

# PROPERTY REPORT

## Guidance Notes

The purpose of these guidance notes is to provide a summary of the steps we will be taking on your behalf prior to you entering into a contractual commitment to purchase your new property in order to safeguard your interests. It also explains what is not covered in the process and what you may need to do.

Before we can do anything, we will need the Seller's solicitors (or the Estate Agent) to provide us with a plan which shows the location of the property and clearly identifies its boundaries. This will enable us to arrange the various searches which should be undertaken in relation to the property.

This will always consist of at least a search with the relevant Local Authority together with, possibly, the Water Authority and, unless the property has previously been registered at the Land Registry, a search at the Land Registry.

Whilst we are dealing with this we would expect to receive from the Seller's solicitors some basic information about the property together with a list of the items which the Seller is either planning to leave or remove from the Property.

If you are funding the purchase with the aid of a mortgage, then the mortgage company will simultaneously be arranging for the property to be valued for mortgage purposes. Incidentally, you may like to arrange for the valuer to carry out a more detailed survey on your behalf. In any event, we would strongly recommend having a survey done before you commit to the proposed purchase.

It will not be possible to commit to the purchase (by what is known as an exchange of contracts) until we have received the results of all of our searches, the Seller's solicitors have provided the property information details (and dealt with any enquiries we may have on them), we have reviewed and agreed with the Seller's solicitors on your behalf the form of the contract and, if you are having a mortgage, we have received mortgage instructions from your lending institution.

However, before contracts are exchanged we will write to you reporting on all of these matters and deal with any outstanding issues. It will be appreciated that once contracts are exchanged you will be contractually committed to the purchase which must be completed on the day fixed for completion at the agreed price.

The Report on Title which we will send you will typically deal with the matters set out in the list below which are amplified in the subsequent sections of this note

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## SECTION A: SEARCHES

In most cases we will arrange searches with the following organisations/matters :-

1. **The Local Authority**
2. **The appropriate Water Authority**
3. **Chancel Check Liability**

1. **Local Authority Search**

The local authority maintains registers of information relating to all properties within their district. This will reveal all of the information held by the local authority in relation to the property.

Examples of the type of information that is held by the local authority are as follows. (We have not detailed every issue but only those that are more significant) :-

- i. **Planning and Building Regulation History.**  
If an extension requiring planning permission has been added to the property the search result will confirm if planning permission and building regulation approval were applied for and granted. If appropriate permissions have not been obtained this will need to be addressed before you buy your property.
- ii. **Adoption Status of the Road on which the property is built.**  
It may be that the road on which the property is built has not been adopted by the local authority. If so this would mean that you could become liable to pay for repairs to the road. The results of the search will confirm the position.
- iii. **Conservation Area**  
Some areas are designated as conservation areas. Where a property is within such an area certain extra conditions are placed on the property in relation to any alterations or development. An example of this would be restrictions on the type of windows that can be installed.
- iv. **Outstanding Notices**  
The Authority may have served a notice on the property owners which requires certain building works to be undertaken. If the notice has not been complied with and you proceed to buy the property you will become liable for the work that is required by the notice to be undertaken.
- v. **Nearby Road Schemes**  
The search will reveal if there are any plans to undertake work to nearby roads. This may involve a period of road work activity which may be inconvenient to you or could involve a new road being built that may decrease the value of the property.

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## vi. **Tree Preservation Orders**

There may be a tree in the garden of the property that is protected by a Tree Preservation Order which means that you would be unable to cut down or prune the tree without the consent of the local authority. This may be a particular problem for a buyer who plans to build an extension in the garden but is unable to do so because a protected tree is in the way and cannot be cut down.

### **! Caution !**

*It is important to bear in mind that the local authority search results are simply a snapshot of the information held by the Authority at the time at which the search results are issued. If we do not find any problems it does not mean that you may never have a problem. We are only able to report on the information held by the local authority at the time the search is carried out and it is limited to the property in question. It would not, therefore, cover anything affecting any adjoining property unless we were specifically asked to make enquiries about that property.*

## 2. **Water & Drainage Authority Search**

Fresh running water and drainage facilities can often be taken for granted. The Water and Drainage Search is designed to establish if there are any problems that could adversely impact on the water and drainage services to the property.

