

# Alison Fielden & Co.

## Solicitors & Notary Public

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### FACTSHEET

#### Buying, Selling and Other Dealings With Your Home

##### INTRODUCTION

For many people, buying a house is the biggest single purchase they will make. Understandably they will be anxious that everything should go smoothly, and worried if delays or problems occur. Where a sale and a purchase proceed together, this can increase the pressure, particularly if the transactions are part of a long 'chain' of sales and purchases all depending on each other to go ahead at the same time.

This leaflet is intended to summarise the procedure, show where delays or pitfalls can occur, and outline the ways in which we can help. It also sets out the procedure on other transactions which may affect your home.

##### SALES

If you are selling it is helpful if you contact us as early as possible in the process. If you speak to us before contacting your chosen estate agent we can advise on the contract you make with them. In any case we can take steps at an early stage to obtain **Title Information** and a copy of the **Title Plan** electronically from the Land Registry (if the land is registered) or **title deeds** (if unregistered) together with any supplementary documents. This will avoid delay once a buyer is found. We will also give you a form to complete about the property which will be passed on to the buyer with the other documents.

Title deeds will often be with your mortgage lender if the property is mortgaged. They need to be inspected as soon as possible. Occasionally there is a defect in the paperwork which needs to be put right and the sooner this is spotted and dealt with the better. There will also be certain information to be collected for the buyer and the sale **contract** itself to be drafted.

Please note that many lenders now do not hold title deeds, and these together with supplementary documents are often sent instead to the borrower for safe keeping. If you have any such documents when you come to sell, please pass these to us as this will save time and possibly expense when supplying information to the buyers' solicitors.

Once the contract and other documents have been sent to the buyers' solicitors it is for them to make such **enquiries** as they need - some of which may be sent to us and on which we will consult you - prior to exchange of contracts. We will advise you when the documents need to be signed.

**Exchange of contracts** is the physical swap of two identical signed contract documents. At the moment of exchange, not before, both parties are legally committed, and a completion date is fixed. This date is by mutual agreement and can be quite soon after exchange. A Land Registry transfer document is signed before completion.

On **completion** the buyer will pay and the seller will give vacant possession and hand over the keys. If you have a mortgage on the property you are selling we will pay this from the sale proceeds and account you for the balance, less our costs and if applicable, those of the estate agents and any other payments needed. We will send the deeds to the buyers' solicitors.

## **PURCHASES**

When you have found a property to purchase please let us know as soon as possible to enable us to begin the necessary searches and enquiries. We will make a **local authority search**. This shows planning decisions which affect the property, such as consents, refusals, enforcement notices. It will show whether the road adjoining the property is adopted, and other orders affecting the property such as advertisement orders, smoke control orders, tree preservation orders. Extra questions may be added to the standard enquiries if you require. It is important that these matters are checked and if necessary remedied before you are committed to the purchase.

Other searches which may be relevant include:

- **environmental search** - for contaminated land and other information
- **water search** - for information on water supplies and sewerage services
- **index map search** - for unregistered land
- **mining search** - for past or present mine working areas
- **commons registration search** - for rural or village properties
- **chancel repair search** - see separate leaflet

The sellers' solicitors will provide a draft **contract** and supporting documentation, which we will check for you. If the land is registered, a copy of the Land Registry entries will be included. If the land is unregistered copies of the title deeds for at least the last fifteen years will be needed. If any defects in title are apparent we will advise on how these can be put right. Sometimes we may ask the sellers' solicitors to provide insurance cover.

Your financial adviser or you yourself will apply for any **mortgage finance** you need. We will normally receive a copy of your mortgage offer and advise you on any conditions you need to observe.

You will need to decide whether to obtain your own **survey** of the property. It is often advisable to obtain a survey for an older or more unusual property.

Once all the pre-contract investigations have taken place we will arrange for you to sign the contract and provide the **deposit** - usually 10% of the value of the

property but quite often a smaller amount is negotiated. If you are also selling, it is usually possible to use the deposit received on the sale to finance that on the purchase.

As mentioned above, **exchange of contracts** is the physical swap of two identical contract documents, and at the moment of sale - not before - both parties are legally committed, and a completion date is fixed. This date is by mutual agreement and can be quite soon after exchange.

Before completion, further **searches** are made, in the Land Registry and the Land Charges Registry and any adverse entries must be dealt with before going any further. If you are obtaining mortgage finance we will report to the lender that the property is marketable and request the funds.

