



Trinity House, Thurston Road, Northallerton, DL6 2NA
Telephone: 01609 780717
Fax: 01609 779968
Email: info@coles-law.co.uk



THE GUIDE TO MOVING HOUSE

or

NOTES ON THE CONVEYANCING PROCESS
Essential Reading for Buyers and Sellers

THE GUIDE TO MOVING HOUSE

NOTES ON THE LEGAL ASPECTS OF MOVING HOUSE Essential Reading for Buyers and Sellers

These notes are intended to guide Buyers and Sellers through the conveyancing process and to explain and assist with the legal aspects of your house move. They should be essential reading in connection with any sale or purchase by private treaty. If you are buying or selling at auction, or buying a new property from a builder then other considerations will apply and we will give additional advice specific to your transaction.

Here is a brief overview:-

The Timetable

There are three main stages:-

- i) The Preliminary stage,
- ii) Exchange of Contracts,
- iii) Completion.

The processes involved are as follows:-

- The deal is agreed. The Selling Agents send out instruction letters - everything expressed to be “subject to contract”.
- Sellers solicitors obtain the Deeds, (borrowing them if necessary from the Sellers mortgage lender), and title entries from the Land Registry.
- Sellers complete Contents Questionnaire and “Sellers Property Information Forms” provided by their solicitors.
- Sellers’ solicitors send the forms, plus contract, copy title documents and boundary plans, to the Buyers solicitors.
- Buyers’ solicitors examine the paperwork, check the title and advise the Buyers on the same.
- Buyers’ solicitors raise preliminary searches including local authority and drainage searches, and send any necessary specific enquiries to Sellers’ solicitors.
- Buyers apply for mortgage if required, and arrange all necessary surveys and physical inspections of the property. **Buyers arrange insurance if not arranged via mortgage lenders.**

- Both parties sign contracts in readiness, and Buyers provide deposit cheque (unless being provided on their own related sale).
- Once all parties are ready and fully satisfied as to all the above, they can **then** and only then confidently confirm the completion date and move onto:

Exchange of Contracts

This is when the agreed transaction becomes binding - and there is no going back. The process involves:-

- The solicitors confirm the agreed completion date, after checking that everyone in the chain is ready and has a van available! This is inserted in the Contracts and the Contracts signed by the Buyer and Seller are each sent by their solicitors to the other. The deposit is passed along the chain from the first Buyers' solicitor to the last Seller solicitor and held pending completion.
- Final searches are arranged, and mortgage funds requested.
- All insurances and life policies put in place. Buyer and Seller arrange meter readings, arrange connection or continuation of gas, electricity, phone services and notify local authority etc.
- Transfer and mortgage deeds signed ready for completion.

Completion

This is the moving day, when the following take place:-

- Buyers' mortgage lender releases funds to the Buyers' solicitors.
- Buyers' solicitors pay balance of purchase price to the Sellers' solicitors - usually by direct Bank Transfer.
- Sellers solicitors notify them that the funds have arrived, when release of keys authorised, usually via the estate agents.
- Deeds and Transfer documents sent by Sellers solicitors to Buyers solicitors.
- Buyers move out and Sellers move in!
- Documents sent for registration at The Land Registry after Stamp Duty paid to Inland Revenue.
- Sellers' Solicitors pay off any existing mortgages, and settle Selling Agents' account
- In endowment mortgage cases, notices of assignment, deposit, release etc sent to life companies.

Simple isn't it!

However, you should carefully note the following points:-

1. Surveys

Unless buying new from a builder, any house purchase involves buying a “second-hand” item that is sold with all faults, whether obvious or hidden. Although the Seller must not make actual false statements (which normally cannot be pursued unless put in writing) he has no duty to volunteer information about the physical condition of the property. It is therefore essential for the Buyer to fully investigate all matters before exchanging Contracts, since from that point onwards you will be committed to complete the purchase. If you don't need a mortgage, you should have the property inspected by an expert, usually a qualified Chartered Surveyor who will inspect the property and give a detailed written report as to its general condition and any defects. He will also advise as to any further investigations which should be undertaken, e.g. by damp and timber treatment specialists, structural engineers, builders, plumbers, electricians etc.

The most commonly used report is known as the R.I.C.S./I.S.V.A. “Homebuyer Survey and Valuation” which will be in standard format and is designed to give a compromise between detail and low cost. In many cases, it may be safer to obtain a more detailed report called a “Building Survey”, which could deal with the entire house or specific parts of it. A building survey will give much greater detail and inevitably involve higher expense, but is well worth considering, particularly if the property is old or unusual. You can discuss these choices in advance with the surveyor, and, depending on location, we may be able to help you to find a surveyor if you wish.

