

Conveyancing: Practice and Procedure

Conveyancing matters are usually sales, purchases, or simultaneous sales and purchases. Where there is a simultaneous sale and purchase we would most strongly advise you to instruct a solicitor. This is because if all the procedures are not carried out correctly someone could be left without a roof over their head in which case, if it is due to some fault of yours, you could be held responsible for damages.

The following is a brief outline of the process of conveyancing in the case of a purchase and of a sale, as a solicitor would carry them out. It will give you an insight into what is involved if you were to attempt to do it yourself, and in the case of your instructing a solicitor, it will at least give you some idea of what your solicitor is supposed to be doing for you.

Purchasing a Property

It is important to bear in mind that there are two distinct stages in buying a property:

(1) Exchange of Contracts. This is where both parties have agreed to the transaction, and the terms of it, and they have signed and exchanged contract documents. Once this has been done both parties are committed to the transaction and will be liable for penalties in the event of their non-performance of the contractual terms. Prior to Exchange of Contracts there is no binding agreement, even if the parties have verbally agreed to proceed.

(2) Completion. This is when the transaction is finalised and property and purchase money actually pass.

Pre Exchange of Contracts (Buying)

When the purchaser agrees to buy and the vendor agrees to sell both parties will generally instruct solicitors. The vendor's solicitor will in due course forward the following to the purchaser's solicitors:

(1) Office copies of the title to the property. These are documents obtained from the Land Registry, which show an Ordnance Survey map of the area and the boundaries of the property to be sold. They will also give a description of the property, and details of the registered owner, and of any charges against the property, such as mortgages. They will also give details of any restrictive covenants or easements relating to the property. A restrictive covenant is where the use of the property is restricted in some way

i.e. The owner may not use the property as a place of business or is not allowed to park a caravan outside the front of the property.

Easements are rights over the property such as rights of way or drainage. There are other rights over the property that will not be shown on the office copies. These are known as overriding interests. These are interests that do not need to be registered to be valid. They are usually rights to run cables or pipes over or under a property and are generally nothing that the purchaser need be concerned with.

The vendor's solicitor will enquire at a later stage whether the purchaser is aware of any such interests when he raises his preliminary enquiries, we will deal with these later. The office copies will enable the purchaser's solicitor to establish that the vendor has a right to sell the property, and what exactly the purchaser is buying. Since 1925 when the Law of Property Act was passed, property in England and Wales has gradually had to be registered with local Land Registries. Certain areas were made into areas of compulsory registration and any transactions in those areas would have to be registered with the Land Registry for that area. Once a property is registered with the Land Registry the Land Registry will issue a Land Certificate to the owner and that will be sufficient proof of ownership. In the event of there being a charge or mortgage on the property, that will be registered on the charges register and a charge certificate will be issued to the mortgagee, usually a Bank or Building Society, which will hold it as security for their loan. The office copies sent by the vendor's solicitor to the purchasers are up to date copies of the register relating to that particular property. This makes the conveyancing process very simple in comparison to the old method where purchasers had to deduce title by looking at title deeds. With registered land the land registry guarantees the title. There is still some unregistered property and different conveyancing procedures have to be used when purchasing such a property. In such cases it is essential that a solicitor be employed, as unregistered conveyancing can be very complex.

(2) Draft contract in duplicate. The vendor's solicitor prepares the contract of sale, which contains a description of the property, including its registered title number, details of the price and deposit to be paid. It will generally refer to the Law Society's conditions of sale, which lay down such things as how completion will take place and what penalties will be imposed in the event of breach of contract. The Purchaser's solicitor will ultimately return one part of the contract approved, and both parties will have a copy ready for signature and exchange when they are ready, and a completion date is agreed.

(3) Replies to preliminary enquiries. It used to be the case that the purchaser's solicitor would raise preliminary enquiries themselves but there is now a protocol amongst most solicitors whereby the vendor's solicitor sends a completed preliminary enquiries form to the purchaser, when forwarding office copies and the draft contract. Preliminary enquiries are questions relating to the property, and cover such things as items included in the sale and questions about the property generally i.e. have there been any boundary disputes, any notices issued by the Council about the property, have there been any disputes with neighbours, are there any guarantees relating to any appliances to be left at the property. The vendor will also be required to state whether he is aware of any matters that might adversely affect the property.

This is an important form as the vendor may be held to be liable at a later date for any misrepresentations he may make.

On receiving these documents the purchasers solicitor will, if satisfied that the matter will probably go ahead, institute a local search. This involves completing a Local Search form and forwarding it with the appropriate fee to the local authority for the area where the property is being purchased. The local search will reveal any information that the Council has about the property and give details of any proposed matters that might affect the property. Examples are tree preservation orders, planning matters affecting the property, and any proposed road schemes or developments in the vicinity.

An important matter to note when purchasing a property is to see if there have been any recent extensions to the property and, if so, to make sure that planning permission was granted, otherwise if there was an extension within the last five years and planning permission was not obtained, the local council could insist that it be pulled down, or you could have to submit a planning application yourself.

In areas where there has been mining a prudent solicitor will carry out a Coal Board Search to establish whether there has been any mining carried out under the property, as this may have caused subsidence. It will also show if a claim has been made against the coal board in respect of the property for damage caused as a result of subsidence. If there has been a claim you will need to establish whether any compensation paid was used to repair the property, because no further claims can be made.

Once the purchasers solicitor has received all the above and he is satisfied that there are no problems with the property, or the title to the property, he will be in a position to exchange contracts. If the purchaser is having a mortgage to assist with the purchase of the property he will need an irrevocable offer of mortgage from the Bank or Building Society. The purchaser's solicitor will in such cases be working on the mortgagee's behalf as well as the purchasers as he will have to protect the mortgagee's interests by thoroughly investigating the title, and making sure their interest in the property is registered at the land registry.

The Law is

[I need a Solicitor](#)

[Free Help](#)