

PROPERTY – THE LEGAL PROCESS

● Introduction

By the time you read this, you may have accepted an offer for your house or flat, or made an offer on a new home. You might even have agreed your new mortgage 'in principle'. You may be told that you're 'ready to go' and that there will now be a few weeks' 'hold-up' while the lawyers deal with the 'conveyancing'.

1. Moving house is not that simple!

In this article we hope to explain exactly what conveyancing involves. (Conveyancing is the legal work relating to buying and selling houses and flats). It may be very helpful if you read it now, and look at it again if there is something you are unsure about. It may well answer your question, but if not then please get in touch with us. This article also explains the conveyancing work your Solicitors do, and (therefore) what you are paying for. We will usually do legal work beyond the work covered by this article. This could of course involve further costs, but wherever possible we would agree these with you first.

2. There are two stages to your Conveyancing

a. The first stage, from when an offer is accepted, up to EXCHANGE OF CONTRACTS.

Before exchange of Contracts, the seller or buyer can try to re-negotiate the price, sell to someone else, buy a different property, or just decide not to sell or buy at all. Each seller or buyer is responsible for paying their own survey, legal or other fees. So if, for example, the owner of the house you want to buy changes his/her mind before exchange of contracts, you have no legal right to claim from him/her the cost of (for instance) the survey that you had done, or your conveyancing fees.

b. The second stage, from EXCHANGE OF CONTRACTS to moving day, called COMPLETION.

Once Contracts have been exchanged, both seller and buyer are legally committed to the sale and/or purchase, the price is fixed, and the completion (moving) date is fixed. If seller or buyer then tries to change the terms of the deal without the agreement of the other party, then they are in breach of the conveyancing Contract and can face expensive legal action.

3. Why are there two stages?

These two stages are useful because you may discover all sorts of disadvantages after first seeing the property, which cause you to think again, and before exchange of contracts you can pull out without legal consequences. For example

- a. Your survey might reveal that the charming 17th century cottage you want to buy is riddled with damp, woodworm and subsidence and about to fall down at any minute.
- b. We might find out that the local authority are planning to build a new road which will go straight through the garden of the property you want.
- c. We may find that the accessway to the property you want is in fact owned by someone else, who doesn't want anyone else crossing it!

If anything like this happens, then all you have to do is to tell the Estate Agents that you've changed your mind.

4. All right, but does it have to take this long?

NO! IF you have no property to sell yourself AND you're not having a mortgage AND you don't care whether the property is structurally sound or not AND you don't object to the Council constructing a bypass through the garden AND you don't mind if the house gets sold AFTER you buy it because the previous owner owed money.....then almost the whole process can be ignored and you can move the same day IF, that is, the owner doesn't mind. The usual cause of delay is what is called the conveyancing 'chain'. In order for you to exchange Contracts, your seller and/or buyer must also exchange Contracts, so must THEIR seller and/or buyer and THEIR seller and/or buyer.....and so on. This is the 'chain'. And like all chains, the house-moving chain is only as strong (or fast) as its weakest (or slowest) link. So if anyone in your chain hasn't got a mortgage offer yet, or disappears on holiday for two weeks, or needs to wait to get paid before having their survey done, then the whole conveyancing chain - which includes you - is slowed down. The more people in a chain, the more things there are to be done, and the more chance there is of a hold-up.

• What has to happen before I can exchange contracts?

1. Survey

- a. The legal conveyancing work your Solicitor does, does not involve any checks on the structural state of the property. Houses and flats, like almost any other second-hand item, are 'sold as seen', it is up to the buyer to ask questions and make checks before buying, and it is difficult to make any claim afterwards. The only way to check properly the condition of the property is to have a survey carried out. We recommend that you always have a full structural survey, and get quotes for any work that the surveyor recommends. This may cost you a few hundred pounds, but a structural problem could easily cost you several thousand (perhaps even tens of thousands), so this is money wisely spent.
- b. DO NOT rely on
 - i. your lender's survey. Firstly, it is NOT a true survey - it is a valuation, and is only done to check that the property is enough security for the amount you want to borrow (NOT what it is worth). Secondly, it is done for the lender and not you, so the surveyor who does it is only answerable to the lender. ((S)he may, however, be able to carry out a separate survey for you while (s)he is at the property. Ask)
 - ii. anything the owner says. There may be defects that the owner does not know about, or might want to gloss over.