### **Mains Water and Mains Drainage**

The most important issue we check is that the property is served by a mains water and drainage connection. Some properties in more rural locations are not connected to a mains drain and instead drain to a septic tank. This would mean extra costs in maintaining and emptying the septic tank that you may not have considered.

Fortunately, most properties are connected to mains water and drainage but the search will reveal if this is not the case.

### **Public Sewer**

The search will reveal the location of any public sewers in the vicinity of the property. There may be a public sewer within the boundaries of the property. If this is the case you may need to obtain a build over consent from the water authority if you wished to extend the property.

### **Water Quality**

The search result confirms the results of water quality analysis tests. Sometimes the basic standards for water quality cannot be met by the appropriate authority for various reasons. The search result should identify this and you would then be able to make a decision as to how important the issue may be for you.

### **Is the Property on a Meter ?**

The search will confirm if the property is metered. This may be an important consideration according to your likely requirements.

If the property is not metered a standard charge will apply and the search will confirm this.

## 3. **Chancel Liability Search**

Chancel Liability is a very old historic issue that dates back to medieval times.

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In summary the owners of certain properties can be liable to pay towards the cost of maintenance and repair of a local parish church. In the rare cases where this arises the sums involved can be substantial.

We will check if the property you are buying is potentially at risk. If a risk is identified we will typically advise you to take out an insurance policy that involves a payment of a one off premium. If a liability then arises your insurers will then meet any claim rather than you being left out of pocket. The cost of insurance is in the region of £50.00 to £300.00 depending on the amount of insurance cover required.

As from October 2013 the Church will lose the right to claim against property owners unless the Church has registered its right to claim with the Land Registry. The Land Registry will notify you if the Church do register their right to claim against your property.

#### **4. Other Searches**

In certain circumstances we may recommend that other searches are obtained such as a coal authority search for a property located in a mining area or a flood risk search if the property is an area that we believe to be at risk of flooding.

If you believe that the property has been built on a brown field site or may have been affected by any form of pollution then you should let us know so that we can advise as to whether an environmental search should be undertaken. We would not automatically arrange one as a matter of course but only in circumstances where we are told that the property may have been affected by pollution.

We will inform you if in our opinion any such additional searches are necessary and the cost of them. Please be aware however that if you are borrowing money from a mortgage company to buy the property it may be a condition of your mortgage that we obtain the relevant searches and report to your mortgage company any problems we find.

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## **SECTION B: THE CONTRACT**

### **What is special about the Contract ?**

The words “contract” and “agreement” mean precisely the same thing and, in fact, are entirely interchangeable.

The significant difference between a contract (or agreement) for the sale or purchase of any kind of real property (whether a house or barren land) and almost any other type of agreement is that a contract for real property is not legally enforceable unless it is in writing and signed by (or on behalf of) each of the parties to the transaction. This means that contracts for the sale or purchase of property are more formal than other types of agreement and must necessarily incorporate all of the relevant terms within the document to be signed.

### **Form**

Contracts for the sale and purchase of property usually follow a similar pattern which is well familiar to solicitors. Typically, the contract will be prepared by the solicitor acting for the Seller and then sent to the Buyer’s solicitor for approval. If any special or non-standard provisions have been agreed between the parties (for example, through the estate agents) the Buyer’s solicitor will want to ensure they have been included.

### **What other information is included in the Contract ?**

The front page of the contract sets out the basic details including the price of the property, the completion date and the names of the seller and buyer.

The subsequent page(s) of the contract set out a number of Special Conditions that can be varied to fit the circumstances of each individual transaction. We will advise if there are any unusual conditions of which you should be aware. Typically however the special conditions will routinely include the following :-

#### **1. Vacant Possession**

Unless the property is sold with a tenant in occupation, it will be sold with vacant possession. This means that the property will be empty and should have no rubbish or personal effects in it on the Completion Date.

#### **2. Risk**

As the Buyer of the property, you will declare that you are buying the property based on your own inspection and enquiries and not in reliance on anything that the Seller may have said to you. If the Seller has or does say something to you that you believe is of particular importance you should tell your solicitor immediately so that if necessary, the issue concerned can be documented.

