



VINCENT SYKES & HIGHAM LLP  
SOLICITORS

# Guide to Conveyancing

Version 2 – October 2007



## INDEX

Introduction .....	3
Survey.....	4
Newly Built Properties .....	5
Mortgages.....	5-6
Deposits .....	7
Reservation fees .....	7
Legal Costs .....	7-8
Insurance .....	8-9
Conveyancing Procedure overview.....	9-10
Exchange of Contracts.....	10
Joint Buyers.....	11-12
Helping You Save Tax .....	12
Completion .....	12
Leasehold Properties .....	13-16
Glossary of Legal Terms .....	17-18



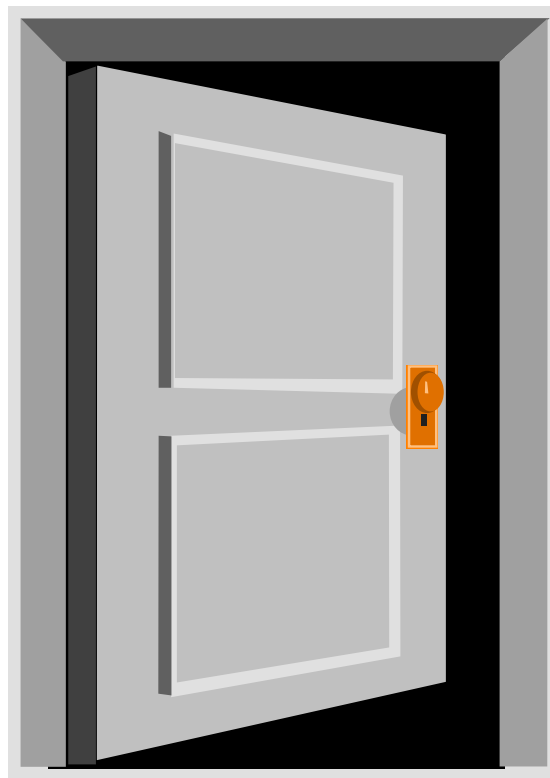
## Introduction

At Vincent Sykes & Higham LLP we have many years of experience in property transactions and aim to make the legal aspects of the house purchase process as simple and straightforward as possible for you.

Whilst this Guide cannot deal in detail with every point which may arise it aims to be a guide through the Conveyancing process. It is designed to be general and assist in many issues that commonly arise in transactions. However all transactions are different and clients should take specific advice from the person acting on your behalf on the specific property being bought or sold.

If we can be of any assistance then please contact the person looking after your transaction at our Thrapston Office on (01832) 732161

**Always remember, we are here to help** and if you do have any queries, however small, do not hesitate to let us know.





## 1. Freehold and leasehold

Most houses are usually sold as "*freehold*" which means the buyer will own the whole of the property "forever". However, virtually all flats (and some houses) are sold as "*leasehold*" (which is explained more fully in paragraph 8 of this Guide).

## 2. Surveys

Having chosen the property that you wish to buy and, if necessary, having arranged to borrow money from a Building Society, Bank or other Lender to assist in your purchase, you should then consider which type of survey you require to be carried out on the property.

### 2.1 Mortgage Valuation Report

If you are obtaining a mortgage advance, the Lender will insist that a qualified surveyor, which usually it will appoint, carries out what is called a "Mortgage Valuation Report". This is not an exhaustive examination of the property's structure, and does not go into any great detail. This you will see when you receive a copy of the Report, which most Lenders now supply to you. It should be borne in mind that the purpose of this Report is only to enable the Lender to ensure that the property is worth at least the amount which it is lending you.

### 2.2 Your own survey report

You should consider having a more detailed Report carried out on *your* behalf and you should check with the Lender whether the Surveyor who will carry out its Mortgage Valuation Report will carry out such a survey for you - it may be cheaper and quicker that way.

There are two common types of more detailed Report : -



### *House Buyer's Report and Valuation*

This covers the condition of both the interior and exterior of the property and the extent of the inspection is clearly defined so that you know what problems your Surveyor can be expected to pick up. As well as the Report the Surveyor will give you his opinion of the value of the property.

