

Home Buyers Guide

Moving House

The process of buying and selling a house is what Solicitors call "CONVEYANCING". Sometimes this can be relatively straightforward, at other times it can be quite complex. This booklet will attempt to answer some of your questions on conveyancing, but if you have further questions please ask the person who is dealing with your particular transaction and he or she will be only too willing to help. If you look at the simple outline set out below it will help you to understand more fully as you read through the text.

What should I do first?

The first thing you should do is speak to us and tell us that you are thinking of buying and/or selling your house. borneohughesmartell will be able to advise you about an estate agent, a mortgage advance and all the other problems that are likely to arise. **We should also be your first point of call to prepare the Home Information Pack ("HIP") which is required by Law before you can start marketing your house.** However, it sometime happens that Sellers have already decided to sell and buy a new home before they instruct a Solicitor and will often already have made their own arrangements with Estate Agents and potential lenders. If this is the case with you, when you decide to instruct us then tell us which Estate Agent is acting and to whom you have applied for a mortgage.

But what does the Solicitor do?

If you are selling a house your we will prepare the contract for sale after getting your deeds from the Lender if you have a mortgage. You will be asked to complete a Property Information Questionnaire and a Fixture and Fittings List which will be added to the Energy Performance Certificate ("EPC"), copy of searches and your title deeds form part of the HIP. Once a buyer has been found we will also prepare a contract for sale of the property. We will also deal with any questions which the Buyer's Lawyer may have and ensure that the money is collected and paid to you or used to buy the new house if you are making a contemporaneous purchase. We will also ensure that your existing mortgage is paid off and that the title to the house which you acquire, if you are buying a property, is what is known as a "good marketable title" - i.e. you get what you thought you were buying! To do that we will check the contract and explain its contents to you, and he will make the same sort of enquiries of the Lawyer acting or the people selling the house, as he has dealt with on your sale. We will ensure that you are not legally bound to the transaction until you are in a position to afford it, the title is good and the completion can take place at the same time as the completion on your sale.

We will also prepare the document, which legally transfers the property into your name. We will prepare the Mortgage Deed, if there is a mortgage involved.

We will make a search at the Land Registry to ensure whether or not, the property has a registered title, there are any restrictions registered against the property and may also make a search at the Land Charges Registry to ascertain whether or not there are any charges or judgments entered against you, if you are obtaining a mortgage. We will also make a search of the Local Authority and other necessary bodies on your behalf and this will be explained later.

When am I legally bound to the transaction?

There are two stages to the conveyancing transaction; the first is called "EXCHANGE OF CONTRACTS" the second is called "COMPLETION". "EXCHANGE OF CONTRACTS" takes place when the contract, which is in two identical parts, each part being signed by one party to it, is exchanged, that is to say the Solicitors hand over their clients part contract duly signed. At that stage all the parties to the contract are legally bound to the transaction and cannot pull out of it. If you do then there are penalties you will have to pay and these can often be quite high financially.

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At that stage any deposit which has been negotiated is paid and a date will normally be fixed for completion. This is usually, but not always, 14 days after exchange of contracts. Between exchange of contracts and completion the Solicitor will be busy dealing with other aspects of the conveyancing and making further searches.

Before completion we will let you have a statement of your finances showing what money he has received, what money we expects to receive and what money we need to receive from you to complete the transaction. On the day fixed for completion the Lawyers acting for the Buyer will hand over the balance of the money to the Lawyers acting for the Seller and in return they will receive the Transfer together with the Deeds which will transfer the property into your name. That is the moment at which "COMPLETION" takes place, that is to say the transaction is completed and the Vendor or Seller has to give vacant possession of the property and the Buyer can move into it.

When do I need to Insure?

If you are arranging your own building and contents insurance (i.e. not using your Lenders insurance service) then it is ESSENTIAL that YOU place upon risk IMMEDIATELY upon exchange of contracts unless the Seller has agreed in the contract to keep the property at the Seller's risk. It will also probably be a condition of the mortgage that the Lenders approve the insurance receive confirmation from the insurers that their interest is endorsed upon the insurance and that they receive a copy of the Schedule before you exchange contracts.

Council Tax

Please be aware that if the property you are purchasing has been improved since the 1st April 1993 there is a possibility that the property will be moved to a higher council tax band when the property changes hands. It can take some weeks (and in some instances some months) between you moving into the property and the receipt of a revised bill from the local authority.

What Searches are made?

A number of searches are carried out against the Property and are very important. It is a condition of any mortgage offer that local authority and Environmental Searches are carried out BEFORE any commitment to buy is made. This is why we ask you to send a cheque at the start to enable us to apply for the searches. (If you or the Seller withdraw before a legal commitment is made the costs of the Searches cannot be refunded).

