

# Conveyancing Guide

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**Moving?**  
**Relax**  
we'll take  
care of it...

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**AWDRY BAILEY & DOUGLAS**

**S O L I C I T O R S**

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# Conveyancing Guide

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For most of us moving home is an exciting and positive time and as property lawyers we are here to make sure that your transaction proceeds smoothly and successfully.

This booklet is intended as a step by step guide to the conveyancing process. At Awdry Bailey & Douglas we focus on 3 things;

- ▶ working promptly
- ▶ being proactive
- ▶ keeping in touch with you every step of the way.

Moving home can be stressful but we aim to take the worry off your shoulders and we hope that by the time you move you will be able to say “ABD made it so easy for me”.

So what will happen during your transaction and what other information do you need to know? These questions are answered by the sections in this guide:

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# Key Steps

## SELLING

**Step 1** We will ask you to fill out a Fittings and Contents Form and a Property Information Form. These forms will be sent to your Buyers' Solicitor, together with Land Registry documents relating to your property.

**Step 2** The Buyers Solicitor will set about checking the documents and undertaking the Local Search and any additional required searches.

Often a considerable number of questions are raised by a Buyers' Solicitor at this stage - these can relate to matters such as guarantees, planning permissions, building regulation approvals or queries over boundaries. We will discuss with you any questions which we cannot answer from the documents and information held by us.

**Step 3** Once all the enquiries have been dealt with and the Buyers have a Mortgage Offer (if they are obtaining a Mortgage), a Completion Date is then agreed. This is the date of the actual move. We can then proceed with Exchange of Contracts. After Exchange of Contracts has taken place there will be a legally binding agreement and neither party can withdraw.

If there is a long "chain" every party in the chain must be ready to Exchange and agree on a Completion Date.

**Step 4** During the period between Exchange of Contracts and Completion, we will obtain a final Redemption Statement from your mortgage lender. This will specify the amount required to fully repay your Mortgage on the day of Completion. We will prepare a statement showing how much will be due to you and make arrangements for you to sign the Transfer Deed (this is the document which will transfer the property to your Buyers).

**Step 5** On the day of Completion we will receive the balance of the sale money by bank transfer from the Buyers' Solicitor. At that stage we will ring you and the Estate Agents to confirm that the keys can be released to your Buyers. Receipt of the money from the Buyers' Solicitor will signify Completion of the transfer of the property.

Following Completion we will settle your account with the Estate Agents, pay off your Mortgage, send the net proceeds of sale to you (or if you are buying another property it will be used on the related transaction) and forward the original copies of important property documents to your Buyers' Solicitor.

## BUYING

**Step 1** The Sellers' Solicitor will provide a Fittings and Contents Form, a Property Information Form, the Contract and Land Registry documents.

When we receive these documents we will check them and will then report to you on all aspects of the property. This will be by way of a written report (in plain English) or if more convenient for you, by way of a meeting.

We will undertake a Local Search and any other required searches. For certain types of properties, or homes in certain areas, additional searches are required - for example, properties in coal mining areas may require a Mining Search.

**Step 2** The paperwork we receive may give rise to extra questions. We will raise any necessary questions with your Sellers' Solicitor. They may relate to matters such as guarantees, planning permissions, building regulation approvals for extensions or alterations to the property or ownership of boundary hedges and fences.

Importantly, we will also require confirmation from the Sellers' Solicitor that any existing Mortgages on the property will be paid off on Completion.

**Step 3** If you are obtaining a Mortgage your mortgage lender will forward a copy of the Mortgage Offer to us. We will not be able to Exchange Contracts until the Mortgage Offer is received. When the Mortgage Offer is received we will calculate the amount of money which will be required from you for Completion. We will prepare a "Completion Statement" and send it to you.

**Step 4** Once we have received the search results, replies to all questions and your Mortgage Offer we can move towards Exchange of Contracts. By this stage there will need to be agreement on a Completion Date. If there is a long "chain" every party in the chain will need to be ready to Exchange and in agreement on the Completion Date.

After Exchange of Contracts has taken place there will be a legally binding agreement and neither party can withdraw.

**Step 5** On the Completion day we will forward the balance of the purchase money to the Sellers' Solicitor by bank transfer. Upon receipt they will confirm to the Estate Agents that the keys can be released to you. Following Completion the Sellers' Solicitor will forward to us any original copies of important property documents and we will register your ownership at the Land Registry. Following completion of the registration we will forward a copy of the Land Registry Certificate to you.

