

THORNLEYS SOLICITORS

A GUIDE TO BUYING AND SELLING YOUR HOME WITH THORNLEYS SOLICITORS



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Buying your own home should be a very exciting experience, but at times, it can be heartbreaking. Delays are the biggest frustration suffered by homebuyers, and the situation is often worse if you are trying to buy and sell a home at the same time. Such delays can be caused for a number of reasons. Local authority searches may take time or your deal may be caught in a “chain”, where one person unable to sell delays others. This article tells you in simple stages what Thornleys solicitors can do to help your move go as smoothly as possible.

Unless you are a first time buyer, it is likely that you will be buying and selling a house at the same time. This article covers both areas, and has a section for buying and selling your home.

Remember, we are a totally independent advisor, whose only concern is to give you the best possible advice.

SELLING YOUR HOME

Ideally, you should contact us as soon as you decide to sell your home, **even before you go to an estate agent.** We will be able to arrange for the preparation of your Home Information Pack (“HIP”). You will need to have a HIP before you can lawfully market your property for sale. As your Solicitor we can ensure that your HIP is professionally compiled to meet all legal requirements and regulations. Whilst we are preparing your HIP we will be able to collect together as much of the information and documents required during the time it takes you to find a buyer. This will prevent delays at a later stage. We will also be able to advise you upon which estate agent to use and on the type of financial and other arrangements you should make with any estate agent to sell your house. If you are also buying a house, we will be able to recommend independent financial advisors who in turn will be able to give you early advice about the type of mortgage that you may need and will be able to arrange this and any necessary insurance requirements .

If you do not arrange to see us until after a buyer has been found for your house, there will be inevitable delays whilst we obtain the deeds, make searches and collect information about your property. **Help us by getting in touch with us prior to putting your house on the market.**

Right at the beginning we will need to obtain the answers to a number of questions concerning your home.

The information needed will include general details about your home, its boundaries, any disputes with neighbours, the mains services available, any planning application which you have made or building works carried out and so on. Most houses have what is called a 'freehold title'. Most flats and some houses have a 'leasehold title'. If you already live in a property with a leasehold title, there will be additional questions which we will need to ask you. Again, if you are selling a leasehold property, we will be able to move much more quickly once you find a buyer if we are able to collect this information together as soon as you decide to sell the property.

There is a convenient form, called the Fixtures, Fittings and Contents Form, which will help you decide what you want to include in the price of your home, and what you will be taking with you or selling separately.

For example, you may decide to offer to include the carpets and curtains in the price but to charge an extra sum if the buyer wants you to leave behind the garden furniture or other items of particular value to you.

We will need to send this information to your buyer's solicitor. This has to be done as soon as possible after a buyer has been found and the seller has accepted an offer. That is why we need to obtain information from you and from your deeds.

ARRANGING TO SELL YOUR HOME

If your house is not already for sale, you will need to place your house on the market (before you can do so you will need a HIP (except in very limited circumstances). You may choose to sell privately or through an estate agent. If you decide to sell through an estate agent, you will be given an opinion about the value of your home. The estate agent will receive a commission on the selling price, usually between one-and-a-half and two-and-a-half percent of the sale price plus VAT.

If you are planning to buy and sell at the same time, it is important to take a close look at your budgeting, or you might end up in financial difficulties.

We will be happy to give you full details of our legal fees at the outset for the conveyancing and of payments which may have to be made on your behalf, such as search fees and payments to the Land Registry.

If you are buying a property, then there may also be a government tax called Stamp Duty Land Tax which you will have to pay but we will give you details of this.

The financial details vary considerably from one house sale to the next. Your estate agent or Lender are unlikely to be able to give you full details of all your expenses for which you may have to budget. We will be able to work out these sums with you so that you can be quite sure that you know just how much you will be able to afford to spend in buying a new home.

THE OFFER

Once a buyer has made an offer which is acceptable to you, we will get in touch with the proposed buyer's solicitor. We will try to find out if there are any difficulties, such as delay in the buyer selling his own house, or obtaining a mortgage. You will be warned of such delays. At the same time, we will send all of the information which has been collected to the buyer's solicitor along with the draft contract.

We may then have to answer enquiries made by the buyer's solicitors before the exchange of contracts takes place. It is important that you understand what is meant by "exchange of contracts". This is explained later on in this article.

You must remember that until contracts are exchanged, the bargain is not binding on you or the buyer. Sometimes buyers withdraw at this late stage, or say that exchange of contracts must be delayed. This may be because they are afraid to commit themselves, particularly if they have not sold their home.

Unfortunately, there is nothing we can do to enforce the sale. At the same time, you must remember that you, equally, have the right to cancel the sale at any time before exchange of contracts

BUYING YOUR HOME

We will receive various Information Forms from the seller's solicitor in which will be set out relevant information which needs to be known about the house or flat which you are buying. We will check this information and will consider whether any further questions need to be asked about the property, and will decide whether the draft contract provided by the seller's solicitor is acceptable to you.

