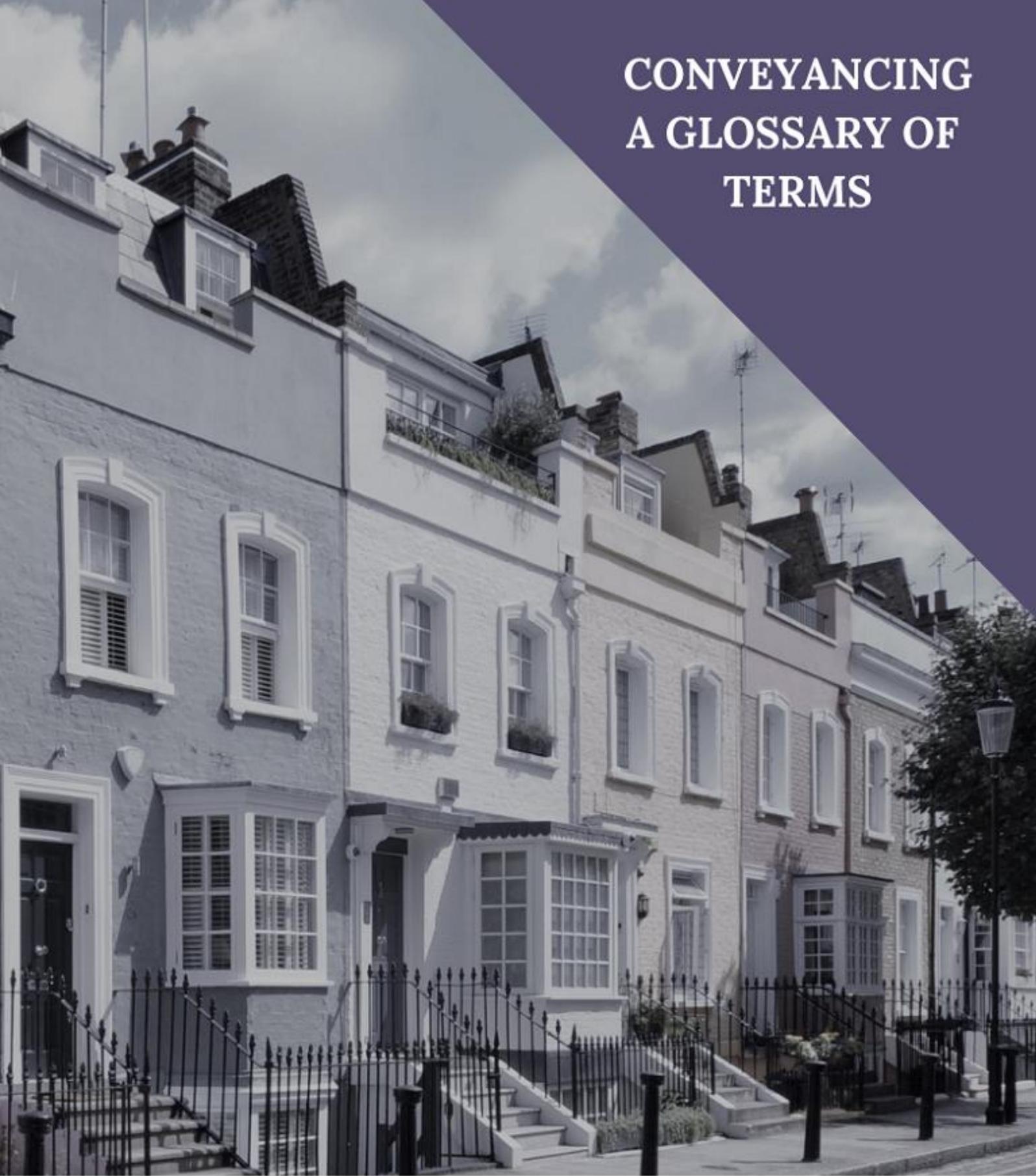


CONVEYANCING
A GLOSSARY OF
TERMS



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Conveyancing Glossary of Terms

Absent Landlord

Describes position where on a leasehold transaction the freeholder cannot be found, which creates problems as the freeholder typically has many obligations in a lease relating to issues such as building maintenance and insurance.

Absentee Landlord Indemnity Policy

Type of specialised property insurance policy covering losses possibly suffered as a result of an absent landlord situation. Such a policy may or may not be available and/or acceptable to the buyers or their mortgage lenders and the one-off premium would typically payable by the sellers.