- c. Most surveys seem very worrying the first time you read them. Remember that the surveyor's job is to be thorough and point out every defect. At the end of the survey, the surveyor will state what sort of general condition the property is in, and whether the price is reasonable. Read that first!
- d. The survey may state that some work needs to be done. No property, especially an older one, will be in absolutely perfect condition, but if the required work will cost more than a few hundred pounds, then you may have a good reason to ask for a price reduction. Speak to the Estate Agent about this.
- e. If the result of the survey is really bad then you may not be able to obtain a mortgage on the property. Even if you can afford to pay cash, remember that it may be difficult to sell.

2. Mortgage

- a. There are many different kinds of mortgages available. We do not give mortgage advice - this is a job for a financial adviser. Please bear in mind that many financial advisers have arrangements with only one company and only recommend that company's products. You may prefer to consult an independent adviser. What you need is a written mortgage offer. Agreeing a loan 'in principle' is not enough.
- b. Your lender will have to:-
 - i. have their surveyor check the property (see Survey)
 - ii. usually obtain written confirmation of your income
 - iii. check that you're not seriously in debt
- c. This process can take a few days or several weeks. If you think that it is taking too long, speak to your lender, or whoever is arranging your mortgage. We do not usually have any contact with your lender until they issue the written offer. When you receive the written offer, you may need to accept it, by signing one copy and returning it to the lender. If you haven't already done so, make sure that you will have enough money to complete your purchase (and any sale) - do not forget stamp duty and all the other conveyancing costs, estate agents' fees, and removal expenses. Please read the mortgage offer carefully - quite often, various amounts are taken off the loan before the lender actually pays it over to us, so the amount we receive is often less than the full amount of the loan (on which you will be paying interest). The most usual deductions are usually the first year's household insurance, the first month's interest, a 'high loan to value' fee or a retention. Remember to take these deductions into account in your financial calculations. When the mortgage offer is issued, your lender will send details of it to their Solicitors and ask them to do their conveyancing work. Usually, your lender will ask us to do the conveyancing work for them, which makes sense, because it is the same kind of legal work as we do for you. Some lenders insist on using their own separate Solicitors - this costs you money (because your lender will expect you to pay their Solicitors' bill) and tends to slow the conveyancing process down, because we have to deal with your lender's Solicitors as well as the seller's Solicitors.

3. Legal Work

a. *Before exchange of contracts*

On Your Sale	On your Purchase
Prepare the legal paperwork or a	Receive the draft Contract, HIP (if needed) and other

Home Information Pack (HIP) (if this has not already been done)	legal documents from the seller's Solicitors
Prepare and send the draft contract, HIP (if needed) and any other legal documents to the buyer's Solicitors	For non-HIP properties, make the preliminary searches, check them when received and ask any questions
Answer any other questions asked by the buyer's Solicitors - we may need your help	Check the legal paperwork and ask any questions.
Receive one copy of the Contract back from the buyer's solicitors	Receive and check the replies to any questions asked on the legal paperwork
	Receive and check details of your mortgage from your lender
Agree with you any unusual provision regarding the deposit	Agree the amount of the deposit and obtain this from you (if necessary), and clear it through our account
Have you sign the sale Contract	Report to you on all the legal aspects, enclosing the Contract and other documents for signing, pointing out any unusual matters, and receive the signed documents back from you
Agree a completion date	Agree a completion date
Exchange Contracts	Exchange Contracts

b. After exchange of contracts

On Your Sale	On your Purchase
Get repayment figure from your Building Society or Bank and details of commission from your Estate Agent	Make sure the property is insured
Have you sign the Transfer Deed (if not already done)	Make further searches against the title and against you (see below)
	Have you sign the Mortgage Deed and obtain any funds required from you (we may well have done this before exchange)

	Prepare the Transfer Deed for the seller to sign (we usually do this before exchange)
	Request the mortgage money from your lender (this needs to be done in writing)
Receive the sale money and complete the sale	Pay the purchase money and complete the purchase
Send Deeds to buyer's solicitors	Pay the stamp duty, receive the stamp duty certificate and register the Deeds
Pay off your old mortgage and pay the Estate Agents fees	Complete the paperwork on any Life Policies
Pay any balance to you	Send the Deeds to you or your lender

