

Guide to Selling and Buying your Home

Selling and buying property can be one of the most stressful periods in anyone's life. So, what can you do to ensure that the process goes as smoothly as possible? Choosing a legal representative to assist you through the process and to provide you with competent advice can be difficult with so many firms to choose from. The cost of legal fees is not the only thing to consider – finding someone that you feel comfortable talking to and who can guide you through the process efficiently and professionally should also be a major factor to consider before you instruct someone to act on your behalf.

Why Choose C Nicholls?

Solicitors and Licensed Conveyancers are professionals qualified to undertake the complicated legal work involved in the conveyancing process. But, with so many legal firms out there, how do you choose which to act for you?

At C Nicholls Solicitors, our friendly team are committed to providing a service that you can rely on to make the process as stress free as possible.

We are an established firm of solicitors with the major advantage of local knowledge of the Cornwall area. We are happy to answer any queries that you may have by telephone and, of course, you may not be so far away that it would be impossible for you to make an appointment to call in to see us should you wish to discuss anything face to face.

At C Nicholls, we firmly believe that all of our Clients should be able to discuss their own requirements with someone that they can trust. Every transaction is as individual as you are and we feel that it is very important that you are able to make contact with the person dealing with your case from the start right through to completion.

The Process

So, you have found a seller and/or buyer, you have instructed your legal representative, but what happens next? This guide has been produced to help you understand the legal work involved in buying and selling a property and to help you to help us to manage the process as quickly and as efficiently as possible.

The average conveyancing transaction will take around 4 to 8 weeks depending upon the length of any chain but as a guide, you might add an extra 6 weeks to the time taken for every additional party to the chain. However, not all transactions are straightforward and more complicated sales and purchases can take longer than this. If you are within a lengthy chain or if you require a Mortgage to assist you with your

purchase then it is not always easy to arrange completion for a specific date and you may need to be a little flexible. In these circumstances, our general advice is not to make any firm arrangements regarding completion dates without first discussing the situation with us. Wherever delays look likely then we will discuss the situation fully with you and advise you what steps we are taking to try to resolve the situation in accordance with your wishes.

Buying and Selling – The Steps

a) The Contract

It is advisable for you to consult your solicitor as soon as your property is placed on the market, even before a buyer has been found. We can arrange for your Title Deeds to be sent to us or call for details from the Land Registry if the title is registered in good time for a Contract to be prepared and sent out to the buyer's solicitor as soon as an offer has been accepted. If your property is mortgaged then your Lender may have your Deeds. We will need details of your Lender and your mortgage account number so that we can order your Deeds from them if the deeds are retained. Copies of your Deeds are sent to the buyer's solicitors to assist them in raising any enquiries about the property.

Many solicitors have now adopted the Law Society's TransAction Scheme, which was introduced to simplify the selling and buying process. Under this scheme much of the information about a property is supplied with the Contract, in standard forms, which are widely used and replace the need to raise time-consuming standard enquiries.

The Sellers Property Information Form provides the buyer with information about the property, such as who is responsible for the boundaries, whether or not there have been any disputes with neighbours or other organisations and whether or not the property has ever been changed.

The Fixtures, Fittings and Contents List is completed at the start so that everyone is clear about what is to be included in the sale and avoids last minute quibbles about whether or not the light fittings or loo roll holder are to remain at the property!

If the property you are selling is Leasehold, then an additional Leaseholders Information Form will also need to be completed and this gives the buyer information about any Management Company involved in managing the property and details of the ground rent and service charges payable.

These forms are included as part of the Contract package. It is important that they are completed as accurately as possible because the buyer will rely upon what you say and if the forms are deliberately misleading then the buyer could have a case to sue for misrepresentation.

It would greatly assist us if any documentation relating to the property, for instance, any guarantees or deeds and documents passed to you when you completed your purchase of

the property, could be sent to us at this stage to assist us with answering any enquiries that the buyers may raise.

b) Valuations and Surveys

If you are buying a property with the assistance of Mortgage finance then your Lender will carry out a mortgage valuation for which you will have to pay. However, this is for valuation purposes only to guarantee the security of the loan and the report will be purely for the lenders benefit.

For an additional fee it may be possible for you to instruct the valuer to carry out a full structural survey of the property and to provide a copy of the report to you for your information. Alternatively you may prefer to instruct your own surveyor to carry out this type of survey. We would always advise that a structural survey be carried out wherever possible, as the surveyor will investigate the whole of the property from the roof to the floorboards, where practicable.

Structural surveys can be expensive so it is always a good idea to obtain a quotation from more than one firm and do check whether or not the fee includes the cost of the mortgage valuation. In addition, check that the firm that you instruct to carry out the survey is a member of the Royal Institution of Chartered Surveyors or the Incorporated Society of Valuers and Auctioneers.

