

Guide To Buyers

Before making your offer we urge you to consult the Solicitor who will be dealing with your purchase to discuss all the relevant details and options. Your Solicitor will be able to advise you about surveys, mortgages and insurances. By having a discussion at the earliest possible time your Solicitor will be able to give you all the useful guidance and assistance you may require.

1. Duty To Disclose

The Law imposes on the Sellers a duty to disclose (particularly following the introduction of the Land Registration Act 2002) all rights and interests that they have enjoyed or used during their period of ownership over the property and its adjoining accessways or those which have been enjoyed by anyone else over their property, we do need you to alert us to anything you may have observed when visiting the property or which has been identified by your surveyor. We raise enquiries and carry out searches on your behalf but do not see the property. It is your responsibility, therefore, to draw our attention to any other matter affecting the property which you have noticed but which is not mentioned by the seller or in any report from us.

2. Confidentiality And Our Obligation To Your Lender

We owe you a duty of confidentiality in relation to this transaction, however if you require a mortgage for your purchase please



bear in mind that we will also have to comply with your Lender's requirements. The Council of Mortgage Lender's (CML) Handbook states that if any matter comes to our attention which we should reasonably expect your Lender to consider important in deciding whether or not to lend to you as borrower, we are required to report that information to your Lender. In most cases, this would involve us asking you for permission to disclose the relevant information

to your Lender. If you chose not to authorise this disclosure it is likely that we would have to cease acting for you and notify your Lender accordingly that we consider a conflict of interest has arisen. It is important to note that in a few exceptional cases, Lenders will instruct us to act for them in relation to your mortgage. We will owe similar duties to both you and your Lender as separate clients of the firm.

Guide To Buyers

3. High Hedges

When you visit the property we advise you to note any hedges (such as leylandii, laurel and holly), their location and height. Following changes in the law the council may require you to trim these hedges back to 2 metres or thereabouts. If there are any hedges at the property that you think may cause a dispute with your neighbour (eg if they are blocking a view/light or are overhanging the boundary) please let us know immediately. It is likely we would then advise you to obtain a quote from a local tree surgeon to trim the hedges, before you proceed to exchange of contracts, not least as your seller may be persuaded to pay for or contribute towards those costs.

4. Searches

You will expect us to find out as much as we possibly can about the property you are intending to buy. A lot of information is not disclosed by the Seller or the Estate Agents and not disclosed in the Land Registry entries. We will make all the usual and necessary pre-contract searches including the Local Authority and Drainage/Water Company searches, Environmental and Plan searches and a Chancel Repair Liability search. If your property is in a low lying area you may want us to make, or we may recommend, a Flood Report. Sometimes in some areas, more unusual searches

may be necessary such as a coal or tin mining searches. We will report on the results of the searches to you as they become available. Please ask your Solicitor if you want more information in advance of the searches being submitted. Following exchange of contracts and before completion, we will make Land Registry and Bankruptcy searches. Some clients perhaps not purchasing with the aid of a mortgage will not ask us to make some of the searches listed above.

The cost of all the searches varies from area to area and may increase from time to time.

5. Consent

A lack of consent for building works to a property may not mean that the Council can take action, but it is an indication that the work may not have been done to the standards that applied at that time and probably will not comply with current standards.

It is possible for the Council to list any property at anytime and for a Council to receive planning applications on adjoining properties after we have done our searches. It may therefore be sensible to contact the Council to check if the property has been listed or if they have received any applications just prior to exchange.

6. Additional Pre-Contract Enquiries

If we have acted for you previously on a purchase, you may recall that we asked the seller or seller's solicitors to deal with a fairly lengthy set of standard Additional Enquiries. These cover issues not otherwise dealt with in the Sellers Property Information Forms, such as; re-wiring of the property since 1st January 2005 when new building regulations came into force, an enquiry as to whether all keys to door and window locks would be supplied on completion, and a question about noisy neighbours or other anti-social behaviour. Arising from our adoption of the Law Society Conveyancing Protocol Documentation, including a revised form of Sale Contract and other paperwork, we have now taken the view that, if we utilise a standard documentation and procedure with other local firms in our area, this will help to speed up the conveyancing progress generally. In practice however, it is important that you let us know as quickly as possible and prior to authorising an exchange of contracts if there are any other questions you wish us to raise with the seller or the seller's solicitors. Please bear in mind that the seller's solicitors are unlikely to advise their clients to reply to questions which could be dealt with by way of personal inspection, survey or the usual searches which we will undertake on your behalf, in any event.

Guide To Buyers

7. Representations and in particular new builds

Following on from point 6 above is an issue particularly relevant to contracts for the purchase of new homes being sold by a developer (although the principle will apply to most purchase transactions). If there is anything that you will, or may wish to rely upon, please tell us. This can be very important since this type of contract will often include an “entire contract” clause i.e. the buyer can only rely on what is written in the contract, not what they may have been told verbally or indeed in anything written outside the contract. This is always the case with a new build under the New Home Buyer Code. In short, it is better to discuss such matters with us as early as possible in the process, so we can look after your interests and try to ensure the legal paperwork is entirely in line with that which you understand is agreed with the seller or developer.