• Legal work in more detail

1. Your sale

- a. The law has changed recently, and you now need a Home Information Pack (HIP) in order to sell any property put on the market after 14/12/2007. For this reason you should always find a Solicitor to 'act' (work) for you as soon as you consider moving. Most of the HIP's contents are the legal paperwork that conveyancing Solicitors have been preparing for a long, long time, so we have much greater experience in doing it than almost any other HIP provider. There is another very important reason for using us to prepare your HIP. Most of the other HIP providers claim to offer 'free' HIPs, but if you read the small print you will find that the HIP is only free as long as you continue to use them; if you decide to stop using them you will have to pay for it. If we prepare it for you, not only do you have our expertise, but the HIP is yours, and you can use the selling agent of your choice, which means that you can 'shop around' for the best 'deal'. To prepare the HIP we must have the Deeds to your property, or at least an 'office' (official Land Registry) copy of them. If you have no mortgage, please arrange to let us have the Deeds as soon as possible. If they are with someone else, for example your Bank or another firm of Solicitors, they will need your written permission (not ours) before they send them to us. If you have a mortgage please let us have the lender's name and address, and the account number (this is important) as soon as possible. Your buyer's Solicitors will need various information about the property, so we shall send you some conveyancing forms containing some questions about the property, for you to fill in and return to us. These forms are part of the legal paperwork on your sale. Please read them carefully. If you do not know the answer, you can simply write 'don't know'. Occasionally we are asked to send Contracts to two or more buyers at once. If more than one person is interested, it is generally best to decide who is the 'better bet', and proceed with one buyer at a time. If we do send out more than one Contract at once, we are required by the Law Society to tell all the buyers' Solicitors that this is what we are doing.

- b. Your buyer's Solicitors will check the legal paperwork, and may ask some more questions of their own. If they do, then we may need your help to answer them. One area in conveyancing which can cause difficulties is agreeing what fixtures and fittings are to be left or taken. Anything which is fixed to the property, and could really be considered to be part of the property, is a fixture, and the buyer is entitled to assume that it will be left at the property, unless you state clearly that you will be removing it. If you remove a fixture without saying so before exchange of Contracts, or without the buyer's permission, you are probably in breach of the conveyancing Contract. If your property is leasehold (a flat or maisonette) we will need an up-to-date copy of your buildings insurance policy, and details of your ground rent payments and any service charges you have paid, including copies of the last few years' accounts. If you do not have these, we can obtain them from the freeholder or managing agents, but this may take a little while.
- c. When we send the conveyancing paperwork to the buyer's Solicitors, we send two copies of the draft Contract. The buyer's Solicitors will make any amendments they think are necessary, and then they return one copy to us. If we accept their amendments we shall then send the Contract to you for signing.

2. Your purchase

- a. It may take a short period of time for us to receive the legal paperwork from the seller's Solicitors, because (like us) they have to obtain the Deeds to the property you are buying before they can prepare the papers.
- b. The preliminary searches on the property you are buying are made by us. (When HIPs come into full force the seller's solicitors will make them, but they will still be checked by the buyer's solicitor). We will tell you the amount of all the preliminary conveyancing searches and how much we need from you in order to start them. We ask you to pay this 'up front' rather than pay it ourselves because it helps us to keep our legal fees lower. The local authority search will show; * Planning matters which can be enforced against the owner, such as tree preservation orders, compulsory purchase orders or listed building orders. If the property is in an urban area there may be a smoke control order, making it compulsory to burn only smokeless fuel. * Whether the road outside the property is maintained by the local authority or privately, and usually the same information about the drains. * Whether any road building or widening proposals affect the property. * Planning applications made in respect of the property, and the results. The search does not reveal planning applications in the area in which the property is situated. The seller will be asked whether he knows of any, but (s)he can only answer to the best of his/her knowledge. If, for example, the house you want backs onto open land, you should ask us to check specifically with the Council whether they have received any planning applications for the open land (they may charge a small additional fee for this). You can always visit the local planning office and inspect plans of the area if you wish. The plan will show pending applications throughout the area and you can get copies of any that interest or concern you. We usually need other searches too - the most common ones are; * an environmental search * a chancel repair search * a mining search The environmental search reveals for example; * whether the area where the property is, is listed as contaminated land * whether the area is at risk from flooding, shallow mining, radon gas, coal mining or natural subsidence * whether there is any history of industrial land use, landfill sites, waste treatment sites, fuel stations, or pollution incidents in the area Although the environmental search is a search we should make for you, you will need to refer anything you are concerned about to a surveyor, as conveyancing solicitors do not usually have expertise in environmental issues. The mining search is only made if the property is in an area where mining has taken place. It reveals whether there are underground mines which

might cause problems with subsidence, and whether there are any past or present compensation claims for subsidence. Chancel repair liability is liability to contribute towards the cost of repairs to the Anglican church building for the parish where the property is. The church building can actually be many miles from the property.