### **Standard Conditions of Sale**

The contract will incorporate what are known as the Standard Conditions of Sale. As the title implies these are standard conditions which are detailed but designed to strike a fair balance between the interests of the Seller and the Buyer. It may be that the standard conditions are not attached to the contract but that their provisions are incorporated by reference to them.

### **Insurance**

The terms of the Contract are such that you should take out Buildings Insurance as from the date that contracts are exchanged (see above). The Seller is under no duty to insure. In any event, you will be obliged to complete the purchase at the agreed sale/purchase price even if the property were to be damaged (for example by fire)

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between exchange of contracts and completion. It is only if you have effected your own insurance that you would be able to recover this loss.

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## SECTION C: THE TRANSFER DEED

### **What is a Transfer Deed ?**

The Transfer Deed is a Land Registry document that formally transfers ownership of land and property from one party to another.

The Transfer Deed will be sent to the Land Registry following the Completion Date, and, based on the information contained in the document, the Land Registry will register the Buyer as the new owner of the property.

The Buyer's solicitor will usually draft this document which is then sent to the Seller's solicitor for approval and signing before completion of the sale and purchase.

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## SECTION D: CO-OWNERSHIP

There are two ways in which more than one person can own land. It can either be on the basis that they are "joint tenants" or "tenants-in-common". Despite what these titles might suggest, the distinction has nothing to do with tenancies.

Under a joint tenancy, the owners own the whole property together and, individually, do not have a separate share in it. If one of the owners dies, the other automatically becomes the sole owner. This would be the case even if the first to die had made a Will purporting to leave the deceased owner's share to someone other than his or her co-owner.

(The position would be the same if there were more than two owners; on the occasion of the first to die, the property would continue to be owned, as a continuing joint tenancy, by the surviving owners.)

This is to be contrasted with a tenancy in common where each of the owners is deemed to have a separate and distinct interest in the property. This is usually reflected as a percentage share and on the death of any of the owners the deceased person's share would pass to the person(s) entitled under the Will of the deceased owner or, if no Will was left, according to the rules of intestacy.

The distinction may be crucial on the death of one of the owners. Where land is owned by joint tenants and one dies the deceased's share in the land passes automatically to the surviving joint owner. However it is possible for a joint tenancy to be unilaterally severed by one of the owners at any time, in which case a tenancy in common will be created. In these circumstances, each of the owners will be treated as having a half share in the property.

Where a couple are purchasing a property as their home (especially a family home) then they may typically choose to do so on the basis of a joint tenancy. If one of the parties were to die prematurely then the property would automatically pass to the survivor.

However, where one prospective owner is providing the whole or an unequal share of the purchase price it will usually be more appropriate to consider a tenancy in common. As the transfer would normally indicate only that the property is to be held on this basis, it should be coupled with an express (written) declaration of trust setting out the parties respective interests in the property and to what each may be entitled on any sale. This may have particular relevance to co-habitees (as opposed to married owners) as if the relationship were to breakdown they do not have the same rights as would apply to a married couple in a divorce.

Finally, we would strongly recommend that if one of the parties to a joint tenancy wishes to sever it then further advice is sought which we would be happy to provide. Similarly, if a party to a joint tenancy receives a notice of severance from their co-owner, we would recommend that they immediately seek advice which, again, we would be happy to provide.

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## SECTION E: THE TITLE DEEDS

In terms of title deeds properties fall into two categories :-

- 1. Registered**
- 2. Unregistered**

### **Registered**

A registered title is one that has been registered at the Land Registry. The property will have its own unique title number allocated by the Land Registry. There will also be a Land Registry plan showing the boundaries of the property. We strongly recommend that after we have sent you a copy of the Land Registry plan, you check the physical boundaries of the property correspond with the boundaries shown on the plan and inform us of any discrepancies.

### **Unregistered**

An unregistered title is one where the title deeds have not been registered at the Land Registry. If the property you are buying is unregistered we will be legally bound to register it after the Completion Date.

We will advise you as to the content of the Title Deeds which may include the following :-

#### **1. Property Rights**

The property may benefit from certain rights, such as a right to park a car in a certain place or a right of access over a private driveway.

#### **2. Rights for Neighbours**

Your neighbours may have rights over the property you are buying such as a right to come onto the property to repair their own property or a right for their drains to cross the property.