If you are obtaining a mortgage, your lender will usually require you as a minimum to have a valuation done either by their own surveyor or by a surveyor approved by them. This is done for the mortgage lenders purposes (so they can be reasonably confident there are no major defects and that the property would resell for at least the amount of the borrowing) and not for your benefit, although sometimes you will get a copy. It will give only minimal detail and you will have little or often no redress against the surveyor for errors or omissions. A valuation must not be confused with a survey. Since the valuation is normally done at your expense but for your mortgage lenders benefit, you should seriously consider the wisdom of paying the additional fees to have a survey. You may wish to discuss this in advance with your mortgage lender, as it might be possible for their surveyor to carry out the survey as well as the valuation, which might save some expense.

A survey can occasionally pay for itself, if it enables you to negotiate a price reduction after revealing defects that you yourself had not noticed.

Your surveyor may recommend you have further investigations carried out, or that you should ask your legal advisers to make further enquiries on certain matters. If so, please bring these to our attention without delay.

- **Warning: The general rule is “Buyer Beware”- do your homework and check absolutely everything before you exchange contracts.**

2. **Guarantees**

If you are a Seller, please hand us all guarantees in your possession affecting the property. Sometimes, to make sense of the guarantees (especially for damp and timber treatment), we also need any survey reports, specifications, invoices and connected documents, which we will copy to the Buyers solicitors. If you are a Buyer, please carefully check such guarantees to be sure they give you the cover you were expecting. Please also exercise extreme caution.

If the property is under 10 years old, it will probably have an NHBC Warranty. This gives comprehensive cover for only the first two years, covering only major structural defects for the next 8 years. If there are guarantees for double-glazing or damp and timber treatment, remember that, no matter how impressive the guarantee appears, it is only as good as the company that gave it. A 30-year guarantee is of no use or ornament if the company giving it went out of business! With damp and timber treatment, you should always ensure that the guarantee is accompanied by the specifications of the work done, so that you can see what is actually covered. Frequently, damp guarantees do not cover the replastering which was done after the work was finished, giving the guarantor an excuse not to honour their guarantees. If a problem arises, most companies charge a fee to re-inspect, therefore if your survey highlights a problem, try to have this investigated at the Sellers' expense before exchanging contracts.

- **Warning! Check everything and make sure you know the cost of rectifying any defects before exchanging contracts.**

3. **Permissions**

If you are selling, please hand us copies of all planning, building regulations and other consents for any works done or changes of use at the property.

If you are a Buyer, please check that all such permissions cover the present building and your intended use. If you think the property has been extended at any time, please tell us immediately so we can check the relevant permissions exist. In addition to planning, building regulations and sometimes listed building consent, there may be restrictions in the Deeds, against adding extensions, or additional buildings, walls and other structures without first obtaining written permission from the original developer. If you have plans to extend, or to add new structures after you have purchased, please make sure you obtain all necessary permissions. Failure to do so can lead to disputes or litigation, difficulties in resale or at least delays whilst attempting to get retrospective consent.

4. **Boundaries**

If you are buying, we will send you a copy of the boundary plan as soon as we receive it. Please check this against the physical boundaries and advise us immediately if there are discrepancies. Since we rarely have opportunity to inspect the boundaries ourselves (and this is not normally regarded as part of

the legal process nor is it included in our conveyancing fees) it must remain your responsibility to check the boundaries against the Deeds plans. If discrepancies arise, it is sometimes possible to have rectification work done—preferably by the Sellers solicitors before exchanging contracts, at the Sellers expense and not your own!

Occasionally with older type properties, a **flying freehold** arises. This is when the first floor of one property overlaps the ground floor of the adjoining property. When this arises, special provisions should be incorporated in the Deeds to be address the ownership of the dividing structures and to provide reciprocal rights of shelter, support and protection. Otherwise, an insurance policy should be taken out to protect you and any mortgage lender. Please advise us immediately if you believe a flying freehold may exist.

5. **Deeds and Documents**

If you are a Seller, we will send the Buyers solicitors copies of all the relevant Deeds and documents. We will ask you to complete a contents questionnaire and a “Sellers Property Information Form” giving information about the property which could not otherwise be gained just from the Deeds. You have a duty to give clear and accurate information. If you require clarification of the forms, please ask us. Please adapt the forms if necessary to avoid any ambiguity. If you do not know the answer to any question, please state that you do not know, and in no circumstances should you employ guesswork.