- c. If, when we check any of the conveyancing paperwork, we consider that there is a serious problem, we will let you know immediately. (If we find that the title to the property you want to buy is still unregistered, this is not a serious problem, but we may have to charge additional conveyancing fees, which we will agree with you first. At this stage it may help if we quickly explain the difference between registered and unregistered land. Until 1925 all land in England and Wales was unregistered. If land is unregistered, then the only way to check whether the seller really owns the land (and so is entitled to sell it to you!) is to examine all the Deeds for (at least) the last fifteen years. However, it is often necessary to go back much further than that, and the process can be very complicated and time-consuming. At the beginning of this century the Government set up a Land Register, which will eventually show who owns all the land in England and Wales, together with all rights or obligations affecting each piece of land. Since 1990 it has been compulsory for all unregistered properties in England and Wales to be registered as soon as they are sold. What this means is that the title to registered land is guaranteed by the Government, and this makes a conveyancer's job less time-consuming.)
- d. The conveyancing Property Information Forms are sent to us by the seller's Solicitors. These deal with such things as
 - i. Who is responsible for the boundaries
 - ii. Neighbour disputes
 - iii. Whether any alterations have been carried out (they might require planning or building or other consent)
 - iv. Which fixtures and fittings will be left or removed

You should ask us about anything that particularly concerns you. If you are moving to a new area, it is a good idea to have the local papers sent to you to see whether there are any local issues you might want to ask about.

- e. When the conveyancing paperwork has been received and checked, we will report to you on it in writing, and enclose the contract and other documents for you to sign.

● Other matters which are worth explaining

1. Fall through

It may be that, at some point, your seller or buyer will decide not to sell or buy. If this happens, there is nothing that you can do about it, apart from trying to persuade him/her to change his/her mind. As we said before, under English law, before exchange of Contracts the seller or buyer can call the deal off at any time without giving any reason. This is a risk you cannot avoid. The person who pulls out is not under any legal obligation to pay anyone else's conveyancing fees. Your time and energy will generally be better spent finding another buyer or looking for another home.

2. Joint buyers

If you are buying a property with someone else, you need to consider what should happen if your partner dies, and what should happen to the money in the property if and when you eventually sell. There are two ways in which co-owned property can be held - the legal conveyancing terms are Joint Tenancy or Tenancy in Common (these are legal terms and nothing to do with renting). If you are Joint Tenants and one of you dies, then the property passes to the survivor irrespective of what anyone's Will says. The survivor can sell the property and keep all the money. If you were both to die in the same accident the law says that the younger one died last, so the property would go to the younger partner's family, which might not be what you would want. It is usual for married couples to be Joint Tenants, as this ensures that the survivor can live in the property as long as (s)he wishes to, and that no Inheritance Tax is payable on the transfer from joint names to the survivor's name. However, where a couple have a great deal of money, it can be an advantage for tax reasons to hold the property as Tenants in Common or even in the sole name of one of them. If this aspect concerns you then you should take proper advice from an accountant or financial adviser. Where joint owners are not married, it may be better for the property to be held as Tenants in Common. If one partner then dies, his/her share will pass according to his/her Will, and not automatically to the survivor. Obviously it is important in such cases to make Wills. If Tenants in Common have contributed towards the purchase price of the property unequally, then it is best to set out, in a document, what share belongs to whom. If you are buying property with a partner to whom you are not married, you should consider this aspect carefully before you buy. The courts do not always give unmarried partners the same protection as married ones.

3. Identity

You will be asked for proof of identity. Under Government regulations we have to see this. We will let you know exactly what we need - we must have it, and we cannot complete without it.

4. Deposits

a. Why does a deposit have to be paid at all?