The Local Authority Search are enquiries made of the local authority which will confirm whether there are any Planning Permissions; that there are no Enforcement Notices; no Compulsory Purchase Orders and will show anything planned such as a road widening scheme which could adversely affect either your enjoyment or the value of the property. It will also confirm whether the road is or will be repaired by the Highways Department at public expense.

The Envirosearch. An attempt is being made to identify areas of contaminated land with a view to clean up where necessary. The responsibility for enforcing any clean up operation lies with the Local Authorities. The reason to carry out the search is to try and identify those areas of contaminated the land so that you have some information to help you decide whether to proceed, depending on the perceived risk. Whilst the burden for clean up costs fall upon the polluter, if the polluter cannot be found, the land owner is responsible!

How do I pay for my house?

If you do not have the full purchase price to pay for your house you will need to borrow some of the money. This is best done from a building society or a bank and your Solicitor may be able to advise you on this. The amount, which you are able to borrow, will depend on your income and the value of the property as ascertained by the Surveyor. Once you have an offer of mortgage you will have to be sure that you are able to provide any difference between the amount being advanced and the actual purchase price.

Your Solicitor may also be able to assist you with regard to "bridging finance". For example, if you are buying a property and completing that transaction a few days before you sell then there will be a gap that will have to be bridged and this can normally be done by means of a short term bank loan with which your Solicitor may be able to assist you.

Why do I have to pay a deposit?

The person selling the property usually wants to be sure that the person buying intends to proceed with the transaction and therefore he asks for a deposit. The contract into which you enter will usually ask for a 10% deposit, but your Solicitor may be able to negotiate that downwards. The deposit has to be paid at the time of exchange of contracts. If you pay the deposit and exchange contracts, but then do not proceed with the transaction, you may forfeit that deposit. Sometimes Estate Agents ask for a deposit to be paid to them. If it is paid to them, then it counts towards the total amount to pay at the end of the day.

All Solicitors are covered by insurance, so that you can be certain that the deposit, which you pay to a Solicitor, is absolutely safe.

Do I need an estate agent?

Estate Agents are established to sell houses and if you are looking for a means of selling your house and obtaining the maximum amount of publicity in doing so, then you will probably choose an Estate Agent, your Solicitor can advise you on a reputable local firm. The fact that a person trades as an Estate Agent does not necessarily mean that he has any qualifications, although of course some are fully qualified, for example as members of the Royal Institution of Chartered Surveyors. You should speak to your Solicitor before you instruct an Estate Agent.

Do I need a survey?

We will advise you on the merits of instructing a Surveyor to prepare a report on a property, which you intend to buy. If the property is a new property covered by a National House Building Council guarantee, then this may not be necessary. If the

property is an older type, then you will be well advised to instruct your own Surveyor to carry out a full structural survey. You should not rely on the fact that the Lender instructs a Surveyor because the nature of the inspection which he does will be much different from that which you may care to commission yourself. It usually only amounts to a valuation carried out on your Lender's behalf – not your behalf.

How long will it be before the transaction is completed?

This is a difficult question to answer because it depends on a number of factors. The transaction will take as long as the slowest person in the chain. It follows therefore that if there is a short chain the chances of delay are smaller than if there is a long chain. The way in which you can best help your Solicitor is to make sure that the steps which have to be taken by you are completed as promptly and as efficiently as possible to minimise the delay on your part, so that your Solicitor can then speak to other Solicitors in the chain and tell them that he is ready with your part of the transaction and urge them to try to arrive at the same position as soon as possible.

What happens at completion?

Prior to exchange of contracts we will discuss a moving date with you (completion). The date will also be agreed with your Seller and when agreed by both parties it will be written into the Contract and you move on that date.

When discussing the moving date it is essential to bear in mind that most Lenders require at least 5 days working notice between exchange and completion to ensure they will be able to guarantee delivery of the cleared funds in time for completion.

On the day of completion we will do a final check against the title and then forward the balance of money you are paying for the property to the Seller's Lawyer. Once the Seller's Lawyer have received the money they will instruct the Selling Agent to release the keys to you.

Warning!! The purchase monies MUST be received by the Seller's Lawyer by 2.00 p.m. on the completion date otherwise penalty interest will be payable by you. The actual time of transfer of the completion monies is out of our control until we have received all the money duly cleared. We are reliant upon your mortgagees and your Purchaser's money reaching our bank through bank clearing systems. It is only then we are able to immediately send the funds to your Sellers Solicitors to complete. When they have received the monies the keys can be released to you.

When organizing your removals we advise that you inform them from the outset that it is possible that you may not have access to your new home until after 2.00 p.m.

How much will this cost?

The cost of the transaction falls into two main categories. The first category is money which the Solicitor pays on your behalf. This will be shown on your bill as disbursements. These figures will be the same whichever Solicitor deals with your transaction.

The second category is the Solicitor's costs, that is, the charge which we make for the work we do.