#### **3. Boundaries**

The title deeds may confirm who is responsible for the boundaries of the property. There may be shared boundaries that are the responsibility of adjoining property owners.

There are cases where we are unable to confirm who the boundaries belong to as the title deeds do not contain any information relating to them.

#### **4. Restrictive Covenants**

There may be restrictive covenants. They restrict the way in which you can use the property. Examples include restrictions which state that :

- You must not use the property for business purposes.
- You must not keep certain animals on the property.
- You must not keep a caravan on the property.
- You must not advertise on the property.

These are just examples and there may be others that we have not detailed above. In some cases there may be no restrictive covenants whatsoever.

We will inform you of any restrictive covenants we discover in the title deeds.

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## SECTION F: OTHER DOCUMENTS

### **Property Information Form**

In most cases the Seller will be asked to complete a Property Information Form which sets out the Seller's response to a number of routine enquiries about the property. This form will then typically be sent by the Seller's solicitor to the Buyer's solicitor with the draft contract. The form should be self explanatory; however we will highlight any specific concerns that we have based on the replies given by the Seller.

### **Fittings & Contents Form**

The Seller will also provide a list of the items that will be left in the property or which the Seller will be removing from the property before the Completion Date.

### **Stamp Duty Land Transaction Return**

In most cases a Stamp Duty Return will need to be signed by the Buyer. This is a legal requirement and penalties can be incurred if it is not completed on time. Incidentally, even if Stamp Duty is not payable, most property purchases must be notified to HM Revenue & Customs by submission of this Return. The Buyer's solicitor will typically complete the document on the Buyer's behalf and then sent it to the Buyer to sign before the Completion Date.

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## **SECTION G: INDEMNITY INSURANCE COVER**

During the fact finding process, we may encounter an issue which requires an insurance policy to be taken out. If we do this, we will advise on the nature of the problem for which insurance is considered appropriate and recommend a policy to provide suitable cover.

There are certain regulatory requirements made of solicitors when we do this. In particular, we are required to provide a statement setting out the process we go through before recommending any particular policy.

### **Purpose**

The purpose of this statement is to provide clients with information on:

- The way solicitors are regulated;
- The information held which is relevant to the insurance, and to record the client's demands and needs;
- The basis upon which the relevant policies **are selected**;
- The suitability of the level of cover provided;
- The relevance of any policy exclusions, excesses, limitations or conditions.

A sample copy of the full policy document is always available on request and will be supplied in any event if a policy is taken out.

### **Regulatory Status and Complaints Handling**

We are allowed by law to do this notwithstanding that solicitors are not typically authorised by the Financial Services Authority directly but are simply included on a register maintained by the FSA for this specific purpose. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by The Law Society. The register can be accessed via the Financial Services Authority website at: [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register).

If you should have any problem with the service we provide in this regard then you should let us know. We will try to resolve any problem quickly for which purpose we operate an internal complaints handling system to help us resolve the problem between ourselves. If for any reason we are unable to resolve the problem in this way then the Law Society has a complaints and redress scheme which can be invoked.

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## SECTION H: MORTGAGES

If you are buying your property with a mortgage there will be a number of standard terms and conditions that are common to all residential mortgages. Your mortgage company will provide you with a copy of the terms and conditions and we strongly recommend that you read through them and familiarise yourself with them. We set out below however a summary of the more important terms and conditions of which you should be aware.

**1. You must keep up your mortgage repayments.**

FAILURE TO KEEP UP WITH YOUR REPAYMENTS MAY MEAN THAT YOUR MORTGAGE LENDER CAN REPOSESS THE PROPERTY AND SELL IT IN ORDER TO RECOVER THE MONEY THAT HAS BEEN LENT TO YOU !

**2. You must keep the property in good repair and condition.**

If you fail to maintain your property to an acceptable standard the mortgage company may serve notice on you which requires certain work and items of maintenance to be carried out. If you fail to comply with such notice the mortgage company is entitled to gain access to your property and complete any necessary work themselves. Any costs incurred in doing so become part of your mortgage debt. Alternatively, your mortgage company may repossess the property as a result of any failure to repair and maintain it.

**3. You must maintain adequate buildings insurance over the property.**

If you fail to maintain adequate buildings insurance, your mortgage company can arrange for appropriate insurance cover themselves. The premiums incurred by the mortgage company become part of the mortgage debt.

