

# PROPERTY PRACTICE & PROCEDURE GUIDE (Residential)

## PURCHASE ONLY

### **SURVEY/VALUATION/INSPECTION**

Sellers are not under a duty to disclose any physical defects in the property to you and you should therefore arrange to carry out your own survey of the property. We advise that a proper and full survey is undertaken by a qualified surveyor on every property bought, as usually only such an expert can identify defects. If you are obtaining a mortgage and your lender is undertaking a valuation this is not for your benefit and provides you with no protection. Both Commercial and Residential properties may be subject to environmentally adverse conditions such as contaminated land (through seepage or storage of hazardous substances or old working practices), radiation/radon, flooding, landslip/subsidence, landfill sites. If you intend to develop the property then you should check separately by way of an archaeological survey whether any archaeological investigations are needed. Existing or future planning permissions may require such investigation as a condition of any development. If you do have a survey undertaken we will only look at and advise on the 'legal' section. You must consider carefully any limitations contained within the report. Surveys do not usually check the working order of services (such as electrical wiring, heating systems and drains etc) or appliances at the property and we would advise you to get appropriate specialist reports.

Please ensure you have undertaken a thorough inspection of the property yourself paying particular attention to whether there might be other occupiers residing there (look in cupboards/wardrobes etc!), neighbours having access over the property etc.

### **TITLE**

#### Defective Title

Occasionally when we investigate the title to your property a defect is found (eg. no right of access). Sometimes this can be rectified but often it is not possible. In these situations we will endeavour to arrange a title indemnity insurance if required. This does not perfect the situation but in the event you suffer a loss because of the defect this policy does give some financial cover. We will try to pass the cost of this insurance, usually a one-off premium of around £300, together with our costs in arranging such insurance, onto the Seller but occasionally you will need to pay. Even after obtaining the cover you may be required to increase the cover at your cost when you sell.

#### Boundaries

Usually the extent of the land you are buying is identified by a plan - a copy of which we will send you. Please contact us immediately if the plan appears to be wrong. However, the position and extent of the boundaries are only approximate and cannot be guaranteed, even with registered land, and certainly not to within inches. If you intend to undertake any works near the boundary please specifically inform us in writing.

### **SEARCHES**

#### Local Search

This is a standard form of enquiries made with the Local Authority in which the property is situated. The Search will disclose, amongst other things, whether there are any relevant Planning Permissions or Improvement Grants and whether any road fronting the property is maintained at the cost of the Highway Authority or is privately maintained. It is important that you realise the limitations on the results of the search. The search will primarily only be against the property you are acquiring. Whilst some matters, eg. possible road developments within 200 metres of the property are covered, no planning information that does not specifically relate to the property you are acquiring will be revealed. If you are concerned about possible development in the surrounding area, you should contact the local Planning Authority direct. This is especially important if the property is next to open land, factories or agricultural buildings etc. If you have any further queries about what is and is not covered by the search, please let us know.

If the property is in a Conservation Area or is Listed, there are much stricter planning controls (affecting extensions, outside decoration and even tree felling) which may mean that the property does not meet current planning requirements. This may lead to you being forced to undertake expensive works after completion. We have no means of identifying such problems without them being raised, so we strongly advise you to have a full survey to identify any planning deficiencies. You will need to tell us about any extension or alteration that has been carried out at the property, even replacement windows/doors, as permissions may have been needed and we must ensure all is in order, both for your benefit and your lender's, before you commit. There may have been works undertaken on the property which required Building Regulation approval and either were never obtained or possibly refused. It is still possible for the Local Authority to take enforcement action against you even though such works were undertaken many years ago. We do not ordinarily make enquiries of the Local Authority about such matters but if you require us to do so please inform us. Please advise us in writing if you proposing to develop the property in any way. You will also need to contact the Local Planning Authority direct before exchange to ensure the site will meet all of their requirements.

If you intend to develop the property then you should check separately by way of an archaeological survey whether any archaeological investigations are needed. Existing or future planning permissions may require such investigation as a condition of any development.

