

BOYS & MAUGHAN

Solicitors and Notary Public

Professional help

. . . . when it's needed



**Important
Information
for all
Home Buyers**

INTRODUCTION

Boys & Maughan endeavour to provide a comprehensive conveyancing service which makes the home buying process as simple and straightforward as possible. The information contained in this booklet explains:

- many of the procedures that are involved,
- the work that we do on your behalf,
- those matters where you will need to instruct other professionals.

Please read all of the following information carefully. Some of the points mentioned may not be directly relevant to you, but if there is anything you do not fully understand please ask. Where applicable we will repeat some of this information in subsequent correspondence and (where we feel it important to do so) will specifically repeat some of the advice which is given here.

Buying your own home is probably the biggest financial commitment that you are likely to make in your life. As a result it can be a nerve racking experience and on occasions very frustrating, particularly if delays start to occur. Such delays can be caused for a number of reasons. The biggest problem is that you may get caught up in a "chain" of transactions where one person is unable to sell and in consequence everybody else is delayed.

As the law stands at the moment, there is little that can be done to prevent a chain of transactions developing. Your purchase may be at one end of the chain where perhaps all the parties are ready to proceed, whilst at the other someone is still looking for a property to buy.

This booklet is designed for general use and some of the points mentioned may not be directly relevant to you.

We will try and keep you fully informed of how the matter is progressing but if at any stage you are uncertain as to the position or do not fully understand anything, please do not hesitate to ask.

COMMUNICATION

We will communicate with you by whatever means is most convenient to you. If you have access to email this can save a considerable amount of time. We can also send emails and SMS messages to you at various stages of the transaction if you wish. Unfortunately conveyancing is not yet a paperless exercise and some original documentation will still have to be signed by you. You can follow the progress of your transaction via the on-line tracking system on our web site at www.boysandmaughan.co.uk which gives a 24/7 real time display.

**Online
Conveyancing
Tracking**



TECHNICAL TERMS

Like most things conveyancing has its own technical jargon. We will endeavour to explain everything to you in plain English but if there are any terms with which you are not familiar you may wish to look at the “jargon buster” on our web site at www.boysandmaughan.co.uk

SURVEY

It is very important to remember that when you buy a property in this country you are given no guarantee by the seller as regards the physical condition of the property, or any of the services connected to it. You should, therefore, give serious consideration to having a private survey of the property to make sure that there are no defects which are not readily apparent. There are two main types of survey. The first, which is the most thorough, but equally the most expensive, is a full structural survey. Alternatively you can arrange a slightly less detailed inspection, known as a "Home Buyers Report", which requires the surveyor to complete a fairly detailed questionnaire based on a standard format produced by the Royal Institution of Chartered Surveyors. If you wish we can put you in touch with a surveyor who will explain more fully the differences between the two, and the costs that are involved.

Your mortgage lender will require a valuation of the property which the lender will arrange, but for which you will have to pay. There may be defects in the property which are not revealed by the inspection carried out by their valuer, and there may be omissions or inaccuracies in the report which do not matter to your mortgage lender but which would matter to you. If you have received a copy of the valuation report you should not rely on that report in deciding whether to proceed with the purchase but should obtain your own more detailed report on the condition and value of the property, based on a fuller inspection, to enable you to decide whether the property is suitable for your purposes.



It is normally possible to arrange for the mortgage lender's surveyor to carry out a Home Buyers Report or full structural survey as part of their valuation, and thereby reduce the overall costs. As a rough guide, the Home Buyers Report is usually approximately twice the cost of the basic valuation carried out for the mortgage lender.

You are responsible for the legal costs incurred by the mortgage lender. By instructing us to act for them as well as for you, these costs are reduced and usually less than the sum indicated in the mortgage offer. It is important to remember, however, that we are obliged to treat both you and the mortgage lender as clients of equal standing. This means that we have a duty to notify the mortgage lender of any matters that come to our notice, which may affect

their security or their decision to advance the loan to you. In most cases your interests and those of the mortgage lender are identical in this respect, but occasionally the situation does arise where there is a conflict of interests between you and the mortgage lender. It is unusual for such a problem to arise, but if it does we will notify you immediately and explain the situation in more detail to you.