### *Full Structural Survey*

This is useful for older or converted properties and will provide you with an in depth Report on the property, including foundations, roofs, gutters, chimney stacks, water and electricity systems, and even the condition of the boundary fences. The Report will be around 15 pages long.

In both cases the Surveyor may suggest further specialist tests are carried out, for example if evidence of wet or dry rot is found, or cracks in the brickwork indicate subsidence. If the Survey Report reveals anything unsatisfactory, you may wish to negotiate with the Seller a reduction in the price of the property, or you may wish him to carry out remedial work before you proceed with the transaction.

**Remember**, nothing can be done about any defects which you discover after you are legally bound to proceed with the purchase (i.e. after exchange of contracts) and the cost of remedying it will be your responsibility.

## **3 New properties**

If you are purchasing a new house or flat then it should be covered by the National House Building Council Guarantee. The N.H.B.C. is a non-profit making body with about 25,000 members who build houses according to a set of standards. Houses built by N.H.B.C members are covered by a 10 year warranty, which is actually a 2 year undertaking by the Builder to repair most faults, backed by the NHBC, for major structural faults in the following 8 years, caused by the Builder's failure to comply with N.H.B.C. standards. Subsidence is not covered.



## 4. Mortgages

Traditionally, Building Societies or Banks were the first port of call for the Home Buyer requiring a loan to purchase and whilst these still account for the majority of mortgage business, in recent years many other Lenders have entered this highly competitive market. Each Lender may be able to offer you many different types of mortgage. Unless you are opting for the simple repayment type of mortgage, where each month you repay part of the capital sum which you have borrowed and interest, then you will almost certainly become involved in taking out a life or pension policy, proceeds of which will be used to repay the loan at the end of the mortgage term. Any Lender or broker giving you advice in such a policy should be registered with a Governing Body authorised under the Financial Services Act. If in doubt, ensure that you have obtained independent advice as to the best type of mortgage for you.

### 4.2 Mortgage Indemnity Premiums

You may be required by your Lender to pay a "Mortgage Indemnity Premium". This is a premium payable to an insurance company to provide cover to the Lender in the event of the Lender having to sell the property in the future at a price less than the amount they have advanced to you. This protection is for the benefit of the Lender only and does not protect you as the borrower. Furthermore, in the event of such a claim being made by the Lender against the policy, the insurers may come to you to pay back to them the amount they have had to pay out to the Lender.

### 4.3 Mortgage protection plans

Borrowers taking out mortgages after 1 October 1995 who then lose their income through redundancy, illness or sickness they will receive no interest payments whatsoever from the State for the first nine months. Entitlement to income support is means tested, so that not everyone will receive it, for example if one partner is working. One way to protect against this eventuality is to take out mortgage payment protection insurance, which will provide cover up to the monthly repayment figure including interest and associated premiums. This is



not available to all borrowers, but you may wish to discuss this with your Lender or your mortgage Broker.

#### **4.4 Life Policies required in connection with the mortgage**

If the Lender requires you to take out a Life Policy, Pension Policy, Endowment or similar in connection with and as a condition of the mortgage offer, please let us have details of the policies as soon as you are able. If there is a Broker dealing with the policy on your behalf, please let us have his details so that we can contact him direct. It is very important that we have this information, as usually we will not be able to proceed without it.

#### **5 Finding a deposit**

When contracts are exchanged, a deposit will be payable to the Seller. Where you have a house to sell, we usually try to make use of the deposit we receive on your sale, but this may not be possible, or may be insufficient. A deposit of 10% of the purchase price is usually required. If you do not think such a sum will be available let us know as soon as possible so that we may be able to negotiate a reduced deposit with the Seller's Solicitors.

#### **6 Reservation fees**

When buying a new house or flat you will usually be asked to pay what is known as a "reservation fee" to the Builder. This will be treated as a part payment of the deposit if the matter proceeds to exchange of contracts. Always ensure that the document you sign when paying the reservation fee states that it is paid "*subject to contract*". Builders will often give a partial or, less frequently, total refund of the reservation fee if you are unable to proceed with the purchase. Check the position as to refunds before signing anything or paying the reservation fee. If you have paid a reservation fees, please let us have details as soon as possible.