# Frequently Asked Questions

Below are listed a number of the more common questions you may have about the conveyancing process.

## **How long will my transaction take?**

Across the country many transactions take three months or more from start to finish but we know that for most of our clients time is of the essence and for that reason (subject to your instructions to the contrary) we look for all ways to reduce delays. We have completed transactions within a few days. The most important thing is that you let us know your required timescale and any dates to aim for or to avoid and we will keep in touch with you on timings.

## **What do solicitors actually do?**

If you are buying, we will check that you will not be taking on any unexpected legal problems which could affect your use or ownership of the property or which could cause problems when you come to sell it. We will investigate potential legal pitfalls and will also provide you with useful and practical legal information relating to your new property. If you are selling, we will put together all the necessary legal information and answer all the questions raised by the other solicitors. We will also deal with discharging any mortgages secured on the property.

## **What can be done to minimise delays?**

It is important that people make their mortgage applications as soon as possible as mortgage lenders are often slow in processing and issuing mortgage offers. Until a mortgage offer is received Exchange of Contracts cannot take place.

If a survey is to be undertaken, it is also important that the surveyor is instructed at the earliest opportunity.

Lateral thinking, expertise and common sense make a big difference when it comes to solving unexpected legal problems.

## **Will I need a survey?**

If you are buying a property with a mortgage your mortgage lender will probably undertake a valuation. A valuation is not the same as a survey. With many properties it is a good idea to have a survey.

There are two types of surveys. A home-buyers survey or a building survey (previously known as a structural survey). We can advise you on whether you will need a survey and if so what type will be best for you.

## **What is Exchange of Contracts?**

Exchange of Contracts is the stage at which everyone is legally committed to proceed with the transaction on the agreed Completion date.

Exchange takes place between the Sellers' Solicitor and the Buyers' Solicitor on the telephone. Each Solicitor will be holding a Contract signed by their clients. Exchange can only take place when a Completion date has been agreed and each Solicitor is instructed by their clients to Exchange.

During Exchange the two Solicitors agree on the telephone to date the Contracts and fill in the Completion date.

Once Exchange of Contracts has taken place the Sellers and the Buyers are legally committed to proceed and cannot then back out of the transaction without risking heavy financial penalties.

## **When can a Completion date be set?**

There is no harm early on in the transaction in proposing a Completion date to aim for. We will always do our best to try to achieve the Completion date that our clients want. However unexpected complications often occur and delays elsewhere in a "chain" can put back Exchange of Contracts and Completion.

It is important to be reasonably flexible over Completion dates. A precise date must be agreed before Exchange of Contracts. As we approach Exchange we will take your instructions in order to firm up on a date for the move.

## **How much time should there be between Exchange of Contracts and Completion?**

We recommend a period of one or two weeks between Exchange and Completion.

Remember that you may need time to book a removals van, arrange for time off work, notify everyone of your new address, pack all your belongings, etc.

Most banks and building societies also require at least a week's notice for the mortgage advance to be sent. On a purchase the mortgage money is not usually requested until Exchange of Contracts.

## **What can be done to minimise the stress of moving?**

If you require a mortgage please get your application in early.

If you are getting a survey please instruct the surveyor early.

Let us know early on if you have any particular legal concerns.

Have funds readily available for Exchange of Contracts and Completion.

Try not to commit yourself too early to a particular Completion date and prepare to be flexible on dates if required.

## JARGON BUSTER A-C

### **Absolute Title**

This is a Land Registry classification of freehold or leasehold ownership of property where there is no qualification or concern as to that ownership.

### **Adverse Possession**

This arises where someone is in possession of property without the permission of the owner. If possession has lasted for a minimum of 10 years (in some cases 12 years is required) it may be possible for the person in occupation to claim ownership of the property. The ownership would be classed as “Possessory Title”.

### **Breach of Contract**

This occurs where a party to a Contract fails to comply with the terms and conditions of the Contract. This may occur for example where one party fails to complete a sale or purchase transaction on the completion date set out in the Contract.

### **Building Regulation Approval**

Building work often requires Building Regulation Approval in addition to Planning Permission. It is sometimes said that Planning Permission governs what a building looks like externally whereas Building Regulation Approval applies to how a building is constructed. Building Regulation Approval applies to matters such as structural integrity, insulation, heating and electrics.