Throughout the period of the mortgage you are obliged to comply with the rules, terms and conditions of the mortgage lender. If you do not comply with the terms of the mortgage, in particular as to the payment of the monies due to the mortgage lender, they are entitled to apply to the Court for an order for the sale of the property to recover the money which is owed to them. If the proceeds of that sale are insufficient to completely pay off the mortgage together with the costs and expenses incurred by the mortgage lender in selling the property, they are entitled to recover the balance still owing to them from you. If you have obtained a large mortgage in relation to the value of the property, you may have been asked to pay a mortgage guarantee premium. This insurance is for the benefit of the mortgage lender alone. It does not protect you and if the insurance company is obliged to make a payment to the building society because of a shortfall, the insurance company may seek to recover that money from you.



If the proceeds of that sale are insufficient to completely pay off the mortgage together with the costs and expenses incurred by the mortgage lender in selling the property, they are entitled to recover the balance still owing to them from you. If you have obtained a large mortgage in relation to the value of the property, you may have been asked to pay a mortgage guarantee premium. This insurance is for the benefit of the mortgage lender alone. It does not protect you and if the insurance company is obliged to make a payment to the building society because of a shortfall, the insurance company may seek to recover that money from you.

Nearly all mortgage lenders now insist that mortgage deeds are signed in the presence of a solicitor or legal executive. We will try to arrange for you to be able to sign the mortgage deed at the same time that you sign the contract for your purchase, to save you having to make a further visit to our office.

ENVIRONMENTAL SEARCHES

Owners of land (including residential property) can in certain cases be responsible for the cost of carrying out remedial work to that land. As people become more aware of the issues relating to contaminated land, the value of property and its marketability may be affected if the history of the land shows a previous use which could give rise to contamination. It cannot be assumed that simply because a property has been built for many years, no problem exists. Every case needs to be judged on its own merits. As solicitors we are not qualified to advise on environmental matters, but we can arrange for a report to be carried out on the site history and other environmental factors affecting the property. This will highlight any potential problems and give you the opportunity of referring them to a suitably qualified expert. Commissioning such a report (called an envirosearch) is a sensible precaution and, if you are obtaining a mortgage, may be obligatory. We can also provide you with details of insurance which is available.



LOCAL SEARCHES

The law now requires the seller of a property to provide a Home Information Pack (HIP) to a prospective buyer. The pack will include a water and drainage search and also a Local Search. Some local searches are obtained by application directly to the local authority concerned. This is known as an official search. Local searches can also be obtained through a personal search agent. These are known as a personal search. Some mortgage lenders will not accept personal searches. Some local authority information may not be available to a personal search agent. Under HIP regulations all personal search agents are required to carry indemnity insurance which would compensate you in the event of any error on the part of the search agent. If you are not happy to rely on the personal search we will carry out an official search for you directly with the local authority and advise you of the fee involved.

THE NEIGHBOURING AREA

It is important to remember that we only make enquiries in respect of the property which you are buying, not in respect of any adjoining land or property. If you have particular concerns about whether there is likely to be any development in the area of the property which you are buying we would suggest that you discuss this directly with one of the local planning officers at the Council before we carry out too much work on your behalf. Details of planning applications for neighbouring properties can usually be found on the website of the local authority, although there is of course nothing to prevent an application being submitted the day after you have bought the property. The council will have a Local Plan which will give an indication of the type of development which the local authority are likely to approve i.e. whether the area is primarily residential or whether a non-residential use might be approved.

IDENTITY

We are required to obtain and keep on our file up to date evidence of your identity.

Proof of identity is required for each client. Acceptable proof is considered to be a valid full passport. If you do not have one please let us know immediately. We also need proof of your address.