8. Survey

We advise that you should arrange for a full survey to be carried out on any house or flat you are buying. The inspection required by your mortgage lender is likely to be very limited and carried out for their benefit, not yours. We or your lender can assist in arranging an appropriate survey. Your surveyor must be asked to comment on any rights/interests enjoyed by the owners of the property and adjoining accessways or to which the

property is subject – including any third party rights which become apparent during the survey. A full survey is most important because, under the Law Society Protocol which most solicitors now use, we do not raise issues relating to the condition of the property or environmental matters.

9. Insurance

a) Buildings

It is essential (even when you are having a mortgage) that the property is insured to its full replacement value from time to time because if it is not and you suffer a loss then the insurance company is entitled to impose a penalty in respect of any under-insurance. We are unable to advise you as to the amount for which the property should be insured. If in doubt then you should check with your surveyor. Even if you are having a mortgage, check with your lender that the property will be fully comprehensively insured and meets the lender’s requirements.

Where you are purchasing a leasehold property the building itself will usually be insured under a block policy and you will usually only be required to insure contents and public liability. It is usually better to insure the contents with the same company who insure the building. Experience has shown that where contents are insured with a different company than the building, difficulties can arise where it is not clear under which policy a particular loss is covered.

b) Contents

Unless you arrange specifically with your lender then, even when you are having a mortgage, it will be a matter for you to arrange contents insurance. Please don’t forget to arrange for coverage while your possessions are in transit.

c) Life/Endowment Assurance

If you are having an endowment mortgage then the insurance policy will be held by the lending institution and while the death benefit under the policy is guaranteed the payment at the end of the term is not guaranteed; it is therefore essential that you frequently check with the insurance company that the policy is on target to do that which it is intended to do, (ie) at the very least to pay off the mortgage at the end of the term. If it is not on target at any time then it will then be open to you to take out “top up” coverage to make sure that the policy will be sufficient at the end of the day. It is essential to make sure that the premiums due under the policy are paid when they are due or the policy will lapse and no benefit will be payable.

d) Mortgage Protection/Term Assurance

If you are having a repayment mortgage you may wish to consider mortgage protection assurance to pay off the loan in any event of death during the mortgage term.

Guide To Buyers

10. Leasehold

When you are purchasing a lease, it is essential you make the ground rent and maintenance payments as and when they are demanded. If you fail to do so, then the ground landlords may forfeit your lease. If, for example, you are going to be away from the property at any time when ground rent/maintenance will become due. Cases have arisen where the owner of a leasehold property has found their lease has been forfeited because ground rent/maintenance demands have come in during a time of absence which have not been dealt with.

11. Joint Ownership

If you are buying with others, (eg where a husband and wife buy in their joint names), please consider the following and advise us as to which one of the two types of joint ownership is relevant.

There are two options: you can either purchase as "joint tenants", which means that if one of you passed away the property would automatically pass to the remaining tenant. You can also purchase as "tenants in common", which means that if one of you passed away, the deceased share would not automatically pass to the remaining tenant (but instead would pass in accordance with the Will of the deceased or under the law of intestacy if there is no Will). If you decide to purchase as tenants in common, it would be advisable to specify your respective shares – equal, or

otherwise, as appropriate – and for you to make a Declaration of Trust setting out your sharing arrangements and dealing with other issues such as how and when the property may be sold in the future. If you are tenants in common, you must each make a Will.

If a Declaration of Trust is prepared for you, it is essential that you keep that Deed under regular review and instruct us to supplement or amend the Deed if necessary, by way of a further Deed if necessary. An example could be if one co-owner introduces significant capital (perhaps by paying for an extension, or paying off part of the mortgage), the arrangements for sharing the net sale proceeds of the property and/or the obligations in respect of payment of outgoings as dealt with in the original Declaration of Trust need to be altered.

A joint tenancy is most commonly used by married couples, and a tenancy in common by unmarried couples, where there are children from earlier relationships, and sometimes for inheritance tax planning (IHT). In many cases, where joint assets of a husband and wife (including residential property) exceed the current IHT threshold, it will be prudent for a purchase to be taken as tenants in common in equal shares, and tax-efficient wills made at about the same time.

If you would like to telephone us to discuss this please do so.

If however, you are quite sure which method of joint ownership is suitable to your circumstances, please complete the relevant part of the enclosed authority form and return it to us.

12. Second/Investment Properties

If you already own a property which you are not intending to sell, please be aware that there may be Capital Gains Tax (CGT) implications arising from your purchase.

We would recommend that you consult your accountant for specific tax advice.

13. Fittings And Contents Form

In most cases the seller will complete a Fittings and Contents Form which should clearly indicate the items included in the sale price, those that are excluded (i.e. to be removed by the seller on or before completion) and those which are not applicable to the property. When we send you a copy of the form, please check it carefully and tell us as soon as possible whether the form has been completed to your satisfaction, or if there are any queries you may have. If you are expecting one or more items to be left by the seller and these are not

Guide To Buyers

shown as included on the form, please advise us immediately.