### **Caveat Emptor**

This is a Latin phrase which means “Let the buyer beware”. Caveat Emptor applies on the purchase of a property because there is usually no recourse against the sellers if the buyers discover after Completion that there are defects with the building or any of the appliances, equipment or fittings. It is up to the buyers to ensure that they are happy with all aspects of the property before Exchange of Contracts. There are some limited circumstances in which there could be a claim against sellers, such as where the sellers have deliberately misled the buyers and the buyers relied on that information. Usually that confirmation would need to be in writing. Buyers should assume that all risk passes to them on Completion.

### **Client Account**

This is an account in the name of a firm of solicitors where money belonging to clients is held and is

separate from the normal trading bank account of the business. As such the clients’ money is safeguarded.

### **Completion Date**

This is the date specified in the Contract upon which the sale or purchase transaction will be finalised. This therefore represents the date when the buyers and sellers move and the exchange of money and keys takes place.

### **Completion Statement**

The statement which we prepare showing the financial dealings relating to your transaction including any money required from you or due to you on Completion.

### **Contract**

The signed agreement made between the buyers and the sellers of a property which sets out the agreed terms. Our Contract refers to Law Society’s “Standard Conditions”. We do not provide a copy of those Standard Conditions but we check the Contract on your behalf to ensure that it is effective and satisfactory. You do not need to concern yourself with the small print but you must check that your names, address and the property price are correct.

### **Contract Interest Rate**

This is the rate of interest payable by the buyers if they delay Completion (the sellers may be entitled to other compensation too). Contracts often incorporate the Law Society’s standard Contract Rate and this is currently 4% above the base rate of Barclays Bank. So as a minimum interest for delayed completion will be charged at 4% above base rate, but please be aware that sometimes the Contract Rate will be substantially above that figure.

### **Conveyance**

This is an old style of document by which freehold property used to be transferred. These days a Transfer Deed in standard Land Registry format is used rather than a Conveyance.

### **Covenant**

This is a binding obligation or enforceable promise. Covenants will normally bind both the current owner of a property and future owners. This is certainly true with “Restrictive Covenants” which

## JARGON BUSTER C-L

are covenants not to undertake certain actions or allow certain things to occur. Sometimes “Positive Covenants” which are requirements to undertake certain actions or make payments (ie, an obligation to pay maintenance charges) are not binding on future owners of freehold property.

### **Deposit**

This is the money paid by the buyers of a property (via their solicitors) to the sellers on Exchange of Contracts. Normally a 10% deposit is payable. It is paid to the sellers’ solicitors and is usually held by them. However, if the sellers are themselves buying another property the deposit is usually passed “up the chain” and used on that related purchase transaction.

### **Disbursement**

This is a term used by solicitors to refer to fees paid to third parties such as the Land Registry or to the Local Authority.

### **Easement**

A right over someone else’s land which benefits your property is an Easement. There are many types of Easements including rights of way, the right to use the pipes and wires which pass under or over a neighbouring property and rights of entry to undertake repairs.

### **Exchange of Contracts**

This is the point at which the Contracts signed by the sellers and buyers are dated by their solicitors and the agreement to sell and buy the property is binding. Each solicitor holds a copy of the Contract signed by their clients and the solicitors agree with each other on the telephone that they will each date their part of the Contract and that copy is then posted to the other solicitor. The buyers’ solicitor sends the deposit money to the sellers’ solicitor together with the Contract.

### **Fittings and Contents**

The items which are left at a property and are included in the sale. Often these are items physically attached to the building such as fitted wardrobes but items such as carpets and curtains would also fall within this category if they are shown on the Fittings and Contents Form as being included.

### **Freehold**

Properties are usually either Freehold or Leasehold. Leasehold properties are those held under a Lease. Houses are normally Freehold properties whereas flats are usually Leasehold.

### **Full Title Guarantee**

Properties are usually sold with a Full Title Guarantee which means that the sellers confirm that they have full authority to sell it and it is free from any undisclosed rights or other burdens. Also see Limited Title Guarantee.

### **Joint Tenants**

If people own a property as Joint Tenants it means that they are entitled to an equal share of the equity and if one of them dies the survivor(s) will automatically acquire the deceased’s share. Also see Tenants in Common.

