



# Brockbanks

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## Solicitors

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## *Your Guide to Buying and Selling a Home*

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## **Contents**

Introduction	3
The Conveyancing Process	5
Buying a Property – New Government Schemes	9
Buying a Property – Which Searches do I need and why?	13

## **Introduction**

“**Conveyancing**” is legal jargon for the process in law of transfer of ownership of land. It originates from the legal name of the document which was used – a *Conveyance* – but it has come to be applied to all the things which lawyers do when the ownership of land is sold, given away, or is subject to some other kind of dealing.

(Conveyance deeds are becoming less and less common – a document simply called a *Transfer* is normally used now).

Buying or selling a home is often classed as one of the most stressful things you will ever do. Whether selling your own property or buying a new home, there seems to be an endless checklist of tasks to complete and people to inform, and that's after you've gone through the whole process of marketing your existing property or scouring the neighbourhood for that dream home.

Then, just when you have that all important offer, or you have your offer accepted, you have to hand over everything to a lawyer. In many ways, this becomes the most stressful stage of the home sale or purchase; not because it is overly complex, or even difficult, but because nine times out of ten home buyers or sellers just don't understand what their solicitor is doing for them, when they are doing it, and how the process works.

### ***Why do I need a solicitor?***

Ownership of your home is one of the most important steps that you take in your life. Of course, very large sums of money are involved. Most of us spend a significant part of the money we earn every year in making mortgage repayments of the money we borrowed to buy our home.

But it isn't just the money. Home is a secure place to live. Home is the place where we bring up our families. It has to be a safe haven and if that security should seem to be under threat in any way, we would suffer enormous stress and anxiety.

A large number of laws and rules have been made over the centuries to protect people's homes and the money and emotion they invest in them. They are undoubtedly very complicated and you need an expert to make sure they work properly. Solicitors are expert in conveyancing. They can be trusted with your money. Many parts of the conveyancing process now rely entirely on solicitors being involved to proceed smoothly. Banks and building societies won't usually do anything without one.

So you do need one.

### ***When do I need a solicitor?***

Ideally, you should contact your solicitors as soon as you decide to buy or sell. We will be able to collect together much of the information and documents at an early stage and save time later on. If there is any problem, the sooner it is tackled, the sooner it can be put out of the way.

And we can also work out with you your requirements on the timing of the transactions.

# ***The Conveyancing Process***

## **Phase 1 – before exchange of contracts**

### ***Selling preparations***

Right at the beginning we will need to know from you the answers to a number of questions concerning your house. You should arrange to see us, or at least contact us by phone. There is a standard form which gives the buyer and his solicitors the information they need. We will send it to you in the post or complete it with you at a meeting.

The information needed includes general details about your house, its boundaries, any rights enjoyed over the property by other people, any disputes with neighbours, the services available, any application for planning permission you have made, any building alterations you have done and so on. *Take care with this form – the information you give in it can be relied on by the buyer and anything incorrect or omitted can be used in a claim for damages or even in some cases setting a sale aside.*

There is also a Fittings and Contents form which will help you decide what you want to include in the price of the house, and what you will be taking with you or selling separately. Anything that is fixed permanently to the house or land, such as baths and built-in cupboards, is automatically sold in with the house price, unless you say otherwise at this early stage. *Take care with this list – it eventually forms part of the formal sale contract.*

We prepare a contract package for the buyer's solicitors. For this purpose we may need your title deeds – the bundle of documents that proves you own the house. Paper deeds are sometimes obsolete and the Land Registry will eventually have all ownership registered in electronic form on its computers. They can be very useful in dealing with points arising out of the history of the property and not just to do with legal ownership – for example, planning permissions for extensions.

From the deeds and the Land Registry information, we can extract the legal information which the buyer's solicitor will need to have, to make sure the contract is right for the buyer as well as seller.

Many legal documents are very complicated, but for house sales solicitors have a nationally recognised scheme of rules which enables us to slim down the actual paperwork to something simple and understandable in appearance.

## ***Searches (for information on other searches, please refer to page 13)***

The buyer's solicitors then carry out "searches", which are checks with various public offices as to whether they have anything registered against the property which might mean you could not use it as you wish, or might reduce its value.

