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## A Guide to Conveyancing



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## A Guide to Conveyancing

We have provided this guide to explain the steps which are usually taken (and the reasons for them) in the conveyancing process, the factors which dictate when these steps are to be taken, and some of the terms used by solicitors. A short written explanation like this cannot cover all the points which may arise, but we hope you will discuss any concerns with us, so that we may help you.

*The Napthens residential property team.*

### Conveyancing – What is it?

Transferring the ownership of land is not like transferring the ownership of, say, a piece of furniture or a car. Land is always there, and over the course of time many rights and obligations may be created in relation to it. They are often not evident on an inspection of the property: for example, someone may have a right to occupy part of the property or a neighbour may have a right to enter the property and dig up the drains in order to inspect or clean his drains.

The public, too, may have claims – perhaps there is a public footpath across the property; the council could have rights in respect of, for example, compulsory purchase or unpaid charges for making up the road; the planning authority or the highway authority is perhaps considering schemes which would affect the surrounding area and property.

Then there is the question: Does the seller really own the property and, if so, is he free to sell it? If he inherited the property, were the correct steps taken to transfer the legal ownership to him, or is it still outstanding in someone else's hands?

These are only a few of the snags which may arise and which it is your solicitor's duty to discover, if they exist, and advise you about. Conveyancing is the name given to the process of transferring ownership of land from one person to another, the solicitors for the seller and the buyer each being obliged to safeguard their client's interests.



## What Happens in a Conveyancing Transaction?

### Pre-Contract

**The Buyer:** You have found the property you want, and the seller has accepted your offer. Some of the most difficult and responsible work has to be done by your solicitor at this stage.

Search applications and “preliminary enquiries” are by no means a formality. We will summarise the information obtained about the property and advise you about the draft contract. It is in this period that the buyer’s solicitors check the title of the property. It is also your solicitor’s duty to ensure you do not “exchange contracts” before you have all the money needed to pay for the house at completion.

We shall be in touch with your mortgage lender and with your buyer’s solicitor, if you have a related sale. The “mortgage” is prepared and the buyer will have it explained to him before he signs it. An obligation to repay the thousands of pounds, at a rate of perhaps hundreds a month, is not undertaken lightly. Once all these elements have come together, we shall ask you to sign the contract and pay the agreed deposit to us so that contracts can be “exchanged.” If you are arranging your own buildings insurance then you should arrange for this to be placed on cover from the date of “exchange of contracts.” Please provide a copy of the buildings insurance schedule to your solicitor as soon as possible.

If you are buying a property you are under a duty to discover any physical defects. Your mortgage lender will do a “Mortgage Valuation” although you may wish to consider a more comprehensive “Home Buyer’s Report and Valuation” or even a “Full Structural Survey” – remember, buying a house may be the biggest investment you ever make.

**The Seller:** Having found a buyer, we will send a draft contract to the buyer’s solicitor. To do this we shall need the deeds, to check the nature of your ownership and the existence of any rights or burdens which must be revealed and passed on to the buyer. The deeds may be held by your mortgage lender and we will require your mortgage account number as soon as possible. If you are holding any deeds, please forward these to us as soon as possible.

With the draft contract we will send the Property Information and Fixtures, Fittings and Contents Forms completed by you to the buyer’s solicitors. They will then raise “preliminary enquiries” and once the buyer’s solicitor is satisfied with all the documentation, we will ask you to sign the contract. Contracts will be “exchanged” and a date fixed for moving and payment: “completion”.

### Between Contract and Completion

During the stage between “exchange of contracts” (when the parties become contractually committed) and “completion” (the day on which money changes hands in return for the keys and transfer of ownership, i.e. the day on which you are entitled to move in) the buyer’s solicitors will prepare the documentation for the transfer of ownership to the buyer.

The “transfer” must be signed by the seller and in some cases must also be signed by the buyer. As we approach the date for completion, the financial details will be calculated and the buyer asked to provide the balance of the purchase price. On completion the purchase price is paid to the seller’s solicitor in return for the keys and deeds to the property. At that point you will be entitled to occupy the property.

### After Completion

What remains to be done is almost entirely in the hands of the solicitor. As seller’s solicitor we shall account to you, the seller, for the balance of the purchase price after paying off any mortgage, estate agents and ourselves. If we are acting for you as a buyer, there is rather more to be done.

We shall submit the Land Transaction Return to HM Revenue & Customs for the details of the transaction to be entered in their records and for any necessary stamp duty land tax to be paid. The level of stamp duty land tax payable (if any) is a percentage of the price and your solicitor will advise you exactly how much will be due on completion. This is a government tax and should not be confused with our professional charges! HM Revenue & Customs forward a certificate to us which we deliver to the Land Registry together with the transfer document and an application to register the title, and also with a cheque for the Land Registry fee. When the transfer is registered we then send the deeds to the lending institution. If there is no mortgage, we shall deal with the deeds as you wish. We would be happy to look after them for you free of charge.

## Glossary of Terms used

**Exchange of Contracts:** Literally, the exchange of one copy signed by the buyer for another signed by the seller. At this point both parties become committed to proceed.

**Completion:** The date fixed for transfer of ownership, on payment of the price.

**Registration of Title:** In all areas of the country, title to land has to be registered in one of the registers maintained by the Land Registry on completion of a purchase. The Register records ownership and all important details of rights and liabilities.

**Preliminary Enquiries:** A series of questions addressed to the seller, who is expected to answer from his own knowledge about such matters as disputes with neighbours, or work done on the property needing building regulations approval, or rights enjoyed over the property.

**Deposit:** Part of the purchase price paid at exchange of contracts, normally 10%.

**Searches:** The local search is the most important search. This is a search of the registers maintained by the district council in relation to such matters as road charges and planning decisions. The expression includes the enquiries made of the different departments of the council to do with a wide range of other matters which may affect the property. Apart from road proposals affecting land within 200 metres of the property, the local authority search will only give information about the property itself.

The search will give no information about other property, for example, the development of neighbouring land. If, therefore, you are concerned about the possibility of development or any matter relating to other property in the neighbourhood, you should make enquiries of the local authority before you consent to exchange of contracts on the purchase.

Other searches will also be required dependent on the location of your property.

**Mortgage:** A document recording the loan of money secured on the property. If payments are not maintained, the lender has the right to take possession and sell the property.

**Transfer:** The document transferring ownership.

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