

## Guidance Notes

### GUIDANCE NOTES FOR CLIENTS BUYING AND SELLING PROPERTY

K.J. Commons & Co have prepared these notes in order to assist you throughout your conveyancing transaction. We hope that you will find them helpful, but please note that they are not intended to replace our individual advice to you, and that if you have any queries about your sale and purchase you should feel free to contact us.

#### INSTRUCTIONS

We need to take instructions from you fairly early, so that we have details of your Buyer and Seller on each side, the mortgage you are obtaining for the new property and the mortgage we will have to pay off on the old one. We also like to meet you if the firm has not acted for you before. After your first appointment we will need to see you again when we have all the documents to hand so that we can explain them to you, and again later to sign the contracts, mortgage and transfer papers. At this stage we hope to be able to give you an indication of the timescale of the transaction. We often find that on taking first instructions the client has more information about the existence of a chain or the plans of other parties than we do, so after discussion of the practicalities we can often give you a rough time estimate. If all properties in the chain have sales agreed and all the parties have put in hand such things as mortgage applications, we would hope to complete the sale and purchase in eight to ten weeks. It does sometimes happen that completion takes place earlier than that, but we are rarely able to tell you that at such an early stage. Similarly there are many possible causes of delay, and we aim to keep you informed of developments as they become known to us. If a projected completion date has been suggested we will advise you as to whether we consider it to be feasible and will certainly do our best to achieve your preferred date. **FIRST STEPS**

Upon receiving confirmation of your instructions we normally take the following steps on your behalf:-

(a) **The Sale** If you have a mortgage we contact the mortgagee (bank or building society) to arrange for the title deeds to be sent to us, and if there is no mortgage we arrange to obtain the deeds from wherever they are kept. The title is checked and a draft contract sent to the Buyer's solicitors as soon as they are known to us. It is necessary for us to prove your ownership of the property, inform them of the existence of any mortgages or other encumbrances, and give them further information regarding the property such as the position of boundaries, the existence of guarantees for work done etc. So that we have all of this information to hand we ask you to complete a questionnaire for our use which refers to matters usually within your knowledge. In addition we ask for details of the fixtures and fittings which you intend to remove or leave in the property so that we can pass that information to the Buyer also. In our experience, providing that information assists both parties by avoiding arguments on completion about missing fittings or other items.

(b) **The Purchase** We write to the Seller's solicitor for draft contract documents. The draft has to be approved by us on your behalf, and we need to check all the matters referred to above to ensure that you are getting a good title to the property. We would expect to receive a fixtures and fittings list referring to this property, a copy of which we will give to you for your approval. At an early stage we will probably ask you to let us have the fee for the local search. This application is submitted by us to the local authority and is returned to us usually in about two weeks revealing details of any council charges or plans which may affect the property. This will include any planning permissions granted for this or any neighbouring property, Smoke Control Orders, Conservation Areas etc, also whether the roads and drains are maintainable at public expense. The search is carried out before contracts are exchanged. **YOUR MORTGAGE OFFER**

By the time you see us you may have put in your mortgage application, but if you have not yet arranged a mortgage we can advise you if required. However, our advice will not cover investments beyond a mortgage and associated Life Assurance policy.

If you have informed the new mortgagee that we will be acting for you, they will send a copy of the mortgage offer to ourselves at the same time as to you. On rare occasions a lender may wish to instruct solicitors other than ourselves, but this should not cause any significant delay and we would advise you if this were to happen. The mortgage offer confirms that you have been accepted for mortgage finance on that particular property, and the funds which will be available. Read the mortgage offer carefully and let us know if you would like anything to be explained. Money can be deducted from the amount you are to borrow, and the most common reasons are:-

(a) **Mortgage Guarantee Premium** If this is to be deducted it should have been explained to you by the lender. It represents a single premium on an insurance policy to protect the lender against the value of the property falling below what they have lent you, and only applies when you are borrowing a relatively high proportion of the value of the property. Some premiums are added to the mortgage account, in which case it should be stated on the offer.

(b) **Retention** If there are improvement works which the valuer considers to be essential, the lender may retain money from the advance until the works are completed. If a retention causes you problems, please let us know.

Please remember at all times that the mortgage is secured on the property. **YOUR SURVEY/VALUATION**

Unless you are buying a new or recently built property which has a NHBC or similar certificate, a house or flat does not come with a guarantee as to its state and condition. The Seller is not obliged to tell you of any structural defects known to him, and of course there may be problems which are not apparent. It is therefore very important that you satisfy yourself that you are aware of any defects before you proceed with the purchase. The bank or building society will require a valuation if you are applying for a mortgage, but they need only satisfy themselves that the price you are paying is fair and reasonable, and that the property appears to be worth the amount that you wish to borrow. **OUR ADVICE TO YOU IS THAT THE LENDER'S BASIC VALUATION IS INSUFFICIENT FOR YOUR PURPOSES.**

If you later discover problems which the basic valuation did not reveal, the valuer is unlikely to be liable because of the limited nature of his instructions.