The checks only relate to the specific property being purchased, and not any neighbouring land. So if you are worried about things like possible new building developments in the area, drains, new roads, boundaries, rights of way or restrictions, please let us know as soon as possible. We can then arrange special enquiries.

## ***Structural Survey***

Buyers should not rely on a simple valuation by a bank or building society. This is only an inspection to see that the house is worth at least what they are going to lend you, which can be a lot different from what you are spending. It will not reveal any hidden problems.

Legally the seller does not give any guarantees as to the condition of the property. The buyer purchases it as it is, whatever its faults. *We strongly recommend a structural survey or a house-buyers report by a qualified surveyor or valuer, whether there is a mortgage or not.*

Better to find out any problems now than later...

## ***The Mortgage***

During this time the buyer will have been sorting out his or her financial arrangements. Unless you have the cash available this will normally include obtaining a mortgage loan. Although banks and building societies will often say that you can have your loan, *please be aware that the money will not be available until they actually issue a formal offer*, with all the conditions that have to be fulfilled before the money can be released.

As your solicitors we will usually be asked by the lender to act for them as well, so it will be ourselves who have to ensure the bank or building society is getting what it asks for. If there are any queries, these have to be answered satisfactorily before we are sure we can get the money for you.

Bear in mind that what may be unimportant to you, may be crucial in a lender's decision to part with money. And until the money is certain, you can't commit yourself to signing the contract.

## ***Exchange of Contracts!***

Until now, nothing is binding. There is nothing more than a gentleman's agreement, and either side can back out without any liability whatsoever to each other. However willing both seller and buyer may be, neither side should be committed to the transaction until they are ready, with the seller able to move out and the buyer ready and able to pay the full price. Only then will contracts be exchanged and both sides be bound to go ahead.

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

So the whole chain can only go as fast as the slowest transaction. It can be very frustrating.

Both buyer and seller are legally bound only when contracts are formally exchanged and a completion date (that is, the date which the seller must give vacant possession of the house and the buyer must pay for it) is agreed. If you are selling, you must move out on the completion date. *You cannot stay there after the buyer has paid for the property, even if it is only 24 hours.*

We discuss the suggested completion date with you in advance and make sure it is acceptable to everyone else in the chain. **About two weeks from exchange of contracts is usual.**

## **Phase 2 – From Contract to Completion**

### ***Pre-Completion***

Generally, completion takes place on the agreed completion date two to three weeks after exchange of contracts.

In that time the seller's and buyer's solicitors agree the final form of Transfer; prepare any mortgage deed which may be necessary; make final searches; report to mortgage lenders to arrange release of the loan and repayment of any existing mortgage; make sure all the finances are ready; and have all the documents signed.

On the day of completion, while you are involved in packing and removal of your furniture, the solicitors will be arranging for the money and deeds to be transferred between offices. As soon as the seller's solicitors are satisfied that the full price has been paid, the keys of the property are released to the buyer – usually through the estate agent, but sometimes directly from the seller to the buyer.

At last!

## **Phase 3 - Afterwards**

### ***Sorting out the money***

All the money paid and received on your behalf during the transaction will have passed through our office. Naturally, we send to you at the end a statement showing in detail how the money has been dealt with.

If we need any money from you to finalise the matter, then we will send the statement out to you before completion so that you can put us in funds in readiness. ***We need “cleared funds” on completion, so we need your cheque at least five working days before the completion date, or a direct bank transfer the day before.***

If the mortgage loan and the proceeds of sale of your present home are financing your purchase entirely, then all the fees and expenses (including our own bill) will usually be deducted on completion and a cheque for the balance due to you will be sent out promptly.

When we have acted for you on a sale, out of the proceeds we will pay the estate agent in accordance with any bill you have first approved, and we will pay off any mortgage loans in full.

### **And finally**

When we have acted for you on a purchase, we prepare for you a Land Transaction Return form usually required from you by HMRC and arrange payment of the tax payable on many land purchases (“Stamp Duty Land Tax”). We then apply to have the change of ownership registered at the Land Registry – the government office responsible for recording who owns what property.