Since 1st April 2000, Local Authorities are required to prepare a definite list of sites within their area where past uses have led to contamination. The Local Authority search specifically asks the Local Authority whether the site does have some history of use which could lead to contamination. As the Local Authority's obligation to compile a register has only just arisen, it is unlikely that any entries on the Local Authority search would appear against the property you are purchasing. This does not mean that the site is not contaminated, simply that the Local Authority has not yet investigated the position. If, when you come to sell the property, it does appear on the Local Authority's register then you may find it difficult, if not impossible, to sell your property. Fortunately, it is possible to carry out an environmental search which would highlight the history of the site of your property and details whether or not any potential sources of contamination exist within a 250 metre radius.

#### Water & Drainage Search

This search helps to avoid costly mistakes relating to drainage and water assets and owner liability issues under and around the property. The search will show known "mains" and if under existing buildings or extensions could make such constructions at risk of being "unauthorised" and therefore potentially affecting the value and usability of the property. They are also of interest to clients who are buying a property with the intention of developing or extending it in the future. Depending upon the location of water pipelines or sewers, such developments can be refused if the property is situated too close to these assets.

The drains/sewers/pipes that run under private property will usually be the responsibility of the owners under whose land they lie. Only when they join either neighbouring property's drains/pipes or an existing adopted main or meet a public highway do they become adopted 'mains'. We would advise you to have a drains survey to investigate the extent of any potential liability. Septic tanks should also be investigated (including all pipes) to ensure it works and has sufficient capacity. Certain types need more maintenance than others.

#### Envirosearch

An Envirosearch provides essential site history and other environmental information for properties. They detail site-specific current and historical contaminated land information and a range of environmental data. They include details on all past and present contaminating and polluting processes, information on local areas of mining activity, landfill and waste treatment site details, nearby hazardous and radioactive substances, subsidence and probability of radon gas. However, they only use historical data and cannot guarantee there has been no contamination of the property and therefore a site inspection/survey is always recommended especially where any development of the site is intended.

#### Chancel Repair

Until 2013 (and possibly afterwards) there is a risk that the Property may be subject to a Chancel Repair liability. It will be cheaper to take out Title Insurance of around £20 to give you cover rather than investigating matters further. If you need a Mortgage then your Lender will insist on this insurance being taken out. Sellers rarely are prepared to pay for this type of insurance so you will need to pay this.

### **ENQUIRIES**

Under the Law Society National Conveyancing Protocol scheme, enquiries are in an approved form - Property Information Form. We shall not raise any further enquiries (other than enquiries relating to the legal title) unless you specifically ask us. If the property is a repossessed property or a probate sale then the Seller gives little or no replies or they are extremely limited in their nature. There are more risks in these situations - there may be disputes with the neighbours or other problems which would otherwise be identified. It is even more important that a full survey is undertaken and that you yourself enquire locally. You cannot rely upon any statements given by the Seller that have not been specifically made in writing by the Seller's Solicitors. You must inform us immediately if there are any other persons over 18 years old in residence other than the Seller.

#### Access/Parking

When we send you a copy of the plan of the property showing the extent of the land you are buying please check that access is available directly off the nearest highway and the car parking area is within those boundaries. With on-road parking please note that areas/roads currently available adjacent/nearby may be restricted or withdrawn in the future and this could seriously affect the value of your property. If access to the property is over a shared driveway then you will be responsible for a share of the costs of maintenance. However, it may be difficult in enforcing maintenance or getting other users to contribute.

Please inform us if there are any other accesses/footpaths or the like that you will need to use. Also you should inspect the property carefully and inform us if there appears to be any accesses or footpaths that cross the property as these may detrimentally affect the property and its value. Gates in fences or walls may lead to land over which no legal rights have been granted or imply a neighbour has rights over the property.

