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A Guide to Conveyancing

From Meadows Fraser

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We have provided this Guide in the hope that it may explain some of the terms used in Conveyancing, the steps which are usually taken (and the reasons for them), and the factors which dictate when these steps are to be taken.

Conveyancing - What is it?

Transferring the ownership of land is not like transferring the ownership of, say, a piece of furniture or a car. Land is always there, and in the course of time many rights and obligations may be created in relation to it. They are often not evident on an inspection of the property. For example, someone may have a right to occupy part of it, but not be there when you call; a neighbour may have a right to enter the property and dig up the drains in order to inspect or clean his drain.

The public, too, may have claims perhaps there is a public footpath across the property; the council could have rights in respect of, for example, compulsory acquisitions or unpaid charges for making up the road. The planning authority, or the highway authority, are perhaps considering schemes which would affect the environment of the house you are thinking of buying.

Then there is the question:

Does the seller really own it and, if so, is he free to sell it? If he inherited the property were the correct steps taken to transfer legal ownership to him, or is it still outstanding to safeguard their client's interests. Buying your home may well be the single biggest financial transaction you will ever make. This is where we at Meadows Fraser can assist you by helping to relieve the pressures and anxieties which will naturally concern you at this time. We can help to make your move as smooth and trouble free as possible and keep you advised at every stage.

What Happens in a Conveyancing Transaction?

There are three main areas to consider and we shall briefly look at each. They are:

1

The work carried out after agreement in principle is reached, but before the seller and buyer are bound by contract to proceed with the matter.

2

The stage between “exchange of contracts” (when the parties become contractually committed) and “completion” (the day on which money changes hands in return for the keys and transfer of ownership, i.e. the day on which you are entitled to move in).

3

The conclusion of the formal side of the transaction, when any Stamp Duty Land Tax Returns are filed and any Tax paid. Here at Meadows Fraser we do these things electronically to ensure that all formalities are dealt with efficiently and on time. We then make application to H M Land Registry for registration of title and with e-Conveyancing “just around the corner” we can assure clients that Meadows Fraser will be at the forefront of this important area. We have already been involved with the Land Registry in various pilot projects.



Pre-contract

The Buyer:

You have found the property you want and the seller has accepted your offer. (Another guide ought to be written about this stage - before most people even consult a solicitor!). Some of the most difficult and responsible work has to be done by your solicitor at this stage. The making of “appropriate searches” and “preliminary enquiries” is by no means a formality. We shall summarise for you the information obtained about the property and advise you as to the meaning of the provisions in the draft contract. It is also your solicitor’s duty to ensure you do not “exchange contracts” before you have available all the money needed to pay for the house completion. We shall be in touch with your lending institution (or your bank, if bridging finance is needed) and with your buyer’s solicitors, if you have a related sale. Once all these elements have come together, we shall ask you to sign the contract and pay the agreed deposit to us, so that contracts can be exchanged.

The Seller:

Having found a buyer, you will instruct us to send a draft contract to the buyer’s solicitors. To do this we shall need the deeds, to check the nature of your ownership and the existence of any rights or burdens which must be revealed and passed on to the buyer. If we have acted for you before, we shall know where the deeds are and shall send for them straight away; otherwise you will have to tell us - the sooner the better. However, in this day and age with regards to registered title and with many Lenders not requiring deeds to be lodged with them, it may well be that you are holding some documents. We at Meadows Fraser have high speed access to Land Registry Direct and can obtain Official Copies of the Register Entries and other documents relating to your Property in moments all increasing the speed and efficiency with which we can help you.

When we have the deeds, we shall prepare a draft contract and send it to the buyers solicitors along with the Sellers Property Information Form and Fixture and Fittings List. This may be termed as the Contract Pack. In turn, the Buyers solicitors often send us “preliminary enquiries” designed to discover from your own knowledge of the property whether any of a number of possible disadvantages actually affect this property. Once the buyer’s solicitor is satisfied, he will approve the contract and we shall ask for you to sign it. Contracts will be “exchanged” and a date fixed for moving and payment:”completion”.

