **Between Exchange and Completion**

- 12.1 During this period completion searches are made and the deeds signed to transfer ownership to you and create any mortgage you require.
- 12.2 Completion is usually two to four weeks from exchange. However, if you are buying a new plot from a builder, this is subject to the builder's time scales.
- 12.3 We must make sure that all mortgages taken out by the seller on the property, as well as local authority grants etc, will be repaid at completion.
- 12.4 Any monies that may be due from you must be paid to us at least five working days before completion to allow for clearance of cheques. We will send you a detailed statement of all monies required, which will include our charges and all outgoings for the purchase and any mortgage and additional work that you may have instructed us to do.

#### **Your Ownership of the Property - Joint Ownership**

- 13.1 If you are buying a property on your own there is no real matter to be discussed. You will be the sole owner.
- 13.2 Where two or more people are purchasing the property together they must hold the property either as "joint tenants" or as "tenants in common". These are technical expressions which have nothing to do landlord and tenant; they apply whether the property is freehold or leasehold. The meaning of these expressions is as follows:-
- (a) Where two or more people own a property as joint tenants, each co-owner is deemed to own the entirety of the property. Two things follow from this:-
- (i) On the death of a co-owner his or her share will pass instantaneously and automatically to the surviving owner or owners. A joint tenant's share in the property cannot be passed by will or the rules of intestacy.
- (ii) On a sale of the property during the lifetimes of the co-owners, each co-owner is entitled to an equal share in the net sale proceeds irrespective of his or her contribution to the original purchase price or mortgage payments (if any)
- b) Where joint owners purchase as "tenants in common", each tenant in common has a distinct share in the property; on the death of a tenant in common this share will pass to whoever is entitled to it under the terms of the will of the deceased co-owner or if no will under the rules of intestacy. It follows that this share could pass to someone other than the surviving co-owner or co-owners which may necessitate a sale of the property in order to pay out the share to the third party. The value of the co-owner's share under a tenancy in common will depend on what was agreed at the time of purchase and will usually reflect the financial contribution of each

co-owner to the original purchase price or to subsequent mortgage payments (if any).

- 13.3 It follows therefore that you must give us written instructions whether or not you purchase as joint tenants or as tenants in common depends on the wording used in the document which transfers ownership to you. It follows therefore that you must give us instructions, preferably before exchange of contracts, as to whether you want to purchase as joint tenants or as tenants in common. **WE ENCLOSE A SEPARATE FORM WHICH WE WOULD ASK YOU TO COMPLETE ONCE YOU HAVE DECIDED HOW YOU WANT TO HOLD THE PROPERTY.**
- 13.4 Generally speaking joint tenancies are the usual for married couples or other couples in long term relationships. However they may be inappropriate where one party to the relationship has contributed a significantly greater proportion of the purchase price and/or wishes to preserve his or her share in the property to be passed to, for example, children of a previous marriage.
- 13.5 If you feel that a tenancy in common is appropriate, we strongly advise (for clarity and to avoid future disputes) that a document (usually called a Declaration of Trust) be prepared recording the respective contributions to the original purchase price and mortgage payments and declaring what the respective shares in the property are to be eg 50/50, 30/70 or whatever. An additional charge will be made for the preparation of this document, probably in the region of £80 plus VAT

### **Practical Points at Completion**

- 14.1 Make sure that you have clear arrangements for the transfer of keys. Check with us if you have not been able to deal with this either through the agents or the seller direct.
- 14.2 Make sure that you arrange for the Water, Gas, Electricity and Telephone services suppliers to read meters, transfer accounts etc. on the right day.
- 14.3 Book your removals in plenty of time.
- 14.4 Check your property and life insurance cover is adequate.

### **Completion**

- 15.1 Provided you have complied with 11.3 above, we will make sure the money is paid and that the keys are released by the sellers Solicitors
- 15.2 We will confirm to you in writing that completion has taken place and, if not already sent, will send you complete financial accounts for the transaction.
- 15.3 We will deal with payment of stamp duty, if applicable, and apply for registration of your ownership of the property and registration of any lenders mortgage with H M Land Registry.
- 15.4 Once registration has been completed we will send you a copy of your registered deeds for you to keep. Due to dematerialisation, most Lenders no longer hold any original deeds other

than a copy of the registered title. It is quite possible there will however be various deeds and documents which will be required when you come to sell the property, and if that is the case we will forward them on to you for your safe keeping.

### **Miscellaneous Points**

- 16.1 If your property is mortgaged you must observe the rules and conditions of the lender, which will include keeping the property in good repair, making no structural alterations without consent, not allowing anyone else to obtain rights of occupation without their consent and keeping mortgage payments up to date.
- 16.2 Properties under ten years old will, most likely, have the benefit of an NHBC or similar guarantee. Any available guarantees will be forwarded to you following completion for your safe keeping.

### **Conclusion**

- 17.1 We will do all in our power to comply with your reasonable requirements and timescale. Should there be any points you wish to discuss as matters proceed please contact us. We will be pleased to help.

## JOINT OWNERSHIP OF PROPERTY

When a property is purchased by more than one buyer the deeds can provide that the property is owned by the buyers either as “Tenants in Common” or as “Joint Tenants”. The practical differences between the two are:

### **Tenants in Common**

This means that on the death of one of you the share of the property of the one who dies passes under the terms of his or her Will or, if no Will is made, under the Intestacy Rules. If you purchase as “Tenants in Common” the deeds must state the shares of the property owned by each of you, which can be any fraction each that you want

### **OR**

### **Joint Tenants**

This means that on the death of one of you his or her share of the property passes automatically to the other of you. You cannot leave it to someone else by way of your Will. If you purchase as “Joint Tenants” you will be deemed to hold the property in equal shares irrespective of actual contributions to the purchase price.

It is entirely up to you to decide how you should own the property. Please would you therefore confirm to us the basis upon which you wish to own the property by completing and returning to us the form attached to this information sheet.

### **Declaration of Trust**

At the time of buying a property a Declaration of Trust can be prepared. This is particularly useful when a property is held as “Tenants in Common” in unequal shares and also in the case where either one of the parties to the purchase has paid a particular sum of money which needs to be preserved in their name. In the case where someone else (such as a parent) has provided a contribution towards the price, the Declaration of Trust provides a record of the contribution and contains an agreed confirmation that it will be repaid on the sale of the property.

### **Wills**

It should be noted that whatever form the purchase arrangements take, it is also important to make a Will. Should you wish to instruct us to draft your Will, or to review an existing Will, please contact us to make an appointment.

## JOINT OWNERSHIP OF PROPERTY FORM

OUR NAMES.....

THE PROPERTY WE ARE BUYING.....

- We confirm that we wish the purchase to be in our joint names as:  
(Please tick the option you require)

### Joint Tenants

(The property passes automatically on the first death to the survivor)

**OR**

### Tenants in Common

(The property does not automatically pass on the first death to the survivor but in accordance with the terms of a Will or in the absence of a Will according to the laws of intestacy)

SET OUT BELOW ARE THE SHARES IN WHICH WE WILL HOLD THE PROPERTY AS TENANTS IN COMMON:

.....% for .....  
(name)

.....% for .....  
(name)

SIGNED.....

.....  
(all purchasers must sign)

DATED.....

\*\*\* Please detach and complete this form and return it to Barr Ellison \*\*\*

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