### **Lease (Leasehold)**

A Lease is a document between a Landlord and a Tenant. Flats are usually held under a Leasehold arrangement. Leases are usually granted for a fixed period (for example 999 years or 125 years). With shorter term Leases an annual rent may be payable. The reason that flats are Leasehold is because with a shared building there are usually many rights granted and many restrictions or obligations imposed on the occupants and the best way to ensure that those rights and obligations can be enforced is to put them into a Lease. The Landlord or Management Company can then exercise control over the effective functioning of the shared building. The same considerations do not apply to a single house. Within a Lease there will usually be obligations to contribute to a Service Charge and having a Lease is the mechanism for the Landlord or Management Company to ensure that the money can be collected.

### **Limited Title Guarantee**

Limited Title Guarantee is a guarantee which is similar to “Full Title Guarantee” (see the definition above) but the sellers are only liable for the accuracy of information which is within their direct knowledge. It is accepted practice that Limited Title Guarantee will be provided by Executors, Trustees or other people who have not lived at the property and so have limited knowledge about it.

# JARGON BUSTER M-S

## **Management Company**

A Management Company is a Limited Liability Company which either owns property or has responsibility for maintaining a property or part of it. They occur with both Freehold and Leasehold buildings although they are more common in a Leasehold situation.

With Freehold properties a Management Company is sometimes created to hold the ownership of a shared or common area such as an unadopted driveway used by the owners of a number of houses. Instead of the driveway being owned by one person who grants a right of way to the others, all the owners of the houses would be members of the Management Company and the Company then holds the driveway for the joint benefit of all of them. On the sale of one of the houses the sellers simply transfer to the buyers their Share in the Company.

With Leasehold flats or apartments the structure and common parts of the building will be owned by a Landlord or by a Management Company. An alternative is for the structure of the building to be owned by the Landlord but an associated Company undertakes or organises all the maintenance work. A Landlord will either (a) retain control and ownership of the Management Company or (b) the Landlord may transfer the Shares in the Management Company to the owners of the flats/apartments, so that those Leasehold owners have control over the Company and as a result the Leasehold owners will have more control over what happens at the building. There is not always a Management Company with Leasehold properties. With some buildings the Landlord operates without one.

## **Mortgage**

A Mortgage is a loan secured against a property. A mortgage lender is usually be able to enforce the sale of a property to recover money due to them if there has been a breach of the terms of the Mortgage Agreement.

## **NHBC Guarantee**

A guarantee which gives protection against structural and other defects which are discovered within a specified time period after a property has been built.

## **Planning Permission**

This is consent granted by a Local Authority in respect of works carried out at a property. Technically Planning Permission is required for a very wide range of works including any extensions, creating a new driveway and even painting the front of a house. However, "Permitted Development Rights" allow many works to be undertaken without the need to apply for Planning Permission. Sometimes Permitted Development Rights are withdrawn for particular properties or in certain areas and so if any works are to be undertaken it is necessary to check whether Permitted Development Rights apply and if the proposed works fall within the scope of permitted development.

## **Possessory Title**

See comments under "Adverse Possession".

## **Redemption Figure**

The amount required to pay off a Mortgage secured on a property. We will obtain a redemption figure from your mortgage lender if you are selling a property which is subject to a Mortgage.

## **Searches**

There are a number of searches which can be undertaken. Mortgage lenders require us to undertake a Local Search as a minimum when acting for buyers purchasing a property. We will inform you of the main types of additional searches which can be undertaken.

## **Service Charge**

There is usually a service charge to be paid by a Tenant to a Landlord with a Leasehold property but sometimes with Freehold properties there are also maintenance charges for items such as the maintenance of shared driveway or parking area.

## **Share of a Freehold**

Sometimes when buying a Leasehold flat or apartment, a share of the Freehold of the building is included. This will not apply if there is a Landlord who has retained control and ownership of the building. It can however arise in 2 situations. Firstly there may be a Management Company (see definition above) which owns the Freehold of the building and the Leasehold owners each have a share

## JARGON BUSTER s-v

in the Management Company and be directors of the Company. Secondly the Freehold may be held in the joint individual names of the Leasehold owners. In either of these situations the purchase will still be a Leasehold purchase because most of the value of the property rests in the Leasehold ownership. The shared interest in the Freehold of the building is simply joint ownership of the parts of the building which are not included in any of the Leases (such as a shared driveway, entrance hall and other communal areas, and usually the structural parts of the building, such as the roof, foundations and main supporting walls). So if you are offered a share of a Freehold, you will almost certainly be buying a Leasehold property with a joint ownership arrangement for the retained parts of the building. The advantage is that this does give you some say over the Freehold although decisions will still require agreement from a majority of the joint Freehold owners and this is important when it comes to matters such as the cost of repairs to the building or an extension to the term of your Lease.