Please let us have two of the following as proof of your address:

- bank or building society account statement less than three months old;
- credit card statement less than three months old;
- utility bill less than three months old;
- council tax bill less than three months old;
- council rent book showing the rent paid for the last three months;
- mortgage statement for the mortgage accounting year just ended;
- both parts of a UK driving licence.

Would you please bring or send in to the office originals of the above, which will then be copied and returned to you immediately.



DEPOSIT

When contracts are exchanged a deposit of 10% of the purchase price is payable. The Law Society encourages solicitors to give general advice about deposits at an early stage, to avoid subsequent difficulty and delay. It may be that you are obtaining a mortgage for more than 90% of the purchase price. We may then be able to negotiate with the sellers' solicitors a reduced deposit. If this is accepted you will be expected to provide a deposit equivalent to the balance of purchase money, plus the various legal costs and disbursements that will be payable by you when the transaction is completed. This is to provide the seller with the maximum available deposit (up to 10%), since if you fail to complete your purchase the seller may be entitled to retain the deposit money that you have paid, and also be able to sue you for the balance of the 10% deposit. If you are not going to be in a position to pay a full 10% deposit please let us know the maximum that you will be able to raise as quickly as possible, so that we can negotiate the reduction with the sellers' solicitors now and avoid any subsequent delay.



If you are selling a property as well we will usually be able to arrange for the deposit paid by your own buyer to be used by you in connection with your purchase. In such a situation you will not have to find any deposit money yourself when contracts are exchanged.

Under the Law Society's latest recommended form of contract, your seller will be entitled to use the deposit which you pay as part of the deposit which your seller has to pay on any related purchase. If there is a chain of transactions, your deposit plus any additional deposit paid by subsequent buyers may be passed along the chain and ultimately be held by the solicitors at the end of the chain i.e. those who are acting for a seller who is not also buying.

TAX

We do not offer advice on the tax implications of any particular transaction unless specifically asked to do so. In such circumstances you must give us instructions in writing as to the nature of the advice which you require. We will either give such advice in writing or refer you to an appropriately qualified accountant where we feel that specialist advice is required.



INSURANCE

Usually the property is at your risk from the time that contracts are exchanged, and you should accordingly arrange for the property to be insured for its full reinstatement value.

If you are obtaining a mortgage, your mortgage lender will either arrange insurance themselves, or specify the amount of insurance cover they require to be taken out, the risks that have to be covered and the maximum amount of any excess under the policy. You will also have to insure against public liability and obtain written confirmation from the insurer that they will notify your mortgagee if the policy is not renewed, or is cancelled. Usually the policy will have to be index linked and cover the following risks:-



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|-------------------------|---|
| Fire; | Malicious damage; |
| Lightning; | Theft or attempted theft; |
| Aircraft; | Falling trees and branches and aerials; |
| Explosion; | Subsidence; |
| Earthquake; | Heave; |
| Storm; | Landslip; |
| Flood; | Collision; |
| Escape of water or oil; | Accidental breakage of glass and sanitary ware; |
| Riot; | Accidental damage to underground services. |

If you arrange your own insurance direct with another insurance company or through an insurance agent, we must have written confirmation that the policy is on risk and complies with all of your mortgage lender's requirements before we will be able to use the mortgage advance.

USE OF PROPERTY

We are assuming that you are purchasing this property as a personal residence for you and your immediate family. If this is not the case and you are buying the property as an investment or for occupation by other people or for the purpose of a business you must advise us in writing so that we can check that there are no restrictions which might prevent you from doing so.