The payments made on your behalf by the Solicitor include, Stamp Duty Land Tax to the Government, which amounts of 1% of the total purchase price where the purchase price exceeds £125,000 (although this limit has been temporarily raised to £175,000 until September 2009), 3% where it exceeds £250,000 and 4% where it exceeds £500,000; a fee to the Land Registry to register your title to the property there and fees which he pays out to make searches, both against the property and against you. The Solicitor will also have to pay V.A.T. to the Government on his charges.

The amount which the Solicitor charges depends on the amount of work he does and the nature and complexity of the transaction. This may seem very vague. At the beginning of the transaction you will be given a written estimate of fees and disbursements which will be the best possible estimate based on the information that your Solicitor has at the time, and your final account should not vary substantially from those figures. Exceptionally however, difficulties or problems may arise, or circumstances may change, which may make it impossible for us to deal with the matter properly on your behalf within this original estimate. If such difficulties do arise, then your Solicitor will inform you in writing and let you have our best view as to the likely additional costs which may arise.

Is that it?

Possibly, but probably not. Remember, if you have purchased a house you now own a valuable asset, something which will remain after you have died. It makes sense therefore to discuss with your Solicitor the **MAKING OF A WILL** to ensure that the asset which you have just acquired goes to the right people after you die. Your Solicitor will be pleased to advise you on the making of a Will and it is hoped that by the time the transaction ends you and your Solicitor will have become well acquainted and you will feel able to turn to him at any time in the future when you have a problem. Remember, your Solicitor will not just be a Conveyancer. Either he or someone in his office will be able to advise you on all aspects of the law and will be pleased to see you whatever your problem.

Simple outline of your Sale and Purchase

Sale	Purchase
You give your Solicitor and your Estate Agent your instructions to sell your house. borneohughesmartell can supply the Home Information Pack compulsory if you are marketing your home	You give your Solicitor your instructions to purchase a new home and you apply for a mortgage. You will be asked to make a payment on account of the Local and other searches, which need to be made.
↑	↑
Your Solicitor obtains your deeds from your Lender and sends you a Property Information questionnaire and Fixtures and fittings list to complete. These now form part of the HIP that has to be available before you start marketing the property	Your Solicitor receives draft contracts from your Seller's Lawyer and evidence of title
↑	↑
Your Solicitor prepares and sends to the Buyers Solicitors a Sale pack including copies of the deeds a draft contract and the questionnaires that you have completed	Your Solicitor raises all necessary enquiries about the property with the Seller's Lawyer
↑	↑
Your Solicitor replies to further enquiries raised by Buyer's Lawyer	Your Solicitor makes any additional searches that may be necessary in addition to those provided in the HIP
↑	↑
Your Solicitor receives one part of your contract back from the Buyer's Lawyer and arranges for you to sign it	Your Solicitor receives your mortgage offer and prepares mortgage documentation for signature
↑	↑
↑	Your Solicitor sends back one part of the contract to Buyer's Lawyer amended and prepares actual transfer for approval and signature
↑	↑
↑	Your Solicitor sees you to go through all the purchase details and documents. You sign your part of the contract Transfer and Mortgage
Exchange of Contracts	
Deposit paid on each	
Your Solicitor amends and approves draft transfer and returns it to Buyer's Lawyer. This is sometimes prepared before exchange of contracts	Your Solicitor prepares draft transfer or conveyance for approval by Seller's Lawyer
↑	↑
Your Solicitor receives transfer and you sign it	Your Solicitor makes various searches against the property and you
↑	↑
Your Solicitor obtains a settlement figure from your Lender	Your Solicitor prepares actual conveyance or transfer for your approval and signature
↑	↑
Your Solicitor draws up a completion statement to show you how much is left over on your sale, if any	Your Solicitor draws up a completion statement to show how much he needs, if any, to complete and you pay your Solicitor at this time
Completion Day	
All money handed over on sale and purchase	

All post completion matters
e.g. Registration of your name as owner of the Property

Before you move...

perhaps the following check list could be helpful

HAVE YOU....

- Measured all the windows of your new home for curtains?0
- Arranged to change the locks immediately after you move?0
- Measured all the floors if you are recarpeting?0
- Checked the measurements of the space in the kitchen for your cooker, refrigerator, freezer, washing machine, etc?0
- Stopped newspapers, milk and other deliveries to your present home and rearranged for them for the new one?0
- Arranged with the Post Office to redirect your mail?0
- Advised friends, relations, bank, employer, social and business contacts of your change of address and telephone number?0
- Arranged for oil or solid fuel delivery to your new home and for electricity and gas to be reconnected?0
- Arranged to have your rates for present and new homes amended?0
- Arranged the removal lorry?0
- Kept frozen food stocks to a minimum?0
- Arranged for meters to be read and for accounts to be forwarded to your new address?0
- Notified your telephone supplier?0

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solicitors

borneohughesmartell is the trading name of Borneo Hughes Martell LLP, a limited liability partnership registered in England and Wales under number OC327261.
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