

SELLER'S NOTES

*This guide has been prepared by **Field Seymour Parkes**, solicitors in Reading, and is reproduced with their kind permission.*

These notes contain important information about selling a property and we ask you to read through them carefully. They form an integral part of our conveyancing service and we hope that the information provided will enable you to understand better what is happening during the process and the documents you will receive from us during the transaction.

Before you can put your house or flat on the market, your estate agent must be in possession of a home information pack (referred to generally as a HIP). Once in possession of the HIP, the estate agent must make a copy available to any potential buyer requesting one. A HIP is a bundle of information relating to your property. It must contain an index, a sale statement, an energy performance certificate, title details, a local search, a water and drainage search and a property information questionnaire. Because there may sometimes be a delay in obtaining the searches, the HIPs rules allow these items to be placed with the HIP up to 28 days after the property has been put on the market (subject to certain conditions being satisfied). This is an extremely useful exception and should mean that the HIP can be produced in a matter of days. Your estate agent may arrange the HIP for you. If not, we will be happy to prepare a HIP for your property.

The notes start with an overview of a sale transaction, and then move on to a more detailed discussion of certain key areas. If you require any additional information or if you have any queries on these notes, please contact us and we will be pleased to help.

1 THE BASICS

In a nutshell, the legal steps in a sale are as follows:

Step 1:

- we will send you the Property Information Form and Fittings and Contents Form to complete
- we obtain your title deeds either from you, the solicitors who acted for you when you purchased the property or from your mortgage lender (if applicable)

Step 2:

- we prepare a contract for the sale of the property in draft form and send it to the buyer's solicitors together with the a copy of the Home Information Pack, the completed property information forms and copies of all relevant deeds and documents

Step 3:

- we deal with any additional enquiries raised by the buyer's solicitors; often we will need your assistance to provide replies

Step 4:

- contracts are exchanged and a date is fixed for completion; from this moment you are legally committed to sell the property
- we will send you a note explaining what pre-completion arrangements you need to make

Step 5:

- the sale completes when we receive the purchase money from the buyer's solicitors. You move out of the property and the buyer will be entitled to move in. If you have a mortgage, this will be repaid on completion out of the sale proceeds. We also settle the estate agents' commission account.

2 TITLE DEEDS

If there is no mortgage on the property, you will presumably either have the deeds at home or will have lodged them with the solicitors who acted for you when you purchased the property for safekeeping. If the deeds are at home, you will need to make arrangements to send them to us. You may wish to use registered post, although this is not necessary unless title to the property remains unregistered. If your deeds are with your former solicitors, you will either need to collect the deeds and bring them to our office or you could write to the firm asking them to send the deeds direct to us.

If there is a mortgage on the property, it may be the case that the title deeds are held by the mortgage lender. However, since October 2003 many lenders have decided not to retain any title deeds for safekeeping. Where there is a mortgage we will always write to the lender to see whether they are holding any deeds. If you know that the deeds are not held by the lender, please make arrangements to send them to us as detailed above.

3 INFORMATION REQUIRED FROM YOU

A very important part of the conveyancing process involves the buyer obtaining information about the property from you. The Law Society has prepared standard forms to assist with this stage of the process, and we would ask you to complete and return the property information forms as soon as possible so that we can forward them to the buyer's solicitors.

Please also send us originals or copies of any other documents which relate to the property. In particular we will need the original or copy of any planning consent and/or Building Regulations approval obtained by you for any work at the property (e.g. an extension). We will also need to see any guarantees obtained by you for treatments at the property (e.g. damp proofing, timber treatment).

If the property you are selling is leasehold (this will always be the case where you are selling a flat), there will be a considerable amount of extra information which we will have to provide to the buyer's solicitors. We will send you a Leasehold Information Form to complete, which asks for full details of payments made in respect of ground rent and service charges (if any), and details of how the property is insured.

Many landlords and management companies use managing agents to deal with the collection of ground rent and service charges, and to maintain and insure the building. It is now the case in most transactions that a standard pre-sale pack is provided by the managing agents on receipt of a fee. Once we have made contact with the managing agents and know the current fee, we will ask you to send us a cheque so that we can apply to them for the pack.

4 EXCHANGE OF CONTRACTS

You will in due course receive from us the contract for the sale of the property for signature. When you have returned the signed contract to us together with your instructions on a completion date we will then be in a position to exchange contracts with your buyer (assuming of course that the buyer is also ready to exchange). Once contracts have been exchanged you and the buyer are legally committed to the transaction.