If your buyer does not complete on the date in the Contract, you have the right to sue for breach of contract, claiming compensation for all your losses and expenses. However, if your buyer disappears and cannot be found (and this has happened) this right is of little use to you. Conveyancing Contracts therefore state that on exchange the buyer pays a fairly large deposit, and that if the buyer does not complete, the seller is (in certain circumstances) entitled to keep the deposit, so that the deposit acts as a guarantee that the buyer will complete.

b. How much deposit will I have to pay?

Most Contracts provide for the payment of a 10% deposit, but often a smaller sum, very often 5%, can be agreed. This is usually on condition that if you fail to complete on the agreed date you have to pay the full 10% at that time.

c. Can I use the deposit that my buyers will pay me?

Contracts now allow the seller to use your deposit for his/her own purchase. This does carry the risk that if the seller becomes bankrupt after exchange of Contracts but before completion, you might lose your deposit. In practice, this is not at all common. You are allowed to use the deposit only as a conveyancing deposit for the property you are buying. We cannot send any part of the deposit to you personally before completion unless the buyer particularly agrees to this.

5. Signing the contract

Standard conveyancing Contracts contain over 100 clauses. Explaining each of them to you would take a very long time and you would probably be none the wiser! You can assume that we have checked the Contract and that it is satisfactory - if there are any particularly unusual parts, we will explain these. The Contract(s) will refer to a 'rate of interest' which will probably be 4 or 5% above the base rate of one of the main banks. If you do not complete on the agreed date, then you have to pay interest to the seller on the price of the property, at this rate, for each day that you are late. If you are selling, and your buyer fails to complete, then (s)he will have to pay you interest, and if you are buying too, then one can be set against the other. We will send you a plan of the property you are buying. Please check that the shape, size and dimensions seem correct to you. You have seen the house and garden - we haven't! A lot of land is subject to what are called 'restrictive covenants'. These set out details of things that you can or cannot do with the property, and if there are any that affect the land, we will send you a copy of these. Please pay particular attention to them if you are planning to do any further building work on the land or property. We shall send you a financial statement, showing * all money received and required, and what for * whether we need money from you in order to complete. Please let us have any money needed in plenty of time; the letter we send with your statement tells you how you can pay, and how much time you should allow. We must have cleared funds, and we need to be able to see them in our account. All solicitors are subject to very strict regulations regarding the safekeeping of clients' money, and those regulations now also cover money laundering. The part which concerns you the most is that all money must come from an account in your name - we cannot accept money from other people's accounts. ('All money' means even a cheque for £5- we are sorry, but we do not make the rules!) You should now sign the Contract(s) and return them to us with any money we have asked for. If you send us your own cheque for the deposit we will have to clear this before exchange - if you send us a Building Society cheque or bank draft this is quicker. Signing the Contract does not commit you. You are not actually committed until we exchange Contracts on your behalf.

6. The completion date

This is the date on which the rest of the money is paid and you can move in. It has to be agreed before exchange, as it is written into the Contract(s). It used to be the rule that the time period between exchange and completion was 28 days. It is less than this now, but please assume that we will need 10 working days (2 weeks) as quite often it takes that long to apply for and obtain your mortgage money. It is sometimes possible to exchange and complete on the same day, but it is not a good idea - in theory your seller and/or buyer could pull out on the day you are supposed to be moving! Please do not let yourself be pressured into accepting a completion date that is too early. Non-completion is rare but extremely stressful.

7. Exchange

The exchange of conveyancing Contracts itself is done by us over the telephone and can take a few hours to finish. The procedure is complicated, but it starts with the Solicitor for the person at one end of the chain, who is not selling, and ends with the Solicitor for the person at the other end, who is not buying. As soon as Contracts have been exchanged we will let you know.

8. Insurance

What the Contract says about buildings (fire) insurance can vary. If you are selling, then it is best not to cancel the buildings insurance until completion. If you are buying, then it is best to insure as soon as Contracts have been exchanged. It is much better for the property to be insured twice than not at all (they can catch fire!). If you are having a mortgage then your lender may look after this - check with them. If you are not having a mortgage, you will have to do this yourself.