## Guarantees (NHBC/Damp/Timber/Double Glazing)

If the property has the benefit of NHBC cover then certain defects are covered but note this guarantee has limitations (ie. the amount of cover, excesses and notice period requirements). We are often supplied copies of guarantees for work undertaken at/on the property. However, these may not be valid and may in fact be worthless if for example the company that gave the guarantee has ceased trading. If any work (e.g. extension) has been carried out since issue, this can invalidate the guarantee. With damp/timber guarantees it is advisable for you to arrange for the guarantee company to re-inspect the property and confirm the guarantee is still valid and that no other work is required.

These guarantees may need to be formally assigned but we will not undertake this work and you should arrange this following completion by notifying the company involved.

## **MORTGAGE**

If you require a mortgage to assist you in buying a property then you should liaise with your Broker/Financial Adviser to progress the Mortgage Application to the formal Offer stage. In most cases, this firm will also be instructed to act for your Lender and we must comply with their Instructions which will accompany your Mortgage Offer. We will report to the Lender on the property and on any other material matter affecting the loan. (If there is any conflict, we would not be able to act for both you and the Lender).

## **POST COMPLETION**

Following completion we shall submit the SDLT Return to HM Customs & Revenue and pay any Stamp Duty due. An application for registration of your name(s) on the title at the Land Registry will then be made and after approximately 4 weeks new Title Entries will be produced. These together with any other important documents will be sent to you or if you have a Mortgage, your Lender.

# **BOTH SALE & PURCHASE**

## **NATIONAL CONVEYANCING PROTOCOL**

This is a Scheme recently introduced by the Law Society and which has been adopted by MCP and a large percentage of Solicitors Firms nationally. The steps involved in the sale and purchase are carried out in accordance with this Protocol, the aim of which is to ensure that the Seller's Solicitors provides the Buyer's Solicitors with as much information as is possible about the property at the outset of the transaction. This helps to narrow the time gap between the agreement on the sale or purchase and the actual exchange of Contracts. Unless you write to the contrary we shall assume that you have no objection to us using this "Protocol".

## **THE CONTRACT**

The Seller's Solicitor draws up a document known as the Contract. This document gives full details of the Agreement reached between the Seller and the Buyer. It sets out the purchase price, the names and addresses of the Seller and Buyer and describes the property. It also states whether the property is Freehold or Leasehold. The Contract will also include any Special Conditions which have been agreed between the Seller and Buyer, for example, whether the Seller will carry out any repairs to the property before the completion date.

## **PROPERTY INFORMATION FORM (TA6)**

This is a Questionnaire completed by the Seller and contains questions relating to your property for example, enquiries such as to the ownership of the boundary fences, disputes with your neighbours, availability of guarantees etc. This information is then supplied to the Buyer's Solicitors when the draft Contract is sent out. It is vital that you read the front page of the Questionnaire before completing your replies and if you have any guarantees, Reports, Planning Permission etc in your possession you should forward such to us when returning the Questionnaire.

It is very important that your answers are correct because the Buyer is entitled to rely on them in deciding whether to go ahead. Incorrect or incomplete information given to the Buyer direct through us or the selling agent or even mentioned to the Buyer in conversation, may mean that the Buyer can claim compensation from you or even refuse to complete the purchase.

If anything changes after you fill in the forms but before the sale is completed, please tell us immediately. This is as important as giving the right answers in the first place. Please send us immediately any notices you have received which affect the property, including any notices which arrive at any time before completion of your sale.

## **FIXTURES FITTINGS AND CONTENTS (TA10)**

This Questionnaire sets out the items included or excluded from the sale. In the "included" section list all items which the parties have agreed are included in the agreed sale price. Anything which is being sold as an extra sum should be listed separately. Be particularly careful also in listing those items which you wish to take with you to your new home. The Schedule will form part of the Contract and you will not be able to change your mind about what is included or excluded after exchange of Contracts without the other party's consent or possibly being required to compensate them. If you are in any doubt as to whether or not an item is to remain at the property and included in the sale price, please mark it as "excluded".