The completion date is not finally agreed until just before exchange, and on exchange the agreed date is written into the contract and that will be the date upon which completion must take place. Completion can take place on any date the seller and buyer agree on, provided it is a working day. Most people prefer a Friday to give them the weekend to sort things out, but because of this the bank money transfer systems sometimes get overloaded which can cause delays. Particularly difficult are the last working days before holidays. If you are able to, it would be sensible to choose a quiet day earlier in the week. As a rule, completion should be at least five working days after exchange of contracts.

5 DEPOSIT

The deposit is a part payment of the purchase price paid by the buyer to the seller on exchange of contracts. The traditional deposit paid on exchange is 10% of the purchase price, but it has become common for buyers to offer smaller deposits. You may well be asked by your buyer (often just prior to exchange of contracts) to accept less than a 10% deposit and you will need to tell us whether you agree to this. This section of the note explains the purpose of a deposit to enable you to decide whether you will accept a reduced deposit.

The deposit is probably best regarded as a ready-made compensation fund for your benefit should the buyer fail to complete the purchase. If the buyer defaults, you should be entitled to keep the deposit and re-sell the property. You can therefore see that the size of the deposit represents the size of the compensation fund available to you. However, please note that there will be no available compensation fund if you use the deposit which you receive on your sale as the deposit on a related purchase.

You should also be aware that the Court has a discretion to order the return of the deposit to the buyer even in circumstances where the buyer is in default. The Court may order the return of a deposit in circumstances which make this the fairest course between the parties. In a rising market, the Court may well have regard to the opportunity the seller may have to re-sell the property at a higher price. However, the circumstances would have to be exceptional to make it appropriate for the Court to exercise its discretion to order the return of the deposit to the buyer.

If you agree to accept a low deposit on your sale (or even no deposit at all), then the losses and liabilities which you incur may significantly exceed the amount of the compensation fund available to you. This is brought into sharp focus where you are selling and buying simultaneously, since any default by your buyer will not relieve you of your obligations under your purchase contract.

It is generally considered that 10% of the sale price provides an adequate compensation fund in most circumstances. However you may be faced with a situation where your buyer is simply not able (or perhaps not prepared) to pay a full deposit in which case you will have to decide whether to accept the reduced deposit (being aware of the risks described above) or to reject it in the hope that the buyer will be able to come up with more money.

6 YOUR EXISTING MORTGAGE

When we apply for your title deeds at the beginning of the transaction we do two other things at the same time:

- (a) we ask for a redemption statement (i.e. a statement issued by the mortgage lender stating the amount required to pay off the mortgage together with accrued interest) based on a notional completion date
- (b) we give the mortgage lender formal notification of your intention to redeem the mortgage; this is because some mortgage lenders require a fixed period of notice before you redeem your mortgage

You should continue to make your mortgage payments on time right up to completion. If there is any element of overpayment (e.g. because the final redemption statement assumes that a monthly payment will not be made but in fact the payment is made), you will receive a full refund from the lending institution after completion.

Please note that we will usually be unaware of any redemption penalty application to your mortgage, as we will not have a copy of your original mortgage offer setting out the redemption terms. If you are aware that a redemption penalty is applicable to your mortgage, please let us have details. The expiry of any redemption penalty period could determine the completion date which you require.

7 INSURANCE

Under the form of contract used by this firm, risk of damage to the property passes to the buyer on exchange of contracts. However, you should not cancel your insurance cover on exchange. It is important that you maintain insurance cover on the property right up to and including the date of completion.

If you have a mortgage on the property and the insurance is arranged through the mortgage lender you need to take no action as the insurance cover will not be cancelled until your mortgage has been redeemed on the completion date. If however you arrange the insurance of the property yourself, it is important that you do not cancel the insurance until completion.

8 OUTGOINGS

You should continue to pay all outgoings on the property right up to the date of completion. If you are selling a leasehold property then any advance payments of ground rent and service charges which you have made will be apportioned as between you and the buyer on completion and you will receive a refund from the buyer for any payments attributable to the period after completion.

Outgoings in respect of the services (gas, telephone, electricity etc) will not be apportioned. You will need to contact the utilities before completion asking them to read the meters on the completion date and to prepare final accounts. We will send you a note on exchange of contracts reminding you to make these arrangements.

These notes are believed to be accurate as at February 2010. They do not constitute legal advice save where they have been issued to a client of Field Seymour Parkes in the course of a conveyancing transaction.

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