If you are buying a "second hand" property through an Estate Agent, once again you may be asked to pay a "holding deposit" to secure the purchase, which again should be paid "*subject to contract*" and on the basis that it is fully refundable if you do not exchange contracts.



Ensure you obtain a written receipt from the agents. Again, please let us know as soon as possible if such a fee is paid.

## 7. Legal costs

If you would like us to give an estimate of our fees, please ask. Where sufficient information is available, it is often possible for us to give you a fixed price quotation.

**Remember** that in addition to our fee, you will usually also have to pay the following:-

### *Search Fees -*

we have to carry out certain searches with the local authority and water supply company to check that the property is not subject to any matters which could affect

your purchase, such as proposals for new roads to be built nearby, compulsory purchase orders, etc. and we have to pay a fee to the relevant authority for this service.

### *Stamp Duty –*

the Government requires Buyers to pay a tax known as "Stamp Duty" if the purchase price of the property is more than £125,000.. The Tax is payable at a rate depending upon the purchase price and is payable on the **total** purchase price. It is payable to the Inland Revenue (through us) on completion of your purchase. We will advise you as to the amount when reporting to you with the contract documentation. If you wish to know in advance of this (e.g. for budgeting reasons) please ask.



*H.M. Land Registry fees -*

in all parts of the country purchases now have to be registered with H.M. Land Registry, to whom a fee is payable. This fee is on a sliding scale depending on the purchase price of the property and means that details of your Title (right of ownership) to the property are kept on a central register.

## 8. Building insurance

If you are obtaining a mortgage, your Lender can arrange this automatically. If the Lender does not arrange automatic cover, or you are buying without the aid of a mortgage, then we will let you know before contracts are exchanged so that you may make your own arrangements. The contract may provide that you should arrange for cover to commence on exchange of contracts, or on completion of the purchase. We will confirm to you which is applicable to your transaction in plenty of time.

Where you are buying with the aid of a mortgage and are not taking out the lenders own or recommended insurance, the mortgage lender will ask us to check that the insurance cover meets their requirements. If we are required to do this, there is a fee payable, which you will notice in the breakdown of the estimate we provide to you. If you wish to avoid this fee it may be sensible to take out the lender's own insurance and immediately after completion cancel it, putting in place your chosen insurance instead. Many lenders charge a fee for you taking out insurance other than their own, whether this is done before or after completion and your mortgage offer will detail the cost, if any. Because the lender charges this fee whether you take out alternative insurance before or after completion this will not affect the overall amount you pay. It can however save you money on our fees and speed up exchange of contracts, as we do not have to wait for an insurance company to provide details to us.

Remember the house **contents** should be insured during the move and in the new house immediately you move in.



## **9. Procedure**

### **9.1 The contract**

The Seller's Solicitor draws up a contract describing the property, the price, the names of the Seller and Buyer, whether the property is freehold or leasehold, and whether there are any restrictions on its use. The contract is carefully checked by us and you will not be asked to sign it until we are happy with its terms.

### **9.2 Property information**

Once we have received the contract, we obtain replies to a set of questions known as the "*Property Information Form*" from the Seller's Solicitor. They include, for example, who maintains the boundaries, whether there have been any recent disputes with neighbours, whether the property has the benefit of any guarantees, what alterations have been made and whether permission has been obtained, and details of any fixtures and fittings included in the sale.

If there are any particular questions you wish us to raise, please let us know as early in the transactions as possible, so as to avoid unnecessary delays.

### **9.3 Searches etc.**

Also at this stage of the transaction, we make the Local Search and any other relevant searches and there is often a delay whilst a Local Authority deals with our questions, but it is not advisable to proceed until we have their replies. The Lender will in any event usually require us to obtain this information before they will lend on the property. Information is only given on the property you propose to purchase.