On **completion** we will arrange for the balance of purchase money to be paid to the sellers' solicitors. Vacant possession will then be given and the keys made available to you.

Following completion we will normally receive the deeds from the sellers' solicitors and will then pay the appropriate Stamp Duty Land Tax to the Inland Revenue and receive their certificate. We will then send the relevant documents to the Land Registry with their fee for the registration into your name to be noted. On receiving the new land or charge certificate from the Land Registry we will send documents to your lender, if any, or, if none, retain or send the deeds to you in accordance with your instructions.

## **REMORTGAGES**

Sometimes it is financially beneficial to change mortgage lenders, to raise more capital or to benefit from another mortgage company's more favourable terms. The procedure is simpler than for sales and purchases but contains elements of both.

- Title deeds have to be obtained and inspected (as for a sale)
- Local and other searches need to be instigated (as for a purchase)
- Mortgage offer is received and we consult/advise you on its terms and arrange for you to sign the mortgage deed (as for a purchase)
- A redemption figure is obtained on your existing mortgage (as for a sale)
- We advise your lender that the title deeds are acceptable and the search results are not adverse, or, if appropriate that steps have been taken to deal with any problem (as for a purchase)
- On receipt of funds from your lender we pay off the old mortgage and account to you for the balance after deduction of costs, VAT and disbursements (as for a sale)
- We register the new mortgage at the Land Registry and send deeds to the lender following registration (as for a purchase)

## **TRANSFER OF EQUITY**

It may be necessary to transfer your share of a property from yourself and another joint owner to one sole owner or vice versa. This may be by way of a gift or for a sum of money or to comply with a court order, e.g. if there has been a divorce. If the property is mortgaged the mortgage lender will need to consent or approve the transfer and may need to issue a new mortgage offer.

We will do the following:

- Obtain the title deeds
- Draft the deed and have it approved and signed by other parties including the lender
- Check on the lender's requirements, which may be as for a re-mortgage or may alternatively be simpler, and comply with them
- Register the change of ownership and any new mortgage with the Land Registry
- Following registration, send deeds to the lender or retain/send them out in accordance with your instructions

## **RENTING YOUR PROPERTY OUT**

The law relating to landlord and tenant has been changed in recent years and new residential tenancies are now likely to be assured shorthold tenancies or, more rarely, assured tenancies. We can provide a form of agreement appropriate to the circumstances.

Points to note include the following:

- Ensure that your tenant has signed the necessary documents and paid any sums owing before moving in
- Ensure that any mortgage lender has consented to the tenancy
- Remember that tenancy agreements attract stamp duty

## **COSTS AND EXPENSES**

Buying, selling and mortgaging can be quite expensive.

We can help by giving estimates of costs at the outset, including our own fees, VAT and fees for searches, stamp duty, Land Registry fees and other necessary disbursements. If, as occasionally happens, the transaction becomes more complex or time consuming than expected, we will advise you of any likely increase in costs. If the matter does not go ahead, we will charge only for the work we have done up to that point.

## FINANCIAL PROCEDURES

Just after exchange of contracts or a few days before completion we will provide a **completion statement** setting out all payments in and out and showing a balance due from you or to you. If we need money from you we will ask for this to be given to us by cheque at least four days before, or by telegraphic transfer preferably the day before, completion. If there is a balance due to you we will normally send this to you by cheque on the day of completion or at the latest on the day after unless you request, and we agree, any different arrangement.

Any money we hold on your behalf will be placed in our **client account** or, if we expect to hold it for more than a few days, in a separate interest bearing account. While money is in our client account it is unlikely to earn much interest. We will assume, in accordance with the solicitors accounts rules, that if any funds of your earn less than £20 you will not require such sum to be calculated and paid to you. If your funds are in a separate account, however, we will pay all of the interest to you however much or little it is.

## TERMS OF BUSINESS

At the outset we will send you a letter setting out our estimate of costs as above and our other terms of business including who in our office will be in charge of your case, who else you can contact about it, and how you proceed if you ever have cause for complaint.

As matters progress we will be in contact by telephone, by letter or by personal meetings. If you contact us, we will try to respond in the most appropriate and cost effective way for you. This may mean that sometimes the named solicitor will delegate a task to a colleague. If you need a meeting with the solicitor, please try, where possible, to let us know in advance so that an appointment can be made.

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