

A PRACTICAL GUIDE
TO
BUYING AND SELLING PROPERTY

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INTRODUCTION

This guide is designed to be a brief explanation to clients of Max Engel & Co LLP of the process involved in buying and selling property together with an explanation of other important points. It is not comprehensive and we will be pleased to answer any questions you have arising out of these notes.

INFORMATION FOR FIRST TIME BUYERS

BEFORE SIGNING AND EXCHANGE OF CONTRACTS (i.e. Before you are legally committed to complete)

In a straightforward purchase with no unusual problems arising our procedure (briefly) is as follows:-

1. We take your instructions i.e. details of the property to be purchased etc.
2. We obtain a draft Contract, Home Information Pack and other paperwork from the Seller's Solicitors
3. We raise standard Enquiries of the Seller's Solicitors re: Boundaries, Fixtures and Fittings, Disputes, Guarantees, matters arising from the HIP etc.
4. We receive a copy of your mortgage offer from your Building Society. Please deal with any correspondence or queries from your Building Society immediately since delays at this stage can hold up the whole process of buying.

When all of the above matters are completed and if the Seller is ready you will then be in a position to exchange Contracts (this will legally bind both you and your Seller to complete the transaction) and we will ask you to sign the Contract. At this stage we shall need your deposit, if this is going to be less than 10% of the purchase price you should inform us as soon as possible. Also at this stage you should discuss with us and/or the Seller the date you would like to move in bearing in mind that we need on average a further fourteen days to prepare for Completion. If your mortgage lender is not arranging insurance of your new property, you will need to organise this and put the policy into force on exchange of contracts. If two or more people are buying together we will advise as to the methods of ownership i.e. Joint Tenants or Tenants in Common (see attached notes).

AFTER EXCHANGE OF CONTRACTS AND BEFORE COMPLETION (MOVING) DATE

You will now have a date for completion and you should make arrangements with the Seller to have the meters read and the phone transferred etc. on the completion day.

We continue with the matter as follows:-

1. We prepare the final Legal Documents, Transfer, Mortgage etc.
2. We carry out various final searches of a technical nature (i.e. bankruptcy)
3. We prepare a report on title for your Building Society and notify them of the results of our searches. If your Building Society is satisfied and have no further questions we then request the advance monies for the day of completion (they require at least five working days notice)

A few days prior to completion we shall arrange for you to sign your Mortgage and pay our Account.

COMPLETION (MOVING) DAY

We arrange to transfer the purchase money to the Seller's solicitors and receive the Transfer and (in the case of unregistered land only) the Deeds. A key and access to your new property is usually available between 12.00 noon and 2.30 p.m. on the date of completion. Finally we arrange payment of Stamp Duty Land Tax, register your ownership at H.M. Land Registry and send a copy of your title information to your Building Society/Bank and to you.

INFORMATION FOR CLIENTS SELLING AND/OR BUYING PROPERTY

BEFORE SIGNING AND EXCHANGE OF CONTRACTS (i.e. Before you are legally committed to complete)

In a straightforward transaction with no unusual problems arising the procedure (briefly) is as follows:-

YOUR SALE	YOUR PURCHASE
1. We contact your Estate Agent (if any)	1. We take your instructions
2. We obtain your deeds or title information from your Building Society or Bank.	2. We contact the Estate Agent (if any)
3. We obtain up-to-date copies of your title information from the Land Registry	3. We obtain a draft Contract from your Seller's Solicitors
4. We prepare and send out a draft Contract to your Buyer's Solicitors	4. We obtain the Home Information Pack either from the Estate Agent or the Seller's Solicitor
5. We reply to any enquiries sent to us by your Buyer's Solicitors	5. We raise enquiries on the Contract and legal papers (boundaries, disputes guarantees etc)
6. We find out whether or not your Buyers have received their	6. We liaise with the Building Society/Bank arranging your

mortgage offer	mortgage
	7. We can advise on insurance if requested

At the same time the solicitors acting for the other party will be carrying out the same procedures for their Clients.

When all of the above matters are completed, and if your Seller/Buyer are ready, you will be in a position to exchange Contracts (this will legally bind both you and your Seller/Buyer to complete the transactions). At this stage we shall ask you to sign the Contracts. You should now discuss with the Seller/Buyer the date you would like to move, bearing in mind that we need on average a further fourteen days from exchange of Contracts to finalise our preparations for completion. If two or more people are buying together we will advise as to the methods of ownership i.e. Joint Tenants or Tenants in Common (see Methods of Ownership of Property).

AFTER EXCHANGE OF CONTRACTS AND BEFORE COMPLETION (MOVING DATE)

You will now have a date for completion and you should make arrangements with your Removal Firm and with your Seller/Buyer to have the gas and electricity meters read and the telephone transferred etc. on completion day. You should also deal with Council Tax, Water and Sewage Rates.

We continue with the transactions as follows:-

YOUR SALE	YOUR PURCHASE
1. We approve the final legal documents of transfer	1. We prepare the final legal document of transfer and mortgage
2. We reply to any final queries	2. We carry out final searches (bankruptcy etc)
3. We obtain Redemption Statements from your Building Society/Bank to redeem your current mortgage	3. We report to and obtain the advance monies from your Building Society/Bank (they require <u>at least</u> five working days notice)

COMPLETION (MOVING) DAY

You should not need to see us on the moving day. Your Buyer's Solicitors hand over the purchase money to us and in exchange we hand over your title information and the transfer document. You can then hand over the keys. A key and access to your new property is usually available between 12.00 noon and 2.30 p.m .on the date of completion. After completion we deal with the Stamp Duty Land Tax return, pay any duty due, register your ownership at H.M. Land Registry and eventually send your title information to your Building Society or Bank.