Having decided to sell, the sooner you instruct us the better. We can then get together a package of the documents and information which will be required by the buyer’s solicitors so that no time is wasted once a buyer is found. At Meadows Fraser we utilise the Protocol which means that a full pack of information is provided at the outset to the Buyers solicitor.



Between Contract and Completion

Technically, it is in this period that the buyer's solicitors check the title of the property and prepare the document to transfer ownership to the buyer. However, nowadays solicitors usually check title and prepare the Transfer document at a very early stage. The "mortgage document" is prepared and the buyer will have it explained to him before he signs it. An obligation to repay thousands of pounds at a rate of perhaps hundreds a month, is not to be undertaken lightly. In some cases the "transfer" only has to be signed by the seller. In others it must be signed by the buyer too, either because the buyer must "covenant" with the seller to observe the "restrictions" or because there is more than one buyer and the transfer document contains a declaration of trust. As we approach the date for completion, the financial details will be worked out and the buyer asked to provide the balance of the purchase price in return for the deeds and signed transfer document. At that point you will be entitled to occupy the house and take possession of the keys.

After Completion

What remains to be done is almost entirely in the hands of the solicitor. As seller's solicitors we shall account to you, the seller, for the balance of the purchase price after paying off any mortgage, estate agents and ourselves.

If we are acting for you as a buyer, there is rather more to be done. We shall file the appropriate Return with the HM Revenue & Customs and ensure that any Tax is paid. This is a government tax and should not be confused with our professional charges. We obtain the submission Receipt and lodge this with HM Land Registry with the application to register the title, and also with a cheque for the Land Registry fee. On the return of the registered title document we shall, if your lender requires, lodge such few documents as they require with your Lender. If there is no mortgage, we shall deal with the title Documents as you wish. We should be happy to look after them for you free of any charge.

Home Information Packs (HIP)

What is a HIP?

Many of the elements of the HIP are documents that buyers and sellers, or at least their solicitors, would need to sell their home under the current system.

However, what the HIP does is bring all these together before your home goes on the market, plus it has some new documents homeowners would not have encountered before, such as the energy performance certificate.

Are HIPs compulsory across the UK?

No, they are only compulsory (as at 1 June 2007) for England and Wales. HIPs will not be rolled out in Scotland and Northern Ireland.

What goes in a HIP?

- A home information pack index
- An energy performance certificate
- A sale statement
- Standard searches
- Evidence of title
- Additional information for leasehold and commonhold sales, where appropriate.

Do I need to find all this information myself?

No, Meadows Fraser can produce the HIP for you.

It is possible to save money and put almost all of it together yourself, but you have to be prepared to spend some time tracking down all the different organisations that provide the information for the pack, and not everything in the pack is straightforward.

Why have they been created?

The HIP has been brought in by the government as a way of speeding up the buying process, and stopping sales falling through.

Under the current system, buyers may have been hit by some nasty surprises after their offer was accepted, as solicitors would uncover the information as part of the buying process.

With HIPs, most of the documentation is ready ahead of time, in theory making things a lot easier.

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What goes into each section of the pack

- The **sale statement**, has all the basic information about the property, including the seller's name, the address of the property being sold and whether it is a freehold, leasehold or commonhold.

It should also say whether the property is registered or unregistered, and if it is being sold with vacant possession.

- The **standard searches** are a series of documents pulling together information on the property held by the local authority, the local water company and from the land charges register.
- **Evidence of title** is obtained from the Land Registry, and proves the seller is the owner of the property.
- **Additional information for leasehold sales** includes a copy of the lease, service charges, buildings insurance and a summary of any works being undertaken or proposed that will affect the property or building.
- Similarly the **additional information for commonhold sales** section includes an official copy of the individual register and a title plan for the common parts, copies of payment requests going back 12 months, the name and address of the managing agent, and a summary of any works as before.