9. Between exchange and completion

There are also one or two legal checks we have to make. If you are having a mortgage, we are required by your lender to check that you have not been made bankrupt. We also make a conveyancing search at the Land Registry to check that nothing has been registered against the title within the last few weeks.

a. You will have to

- i. Where necessary, sign the Mortgage deeds and a Transfer deed
- ii. Supply details of any life policies to be used in connection with your mortgage - this is important as your lender may not send the mortgage money without them.

b. You should also

- i. Arrange your removals
- ii. Tell the local authority and water board the date on which you are moving out, so that they can bill you to that date, or arrange a refund if you have paid in advance.
- iii. Tell the electricity, gas and telephone authorities that you are moving and arrange for the meters to be read on the completion date.
- iv. Tell everyone else of your change of address (bank, doctor etc.) You are required by law to have the address on your driving licence altered.

- v. Make arrangements to hand over keys, preferably through the estate agents.

10. Paying

Your estate agent's bill will be sent to us. Unless you tell us otherwise, we will pay them from the money we receive. We shall also find out what is owing on your mortgage, and must pay this to your lender as soon as we receive money. Conveyancing fees and other costs are also payable on completion from the money we receive.

11. Completion day

If you are buying and selling, you should aim to be out of your old home by about 12 noon - the Contract actually specifies a time by which you should be out (probably 1pm - 2pm). Nowadays the money is sent by telegraphic transfer between the various Solicitors' banks. If you are selling and buying, then obviously we must have received your sale monies before we can send off the purchase monies. Usually the money will have been sent by midday, but when the system is very busy delays do occur, especially on Fridays. It is better not to rely on being able to move by a particular time, although in practice most people move into their new homes in the early afternoon. We cannot guarantee exactly when any money due to you will be available. Firstly, we cannot be certain of the time it will be received. The CHAPS electronic transfer system, which conveyancing solicitors use, guarantees same day receipt, but does not guarantee any particular time. Secondly, if there is a mortgage on the property you are selling, we need your lender to tell us, once we have repaid the amount they asked for, that your account is clear and closed. This usually takes a few days. We have to do this for technical reasons which we are happy to explain to you if you like.

12. Afterwards

Our conveyancing job does not end when you move in. The stamp duty will have to be paid to the Inland Revenue, and they then send us a certificate proving that it has been paid. The Deeds will then have to be sent to the Land Registry to have the previous owner's name removed and yours inserted. This whole process can take several weeks. When the Deeds are returned, we must send them to your lender if you have a mortgage; if there is no mortgage we will send them to you.

The conveyancing process and fees explained

When you buy, sell or remortgage a property, you are advised to use a conveyancer, employed by a firm of solicitors, or a licensed conveyancer, to look after your interests and deal with the complex paperwork.

Your conveyancer will take care that all the legal conditions and obligations are met and the new mortgage goes into place without problems. He will also act on behalf of your current lender, making sure your existing mortgage is repaid (if you are not a first time buyer).

During the conveyance, you will be told what is happening, what you have to do next and be given a number of documents to sign and return allowing the next stage to go ahead. It is important to respond to any requests promptly, so that you do not delay the whole process. It is not unusual for a chain of home movers to be all lined up and ready to go, only to discover that one of them is guilty of dealing with a request to act on something and the whole process grinds to a halt. Don't let it be you. A break in the chain is unpleasant and stressful for all concerned.

Here's a breakdown of what your conveyancer will be doing when you buy:

He will obtain a purchase contract from the sellers' solicitors, with details of the property and its ownership.

He will sort out any pre-contract enquires and obtain copies of any existing guarantees, planning consents, etc.

He will obtain the sellers' fixtures and fittings list to see what they will be leaving in the property, and you will get a copy to check.

When your mortgage offer has arrived, he will arrange for you to sign the contract and hand over your deposit for him to hold in readiness for "exchange".

When the mortgage conditions have been met and the sellers are ready to proceed, a completion date is agreed that suits everyone in the chain. Contracts can now be exchanged and the transfer deed effected.

Once this has been done your conveyancer can call down the mortgage advance from your lender and send you a final completion statement.

On completion day, your conveyancer pays the required amount to the sellers' solicitors in exchange for the title deeds. You can now move into your new home.

Your conveyancer will now register your name and mortgage at H.M. Land Registry and send the deeds to your lender for them to hold as security for their mortgage advance.

ARRANGEMENT FEE

Arrangement fees became more popular amongst lenders in the 1990s and are now a feature of most mortgage applications. In most cases, the arrangement fee is added to the loan on completion and so is not charged if the mortgage does not proceed. In some cases, the arrangement fee can be requested upfront, and is called a booking fee. This is common with some fixed rate mortgages, where you are paying the lender to secure funds for your application at a certain interest rate. Upfront arrangement fees and booking fees are usually

not refundable. Arrangement fees vary in cost, often between £199 and £399. In some circumstances, they can be as much as 1% of the mortgage advance.