We will make sure that you are in agreement with the details set out in the Fixtures, Fittings and Contents form which the seller will have completed. We will also check various other documents including, for example, copies of any planning consents obtained for the property in the past and will, of course, be looking carefully through the title deeds or documents. In the case of properties with a leasehold title there will be the Lease and other additional information which will need to be checked.

We will make searches and enquiries of the Local Authority, Water Company, and Environmental Consultants (unless satisfactory searches have already been included in any HIP supplied by the Seller). Once the results are received we will check these. We will ask you to pay for the cost of these searches when you first make contact with us. **At Thornleys we are able to carry out these searches over the internet thus saving valuable time.**

It is our advice that you should arrange a survey to be carried out on the house or flat which you are buying. You will buy the property in the condition it is in at the time contracts are exchanged. If you are obtaining a mortgage, your lender will arrange for a surveyor to carry out a very basic valuation of the property for the Lender's benefit only. It is always desirable for you to have a separate and independent survey and we can advise you about the cost of this and can arrange for it to be done

The steps set out in this article are some parts of the work which we will need to do on your behalf before we can report to you as a result of all of the enquiries and invite you to sign the contract.

WHAT HAPPENS WHEN CONTRACTS ARE EXCHANGED?

It is very important that you do not sign any form of contract unless you have received advice from us to do so.

Exchange of contracts does not happen until the buyer's solicitor is satisfied that all the information, which he needs, about the property has been obtained and that the buyer's mortgage or other financial arrangements are organised. Both the seller and the buyer are then asked to sign separate but identical contracts. The solicitors then exchange these so that the seller's solicitor ends up with the contract signed by the buyer and the buyer's solicitor has the contract signed by the seller. At the same time, the buyer has to pay the agreed amount of the deposit and the amount of this is set out in the contract. This does not normally exceed ten per cent (10%) of the purchase price.

There may be several people and properties involved in the chain of linked sales and purchases. It is important for each person in the chain to exchange contracts to sell and buy their property at the same time as everyone else in the chain. This is to make sure that no one legally agrees to buy a property with a mortgage before they have sold their present property and paid off their mortgage.

At the same time as we exchange your contracts on your sale and purchase, a completion date will be arranged. This completion date may be anything from the same day to many weeks later. The completion date will be agreed by us with you prior to exchange of contracts.

Usually a period of one to two weeks after exchange of contracts is acceptable to the buyer and the seller. In this period we will prepare the documents transferring the ownership of the new property into your name and the mortgage documents for you to sign, carry out final searches at the Land Registry and will report to the Lender to request it to provide us with the money in time to be handed over to the seller's solicitor on the completion date.

WHAT HAPPENS ON COMPLETION

The contract which you have signed includes a date called the "completion date" on which all those in your particular "chain" of buyers and sellers have agreed to pay over their money and move house.

On the day of completion, while you are involved in the packing and removal of your furniture, we will be arranging to collect the balance of the sale price of your existing home and to transfer the money needed to complete the payment due on your new home.

In most cases, the same sum of money has to be sent along the chain of buyers and sellers from one end to the other. This can cause problems if there is delay in receiving and sending money.

In any event, you should arrange to visit the new property on the day of completion so that you can confirm to us that the seller and his family are moving out.

As soon as your seller's solicitors are satisfied about the payment of the purchase price, the keys of the property will be released and you can at last move in. After you have moved in, you will have some sorting out and tidying up to do in the house, and we will have to sort out and finish the paperwork so that eventually the deeds which prove your ownership are sent to the Lender to keep until your mortgage is paid off. We will also account to you for any money which is left over and is payable to you.

ABORTIVE SALES AND PURCHASES

Many people feel let down when a buyer or seller withdraws without exchanging contracts.

Although there are still many people prepared to keep their verbal promise to buy and sell, even if they are not legally obliged to do so, it is important to understand the legal position.

Some people withdraw at the last minute because they are afraid to commit themselves, or they find something better, or they are offered a better price or there is some personal family reason for not going on.

There is nothing **WE** (or anyone else) can do to **MAKE** the seller or buyer go on at this stage, even if it causes you difficulty or expense.

The only consolation is that you also have the right to withdraw for reasons that are important to you.

If you have booked holidays or have to go abroad on business at the time when we expect to be able to exchange contracts, do not worry, we can arrange for one of your relatives or ourselves to act for you by arranging a Power of Attorney. Please provide us with reasonable notice of your likely absence so that we have time to prepare this document.

WHAT IS "GAZUMPING" AND "GAZUNDERING"?

Gazumping is a much-misunderstood word. It should mean that someone else offers your seller a higher figure to persuade him to sell to the "gazumper" and not to you, and your seller, for one reason or another, decides to accept the higher price. A newer word, "gazundering", describes what happens when your buyer comes to you, usually at the last moment, and says that he or she will now only pay you a lower price.