## **DEPOSIT**

On the purchase of a property it is normal to pay a deposit when Contracts are exchanged. It is traditional for the deposit to equal 10% of the purchase price. In certain circumstances, for example where a sale is also involved or a 95% Mortgage has been obtained, it is possible that the Seller may agree to accept a reduced deposit. A Buyer does, however, remain liable to make the deposit up to 10% in the event of the Buyer failing to complete the transaction after Contracts have been exchanged and as a result of such actions the deposit being forfeit to the Seller.

## **EXCHANGE OF CONTRACTS**

Once satisfactory Searches and information have been received and when the financial arrangements, such as the obtaining of a Mortgage have been concluded, the Contracts, which each party will already have been asked to sign, are then exchanged and the deposit paid. At this point the deal becomes binding and both parties are committed to the transaction. If the Buyer backs out after the exchange of Contracts then the deposit is forfeit and action may be taken by the Seller for Breach of Contract. If the Seller refused to complete, the Buyer may take action for Breach of Contract. After exchange of Contracts you can make the necessary arrangements for your removals and contact the appropriate Service Boards to have your meter read on the completion date. It is not advisable to make any of these arrangements until after Contracts are exchanged, unless the completion date comes very shortly after the exchange date.

Until exchange of Contracts you can be "gazumped" or the Seller can withdraw at any time and you will have no legal recourse to any compensation for costs such as survey fees, search fees and legal fees. It may be possible to limit this exposure by having a "Lock-out" Agreement (a charge of £150 plus VAT) so please contact us immediately if you wish to pursue that avenue.

## **BUILDINGS INSURANCE**

Once Contracts are exchanged the property becomes the Buyer's insurance risk. It is imperative that the Buyer's insurance be arranged to take effect immediately Contracts are exchanged. A Seller should though maintain their existing insurance until completion, just in case.

## **COMPLETION**

The completion date is the day on which the Buyer's Solicitors hands over to the Seller's Solicitor the purchase monies less the deposit paid on the exchange of Contracts and in return receives the Title Deeds. The Buyer is then able to move into the new property. A Seller should not part with the keys to the property until completion has taken place and his solicitor has received the balance of the purchase money. For convenience it is often best for the Seller to leave the keys with his Estate Agent (if any) and for the Estate Agent to be instructed not to release the keys until the Seller's Solicitor advises him that completion has taken place.

## **CONFIDENTIALITY**

The information which we hold in connection with any business undertaken on your behalf is confidential and cannot be communicated by ourselves to any party without your consent. There are times when we need to pass on information in your best interests, for example in the case of a purchase the Selling Agent may wish to know the progress of the transaction and whether your Mortgage has been confirmed. If such information is not given the Agent may consider advising the Seller to re-market the property. We have included in the enclosed Terms & Conditions a general Authority to supply information as required in your best interests.

## **TAX IMPLICATIONS**

Whilst we will be dealing with the legal aspects of this transaction to ensure that the legal estate is transferred validly, we are not in a position to advise you on any possible tax consequences of the transaction. If you are concerned that there may be such consequences, we would strongly advise you to seek the assistance of an accountant or contact us and we can recommend you to a Financial Advisor whose services you may or may not wish to use.

# **SALE ONLY**

## **REPAYMENT OF EXISTING MORTGAGE**

If you have an existing mortgage the firm will need to give a promise to your Buyer's solicitors that we will pay off the mortgage and remove it from the deeds. Fixed rate and Discounted Mortgages often have Redemption/Early Repayment penalties. Please check with the Lender as to whether these will apply as we will need to pay them the full amount shown on their Redemption Statement. Although we will receive a final figure from the lender for the completion date most lenders do not guarantee that figure in circumstances such as where they assume a recent payment has or will be made and then that payment is not paid or called back. To cover this situation we make a retention/hold back a sum of £500.00 on completion. We will account to you as soon as we have received confirmation from the Lender that sufficient funds have been paid to them.