If the seller has put a price against any individual item(s) shown in the form, this may indicate that they are willing to sell the item(s) at that additional price. If you wish to buy such item(s) and wish us to deal with payment on completion, please advise us before contracts are exchanged.

14. Council Tax

You may wish to make your own enquiries to the seller and/or Local Authority to establish the current Council Tax banding for the property, amounts of Council Tax payable for the current year and/or as to any anticipated increase in Council Tax. Please bear in mind that if the property has been materially increased by way of structural alteration or extension, there will usually be no increase made to the Council Tax banding until the property has been sold (or there is a general revaluation of all dwellings for Council Tax purposes).

15. Deposit

The contract for your purchase will usually state that a deposit of 10% of the purchase price will be required to be paid on exchange of contracts. As house prices have increased over recent years, it has become more common for a deposit of between 5-10% to be accepted. If you have a related sale transaction we will endeavour to utilise the deposit paid on your sale as the deposit on your purchase. This aspect will often require some

discussion just prior to exchange of contracts, and if necessary we will liaise with you. However, please bear in mind that if the buyer at the beginning of the chain is proposing to borrow 95-100% (or more) of the purchase price on mortgage, it is likely you will still be required to provide a substantial deposit (maybe up to 10%) in order to facilitate the exchange of contracts. If you envisage any problem in that respect, it would be helpful if you could discuss this with your Solicitor at an early stage, not least to avoid frustration and delay once the actual exchange of contracts is imminent.

Our professional rules dictate that we must have cleared funds prior to exchange it is likely you will need to arrange by bank transfer of those funds to our account. You may wish to speak to your bank to check their requirements in this respect.

16. Completion Statement

Around the time of exchange of contract or as soon as possible thereafter we will provide you with a Completion Statement setting out all the financial details relevant to the transaction and confirming whether we will need a further payment from you to complete or alternatively the amount available for payment to you. Preparation of the Completion Statement can often take a few days at least, especially where we await information from third parties such as mortgage redemption

figures. We do expect our clients to consider the financial details of their own transaction(s) so that, for example, if additional monies are required to effect completion, sufficient monies are available for payment to us prior to the agreed completion date.

17. Completion

Please note that generally the keys of the property will not be released to you by your Seller or their representatives until the sale monies have been paid over. Often there is a chain of transactions involved, so no guarantee can be given as to what time on the completion day you will be entitled to the keys. Every effort will be made to minimise any possible delay in your receiving the keys and any inconvenience to you.

18. After Completion

After completion we will be dealing with the Stamp Duty Land Transaction Return and registration of title at H M Land Registry. Please note that following the introduction of the Land Registration Act 2002 the Land Registry will not be issuing paper Land or Charge Certificates as the system is becoming wholly computerised. We will supply you with the Registered information provided by the Land Registry and return these to you.

Guide To Buyers

19. Land Charges Registry Bankruptcy Search

Before we complete your purchase, we will usually undertake the above search against your full name in order to ascertain whether any bankruptcy or similar entries have been registered against you (or a person with the same name as you). If entries are revealed, we may need to seek your assistance in verifying that they do not relate to you personally. We cannot utilise the net proceeds of any related sale transaction and/or any mortgage advance in completing your purchase – as would normally be the case – if you are bankrupt or in the process of being made bankrupt. Unless you specifically request, we do not undertake this search before exchange of contracts. The onus is then on you to notify us before contracts are exchanged if you know or anticipate that any bankruptcy or similar issues might have been, or might be registered against you.

20. Storage Of Papers And Deeds

At KJL Solicitors we do not hold or store (other than an electronic copy of) original documents. All original documents will be returned to you or sent on to the purchasers following completion.

21. Address For Service

The Land Registry will rely on the address(es) given by you at the time of purchase if they need to contact you. If you are buying the property but do not intend to live in it, or if you move out or live overseas for part of the year either now or in the future it is your responsibility to provide the Land Registry with your current address. They can be contacted at www.landreg.gov.uk.

Failure to do this could result in you being unaware of any Notice served by H M Land Registry which affects your property in anyway. This could also make you susceptible to mortgage fraud.

Contact Us

If you would like to discuss matters further, please call us on 01603 717520 and ask to speak to someone in our conveyancing team.

Disclaimer: This document is written as a general guide only and is not intended to provide legal advice. © KJL Solicitors February 2013 all rights reserved.

KJL Solicitors is the trading name of KJL Solicitors Ltd: Company No 7874220 and are authorised and regulated by the Solicitors Regulation Authority No 565844. Member of the Employment Lawyers Association. CEDR & Law Society Accredited Civil & Commercial Mediator. Member of the CMC. Member of Law Society Conveyancing Quality Scheme. Registered Office is Blofield Chambers, The Street, Blofield, Norwich, NR13 4AA.