

# FREQUENTLY ASKED QUESTIONS

## BUYING A SHARED OWNERSHIP RESALES PROPERTY



Assisting Ownership in  
Pre-loved Properties

### 1. How long will the process take?

This is the question all clients ask, and no solicitor is ever able to answer! To say “how long is a piece of string” is perhaps not very helpful but is closer to the truth than giving a definite timescale unfortunately. Buying a property is not like any other purchase, nor is it anything like how it is portrayed on the TV. It is a complex process involving many parties and with many obstacles that can crop up along the way which are not foreseen at the outset, and which are beyond the control of the buyer or their solicitor.

If pushed to give an answer we would say to allow approximately 16-18 weeks for the process to go through from the date the draft contract package is received, but this is only an average. Some cases proceed quicker than this, but many end up taking longer and we recognise that this causes frustration for a lot of clients.

We are often instructed by clients who have a target date in mind for exchange and/or completion. Although we will always do our best to achieve such target dates we cannot guarantee to do so as there are so many external factors that impact upon our ability to meet such dates.

### 2. What causes delays?

We are attaching a short guide to the conveyancing process which may help you understand the steps that we and others are taking during the transaction. In an ideal world the various stages identified in the guide would all be undertaken in order and no issues would arise, but there are often delays that are beyond our or your control. In the guide we have tried to identify at each stage the most common causes of delay.

Some clients seem to think that it is in our interests to delay cases, perhaps because they have heard that solicitors charge for every letter that they write. This is not the case, in fact quite the reverse. We charge a fixed fee and only get paid once the matter completes. As such it is just as much in our interests as yours for completion to take place as quickly as possible.

### 3. How does it work when I am in a chain?

As you are buying a shared ownership property it is likely that you will be a first time buyer and / or will not have a property to sell. However, your seller may well be linking the sale in with the purchase of another property. In turn, the seller of that property may have a related purchase, and so on. This is called a chain.

Unless someone chooses to break the chain (by for example exchanging on their sale and going into temporary accommodation) it will be necessary for contracts to be exchanged on the same day, and for the same completion date, on all properties in the chain.

When there is a chain, it is quite possible that you are ready to exchange on your purchase but cannot do so until your seller is ready on their related purchase, or indeed until someone further up the chain is ready.

Unfortunately, a chain of transactions will only be able to exchange and complete when the last person is ready. This does of course impact upon the question of how long the process takes because the timescale is entirely out of our hands when in a chain situation.

As a shared ownership buyer, you are likely to be at the bottom of any chain. Often there is considerable pressure from the top of the chain to exchange contracts as quickly as possible. Unfortunately, the buyers and sellers and estate agents up the chain do not necessarily appreciate that a shared ownership purchase is a little more complicated and can often take a bit longer than an ordinary conveyancing transaction.

Please note that we are only able to speak to your seller's solicitor, not to the seller themselves, nor are we able to speak to other parties in the chain. Likewise, you will not be able to speak with any other solicitor involved in the process, apart from us.

### 4. When should I hand in my notice on my current property?

Not until contracts have been exchanged. At exchange there is a formal contract in place whereby the parties agree to buy and sell the property at a certain price and on an agreed completion date, with financial consequences if completion does not happen. Until that time, either party can withdraw from the transaction without any financial obligation towards the other.

You may be expecting to exchange contracts on a certain date and indeed a completion date may have been agreed with your seller and others in the chain but, if someone's circumstances change or a last minute issue arises, contracts may not be exchanged as planned and the previously agreed completion date may not happen. If you hand in your notice prior to exchange of contracts you risk making yourself homeless should this happen.

It is understandable for buyers to want to avoid paying rent on their existing property at the same time as having to pay mortgage rent and service charge on their new property, but in our opinion the risks of handing in your notice before exchange far outweigh the advantages.

### 5. How often can we expect to hear from you?

When we have something to tell you. Clients often feel frustrated when they do not hear from their solicitor for some time and are concerned that nothing is happening. It is rarely the case that nothing is happening even if it seems like it. In reality, the solicitor is probably waiting for something before being able to update you further, maybe waiting to hear from the other side, waiting for search results, waiting for a reply to a letter sent to a mortgage lender or waiting for a response from the housing association or their solicitors.

When we raise enquiries on the papers that we have received from the seller's solicitors, it is likely to take them a couple of weeks to get the information together before they can

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answer, sometimes longer. Similarly, if we raise any matters with your mortgage lender or with the housing association or their solicitors we do not know how long it will take them to respond. We will chase these things from time to time but until such time as we receive replies there is essentially no progress for us to report to you.

As such, you should not expect to hear from us with updates on a daily, or even weekly, basis. Rest assured that as soon as we have something to tell you by way of update we will do so.

### **6. How quickly will you respond to our emails and phone calls?**

We will respond as quickly as we can. However, many clients have unreasonable expectations of us in this regard. Please do not send an email or leave a telephone message and expect an immediate answer, this is not always possible.