LEGAL FEES

Legal fees for the cost of the conveyancing are payable to the solicitor or licensed conveyancer. The fee charged by a solicitor is based on his time and the costs of legal registrations and miscellaneous costs (known as disbursements).

Solicitors' fees vary from practice to practice, although 1% of the purchase price is not an unusual figure. People selling an existing property have an additional charge to pay for the conveyancing of their existing property to a new buyer.

There are various conveyancing costs, which are usually itemised by the solicitor on completion. These costs include the following:

- *local search, which reveals any matters affecting the property (such as road widening schemes, planning consents).
- land Registry fees, which are incurred in the transfer of ownership on the register from the old to the new owner
- Stamp duty, if applicable (see section below).

Once a solicitor has the basic information, he can often give an estimate of costs.

*From 10 September, all homes in England and Wales with 3 or more bedrooms will need a Home Information Pack (HIP), which includes a sale statement, searches and evidence of title. The average pack is taking around 5 days to compile, with costs in the region of £300 plus VAT.

In a sale or purchase there are three distinct stages:

Before exchange of contracts

Nothing is legally binding on either side and, generally speaking, there is no refund for a wasted survey, search fees and legal costs if the sale falls through.

Between exchange of contracts and completion

Both sellers and buyers are legally bound to complete on an agreed completion date.

On completion day

Monies change hands through the conveyancers, deeds are handed over, sellers move out and buyers move in.

STAMP DUTY

Stamp duty is a 'purchase tax' charged by the Government. It is charged when documents are legally completed in the UK.

Stamp duty is charged when you buy a property costing more than £125,000. The cost is worked out as a percentage of the purchase price of the property and the rate is charged on a scale.

House Price Stamp Duty

£125,001 £250,000 1%

£250,001 £500,000 3%

£500,001 or more 4%

In marginal situations, it may be possible to reduce payment of stamp tax. For example, if a purchaser buys a house with curtains and carpets for £128,000 and the curtains and carpets have a value greater than £3,000, then, if the purchaser buys the property, separate from the curtains and carpets, the purchase price of the property falls below £125,000 and there is no stamp duty. However, the sale documents would have to show this and the borrower may then only be able to borrow the lower amount.

HIGHER LENDING CHARGE (formerly known as a mortgage indemnity guarantee MIG)

This is the cost of an insurance taken by the mortgage lender, but charged to the borrower, when the amount borrowed is a high percentage of the value of the property.

When a mortgage lender agrees to lend against the security of property, the lender's major consideration is to avoid losing money.

In order to reduce this risk, mortgage providers take out insurance to cover loans where a high percentage of the purchase price is to be loaned.

Typically, if someone borrows less than 90% of the purchase price of a property, the provider does not seek further security, other than the property itself, as the likelihood of loss is low. Above this percentage and the provider is likely to insure against loss.

The following examples show how the higher lending charge is calculated; based on different percentage amounts borrowed.

Example one

Purchase price £108,000; mortgage of £93,000. $£108,000 \times 90\% = £97,200$. Since the mortgage required is less than this amount, insurance is not taken.

Example two

Purchase price £108,000; mortgage of £100,000. $£108,000 \times 90\% = £97,200$ $£100,000 - £97,200 = £2,800$ (higher lending charge of 8.5% only applicable on this amount). $£2,800 \times 8.5\% = £238$.

The higher lending charge premium is paid by the borrower, though it can often be added to the loan if the lender allows.

Please Note: Not all lenders make the borrower pay the higher lending charge. Many lenders pay the higher lending charge premium themselves.

SURVEY / VALUATION FEE

Since the Building Societies Act 1986, building societies are required to arrange a report and valuation of every property on which a new advance is made. Whilst lenders other than building societies are not legally required to arrange valuations, they all insist on them.

A survey fee is charged for such a valuation. The survey fee is, therefore, another cost that will usually be paid with the mortgage application. The valuation offers some benefits to both the lender and the borrower in giving a professional opinion as to the market value of the property and security for the loan.

A qualified valuer has a duty of care and a contractual liability to provide an accurate valuation.