Because of the delays within some Local Authorities searches can take a considerable time to be supplied to us. We have therefore entered into an arrangement with a National Search Company to provide Personal Searches (where the search company sends an Agent to the



Local Authority offices to obtain the information personally), drainage searches, environmental searches and a recent type of search, known as a ChancelCheck (which reveals if the property is in a parish with a liability for Chancel Repairs. Chancel Repair liability has been in the news recently as the Church have won a landmark case landing the property owner in question a repair bill over £150,000 and also legal costs must be paid by the owner).

## 9.4 Mortgage offer

If you are borrowing money from a Building Society, Bank or other Lender, we must have written confirmation from them or the details before we can advise you to proceed to exchange of contracts. This may raise additional points which we have to deal with before exchange.

## 10. Exchange of contracts

When all the terms have been agreed and the Seller and Buyer have each signed their own identical copy of the contract, their Solicitors will "*exchange contracts*". It is at this point that both the Buyer and Seller become legally bound to proceed with the transaction, and it is at this stage that a deposit is paid to the Seller's Solicitors. When contracts are exchanged the "*completion date*" [i.e. the date when the purchase price (less the deposit paid on exchange) is paid to the Seller and the Title Deeds and keys are handed over] is agreed. If you have any particular dates to work towards, it is helpful if you notify us of this as early as possible in the transaction

If any new Life or other policies are being used in connection with your mortgage, these should be placed on risk on exchange of contracts.

Remember also that if you are arranging building insurance and we have notified you that the contract provides for you to deal with this from the point of exchange, this should now be placed on risk.



## 11. Between exchange and completion

From here on the process should be less nerve racking since there is now a contractual commitment from the seller to sell the property to you. During the period between exchange of contracts and completion, we will carry out further investigation of the Seller's title to the property and send out the final searches to check nothing adverse has been registered against the property.

We will also apply for the mortgage money from your Lender, and complete the mortgage documents. We will prepare the final legal document which will transfer the ownership to you from the Seller.

### 11.1 The run up to Completion

Before completion, we will send you a financial statement showing how much money is due from you to complete the purchase, or how much is due to you if you are selling. If we need funds from you we must have cleared funds in time for completion. We cannot send out the completion funds required and move to completion on your transaction unless we hold sufficient cleared funds, as detailed on the completion statement. Please bear this in mind when agreeing to any completion date.

## 12. Buying in joint names

If you are buying the property jointly with a spouse, partner or friend we will give you advice on the best form of ownership for your circumstances. There are two possibilities :

### 12.2 Joint tenancy

If you hold the property as "*joint tenants*" then on the death of one of the owners, his or her share automatically passes to the survivor.



## 12.3 Tenancy in common

Where joint owners hold the property as "*tenants in common*" on the death of one of them, his or her share does not automatically go to the survivor, but passes under the terms of the deceased's Will, or if there is no Will, then the rules of Intestacy.

For unmarried couples or friends, it is usually advisable to hold the property as tenants in common, and both parties should make Wills.

## 13.4 Helping You Save Tax

As you may be aware Inheritance Tax applies to those with assets of more than approximately £300,000 (for tax year 2007-08 - this figure changes year on year). This figure includes the value of your home.

As it may well be that your assets fall into the taxable bracket it is important for you to consider making use of the tax exemptions that are available.

One of the most effective arrangements is the use of a Trust which can achieve tax savings of almost £100,000 and in many cases can avoid liability for Inheritance Tax altogether, enabling wealth to be passed down the generations.

These Trust arrangements are accepted by the Inland Revenue and allow you to take advantage of genuine opportunities to save tax. Trusts can benefit those of all ages and are not only for the very rich.

They may not be suitable in all circumstances and therefore if you are interested in reducing your or your dependants exposure to tax please speak to us. We will arrange for one of our experts in the field to contact you. Arranging to save tax should not cause any delays in your transaction if we are aware of your requirements at an early stage. If you are interested in this, please do speak to us at the earliest opportunity.



## **13. Moving day – completion**

This takes place when we hand over the purchase money and in return receive the Deeds to the property and the keys.

In practice the purchase money is often sent to the Seller's solicitor via the banking system. The keys are often left with the Estate Agents. The Seller's Solicitor will telephone the Estate Agents to release the keys to you as soon as the money has been received.