Responding to telephone calls and emails is only part of our job, we have many other things that we have to do – investigating the detailed title and other documentation relating to the properties that our clients are buying, preparing the written reports that we send to our clients when we get the contract signed, attending meetings in or out of the office etc. If someone is engaged in any of these activities, they will not be able to answer or return your call, or reply to your email, until they have finished.

If we were checking the terms of your lease, you would not want us to stop half way through to enter into an exchange of emails with someone else, as there is a danger that when we returned to work on your file we would miss something important. You would prefer that we gave your matter the undivided attention it deserves for as long as necessary and left that other client's email until we had finished. The same therefore applies in reverse!

Often a client will chase for a reply to an email or telephone message within half an hour (and sometimes within a matter of minutes) on the assumption that we are ignoring them when in fact we are not, we are simply busy doing something else, it could even be that we are working on their own file.

The Client Care Guide that was sent with our Terms of Service states that we will aim to respond to telephone calls on the same day as received, or the following day if received in the afternoon, and to emails within the same time period. We always aim to achieve these standards (although unfortunately there are some occasions when this is not possible) but it is certainly not always possible to respond to phone calls and emails immediately.

### **7. Why am I dealing with an Assistant and not with the Fee Earner dealing with my case?**

In our experience, most of the questions that our clients ask us are about the process and not about the technical legal title.

Your lawyer will have spent many years studying the law and this knowledge and experience is necessary to ensure that the property that you are buying has a good legal title which you can enjoy for many years to come. This level of knowledge is not necessary to answer questions about fixtures and fittings, advise as to whether we have heard back from another party on outstanding matters, discuss dates etc.

Therefore, to free up the lawyer's time to deal with the legal aspects of the transaction, we ask that you always contact their assistant in the first instance. The assistant is experienced in handling the process and will be able to answer most questions that you ask. If, however, you ask a detailed question of a technical / legal nature they will refer that to the fee earner to answer. We believe that this structure enables us to handle cases in a more efficient manner.

### **8. Why does my file pass to the completions team on exchange of contracts?**

The completions process is very time consuming. Between exchange and completion, we need to draw down funds from your mortgage lender, undertake our pre-completion searches and prepare a detailed financial statement which shows the final balancing payment required from you. On the day of completion there are monies to be transferred, phone calls to make and stamp duty to be paid. After completion there is the Land Registry process to deal with.

Although completions can take place on any day of the week and at any time of the month, the most common day for completions is a Friday and more completions happen at the end of the month than at the beginning. A busy day of completions would take a fee earner and their assistant most of their time on not only that day but also the day before and the day after. During this time, they would not be available to deal with other clients' cases. This leads to frustration for clients whose cases are in the pre-exchange stage and delays being experienced by such clients during those periods.

Passing the files at exchange of contracts to a dedicated completions team means that fee earners and their assistants are able to concentrate at all times on progressing cases to exchange of contracts as quickly as possible. In addition, because the completions team specialise in that aspect of the transaction only, this assists in ensuring that the day of completion (which can be a particularly stressful time for buyers) runs as smoothly as possible.

When your file is passed to the completions team, they will send you a "Guide to your Completion" which contains some very useful information about that stage of the process. We would urge you to read it at that time.

# THE CONVEYANCING PROCESS

## PURCHASER'S PERSPECTIVE



### Initial Stages

- Buyer instructs their solicitor.
- Housing association (HA) or estate agent issues memorandum of sale (MOS).
- Buyer's solicitor requests contract pack from seller's solicitor.
- Buyer's solicitor contacts HA's solicitor for details of their requirements.
- Buyer's solicitor deals with ID and anti-money laundering (AML) compliance.

*Note: Having made the initial contact, there is nothing that the buyer's solicitor can do to progress the transaction until draft papers are received from the seller's solicitor. For example, searches can only be applied for once we have received the title plan.*

### What causes delays at this stage?

- The seller may delay instructing their solicitor, often because they wish to tie the sale in with a related purchase and do not wish to incur expense on a sale until their purchase has been agreed.
- There are often delays in the HA or the estate agent issuing the MOS. Without this we cannot contact the seller's solicitors to request papers, nor can they send anything to us.
- There may be several weeks between papers being requested and the contract package being received. This is because the seller's solicitor needs to get the seller to fill in lots of forms and needs to obtain other information and documentation from the Land Registry and from the HA.
- Sometimes purchasers delay their own cases by not providing full details of their ID and source of funds when requested. We cannot exchange contracts until our requirements have been met and if there is a family gift towards the deposit, we need to obtain the approval of your lender in writing before we can proceed.

### Papers Received

- Buyer's solicitor reviews all documentation and raises necessary enquiries
- Searches are submitted.

*Note: It is not possible to report to the buyer with the contract for signing until such time as the search results and replies to enquiries have been received.*

### What causes delays at this stage?

- The local search can sometimes take several weeks to come in.
- It is often a few weeks before the seller's solicitors are able to fully reply to the enquiries raised. Depending on the nature of the enquiries that had to be raised it

is often necessary for them to get further documentation from the seller, from the housing association or from the local authority.