The Land Registry as a government department is subject to the policy of freedom of information. This means that the registers of ownership are open to public enquiry and inspection, and any document held by the Land Registry is similarly available to the public. So, for example, the register shows how much you paid for your property and this can be viewed by any member of the public for a modest fee.

When registration is complete, we send to your bank or building society the documents they require to hold during the term of your mortgage. If you have been able to buy without a mortgage, or there are other important papers not required on the mortgage, we will be pleased to keep non-electronic form documents for you in our strongroom for safety.

## ***Buying a Property – Current Government Schemes***

**1. Help to Buy: equity loans** - Equity loans are open to both first-time buyers and home movers on new-build homes in England with a purchase price up to £600,000. You won't be able to sub-let your home if you use this scheme. It must also be your only property.

### How it works

With an equity loan:

- you'll need to contribute at least 5% of the property price as a deposit
- the government will give you a loan for up to 20% of the price
- you'll need a mortgage of up to 75% to cover the rest

### *Example*

<b><i>For a property worth £200,000</i></b>	<b><i>Amount</i></b>	<b><i>Percentage</i></b>
<i>Cash deposit</i>	<i>£10,000</i>	<i>5%</i>
<i>Equity loan</i>	<i>£40,000</i>	<i>20%</i>
<i>Your mortgage</i>	<i>£150,000</i>	<i>75%</i>

### Equity loan fees

You won't be charged loan fees for the first 5 years of owning your home. In the sixth year, you'll be charged a fee of 1.75% of the loan's value. After this, the fee will increase every year. The increase is worked out by using the Retail Prices Index plus 1%.

Your Help to Buy agent will contact you before the fees start, to set up monthly payments with your bank. You'll also be sent a statement about your loan each year. Fees don't count towards paying back the equity loan.

### Applying for an equity loan

Contact Help to Buy Northwest, Tel: 0300 790 0570 (the Help to Buy Agents for Cumbria). You must buy your home from a registered Help to Buy builder. Your Help to Buy agent should have a list of registered builders for you to choose from.

### Selling your home and paying back the loan

The home will be in your name, which means you can sell it at any time. You'll have to pay back the equity loan when you sell your home or at the end of your mortgage period - whichever comes first.

You can also pay back some of your equity loan without selling your home. You can pay back either 10% or 20% or the total amount, so long as the loan is worth at least 10% of the value of your home.

Talk to your lender and Help to Buy agent if you want to pay the loan back in full.

If you are purchasing under the Right to Buy Scheme, you will also have to pay an 'Engrossment Fee' which is the contribution to the fees of the solicitor used by the Local Authority. These costs are usually between £100 to £250 and will appear on the Completion Statement. **They are not included on the attached quotation as it is dependent on the solicitor being used by Council, but we wanted to highlight it as a possible additional cost, and one that is relevant to Right to Buy purchases only.**

**2. Help to Buy: mortgage guarantees** - Mortgage guarantees help you buy a home with a deposit of 5% of the purchase price. It is open to both first-time buyers and home movers for new-build and older homes in the UK with a purchase price up to £600,000.

The guarantee is provided to your mortgage lender by the government - not to you.

### Eligibility

To qualify for a mortgage guarantee, the home you want to buy must:

- have a purchase price of £600,000 or less
- not be a shared ownership or shared equity purchase
- not be a second home
- not be rented out after purchase

The property doesn't have to be newly built.

You don't have to be a first-time buyer and there's no limit on your level of income. But you can't use Help to Buy with any other publicly funded mortgage scheme, or an interest-only mortgage.

### How to apply

You can apply direct to any lender taking part in the scheme. For information on participating lenders, please visit <https://www.helptobuy.gov.uk/mortgage-guarantee/>

The lender will check you are able to make the repayments before they offer you a mortgage.

**3. Shared ownership schemes** - Shared ownership schemes are provided through housing associations. You buy a share of your home (between 25% and 75% of the home's value) and pay rent on the remaining share.

You'll need to take out a mortgage to pay for your share of the home's purchase price. Shared ownership properties are always leasehold.

#### Eligibility

You can buy a home through shared ownership if:

- your household earns £60,000 a year or less
- you're a first-time buyer (or you used to own a home, but can't afford to buy one now)
- you rent a council or housing association property

#### Older people

You can get help from another home ownership scheme called 'Older People's Shared Ownership' if you're aged 55 or over.