A copy of the commonhold community statement is also needed.

- One of the newly-created elements of the packs is the **energy performance certificate**, which is carried out by a qualified assessor and gives your home two energy ratings, in a similar way to your fridge-freezer or washing machine.

The first rating is based on how efficiently your property currently uses energy and the second gives its impact on the environment. It will also give the assessor's expectation of what band it could go up to if eco-friendly measures were taken to improve the property, though there is no legal obligation to act on the recommendation.

- Finally, there is the **Home Information Pack Index** - essentially a contents listing, which also explains any documentation that may be missing and why it has not been possible to include them.

How much does a HIP cost?

Meadows Fraser charge £500.00 (VAT inclusive) per pack.

An additional sum is chargeable in the case of leasehold property by way of reimbursement of the fees charged by Management Companies or Managing Agents for supplying essential information (usually in the region of approximately £100.00).

How long is my HIP valid for?

A HIP is accurate at the date it is prepared.

There is no requirement to refresh searches that go out of date. If a property is not sold for a few months after the HIP is prepared a buyer will want to ensure that they have accurate information and will probably ask their solicitor to re-do the searches and title checks.

How long will it take to get a HIP?

Meadows Fraser can get a pack together within five working days.

Glossary of Terms Used

Exchange of Contracts -

Literally, the exchange of one copy signed by the buyers for another signed by the seller. At this point both parties become committed to proceed.

Completion -

The date fixed for transfer of ownership, on payment of the price.

Registration of Title -

Ownership of unregistered land is proved by showing its recent history as recorded in the “deeds”. A sells B, who dies, leaving it to C, etc. In all areas of the country title to land now has to be registered in one of the registries maintained by the Land Registry on completion of a purchase. The Register records ownership and all important details of rights and liabilities and any mortgages affecting the property. Nowadays all Title registers are held electronically and “hard copy” Land or Charge Certificates are no longer issued.

Appropriate Searches -

These searches include a Local Search which is the search in the registers maintained by the district council in relation to such matters as road charges and planning decisions. The expression includes the enquiries made of different departments of the council to do with a wide range of other matters which may affect the property. Apart from road proposals affecting land within 200 metres of the property, the local authority search will only give information about the property itself. The search will give no information about other property, for example, the development of neighbouring land. If, therefore, you are concerned about the possibility of development or any matter relating to other property in the neighbourhood, you should make enquiries of the local authority before you consent to exchange of contracts on the purchase. As a matter of course, we also carry out an Environmental Search, a Drainage and Water Search and a ChancelCheck Search. Depending on where the property is situated it may also be necessary to carry out additional searches such as a Coal Authority Search, Brine Search, Hard Rock Mining Search, Radon Search, London Transport or even a British Waterways Board Search! There are more...

Preliminary Enquiries -

A series of questions addressed to the seller, who is expected to answer from his own knowledge about such matters as disputes with neighbours, or work to be done on the property needing building regulation approval, or rights enjoyed over the property.



Protocol Forms -

These are the standard forms which are completed by Sellers at the outset of the transaction and consist of the Sellers Property Information Form and Fixtures, Fittings and Contents List. If the Property is Leasehold then there will also be a Sellers Leasehold Information Form. The questions are about the Property which Sellers should be able to answer without too much difficulty. Of course should you have any queries, we are at the end of the phone, or call in to see us. The Fixtures, Fittings and Contents List is filled in by the Seller in order to indicate which items are or are not included in the sale price.

Deposit -

Part of the purchase price paid at exchange of contracts, normally 10%.

Mortgage -

Document recording loan of money secured on the property. If payments are not maintained, the lender may have the right to take possession and sell the property.

Transfer -

The document transferring ownership.

Stamp Duty Land Tax -

This is a tax on property transactions where the price exceeds £125,000.00. If the price exceeds £125,000.00 but does not exceed £250,000.00 then tax at 1% is payable. Between, £250,001.00 and £500,000.00 – 3% and over £500,001.00 – 4%.

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