

Elmslies

NOTES ON LEGAL TERMINOLOGY IN BUYING AND SELLING A HOUSE

We often find clients are confused by some of the legal terminology involved in house purchase and sale, and therefore we produce this guide to assist you.

Noting Interest

When you have seen a property you like, get in touch with your solicitor as soon as possible. This enables him or her to telephone the selling solicitor to "note interest" in the property on your behalf. Once this has been done, it is likely that the property will not be sold to somebody else without you having a chance to offer for it.

Closing Date

When the selling solicitor or estate agent has a number of notes of interest for a property being sold at "offers over £X", he or she will discuss these with the seller and it is likely that the seller will fix a closing date for offers; the deadline by which all offers have to be submitted.

Prior to offering your solicitor will discuss with you the Home Report and, using this and other information, such as comparative prices for the area, you can decide exactly how much to offer. Date of entry is also included in the offer (the date on which you pay for the house and receive the keys) as well as details of any extras, such as carpets and curtains. The seller will usually accept the highest offer, but is not obliged to accept the highest or, indeed any offer. Other factors may come into play, such as the entry date which best suits the seller.

Some properties are sold at a fixed price, when the property, is usually sold to the first person who offers the asking price.

Offers and Acceptance (Missives)

If your offer is successful there follows an exchange of letters between the two solicitors acting for the seller and purchaser; these are called the missives.

An offer might contain about 30 different clauses, for example from the price, date of entry, and extras to be included, to more technical conditions. The selling solicitor will take some time to go through it in detail.

It is very unusual for an offer to be met by a completely unqualified acceptance; it is likely your solicitor will receive a qualified acceptance, deleting or amending some of the conditions in the original offer. However, we as a firm now utilise the Combined Standard Clauses which can result in the missives being concluded more quickly than in the past and indeed you should be aware that it has been known for these conditions to be accepted outright thus immediately creating a binding contract.

Some amendments to the offer, such as those relating to the title, searches and unauthorised alterations, may take a little time to resolve and a number of letters between solicitors to sort out. Solicitors try to give missives priority over virtually all their other work and it is hoped that there will be no unnecessary delay.

The missives are the legally-binding contract between purchaser and seller and when they have been concluded neither party can back out. there is no legally binding contract between purchaser and seller until the letters have been exchanged and missives have been concluded. Verbal offers and verbal acceptance of written offers are not legally binding. Often a binding contract is not made until very late in the transaction and either party can withdraw before then.

Once missives have been concluded your solicitor will confirm this and will be sent the title deeds of the property, to examine in detail to satisfy himself that the title you are being offered is acceptable. He will also examine documents called Searches. Searches confirm that the seller is in a position to give the purchaser a good title to the property. Some Searches show the history of the property, logging the date of each sale and each security granted over the property. This will help to satisfy him that there are no problems with the title.

Various other documents are also checked, such as property enquiry certificates (to make sure that there are no local authority statutory repairs notices, planning proposals or other adverse notices which affect the property) and any building warrants and certificates of completion relating to alterations made to the property, to ensure all is in order.

Preparing Disposition and Loan Documentation

After examination of the titles, your solicitor prepares the document transferring the title from the seller to you. Known as a Disposition, it sets out the parties, the price, the date of entry, and also usually refers to the older title deeds which contain the full description of the property.

He then sends this to the selling solicitors for revision before the purchasing solicitor prepares a final version for signature by the seller before the date of entry.

If you obtain a mortgage your solicitors will also liaise with the building society or bank and complete all the loan documentation required as a condition of giving you the money; this involves a Standard Security, the lender's security over the property, and often also assignation of a life insurance policy. Your solicitor should explain the meaning of these documents to you before you sign them. At the present time a great number of delays have been caused in conveyancing transactions by the failure of banks or building societies to issue the appropriate paper work to solicitors in good time for settlement on the date. If this happens we will do our best to process matters as quickly as possible, but we cannot be responsible for the failures of banks or building societies.

Settlement and Date of Entry

When the date of entry comes around, you are obliged to hand over the money, via your solicitor and, in exchange, the keys will be handed over to you. In some cases the purchasing solicitor goes to the selling solicitor's office with a cheque and receives the keys, the title deeds and the signed Disposition, transferring the title to you. In other cases this procedure is carried out by post. This process is called settlement.

Your solicitors will do his best to make sure the mortgage money is through on time and will have asked you in advance to deliver a cheque to him for your share of the price, plus any stamp duty land tax and other costs that are payable.

There is no specified time allocated for settlement. This is deliberate to ensure flexibility as certain matters are attended to immediately before settlement.

We advise all clients that it is inadvisable to order delivery of furniture, book removals etc. until you actually have the keys in your possession. Various technical problems can sometimes delay settlement. We know this is difficult when a purchase and sale by the same client complete on the same day, but there is always this danger which can be faced in such situations. Examples of unforeseen difficulties could be a late entry appearing on the Search against the seller, a bank or building society failing to produce funds on the day or the unavailability of a party to sign a title deed.

Registration of Disposition and Standard Security

After settlement, your solicitor will have typed on the Disposition the details of the date on which it was signed, the name, address and occupation of the witness and will then have the Stamp Duty Land Tax paid and the appropriate Return made. Stamp Duty Land Tax is a government tax. The purchasing solicitor then sends off the Disposition and the Standard Security to have both registered in the Land Register.

Sending off Title Deeds and Searches

When the recording or registration formalities have been completed, the Keeper of the Public Register will return to the solicitor the Land and Charge Certificate. This can take some months or even years in some cases. The purchasing solicitor puts them with the other relevant papers relating to the house and sends them to the building society or bank.