If you are a Buyer, you will receive from us copies of all relevant documentation and we will try to give you a plain English translation wherever appropriate. Most sellers’ solicitors operate under the “national protocol scheme” by which the Sellers provide standardised, nationally agreed forms and information.

The Sellers Property Information form mainly gives information about the legal aspects of the property and not the physical aspects. For that, you must rely on your surveys and inspections. If there are any matters on which you require more detailed information, or if your seller has made verbal representations on which you would wish to place reliance, please let us know so that we can request confirmation **in writing**.

6. **Insurance**

If you are buying a property without a mortgage, you must arrange your own buildings (and contents) insurance. Although most sale contracts now provide that the property is at the Sellers risk until completion, we recommend you have your own insurance in place by the date of exchange of contracts in any event, as the extra cost to cover the period between exchange and completion will be minimal. If you are obtaining a mortgage, then your mortgage lender will either arrange the insurance, or have specific requirements if you are arranging this yourself. In the latter case, most mortgage lenders will insist their interest as mortgagee is noted on the insurance policy, and that we send them written proof of this and proof that the cover is in force, when (or before) we write to them requesting the mortgage funds. Please check and comply with all requirements of your mortgage lender in good time and, if required,

have the relevant proof of cover sent to us. If this is left too late, it can delay your completion date.

7. Your Mortgage

If you are a Seller, we will obtain a redemption figure from your existing lender calculated to the completion date once this is known. We need reasonable notice of this as most lenders take a week or so to produce the figures. You will probably find the figure includes various extras, e.g. Deeds production fees, receipt sealing fees and so on. If you redeem the mortgage during any penalty period (e.g. if you have had a discounted or fixed rate arrangements) there could be penalty interest.

If you are a Buyer, it is essential that you (and all other Buyers in the chain) have a satisfactory written mortgage offer in your hands, and that we also have mortgage instructions from your mortgage lender, before exchanging Contracts. You should carefully check all the terms and conditions and be sure they are satisfactory to you. We will always advise you as to the terms of the mortgage and will explain these to you before completion.

Please do not think that receipt of a mortgage offer is equivalent to having the cash immediately available. The mortgage offer is simply a statement of the terms, conditions and requirements that your mortgage lender will have in order to release the mortgage funds. Sometimes, the mortgage offer specifies numerous requirements to be covered before we can apply for funds. Sometimes, they retain some or all of the mortgage funds until remedial works are done to their valuer's satisfaction. They may have stringent insurance requirements (see above). Only when all such matters are in place can we apply for the funds.

Normally, we as your solicitors will also be acting for your mortgage lender (the cost of which will be included in your legal bill) and we must satisfy all their requirements. To obtain the mortgage funds, we have to send your mortgage lender a written "Certificate of Title" confirming all their requirements are met. All mortgage lenders require notice, often a week or more, between receiving the Certificate and issuing the funds. Please take this into account when considering the completion date. Some will pay out only by cheque, and we have to allow time for posting and clearance.

8. Searches

When acting for Buyers, we carry out various searches at different points. The preliminary searches include the Local Authority search (and usually) a separate drainage search with the Water Authority. The fees vary considerably from one Local Authority to another and they invariably increase every April. At the outset, we will confirm the figures and ask you for the relevant cheques, if you are Buyers. All Local and Water Authorities require their searches paying for in advance. These searches must be less than 6 months old at completion.

As they are quite expensive, most Buyers over-estimate the amount of knowledge given by the local search. In fact, such searches give certain

standardised information about any local land charges registered against the property, including warning of planning conditions, tree preservation orders, listed building notices, enforcement notices and the like. They will also state whether the property fronts onto an adopted highway, and whether any decisions have been confirmed as the proposed adoption of an unmade road, or the building of any new road within 200 metres of the property. Be warned that the local search gives only limited information, and then only about the property you are buying. The search will usually tell you nothing about neighbouring properties, the neighbouring owners, or planning applications relating to parts of the neighbourhood, which might directly affect your enjoyment of the property you are buying. If you are concerned to receive such information, then a call to the local planning department is a very good starting point. If you require specific information about such matters, please let us know so that we can raise specific enquiries. The local search will tell you nothing at all about the neighbours- be prepared to do your own detective work, e.g. by visiting the property at different times of day or enquiring locally, if this aspect would cause you concern.

Strangely, the local search will not ordinarily reveal details of any public rights of way or bridleways affecting even the property being searched against. An additional enquiry can be added to the search for this purpose, for which the Local Authority will charge an extra fee. If the location is such that the property might be affected by such matters, please tell us, so the relevant enquiries and searches can be made. In some cases, we advise carrying out additional, specialised searches, e.g. coal mining, company searches and village greens and common land. We will advise appropriately in all cases.