JOINT OWNERSHIP

There are two ways in which property can be vested in two or more people. The first of these is what is technically known as "Joint Tenants". This means that on the death of one party the property passes automatically to the survivor, irrespective of any Will that may have been made by the deceased. The alternative is what is technically known as "Tenants in Common". This means that each party has a separate individual interest in the property, which does not automatically pass to the survivor on the death of the first party. Instead, the interest of the party who dies will pass in accordance with the terms of any Will made by that person, or if they have not made a Will, under the rules of intestacy. It does not automatically follow that, where property is held by owners as Tenants in Common, each party has an equal interest. It is therefore preferable to have prepared a short Declaration of Trust indicating the interest of each party, particularly if the purchase price is contributed in unequal parts. It is advisable for anybody, particularly when they have bought a property, to make a Will, but it is essential that they should do so if they purchase a property as tenants in common so that they clearly indicate their wishes with regard to their share of the property. We shall be pleased to assist you in this respect, and also with regard to the preparation of a Declaration of Trust, if you instruct us.

In recent years the tendency has been for married people to hold property as Joint Tenants. This has the advantage that the property passes automatically on death to the survivor and does not form part of the Deceased's Estate. Where, however, the combined Estate of the Husband and Wife is likely to exceed the Inheritance Tax threshold, if both Husband and Wife were to die in quick succession, such as in a road accident, there is a potential tax liability which could be avoided if the property were held as Tenants in Common. We should be more than happy to explain this further if you wish.

Where property is held as Joint Tenants the joint owners will be regarded as holding the property in equal shares. This is regardless of whether or not they contributed to the original purchase equally or unequally. If therefore your intention is that on a sale of the property you would be entitled to the net proceeds of that sale in different proportions then you should instruct us to register you as Tenants in Common and give us details in writing of how you intend that the proceeds of sale should be divided. We can then prepare an appropriate Declaration of Trust.

In any situation where the purchase monies are being contributed in different proportions, it is important that you give consideration as to the extent of your respective interests in the property, and when at some stage in the future it is sold, who is to receive what proportion of the proceeds of sale. It is in the interests of both parties that your intention in this respect be set out in a Declaration of Trust, and we would strongly advise you to instruct us to prepare such a deed on your behalf. We should be more than happy to explain what is involved and any additional costs that may arise.



It is also possible to have a “Cohabitation Agreement” drawn up which records not only your respective interests in the property (and how these should be valued) but also your intentions as to, for example, the payment of any mortgage and insurance premiums, the costs of repairs and other outgoings relating to the property, as well the treatment of any monies or other assets. There might be other contingencies, such as having a child together, or one party being unable to pay their contribution, that you might prefer to provide for now in an agreement. Such an agreement attempts to settle the interests of the parties if at some stage in the future you fall out and cannot agree as to “who is entitled to what”. Such agreements are not legally binding on a court but a judge will now take notice of the intention of the parties as set out in such agreement. As a result they may save time and money later if there is a dispute. Our family department is happy to explain further the benefits of such an agreement and the costs involved of having one drawn up.

COMPLETION

Your purchase does not become binding until such time as the contract which you have signed is exchanged with the part of the contract signed by the seller. At that stage the completion date is fixed. Traditionally the completion date was always 28 days from the date when contracts were exchanged. These days people often want to complete in a shorter period of time and this can usually be arranged. There is, however, quite a lot of



legal work that has to be carried out once contracts are exchanged. We will always try and comply with your wishes, but if you instruct us to exchange contracts for a completion date that is less than 10 working days from the date of exchange, you run a risk that not everything will be in place to enable your purchase to take place on the required date. If that situation occurs, you are in breach of contract and will suffer financial penalties. Additionally we may become involved in extra work which may result in further expense.

We will always try and comply with your wishes with regard to completion, but would strongly advise you to take into consideration the points outlined above when discussing a completion date with the other party.

PAYMENT OF MONEY

When we ask you for money you can pay in a variety of ways. We can accept payment by credit or debit card (additional fees may be payable in respect of these). If payment is made by cheque a minimum of five working days has to be allowed for clearance of the cheque. Alternatively payment can be made by BACS which usually takes three days or via the CHAPS system which involves a “same day” direct transfer from your bank to ours. Your bank is likely to impose a charge for this service.

We can only accept payment by cash of nominal amounts of not more than £250.

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