## **14. At last you own your new home**

After completion we will deal with payment of Stamp Duty and the registration of your ownership of the property at the Land Registry. This process can take a month or more to conclude. If you have a mortgage, the lender may want to hold some or all of the Title Deeds. Those Deeds which they do not wish to hold, or all of the Deeds if you do not have a mortgage, will be sent to you, or we can arrange storage here in our Deeds Safe.

## **15. Leasehold properties**

### **15.1 Leasehold – what it means**

Leasehold means that the flat (or house) will belong to the Buyer ("*the Tenant*") but only for a fixed number of years (the "*term*" of the lease). The freehold will still be owned by someone else ("*the Landlord*") who is the person who grants the lease.

### **15.2 The lease**

The lease is a document in which the term is stated and the various rights of the Landlord and Tenant are set out. The lease is usually a very long document, but the more that is set out in the lease, the less likely it is that disagreement will arise later, as the Landlord and the Tenant will both hopefully know exactly where they stand and what their rights and obligations are. The lease should contain a detailed description of the property, and this may be by reference to a plan.



### **15.3 The term**

The lease will specify the number of years for which it is to run. You may be offered a new lease, or you may be buying a lease which is already in existence, in which case some of the lease will be "*expired*" and you will be buying the number of years remaining on the term. At the end of the term the lease comes to an end and, in theory, you will have to vacate the property. However, there are statutory provisions relating to the right to a new lease. As the term of the Lease nears its end, the value of the property *may* begin to decline. You should therefore ask how many years are left to run on the lease.

Leases with over 82 years left to run are in theory more valuable as the cost of extending the Lease is lower than properties with less time to run on the Lease. This is based on the statutory calculations used in forcing a freeholder to extend the Lease. In practice most Lease extensions are granted by agreement and the cost of the Lease extension is also negotiated. It is something to bear in mind when looking at Leasehold properties however. As with all aspects of the conveyancing process if you have any questions on this aspect, please contact us and we shall be happy to discuss it with you.

### **15.4 Rent**

The lease will set out what rent is to be paid by the Tenant to the Landlord. This is a "*ground rent*" and is usually only a nominal sum, payable yearly, half yearly or quarterly.

### **15.5 Buildings insurance**

In the case of leasehold flats, the lease usually provides for the Landlord to insure the whole building, and the Tenants of each flat in the building will reimburse the Landlord a proportion of total costs. You should ask to have a copy of the insurance policy and proof that the latest premium has been paid.



## 15.6 Maintenance

The lease must clearly state who is responsible for maintaining and repairing the property, the main structure of the building, the common areas such as passages, staircases, etc. In cases of flats, it is usually the Landlord's responsibility to maintain the main structure and the Tenant's responsibility to maintain the inside of the flat. You should ask whether there have been any major repairs or any redecoration recently or whether any such works are due in the near future. You should also ask whether there have been any problems with the Landlord in this respect.

## 15.7 Service charge

In addition to the ground rent and insurance premium, the Tenant will usually also have to pay to the Landlord a "*service charge*". This is to cover the cost of maintaining the common areas, lifts etc. and may also cover such matters as employment of cleaners, caretakers, managing agents, etc. Service charges for flats can be substantial and when buying a flat, it is impossible to tell how much future charges will be, but past service charges can be a guide.

### **You should ask the following questions:-**

1. What have the service charges been for the last three years?
2. Ask for copies of the audited accounts.
3. What is included in the service charge?
4. Does the Landlord employ managing agents?
5. Have there been any disputes with the Landlord or his Agents relating to the service charge?
6. Is there a reserved fund for potential expenses? If so, how does it operate?

## 15.8 Covenants

Leases contain various "*covenants*" which includes a long list of "do's" and "don'ts". These can relate to the general use of the property, such as noise levels at certain hours, the type of pets you can have, where you can dry washing etc. There may also be covenants restricting



alterations to the property without the Landlord's consent, restricting sub-letting of the property, etc. Before you finalise your purchase, check that these restrictions will not create too many problems for you personally, and that there are no restrictions which are likely to affect your ability to sell the flat should you decide to move.