**4. You must not assign lease or sublet your property without the prior consent of your mortgage company unless this has been specifically authorised by the company in writing.**

If at any stage you wish to rent out your property or allow a lodger to stay with you, you should first obtain the written consent of your mortgage company.

**5. You must allow your mortgage company access to the property for inspection purposes.**

The mortgage company will inform you in advance if they require access to the property for any reason.

**IF YOU FAIL TO COMPLY WITH ANY OF YOUR MORTGAGE OBLIGATIONS YOU COULD BE EVICTED FROM YOUR HOME !**

We will advise you as to any specific terms and conditions in your mortgage offer.

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## THE LEGAL PROCESS

This part of the guide is designed to answer some common questions about the work we will carry out for you in relation to the purchase of a new property and to explain the process involved. It also explains the nature of some of the standard documentation involved in the process.

### **Q. How long will it take ?**

A. On average a typical residential Conveyancing transaction will take between 6-8 weeks. Sometimes, however, issues arise that can cause delays. We will inform you if any such issues arise during your Conveyancing transaction as well as keeping you informed generally.

### **Q. What is a Search ?**

A. Various organisations hold information relating to land and property. Such organisations include the local council, the water authority, the coal authority and the land registry to name but a few.

When buying a property, we will check the information held by the relevant organisations concerned with the property you are buying. The process of gathering the information is commonly referred to as carrying out the 'searches'.

The document produced by the individual organisations concerned which confirms the information held by that organisation is called the 'search result'.

### **Q. Why do I need a Search ?**

A. The information held by these organisations is property specific. If, for example, a property has been extended without planning permission and/or building regulation approval then this will be revealed by the search. This is of the utmost importance to a prospective Buyer as the Buyer will become responsible for compliance following his or her purchase.

Quite apart from this, if you are borrowing money from a mortgage company to help finance your property purchase, the terms and conditions of your mortgage offer will state that your solicitor must carry out appropriate searches which effectively makes the process mandatory.

It is, in any event, clearly in your interest that we establish if any of the information held by the relevant organisations is likely to have an adverse affect on the value of the property you are buying or could give rise to other financial liabilities.

### **Q. What is exchange of contracts ?**

A. This denotes the point in time when the solicitors acting for each of the parties agree that the contract for the sale and purchase should become effective. In practice they exchange the contract they are holding signed by their client for that signed by the other party. Up until that time the prospective transaction is described as being "subject to contract".

Until exchange of contracts takes place either party is able to withdraw from the transaction without incurring any financial liability.

It is also the point at which the completion date (see below) becomes "set in stone".

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On exchange of contracts the Buyer will usually be required to pay a deposit which is typically 10% of the purchase price although with the Seller's agreement a lesser figure can sometimes be paid.

**Q. When does exchange of contracts take place ?**

A. There is no set time scale as to when exchange of contracts takes place. Generally it will not take place until your solicitor has obtained all of the Search results and is generally happy that there are no problems with the property or has fully advised you about any problems that exist and has received confirmation that the Buyer wishes (and is ready) to commit to the purchase.

**Q. What is the completion date ?**

A. It is the day on which the payment is made for the property and the keys are released usually from the estate agent. It is typically the day on which the Buyer will physically move into the property. It is also the date on which the law recognises that ownership of the property has changed hands.

**Q. Do I need a Survey ?**

A. If you are buying a new property with the benefit of an NHBC Agreement or the like, a Survey is not usually necessary unless we advise you otherwise.

Save in these circumstances, we recommend that any buyer obtains a full survey. A seller of a property has no duty to disclose any physical defects in the property. As your purchase is likely to be your single biggest investment it is important that you know if there are any problems that may result in additional repair or maintenance costs being incurred. It is not the responsibility of the solicitor to carry out any checks in relation to the structure or physical condition of the property which should be undertaken by a qualified surveyor.

Regardless of the age of the property, if you are buying one with a mortgage, a valuation will be carried out by the mortgage company. This is simply an exercise by the mortgage company to ensure that the property is worth at least the amount that is being borrowed against it. Often the buyer will not be provided with a copy of the valuation arranged by the mortgage company. The valuation is only a basic check of the property, and certain physical and structural defects in the property can be overlooked.