You should note that where you have a mortgage we are usually asked to act on behalf of your Building Society or Bank. We make a further charge of £70 plus VAT for this if applicable. We do however owe an equal duty of care to them and we are obliged to disclose to them any matters concerning the transaction which may affect their security.

METHODS OF OWNERSHIP OF PROPERTY

If you are purchasing a property with another person then there are two ways in which the property can be owned by you:

1. As **JOINT TENANTS** (in which case, upon the death of one of you, the property is automatically inherited by the survivor). The property is always held as an undivided equal share.
2. As **TENANTS IN COMMON** (in which case each of you has an agreed share in the property and, upon the death of one of you, that share will be inherited by a person or persons named in his or her Will or, if no Will has been made, in accordance with the rules on intestacy). The property may be held in equal or unequal shares.

Most married couples and many unmarried couples living together decide to hold their property as joint tenants in order to provide peace of mind for the survivor. However, such a decision should only be made after considering if any of the following factors apply:-

1. Whether one purchaser will be putting more money into the purchase than the other and this fact ought to be reflected in their respective shares in the property
2. Whether there are any other persons (for instance, the children of a former marriage of one or other of the buyers) whose interests ought to be considered and for whom provision ought to be made out of the proceeds of sale of the property.
3. Whether the estates of one or more of the buyers are of such a value that inheritance tax is likely to be payable if the survivor has inherited the other's estate and might be avoided if the property is not held as joint tenants
4. Whether there has been marital discord in the past which makes it

prudent to define the interests of the buyers now, even though divorce or separation is not presently contemplated and may never be required. It is easier to make the decision before the problem arises.

5. Whether the decision would conflict with the provisions of a Will previously made.

Please consider all these factors and any other of your personal circumstances which you feel may be relevant to your decision and then instruct us as to whether you wish the property to be held by you as joint tenants or as tenants in common. A decision made now can be altered in future provided that all parties are agreed (and a joint tenancy can be converted into an equal tenancy in common unilaterally). A change will inevitably mean additional costs and it is best that the correct decision be made now after consideration of all relevant factors.

If you are in any doubt whatsoever about the matter, please seek our advice before reaching your decision. If you decide on a tenancy in common then you should make a Will or check your existing one. This is probably a good time to do this in any event.

INFORMATION ON TITLE GUARANTEE

On the 1st July 1995 an important new law was introduced which affects the guarantees given by a seller of property or a borrower by way of mortgage.

The new law gives the Seller the choice of four alternative guarantees. These are:-

1. Full Title Guarantee.
2. Limited Title Guarantee.
3. No Title Guarantee at all.
4. A form of restricted Full Title or Limited Title Guarantee.

FULL TITLE GUARANTEE

Where the Seller is prepared to give a full title guarantee then the following covenants are implied:

- (i) that the Seller has the right to dispose of the property
- (ii) that he will at his own cost do all that he reasonably can to give the Buyer the title to the property that he purports to give
- (iii) that the property is free from all charges and encumbrances and all other rights exercisable by third parties other than those which the Seller does not and could not reasonably be expected to know about
- (iv) Where the property is leasehold, that the lease is subsisting at the time of the sale and that there is no subsisting breach of a condition or tenant's obligation and nothing at that time would render the lease liable for forfeiture

LIMITED TITLE GUARANTEE

All the covenants imposed by full guarantee apply except number (iii)

In place of number (iii) the Seller covenants that he has not since the last disposition for value (i.e. sale)

- (i) created a charge or incumbrances which is still subsisting at the time of the disposition or granted third party rights over the property which are still subsisting at that time or
- (ii) suffered the property to be so subjected

and that he is not aware that anyone else has done so.

Other types of title guarantee are a matter for negotiation between the parties

SUMMARY

It is important that you are aware that if you give a Full Title guarantee you are promising that the property is free from all rights charges and encumbrances which may be exercisable by any third party apart from those which you could not reasonably be expected to know about. This applies not only to your period of ownership but also to former owners and you will continue to be liable to subsequent buyers.

Wherever possible we will try to obtain a Full Title Guarantee for you as buyer. Most bank and building societies will require you to give them a Full Title Guarantee as borrower. Most domestic transactions will be with Full Title Guarantee but in some cases it may be more appropriate only to have a Limited Title Guarantee e.g. where personal representatives are selling.

If you are selling a property it is important that you disclose to us as much information about the property as possible. The Property Information forms which have been sent to you will help you with this. If you are buying the property you must notify us of any rights or liabilities affecting the property that you know of so that we can fully investigate them.

DO YOU NEED TO MAKE A WILL?

In the notes on Methods of Ownership of Property we have already explained that if you own the property with some other person as Joint Tenants then the property automatically will pass to the survivor on the death of the other owner.

If you own the property either on your own or with someone as Tenants in Common then unless you make a Will leaving the property or your share in it to whom you wish then the property or your share will pass to those entitled to your Estate in accordance with certain statutory rules (known as the Intestacy Rules). In this case the property may pass to those you wish it to or it **may not**.

Apart from the property aspects, there are also other very good reasons to make a Will.

- To dispose of your property to those you wish without relying on the Intestacy Rules.
- If you are co-habiting with someone then you will need to make a Will if you want your Estate to pass to them. The Intestacy Rules do not recognise a cohabitee although there may be a right to make a claim against the estate of a cohabitee. It would be unwise to rely on this right.
- To appoint Executors and Trustees to administer your Estate.
- To appoint guardians for children under the age of 18.
- To give directions as to the disposal of your body.
- For tax planning.

We will be pleased to advise you on any points which are of concern to you.

We can also advise you about a LIVING WILL which gives directions to your medical advisors in the event that you are incapable of doing so.