The lender wants to know of any defects that may affect the property's marketability. The inspection may also reveal other aspects, such as undeclared occupants, or a suspicious connection between the vendor and the purchaser.

The borrower is also concerned with the market valuation of the property and any major defects it may have. Some of the surveyor's findings may enable the purchaser to renegotiate the price.

The surveyor is either a staff valuer, working in the direct employ of the lender, or a panel valuer. Most lenders operate a panel system, whereby local valuation firms are requested to perform the survey.

There are three main types of survey available. These vary in depth of information and, therefore, in cost:

Basic Mortgage Valuation

A basic valuation costs the least of all surveys because it is the most basic. Normally, a mortgage lender will insist you have this survey because it gives them basic information about the value of the property. It will advise them about some basic conditions of the property (e.g. what type of construction it is, what type of roads service the property). This type of survey should cost around £100 - £500 depending on the property value.

Report and Valuation (Homebuyers Report)

The RICS homebuyer report is in a standard format and is designed specifically as an economical survey and is a cost-effective way to minimise risk. The homebuyer report focuses on essentials: defects and problems that are urgent or significant and will affect the value of the property.

The homebuyer report, unlike a building survey, provides not only a survey but also a valuation as an integral part of the service.

This type of report is much more detailed than the basic mortgage valuation, which most people choose to commission, and is normally instructed by house/flat buyers for their own use giving them a direct link with their own Chartered Surveyor. The surveyor's main objectives in providing the service are to give guidance on value and to assist the prospective homebuyer to:

- Make a reasoned and informed judgement on whether or not to proceed with the purchase.
- Assess at what price it would be reasonable to purchase the property.
- Be clear what decisions and actions should be taken before making an offer to purchase.

The surveyor will also give a professional opinion about the particular features of the property that affect its present value and may affect its future re-sale. The report format is standard, compact, and easy to understand. It covers the building inside and outside, the services and the site. It focuses on the defects and other problems that the surveyor judges to be urgent or significant. It also covers:

- General condition and particular features.
- Particular points which should be referred to your legal advisors.
- Other relevant considerations concerning, for example, safety, location or perhaps insurance.

Matters not judged to be significant are generally not included in the report, but where necessary, the surveyor may also provide some extra service which is considered outside the scope of the standard package - perhaps for a schedule of minor defects (for later discussion with a contractor).

Internally, the condition of service installations, such as wiring and drainage and central heating, will also be examined but not tested.

Structural survey

The building survey used to be called a structural survey and it is the most detailed of the three reports. There is no standard form, but all surveyors have developed their own detailed report format.

The surveyor will examine and report on chimney pots and stacks, the roof cover, soffits and fascias, gutters and downpipes and look at all external walls to see if there is any current evidence of settlement or subsidence.

The surveyor will examine windows and external timbers and endeavour to identify a damp proof course. He will lift inspection chambers to examine the drain runs, advising on the necessity or otherwise of a drains test if there is visual evidence within the inspection chamber or around it, or on the building, of drainage problems.

The surveyor will also examine the site, identifying any visually apparent problems with the boundaries. He will also advise if he considers that trees represent a threat to the stability of the building. Inaccessible roof surfaces are examined from the ground with the aid of

binoculars. Inside the property, the surveyor will go into the loft, if access is available, to inspect the structure of the roof, the insulation, any water installation and examine chimney stacks, checking that there is adequate support. The composition of ceilings may be noted together with the condition of any wiring found within the loft.

The surveyor will then examine the underside of the ceilings and check for signs of movement which may indicate roof spread and then inspect all internal walls to see if there are any signs of settlement or subsidence. The surveyor may recommend immediate remedial action, or monitoring of cracks within internal and external walls.

A damp test will be carried out to accessible ground floor areas. This can give an indication of whether sub-floor timbers are at risk from dry or wet rot problems.

The surveyor will then inspect timbers, plumbing, electrics and heating. If there are obvious problems here, he may recommend specialist reports.

The report may result in a schedule of repairs on a separate page that you could give to a building contractor to obtain a quotation for any works that need to be carried out before you exchange contracts on the property.

The building survey can include a valuation on the property and a reinstatement value (what it would cost to build the property from scratch in the event of say, a fire). The surveyor will confirm exactly what is and what is not covered under a building survey by confirmation letter when you ask for a quotation.