## **ESTATE AGENT'S ACCOUNT**

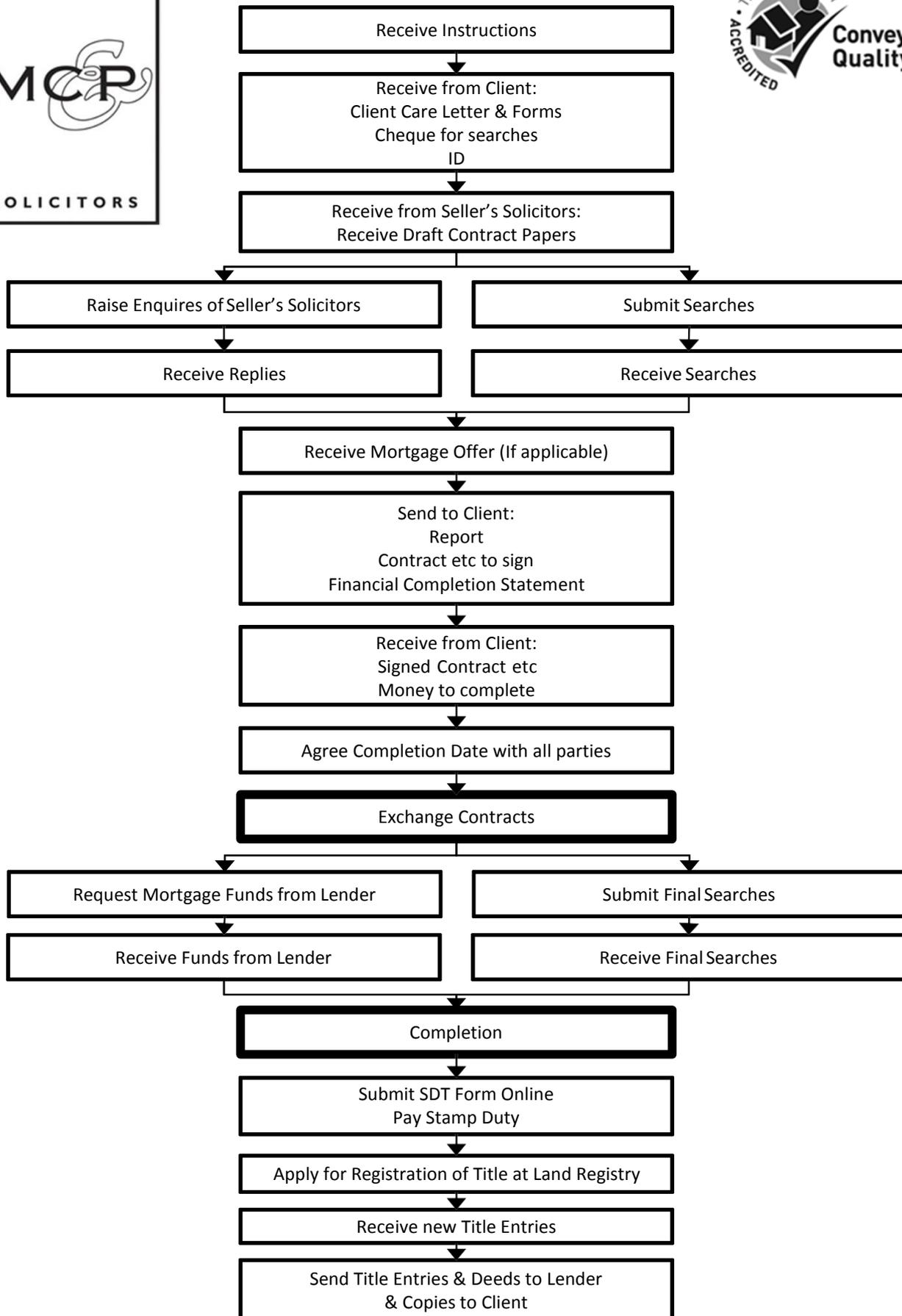
If you are using an Estate Agent to sell your house the firm will usually assist you and pay their account on completion from the sale proceeds and we assume you authorise us to pay them. Of course, you can at any time prior to completion instruct us to withhold payment if that is your wish.

(Last updated 29.02.12)

**Please see our Sale & Purchase Procedure Flowcharts enclosed**



# Purchase Procedure





# Sale Procedure