A cheaper option than the full structural survey is to instruct a surveyor to carry out a House or Flat Buyer's Report. It is more concise than the full structural survey but more comprehensive than a mere valuation. The surveyor will inspect the main structure including the roof space, if accessible, and the drainage and will identify any legal issues that need to be clarified.

Whichever type of survey you choose, once it has been carried out please pass a copy of the survey report to us so that we can investigate any of the legal points raised. If the report reveals anything unsatisfactory it may be possible for you to negotiate with the seller to reduce the asking price. Usually nothing can be done about any defect that is discovered after exchange of contracts.

If you are not obtaining a mortgage then it is essential for you to have a survey.

c) Searches

Upon receipt of the Contract package the buyer's solicitor will obtain a Local Search from the Local Authority as well as any other searches that are deemed to be necessary.

The Local Authority Search will provide us with information concerning the planning history of the property (if there is any) together with any other information known by the Local Authority about the property and which may have a bearing on its sale.

This search has a 'shelf life' of six months. If it takes some time for the buyer to receive a mortgage offer or if the purchase is delayed for some other reason then the buyer will

need to know if the search is still valid. In some cases, a special Search Validation Insurance is available to cover the property for six months from the date of the search. If the buyer finds any proposals that may affect the property that occurred between the date of the search and the expiry date of the insurance policy then the insurance company will pay compensation for any damage the buyer may incur. The cost of this type of insurance cover is much less than the cost of redoing the search. Wherever necessary we can supply full details if you are interested in this type of insurance.

Full details of the searches relevant to the area in which you are purchasing, and the cost of those searches, are included in our standard Terms of Business letter which is sent to you upon receipt of your instructions. Some of the searches are necessary to meet any lenders requirements and some searches are optional and need only be carried out at your request. If you are unsure about which searches you will need then it may be prudent for you to rely upon our local knowledge and legal expertise. In the absence of any specific instructions from you as to which searches to carry out then we will request all of the searches that we believe to be relevant to the area.

Searches take, on average, approximately ten working days but sometimes longer if the Local Authority have a backlog, for instance, over the Christmas period.

d) Additional Enquiries

Upon receipt of the results of the searches the buyer's solicitors will review the results in conjunction with the information provided by the sellers with the Contract package. The buyer's solicitors will then decide whether or not they need to raise any further enquiries about the property and will submit a list of relevant questions to the buyers, for example, if an extension has been built then the buyer's solicitors will need to see copies of the relevant planning permissions and building regulation approval documents.

Some enquiries can be dealt with by the solicitor acting for the seller, from the information contained with the Deeds, but others may need to be referred to the seller who may need to provide further information.

e) Legal Indemnity Insurances

The conveyancing process has changed in various ways in recent years as a result of precedents set by the Courts. In some cases this can mean that a buyer's solicitor will request information that was not perhaps necessary when the property was bought by the seller, even only a few years beforehand.

The most common example of this is the need for some sellers to provide an insurance policy against certain contingencies that may not have been deemed necessary when the property was bought. For instance, the seller may have purchased a property in the knowledge that building works had been carried out without necessary planning consents a few years previously. Because the relevant consents are not in place, this is now considered to be a defect in Title. In this case a new buyer would almost certainly insist upon an insurance policy being issued to provide cover against possible losses incurred should the Local Authority take any enforcement action.

The requirement for this type of policy is relatively recent and the onus usually falls to the seller to pay for and provide such a policy to repair any defects discovered in the Title. If such a defect is discovered then we will discuss this with you in greater detail at the time. Wherever necessary, we are able to issue certain types of Policy from our office and we will be happy to discuss this further with you should the need arise.

f) The Mortgage Offer and our Duty to the Lender

Most people purchase a property with the assistance of mortgage finance. You should contact your Financial Advisor as soon as you make the decision to purchase a property and he will go through the mortgage application process with you.

Once your mortgage application has been accepted then the Lender will issue a formal Mortgage Offer to you which describes the terms and conditions of the loan. A copy of your Mortgage Offer is also provided to the lender's solicitor for their information and many lenders will also instruct the solicitor acting for the buyer to represent their own interests and to ensure that the property upon which they will be lending is a good risk.

When a solicitor acts for both the buyer and the lender he has a duty to report anything that may affect the lender's security to the lender. For instance, if the purchase price of the property is different from that stated in the mortgage offer then the solicitor must report this fact to the lender so that the offer can be revised and reissued where necessary.

The mortgage offer will detail the full terms and conditions of the loan and the solicitor must ensure that all of these terms and conditions are met. Once all enquiries and searches have been carried out and the buyer is ready to proceed towards completion of the purchase the solicitor must certify to the lender that all of the necessary conditions have been complied with. Failure to comply with the conditions could lead to withdrawal of the offer of loan by the lender and the solicitor can be held to have been negligent.

g) Buildings Insurance

If you are buying then buildings insurance cover should be arranged upon exchange of Contracts. Where you are obtaining a mortgage, the lender will make it a condition of the loan that the property is adequately insured and will usually arrange cover in conjunction with your mortgage. If you intend to insure the property elsewhere then it is important that your lender is aware of this fact and you will need to provide us with a copy of your buildings insurance schedule so that we can confirm to the lender that adequate cover is in place. Lenders will often, but not in all cases, advise you of the amount of cover that they require.