### **Stamp Duty Land Tax**

Stamp Duty Land Tax is payable to the government by buyers of most properties over a threshold figure. The sum due will be shown in the estimate which we provide at the beginning of a purchase and will also be shown in the Completion Statement.

### **Bank Telegraphic Transfer**

This is the electronic transfer of money from one bank to another. On the day of Completion money is submitted by bank telegraphic transfer. On a sale we will also forward the net proceeds of sale to you by BTT unless you prefer a cheque.

### **Tenants in Common**

If more than one person owns a property they can hold as Joint Tenants (see earlier definition) or as Tenants in Common. If the property is held as Tenants in Common it means that the parties are each entitled to a specific share of the equity and if one of the owners dies their share does not automatically pass to the survivor(s) but instead it will pass in accordance with the terms of their Will.

### **Title Indemnity Insurance**

This is an Insurance Policy which protects against a legal defect with a property.

### **Transfer Deed**

This is the document which transfers the ownership of property and is registered at the Land Registry.

### **Vacant Possession**

Vacant possession must be provided on Completion of a sale. This means that the property is free of occupants and of any moveable items unless it has been agreed that those moveable items are to remain.

## Optional Searches

For every property we undertake a search with the local authority which reveals any information they may hold about that particular property, but there are a number of additional searches which can also be undertaken.

### **Planning Search**

This will provide details of all applications for planning permissions over the last few years within 250 metres of the property. A detailed plan and information on land use policies are also provided. This is an extremely useful search. It will show if the owners of any neighbouring properties have applied for consent to erect an extension, if there have been any applications to develop nearby open space, if there are plans to construct a telecommunications mast and it will also show the nature and extent of planning zones and limits of development.

### **Flood Search**

If there is the slightest risk that the property may be in a potential flood zone, it is important that a Flood search is undertaken. This search provides a plan showing rivers and other watercourses and marks the extent of flood zones. The same applies to coastal areas. We recommend this search for every property unless you are entirely confident that there is no risk.

### **Water and Drainage Search**

This will show the location of the mains water pipes and sewers nearest to the property which is not information usually discoverable from the Title Deeds. It can be helpful to know where the mains are as this can indicate the extent and route of private supply pipes which will be your responsibility to maintain. This is also important information if you are thinking of extending the property as you may not be permitted to build over pipes and drains.

### **Environmental Search**

Contamination of land is now an important issue with many properties being built on or near former industrial sites, landfill sites and potentially contaminated agricultural land. This search will provide information on the site history and known environmental factors. It will certify whether or not there is a risk that the land on which the property is built could be defined as "contaminated". This can affect the future value and marketability of a property. This search can also include an assessment of the risk of flooding in respect of property near rivers and other watercourses or by the coast.

### **Other searches**

There are numerous other searches that can be undertaken on a property purchase such as a Mining search (to reveal possible ground instability and the presence of disused mine shafts), Chancel Repair Liability search (this covers the risk of a claim for local church repairs), Radon Gas search, Tin Mining search, British Waterways search etc. After we have received the Contact paperwork we will advise you if we think that additional searches are required.

## Planning Your Move

The following is intended as a reminder of some of the things to be done before the day of completion.

- Arrange Removals
- Contact Service Suppliers (ie Gas, Water, Electricity, Telephone & Broadband) to arrange for the reading of meters at your current address and continuity of service at your new address
- Arrange re-direction of mail
- Settle outstanding bills in respect of your current address (ie paper bill, window cleaner etc)

Notify all interested parties of your new address (and date of move) including the following (as applicable):

- Friends
- Family
- Bank/Building Society
- Employer
- Service Suppliers
- Credit Card Companies
- Insurance/Pension Companies
- Inland Revenue
- Local Authority (Council Tax Department)
- Dentist and Doctor
- DVLA
- Hire Purchase/Rental Companies
- Schools/Colleges
- TV Licence Authority
- Professional Associations
- Motoring Organisations
- Clubs and other Associations