A Home Buyer's Report is more comprehensive and a full structural survey is better still, and affords you more protection. We advise you to obtain the best inspection you can afford, and if any problems are revealed to investigate them further. It is money well spent, particularly particularly if the report highlights problems which lead you to either reconsider the purchase or renegotiate the price. If you are paying cash for the property and there is no lender's valuation involved our advice is the same, and if you wish we can arrange a survey for you. As always, please seek our further advice on this point if you need to. **PROCEEDING**

Before we can proceed to exchange contracts on your behalf we need the following:-

- (a) On the Sale -an approved contract -an indication from the Buyer's solicitor that they are satisfied with our replies to their enquiries
- (b) On the Purchase -a contract which we have approved -replies to our enquiries -local search -mortgage offer (if applicable)

The above list of requirements is not exhaustive and if we need other documents we will let you know. At this stage we ask you to sign the contracts and mortgage documents, and discuss a completion date with you. It may be that you are in contact with the other parties and discussions take place between you, which certainly saves time if everyone is in agreement. However, if there are no such discussions we will ask you for convenient dates and suggest them to the other parties' solicitors, unless they have suggested a date first. Please bear in mind that not all parties are ready to proceed at the same time, and that even if we have all our documentation another party may be waiting for various items. Although a date may have been provisionally agreed, it is by no means binding until contracts are exchanged so you should not make any arrangements which cannot be altered until we have informed you that contracts are exchanged and the completion date is certain. We appreciate that this can be a frustrating time as you will need to arrange your removals etc., and we try to keep you informed of the up to date position. **EXCHANGE**

The contracts may have been signed, but they are not in force until they are exchanged. Once contracts are exchanged a party cannot withdraw from the transaction without serious consequences, which is one of the reasons why we have to make the enquiries before that stage. If a deposit is received from the Buyer we are normally able to use it as the deposit on your purchase, and it is not often that we have to ask you for deposit money at this point. However, if the time between exchange and completion is short it may be that deposits will not be paid and the whole of the purchase monies transferred on completion. **AFTER EXCHANGE**

Two transfer documents are prepared and approved, one by ourselves and one by the Buyer's solicitor. When they are to hand we arrange for you to attend in order to sign them in advance of the completion date, although it often happens that the transfer on your purchase is signed by you shortly after completion.

Final searches are carried out, to reveal any matters on your purchase of which we should be aware, and we arrange with your mortgagee for the mortgage advance money to be sent to us.

If it is necessary for the mortgage advance to be sent to us by telegraphic transfer (TT) either because it is the lender's practice or through shortness of time, it may be that the TT fee (usually £20) is deducted from the mortgage advance. Before completion we aim to provide you with a completion statement, although if time is short it may be completion day itself when you receive it. The completion statement will tell you how much money we have used to pay off your existing mortgage, how much we will be receiving in respect of the new mortgage, and the balance after payment of costs and disbursements. Normally we pay any estate agent who has acted for you on your behalf out of the funds which we hold for you, but if you do not wish us to do so please let us know.

If there is a balance of funds to be returned to you we will make arrangements for a cheque to be sent or collected as appropriate, and if there is a deficit we will be asking you to put us in funds before completion. Any money which you give to us must be cleared funds before we can use it on your behalf, so it would assist if you could let us have a cheque five

days before the scheduled completion date.

Now is the time to make your removal arrangements and to organise for the meters to be read when you move out. It is quite often the case that arrangements for handing over keys are made direct between the parties, and that as one party moves out they hand the keys on to their purchaser and so on down the line. If there are more than two or three parties in a chain it is not usually possible for everyone to move on the actual day of completion, so although legally all parties are entitled to possession of their new property on completion, in practice the parties often arrange to move over a couple of days. If arrangements are not made direct between the parties, we endeavour to obtain the keys to your new house as early as possible. If you are moving into an empty property, you can expect to get the keys on completion day. Completions often take place on Fridays, which assists with arrangements for moving. **COMPLETION**

The money in respect of your sale is delivered or sent to us, and we then send or deliver the monies in respect of your purchase. The mortgage on the property you have sold is paid off, and any other costs and disbursements discharged. It is not usually necessary for you to attend the office on completion day itself, unless there are documents for you to sign or a cheque or keys which you have arranged to collect. **AFTER COMPLETION**

The deeds to your new property are sent to the Land Registry for registration of your title, and after registration are sent to the mortgagee, or or placed where you wish them to be if you have no mortgage. Documents such as endowment policies, damp proof course guarantees etc. are sent with the deeds. We sometimes have excess documentation which can be sent to yourselves for safekeeping or retained on our file. **COSTS**

You will receive a quote for our costs and disbursements at an early stage in the transaction, and we will not depart from this quotation without reference to yourself. If the transaction proves to be exceptionally complex and we need to revise the figure, we will let you know and obtain your authority before proceeding further. We will usually be acting for the lender as well as for yourself, and it is possible that the lender will have requirements in addition to the normal level of work we expect to undertake. Since you are responsible for the lender's costs, it can therefore happen that there will be additional costs involved in satisfying their requirements. Fortunately this does not often happen, and we will inform you if it does in your case.

Costs are included on your completion statement. **THINGS YOU NEED TO TELL US**

If you have any problems -if the sale or purchase price changes -if you have arranged insurance other than through the bank or building society -if anyone other than the persons whose names will be on the deeds is to live in the new property -anything else which you think may be relevant .

Please Contact us for more Information