If you are selling then it is important that the buildings insurance cover is not cancelled until your completion date.

h) Reporting to You and Signing the Contract

Once we have received your mortgage offer, carried out all of the necessary searches and received replies to our additional enquiries then we are ready to report to you about your

purchase. In all cases we will provide you with a full report detailing all of the information that we have regarding your purchase. We will also invite you to raise any final enquiries through us that you may have yourselves.

Once you are happy with the report and information provided we will then invite you to the office to discuss any final points and to sign the contract and mortgage Deed.

If you are selling, we will usually send the contract to you for signature as soon as the buyer's solicitors have approved it so that we are ready to exchange contracts in accordance with your requirements and whenever the buyers are ready to do so.

Whether you are selling or buying, it is important for you to understand that you have not committed yourself by merely signing the documents. It is only when contracts are exchanged with the other party that the contract will become legally binding.

i) Exchange of Contracts

Once both parties have signed the contract and agreement has been reached regarding a mutually acceptable completion date, then contracts are exchanged, usually by telephone between the two solicitors acting. The completion date is fixed and the deposit is paid to the seller's solicitors at this stage and the contract becomes legally binding. If the buyer backs out after exchange of contracts then his deposit is forfeited.

j) Financial Arrangements

Following exchange of contracts we will prepare your statement of account and our bill showing our fees and disbursements for your records. We need all monies required for completion to be available as cleared funds in our account on or before completion day. Where we are holding large sums of money on your behalf for longer than seven days, then Solicitor's Practice Rules provide that we must hold this money on special deposit so that it is earning interest for you.

Where you are buying we will be unable to complete your purchase unless we are holding enough funds (including any mortgage advance) to cover the purchase price, Stamp Duty Land Tax, Land Registry fees and our own fees and disbursements.

Where you are selling we will obtain details of the amount needed to repay any mortgage over the property at completion date. The sellers will require us to make a solemn promise to pay any financial charges, such as a mortgage or secured loan, at completion and to provide them with evidence that these have been paid. It is important therefore that you tell us about all Mortgages or charges, bank loans or other financial commitments that could be secured over your property well before exchange of Contracts.

We will also obtain a copy of the Estate Agent's commission account and arrange for this to be paid from the proceeds of sale if that is what you would like us to do.

Details of any payments to be made from the sale proceeds will be agreed with you before completion date so that you are aware of the amounts that are to be paid and the balance due to you.

k) Legal Completion

This is the date which is fixed in the contracts upon exchange, when the purchase price is paid to the seller's solicitors, the keys are released to the buyer and the signed Deeds are passed to the buyer's solicitors.

The purchase price is usually sent to the seller's solicitors electronically through the banking system. In a long chain it can often take some time for the seller to receive the money and it may well be that the keys might not be released until the afternoon. This can be frustrating if you are sitting outside your new property in the removal van waiting to get in! In these circumstances please bear with us and be assured that we are doing our very best to try to get you in to your new property as early as possible. We will, of course, keep you fully informed of any developments throughout the day.

Where you are selling we will repay the mortgage, the Estate Agent's commission account, our own fees and disbursements and forward any net proceeds of sale to you. We can arrange to send any monies due to your bank account electronically at no extra charge if you so wish and the funds will be shown as a credit in your account on the day of completion (assuming that the sale monies are received by us before 3.30pm which is the close of the banking day).

l) Final Formalities

When you have bought we will apply to the Inland Revenue to pay Stamp Duty Land Tax on your behalf. Once a certificate of payment is received from the Inland Revenue we apply to the Land Registry to register the change of ownership.

Once registration is completed we will forward the Title Information document provided by the Land Registry to any lender for them to hold as security for the duration of your mortgage. Copies will also be sent to you for your records.

Other Important Things to Consider

Joint Ownership

There are two ways in which property can be held in joint names. You may hold the property as Beneficial Joint Tenants where, if one co-owner dies their share of the property automatically passes to the survivor(s). Alternatively you may hold the property as Tenants In Common where, if one co-owner dies their share does not pass automatically to the survivor but forms part of their estate which passes under their Will.

Please see our separate form regarding Joint Ownership for more information in this respect and which will assist you in choosing the best method of ownership for your individual circumstances.

Making a Will

If you are a property owner or are in the process of buying your own home then it is vital for you to make a Will if you have not already done so. Please contact David Pitcher who will be happy to discuss this with you and provide you with legal advice in this respect.

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