It works in the same way as the general shared ownership scheme, but you can only buy up to 75% of your home. Once you own 75% you won't have to pay rent on the remaining share.

Your local Help to Buy agent (Help to Buy Northwest, Tel: 0300 790 0570) can help you with this scheme.

#### People with disabilities

Home Ownership for People with Long-Term Disabilities (HOLD) can help you buy any home that's for sale on a shared ownership basis if you have a long-term disability.

You can only apply for HOLD if the properties available in the other Help to Buy schemes don't meet your needs, eg you need a ground-floor property. Your local Help to Buy agent can help you with this scheme.

#### Buying more shares

You can buy more shares in your home any time after you become the owner. This is known as staircasing.

The cost of your new share will depend on how much your home is worth when you want to buy the share. If property prices in your area have gone up, you'll pay more than for your first share. If your home has dropped in value, your new share will be cheaper.

The housing association will get the property valued and let you know the cost of your new share. You'll have to pay the valuer's fee.

### Selling your home

If you own 100% of your home, you can sell it yourself. When you put it up for sale, the housing association has the right to buy the property back first. This is known as 'first refusal' and the housing association has this right for 21 years after you fully own the home. If you own a share of your home, the housing association has the right to find a buyer for it.

### Applying for a shared ownership scheme

To buy a home through a shared ownership scheme contact the Help to Buy agent in the area where you want to live.

**4. NewBuy** - NewBuy lets you buy a newly built home with a deposit of only 5% of the purchase price.

### Eligibility

To be eligible for NewBuy, your new home must be:

- a new build – being sold for the first time or for the first time in its current form (eg a new flat that used to be part of a house)
- priced £500,000 or less
- your main home (you can't use NewBuy to buy a second home or a buy-to-let property)
- owned fully by you (you can't use NewBuy for shared ownership or shared equity purchases)
- built by a builder taking part in the scheme

To be eligible you must be either:

- a UK citizen
- someone with the right to remain indefinitely in the UK

You don't have to be a first-time buyer and there's no limit on your level of income. But you can't use NewBuy with any other publicly funded mortgage scheme.

### How to apply

You apply for a mortgage from an approved lender. The lender will check that you can afford to repay it, as they would for any other type of mortgage.

You could get a mortgage of up to 95% of the purchase price if the lender is satisfied and you meet all the criteria.

## ***Buying a Property – Which Searches do I need and why?***

The searches you have relating to a property are dependent on a lender if you have a mortgage, or on you, if you are a cash buyer. None of the searches are strictly "necessary" in the sense that you can still legally complete the purchase without them. **However, your mortgage lender will insist on some, and for the cost involved (a few hundred pounds in total) we would encourage you to gather as much information as possible about the property you are about to buy.** It's worth pointing out that we simply pass on the cost of these searches, meaning we make no money on them, and we therefore have no vested interest in whether you have them or not.

The following searches are "standard" and would be advisable for all purchases:

The local authority search. This will show all sorts of things, such as whether the property is listed or within in a conservation area, if the local roads are adopted (if not you could end up having to pay towards maintaining them), if there have been any planning applications affecting the property, if the council have plans to develop the area, etc.

An environmental search. It will show whether the land is known or likely to be contaminated, which is important because the owner of a property can be required to pay for the cleanup of any contamination.

A drainage and water search. This search shows whether the property is connected to mains water and drainage, and if a sewer runs within the boundaries of the property.

Other searches are "optional" but some may be very important depending on where your property is located.

Flooding. Self-explanatory.

Commons registration search. This will indicate whether the land is designated as common land. This search should be carried out where the property borders on common land or a village green. If it transpires that any such land has been registered under the Commons Registration Act 1965, no development is permitted over that land.

Chancel liability search. If the property is situated near to a church, a chancel liability search should be carried out, and shows whether the land is subject to a liability to pay for the upkeep of the parish church. These repairs can be very costly.

Coal/lead/tin/iron ore mining searches. These are important if you are in an area with a history of the relevant mining. You need to know if your property might be located over a mine that could collapse and cause subsidence. In some areas of West Cumbria, they should be considered essential.