- One of the things that the seller's solicitor has to supply is a "Management Pack" which has to be obtained from the housing association. This takes 3-4 weeks for the HA to produce.
- It is often necessary to raise further enquiries once additional information is to hand. For example, upon receipt of the local search it may be necessary to ask for copy planning documentation. Also, if the HA is not the freeholder, their Management Pack may disclose the existence of a third-party management company, in which case additional management information needs to be requested from them.
- Often replies to enquiries are provided in a piecemeal fashion, some answers are provided with other information to follow. The buyer's solicitor needs to keep chasing the outstanding ones until everything is answered.

### Mortgage Offer Received

- Buyer's solicitor checks the offer and sends a copy to the HA's solicitor for approval.
- Buyer's solicitor reports to the buyer on the terms of the offer and gets the buyer to sign the Mortgage Deed.
- Buyer's solicitor reports any adverse matters to the mortgage lender and advises them of details of any family gift that the buyer may be receiving towards the deposit.

*Note: The mortgage offer can be received at any stage during the process. Sometimes the mortgage offer is received before draft papers are received (occasionally even before the buyer has formally instructed us), sometimes it arrives at the same time that enquiries are being raised/answered and sometimes all enquiries have been answered and the offer is the last thing that the solicitor is waiting for.*

### What causes delays at this stage?

- If the offer is incorrect in any way, we need to obtain an amended version from the mortgage lender, or alternatively a side letter from the lender confirming that they are aware of the correct position. It can sometimes take a number of weeks and a lot of chasing before a lender responds.
- If there is a gifted deposit, we need the lender's written approval. Even if you have fully disclosed this to the lender when you applied for your mortgage, we still need to provide them with the information and obtain their formal consent.
- We cannot proceed to exchange contracts until the mortgage offer has been approved by the housing association's solicitors. They are usually quick at issuing approval but will not do so until the correct offer or any necessary side letter has been received.

# THE CONVEYANCING PROCESS

## PURCHASER'S PERSPECTIVE



### Preparing for Exchange of Contracts

- Once searches and enquiries have been satisfied, the buyer's solicitor prepares a Legal Report for the buyer, summarising the legal side of the transaction, and arranges for the contract to be signed.
- Buyer returns signed contract to solicitors and transfers deposit monies.
- As soon as both parties' solicitors are ready to exchange and a completion date has been agreed between the parties, contracts can be exchanged.

*Note: If the transaction is part of a chain, contracts cannot be exchanged until all parties in the chain are ready*

### What causes delays at this stage?

- The most frequent cause of a delay in exchange of contracts is because one party in the chain is not ready. Unless someone is prepared to break the chain (i.e., exchange on their sale independent of the purchase) the whole chain has to wait until everyone is ready.
- Even if all parties in the chain are ready and a completion date has been agreed by everyone, exchange of contracts may still take several days to occur. This is because exchange has to happen simultaneously on all transactions in the chain, meaning that all solicitors involved have to be available, hence if someone is not available on the day, exchange gets delayed until the following day.
- With shared ownership matters exchange of contracts must take place within the period that the valuation is valid. Often valuations expire and need to either be extended by the valuer, or authority be obtained from the HA to exchange on a given date, despite the fact that the valuation is out of date.

### Exchange and Completion

- Once contracts have been exchanged a completion date is formally fixed and the parties become legally bound to the transaction, with financial penalties if completion does not take place as agreed.
- The buyer's solicitor requests drawdown of mortgage monies. Lenders generally require 5 working days' notice for release of funds, ideally, we request that they send funds to us to arrive the day before completion.

- The balance of the money required on completion needs to be paid by the buyer to their solicitor in accordance with the completion statement prepared, again we would ideally want these monies the day before completion.
- The buyer's solicitor carries out their final pre-completion searches.
- On the day of completion, the property is legally transferred from the seller to the buyer. The monies are paid, and the keys are released.
- Following completion, the buyer's solicitor pays any stamp duty land tax (SDLT) that is due, pays apportionments of rent and service charge to the HA or their solicitor and registers the buyer's ownership at the Land Registry.

*Note: the best way to achieve a smooth completion is to fix a completion date that is at least ten days after the date contracts are exchanged. A period of less than a week between exchange and completion is likely to increase stress levels for all involved and increases the likelihood of completion taking place late in the day, or even not taking place until the next working day.*

### What causes delays at this stage?

- If there is a short period between exchange and completion, the HA's solicitor may not be able to provide details of the monies due to them until the last minute. This would result in the buyer's solicitor not being able to finalise their completion statement (and hence the buyer doesn't know the final balance that needs to be paid) until the day before, or possibly even the day of completion. This results in the buyer having to transfer funds on the day they are meant to be moving.
- If 5 working days' notice has not been given to the lender for release of mortgage funds, it is unlikely that they will be able to get the mortgage monies to us the day before completion. If monies are sent on the day of completion they could arrive late in the day, thus causing a late or delayed completion.