Similarly, the drainage search of the water authority will usually specify if the property drains into a main sewer, but may give little other useful information. Many water authorities provide plans showing the positions of the publicly adopted sewers and sometimes the surface water drains under the roadways serving the property. Invariably, they will give no information about the means of connection between the property and the mains. As a purchaser, you will become responsible for the repair and maintenance of any private drains. Sometimes, such private systems are shared between a number of different properties, and a blockage or other problem affecting one property may affect each of the others. On modern housing estates, the deeds often specify that the repair and maintenance of such private systems should be shared by the owners of the properties to which they are connected. It is therefore most important for you and your surveyor to make the fullest investigations about the positioning, operation and the condition of all private drains and systems.

Sometimes a drainage search will reveal a sewer or pipe running under part of the property. In such cases this may restrict your ability to extend, or to add a conservatory or garage, as you normally cannot build over or near to a public sewer. Sometimes, sewers or pipes are later discovered which did not show up on the searches, or which turn up in an unexpected place, often because the water company's records are inaccurate. If you intend adding to your property, it pays to carry out a thorough physical survey of the site at an early stage.

Warning: Local authority searches give only limited information- in many cases be prepared to do some detective work.

Radon Gas

Radon gas is a colourless, odourless radioactive gas that can accumulate inside a property. Prolonged exposure can be hazardous to health (e.g. it can increase susceptibility to lung cancer.) It occurs naturally in certain areas, including much of the West Country and Wales, and many other places including parts of Yorkshire. If a property is in an area in which more than 1 per cent of houses, if tested, were above the “radon action level” then this should be revealed in the local search or any Environmental Report. You should then consider making further enquiries or having tests carried out to establish whether the house is affected, so that remedial measures can be taken. The main problem is that the testing process usually takes around three months, and it is impossible to tell if any individual house is affected without testing it. However, builders of new houses in radon affected areas are now required to incorporate measures to prevent radon accumulation, at the design stage.

Environmental Reports

It is now our firm’s practice to arrange an Environmental Search on all property purchases. At very modest cost, such a report will provide information about numerous factors, such as the previous uses of the site, and whether there are any things or businesses in the locality, which might be or become hazardous. This could include landfill sites, industrial processes and recorded river or tidal flood plains. Again, these are all factors which could influence your decision as to whether you wish to proceed.

Chancel Repair Liability Search

It is also our firm’s current practice to carry out a Chancel Repair Liability Search (at a very modest fee) on all property purchases. This search is carried out to reveal whether or not the property you are proposing to purchase may be affected by a potential “Chancel Repair” obligation to the local Parish Church. These obligations stem from medieval times where land, previously owned by the Church has been sold and the new owner taken on the repairing obligation attached to that land. Therefore any property that falls within the boundaries of a Parish where such a liability exists could become liable to contribute towards the upkeep and repair of the chancel of the local medieval church.

This issue has very recently come to prominence following a House of Lords decision in the case of Parochial Church Council of the Parish of Aston Cantlow v Wallbank where the Court overturned the previous decision of the Court of Appeal and decided that the owners of a farm were liable to pay £95,000 towards the repair of the chancel of the local medieval church. Although this is perhaps an extreme example, it does illustrate the potential risk and the importance of trying to make enquiries in advance to establish whether the property may be at risk.

Unfortunately there is no single central register that can provide a definitive answer, but the Chancel Repair Liability search will indicate whether the property is within a parish at potential risk. If within a “risk parish”, it is now

possible to take out an Indemnity Policy to protect you and your lender for the next 25 years. This is a cost that your seller may be persuaded to bear. We will discuss this subject with you further if the property you are proposing to purchase is found to be in a “risk parish”.

Optional Searches

As explained above, the local authority search only reveals information regarding the property you are buying and does not cover neighbouring properties or the surrounding locality. If you are concerned regarding possible development nearby (eg on a field or open space) and such information would affect the value of the property or your desire to buy it, then we would recommend that a separate Planning Search is carried out. This would report on planning permissions granted within the vicinity of the property you are buying and you are therefore not taken by surprise at a later stage. If such a search would be helpful, please do let us know at an early stage.

Naturally a Planning Search can only reveal existing planning decisions and cannot predict those that may be made in the future.