## **15.9 Management Companies**

Some blocks of flats etc. are run on the basis that all owners of the flats each become shareholders in the "*Management Company*", which will deal with the day to day running of the flat e.g. maintenance of common areas etc. In some cases, when all the flats have been sold the Landlord will transfer his interest in the property to the Management Company so that the Company in effect becomes the Landlord. Alternatively the Landlord may keep his freehold interest, but transfer the running of the property and the obligations relating to repairs, etc. to the Management Company.

Where there is such an arrangement, the flat owners share in the company will be transferred to the new owner every time the flat is sold. As a shareholder, you will have some say in the running of the Management Company, and therefore some degree of control over the running of the property.

### **15.10 Landlord's registration fees**

When you are purchasing an existing lease you will usually have to register the change of ownership with the Landlord or his agents and a fee is often payable in this respect. It is usually only a nominal fee to cover expenses, but we will check the exact amount.

### **15.11 Procedure**

If you are buying an existing lease then the legal procedure will basically be the same as if you were buying a freehold house. However, if you are buying a new lease there may be additional work involved in negotiating the terms of the lease etc.



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## 15.12 Conclusion

We at Vincent Sykes & Higham LLP will, of course, check the details of the lease and advise you on its terms. However, you can help yourself by asking the right questions about the property. We can advise you on what the lease says but it is up to you to find out as much as you can about how this actually works in practice and what problems there have been.



## Glossary of Legal Terms

<b>"Advance"</b>	means the total amount of money provided by the Lender to you
<b>"Completion"</b>	means the stage in the conveyancing transaction when the balance of the purchase price is paid over to the Seller and the Seller hands over the keys
<b>"Conveyancing"</b>	means the legal process of buying and selling property
<b>"Covenant"</b>	an obligation or a restriction affecting the use of the property which is binding on owners of the property
<b>"Disbursements"</b>	means the fees that your solicitor has to pay out to third parties, such as Stamp Duty, Land Registry fees, local authority search fees, water authority search fees, etc. which are then added to your bill
<b>"Draft contract"</b>	means the preliminary document which the Seller's solicitor/conveyancer sends to the buyer's solicitor/conveyancer setting out the terms and conditions of the sale
<b>"Endowment mortgage"</b>	means a loan in respect of which only interest is paid during the term of the loan, with an endowment assurance policy intended to pay off the loan at the end of the term, provided there are sufficient funds in the endowment policy
<b>"Exchange of contracts"</b>	means the stage in the conveyancing transaction when both the Seller and the Buyer become legally bound to proceed
<b>"Fixtures"</b>	means items which are attached to the property in such a way as to be treated as forming part of the property
<b>"Land Registry"</b>	means the Government department responsible for keeping a register of ownership of property
<b>"Leasehold"</b>	means the ownership of property for a fixed period of time after which ownership reverts to the Landlord
<b>"Local search"</b>	means an application to the relevant local authority for a certificate and replies to various enquiries relating to a property, dealing with such matters as planning notices, buildings regulations, improvement grants etc.
<b>"Mortgage"</b>	a loan whereby freehold or leasehold property is given as security for a loan. The Lender has certain rights relating to the



property, including the right to sell the property if the mortgage payments are not made. These rights are cancelled once the loan and interest etc. are repaid in full.

**"Mortgage Deed"**

the formal document creating the mortgage

**"Mortgage Indemnity"**

an insurance policy which covers the Lender in certain circumstances (e.g. if the Property were repossessed and sold at a loss). The policy only covers the Lender, not the Borrower. This is usually paid by way of a one-off payment and is usually for loans exceeding a certain percentage of the value of the property.

**"Repayment Mortgage"**

a loan on which part of the capital as well as interest is paid back on a regular basis (usually monthly) throughout the term of the mortgage

**"Stamp Duty"**

a Government tax paid to the Inland Revenue on the purchase of a property. Now called Stamp Duty Land Tax.

**"Subject to Contract"**

this means that there is not yet a binding contract and only provisional agreement. Either party may withdraw without incurring any penalty.

**"Transfer Deed"**

the formal document transferring ownership of the Property

**"Water/Drainage Search"**

a search and enquiries with the relevant water company to check whether the property has mains drainage and water supply