In both cases you will naturally be angry or disappointed, and it may put you in an impossible situation.

Because the “agreement” between you and your buyer or your seller is not legally binding on either of you until contracts have been exchanged, there is, under the present law, nothing which we can do, except to protest on your behalf. If the other party insists upon the higher or lower price, you must decide if you want to go ahead with the deal or not.

If you are buying and selling, and your finances are quite tight, you may be able to persuade the “other side”, with our help, to make some adjustment which will help you to go through with the deal, rather than let the whole arrangements break down, but each party has to consider his own position. Gazumping and gazundering are both very much resented by anyone who is the victim of either. It is also deplored by the victim’s solicitor.

You need to bear in mind that there may be good reasons for the change of heart, and you may be forced to gazump or gazunder someone else yourself to avoid losing your sale or your purchase.

It is often suggested that these problems would not arise if there was not so much delay between making your offer and exchanging contracts. This delay often happens because you are in a “chain”.

One solution would be for you to commit yourself to buying before you sell. But please note that, even if you can afford to pay for two houses for a time, there is a risk that you will not find a buyer quickly, and the delay will be expensive, if you have had to use other funds or borrow the extra money.

There may be other ways round this difficult problem, and we will be able to advise you according to your circumstances.

WHAT IS A “CHAIN”?

A major cause of delay in exchanging contracts is that you are involved in a “chain”. Now that so many people already own a house, and move by selling one house and buying another, the whole housing market depends on several people buying and selling their homes in a chain, usually with a first time buyer at one end and at the other, a sale of a house whose owner had died.

If all the first-time buyers were introduced to people who wanted to sell without buying, there would be no “chains”, and life would be very much simpler. It would mean, of course, that all the other people would only be able to move if they could form a “ring” instead of a chain, so that they all moved round at the same time!

The problem with chains is that they are very liable to break down. The seller in the middle loses his buyer, or a buyer in the middle cannot get the mortgage he wants, so everyone else has to wait until a new “link” is found.

This is another difficulty which we will be able to talk to you about, but the real solution is not in our hands or in yours. If you need to sell and buy at the same, as most people do, you may have to be very patient and long-suffering whilst the other people in the chain organise themselves.

We will give you all the available information we can so that you can make the best decision, but even if you are willing to take the risk of buying before you have sold, your seller may still want to be sure of a new home before selling to you.

Several suggestions have been put forward to avoid these difficulties, but they all involve expense or risk, or both. You should discuss the situation fully with us before you make a final decision.

It is important to give you as clear a picture as possible of the aspects of moving home which are likely to cause you difficulty and sometimes anguish. We can advise you in your own best interests and help you to reach the best decision.

Neither us or anyone else can solve these problems by waving a magic wand. But if you understand what may happen, you will at least be prepared.

The quicker your deal goes through, the less risk there is of people changing their minds. Therefore the sooner that you see us before you decide to sell or buy a home, the more you will benefit from the time saved later on in the sale and/or purchase instructions.

THINGS TO DO BEFORE YOU MOVE

Have the meters read at your old home

If you are paying for gas or electricity on meters, arrange for them to be read on the day of departure (or the day before) and tell the authorities you will be leaving then.

Get a rebate

Since the Council Tax and water rates are paid monthly or six-monthly, it is likely that you have paid in advance. Tell the Local Authority/Water Company you are leaving and ask for a rebate.

Sort out the telephone bill

Tell your telephone company when you are moving and that you will not be responsible for calls made or rental due after that date.

Pack clothes and personal belongings

Most removal firms will pack up all your goods and chattels, but you will want to pack your own clothes. You may think it best to take with you any items of great sentimental value, or very precious or fragile ones. Remember that if you pack those yourself and they are damaged by the removers in the course of the move, you may not be able to claim against the removers' insurance policy.

Insure the contents of your home

Take advice on how much you should insure for.

Check with your seller about meter readings and telephone bills

Organise meter readings between you. You will want the meter read the day you move in. If you can, take over their telephone number from them. It saves a reconnection charge, but make sure that you are not responsible for any rental or calls before the day you move in.

Get your sellers' new address

So that you will know where to find them, or, perhaps, if you need to find the stopcock for the drains!

Fix a time to pick up the keys of your new home

It is usually noon on the day of completion, but we can negotiate this. Tell the removal firm so you can time your move accordingly.



At Thornleys, we are committed to providing the best possible professional service to all of our clients, both business and personal. We have produced our Factsheets and Articles as part of this service but they are intended only as a guide to highlight general issues which may be of interest to our clients. They are not a substitute for full professional advice. Specialist advice and assistance should be sought in relation to any particular needs or circumstances. Accordingly, no responsibility for loss, or consequential loss however occasioned to any person acting or refraining from acting as a result of any material in this publication can be accepted by Thornleys, howsoever caused.

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