9. Exchange of Contracts

This is the point at which all parties make a commitment that cannot be reversed. If you are the Buyer at the start of the chain, you will normally be providing a deposit of 10% of the purchase price (or the difference between your mortgage advance and the purchase price, if less than 10%). If you are selling and also buying, then the deposit received on your sale can usually be utilised towards your purchase. If you are the Seller at the top of the chain, then we are obliged by law to hold the deposit as stakeholder until completion. The deposit is held as security - if the Buyer backs out after exchange of contracts then the Seller can forfeit any deposit and also claim damages for any further losses not covered by this. However, if either party backs out before exchange of contracts, then there is no breach of contract and the other (disappointed) parties cannot seek compensation even though they might have expended considerable sums in survey, search, legal and other fees.

10. Completion

This is the day when ownership changes hands, the balance of the purchase price is paid and the parties can move house. The completion date will have been finally agreed and confirmed at the point of exchange of contracts. Although many parties will discuss and often agree the completion date at a very early stage, please be warned about being too enthusiastic. Whilst it is often convenient to have a date to work towards, there can be numerous delaying factors, usually matters beyond your control. In a chain transaction, it is often said that the chain is only as strong as its weakest link. It only takes one party in the chain to have a delay with their search, survey, title, or financing for the whole chain to grind to a halt. It is not uncommon for us to wait several weeks for someone to receive their mortgage offer, and then to

ask us to complete their move on 24 hours notice! The longer the chain the more scope there is for delays and complications. Please therefore be prepared to keep an open mind and be flexible.

If you are a Buyer living in rented property, please avoid giving notice to your Landlord too early. If you do so before exchange of contracts and then your Sellers ask you to delay, you can risk making yourself homeless. If you are both selling and buying (unless you are prepared to “break the chain” by agreeing to sell independently of your purchase) then we have to exchange simultaneously on both transactions, to avoid the risk of your having two houses or none at all! Much of the time involved in conveyancing is spent in seeking information as to what is happening up and down the chain, so that we can co-ordinate your sale and purchase with everybody else’s, so please bear with us if we cannot always give you an instant answer.

- **Warning: Don’t jump the gun! Don’t finalise your arrangements until you-and everyone else in the chain- are ready. If not, it could all go horribly wrong.**

On the completion day, the Buyers’ solicitors have to transfer the balance of funds to the Sellers’ solicitors. Before doing so, we often have to await large sums arriving via the banking system, both from Solicitors earlier in the chain and from some mortgage lenders. This can sometimes take some hours, e.g. if there is a lengthy chain. The banking system also comes under pressure on Fridays (the most popular moving day, for some reason) and at month ends. Since the keys are usually only released when the sellers’ Solicitors’ bank has actually received cleared funds, there is usually no point in asking for the keys at 9.00 a.m. To be realistic, it is usually best to anticipate the handover at about lunchtime, remembering that you may in some cases have to wait into the afternoon.

11. **Joint Owners**

If you are buying jointly, we will discuss with you the way in which your joint ownership should be recorded in the Deeds. Most couples purchase as “joint tenants”. The Deeds then will not specify the shares they own, but in the event of a dispute there will be an initial presumption of equality. If one joint owner dies, the property will pass to the survivor automatically and irrespective of any provision made to the contrary by Will.

The alternative is to purchase as tenants in common, by which the Deeds can specify the precise shares owned by each party, whether 50% each or unequal shares. Those shares can be disposed of independently by Will or lifetime gift. On death, the share of one owner will not necessarily pass to the survivor, but will pass under the terms of their Will (or the intestacy rules if there is no Will). This can be useful e.g. if the parties are contributing to the purchase price in unequal shares and wish to preserve the situation, or occasionally for tax planning purposes. It is possible to convert from one arrangement to the other even after you have completed the purchase, with varying degrees of complication. We will of course discuss your requirements with you during the course of the purchase, and will adapt the documentation to your requirements, if necessary in conjunction with an appropriate will.

NB: Wills In all cases, as a property owner, you should give careful consideration to making a will to deal with your assets for the benefit and protection of your family, or to updating any existing will. It may also be appropriate to make an enduring power of attorney in some cases, to enable a close relative to handle your affairs if ever you become seriously ill or mentally incapable. We will be happy to discuss all such matters with you.

12. After Completion

Following stamping and registration formalities, the title details will be held in electronic form by the Land Registry. The searches and “pre-registration” deeds will be returned to you for safe keeping (as they may be needed later for reference) or sent to your mortgage lender. We will send you a copy of the registration details once received from the Land Registry.

These notes are designed to assist you generally through the conveyancing process. We will of course advise you specifically on all relevant aspects of the transaction. If you require advice and assistance on any other legal matters (such as the drafting of Wills, obtaining probate, accident claims or civil disputes, matrimonial breakdown and road traffic cases) please contact us and the solicitor with the relevant specialist experience will assist you.

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