Absolute Title

There are classes of title for each piece of registered land whether freehold or leasehold. Absolute title is the most common and best class of title certifying that there is no challenge as far as the Land Registry in England & Wales are concerned regarding the ownership of the interest in land.

Adverse Possession

Adverse Possession refers generally to longstanding unlawful possession of a property or land. If such possession has continued without any challenge from the legal owner for 12 years or more it may be possible for the occupier to claim an interest in the land and to have this recorded at the Land Registry as Possessory title.

Apportionment

An important concept commonly featuring in long lease transactions where ground rent and/or service charges will usually either have been paid for in advance for a period by the sellers or where he/she/they are in arrears. A calculation is made for the day of completion as to whether the buyer must reimburse the seller for advance payments or a reduction in the funds paid by the buyer to deal with arrears owed by the sellers which the buyers will then become legally liable for.

Assent

An assent is a specific form of deed used in conveyancing of a deceased's property to the beneficiary entitled to the property. Assignee

Conveyancing term to describe the person to who a lease, right or interest is transferred.

Assignment

Legal term for the process of transferring rights, benefits or interests. The term is typically used for lease transactions but can also apply to various other rights such as guarantees currently in the name of the seller which need to be formally transferred to the buyers.

Bankruptcy Search

An absolutely critical search carried out by the buyer's solicitors in the period between exchange of contracts and completion to check, on behalf of the buyer's lenders, that the buyer(s) is/are not bankrupt.

Beneficial Ownership

The beneficial owner is the owner legally entitled to the proceeds of sale. The beneficial owners are typically the same as the legal owners, but not necessarily so. With a trust, the legal owners would on the face of it have the legal power to sell a property but he/she/they/it may not be the beneficial owners. In such a circumstance it would be for the seller's solicitors to ensure that monies received are distributed to the beneficial owners and the buyer is generally only required to ensure that they deal with the correct legal owners.

Boundary

Property boundaries in relation to which the Land Registry filed plan is generally conclusive, although can be a problematic area as the Land Registry filed plan is only a scaled plan. Typical pre-contract enquiries from a buyer's solicitor to a seller's solicitors will also raise the issue of who in practice has maintained and paid for maintenance of fences and such like.

Breach of Contract

Following exchange of contracts the conveyancing contract is legally binding on buyer and seller. Should either party fail to complete or otherwise breach the contract that defaulting party will be in breach of contract. It is important to understand that there are different types of breaches, generally depending on the severity, and the remedies available to the innocent party are consequently also linked to the type of breach.

Breach of Covenant

In simple terms a covenant is a clause in a contract. This term often refers to breach of a term of a lease and the situation often occurs in conveyancing when a selling leaseholder has breached a term of his/her/their lease which may or may not be capable of being easily remedied. A typical example might be that a leaseholder has made alterations to the property without obtaining the freeholder's consent. Where a covenant has been continually breached for 20 years or more it may be deemed that the covenant has waived any breach and no longer able to take any legal action.

Building Regulation Indemnity Policy

Specialised form of indemnity insurance policy used for conveyancing transactions. Typically involves a one off premium, payable by the seller to deal with situation when a completion certificate has not been obtained from the Local Authority when a property has been altered. The buyer will need to make a decision as to whether such an insurance policy is acceptable, based on advice from his/her/their solicitor and typically the buyer's lender will also need to consent to such a policy and may or may not agree. Factors which are likely to be relevant to this include the type of works carried out, how long ago the work was done and any safety implications, since Building regulation certification is primarily about certifying works have been carried out appropriately.

Building Regulations

Local Authority regulations that must be complied with when carrying out building works such as replacing windows, electrical works, removing walls. A buyer's solicitor will need to ask the right questions about these issues of the buyer (who will have physically visited the property) and the seller's solicitors prior to exchange of contracts. Failure by a seller to have obtained a final Building Regulations certificate where one was needed may create significant problems with the transaction and at best delay.

Buildings Insurance

Self-evidently, insuring the structure of any property is of critical importance. With freehold house purchases it will generally be for the buyer to insure a property and he/she/they will need to do so from exchange of contracts as risk will pass to the buyer from the moment of exchange. With leasehold flats, commonly, the freeholder will be responsible for insuring the building, with the leaseholders contributing proportionately via service charges. In this case, the buyer will normally reimburse the seller, on a calculated apportionment basis, for service charge paid in advance, on the day of completion.

Buildings Insurance (Contingent) Indemnity Policy

This is an indemnity policy occasionally used in the leasehold flat conveyancing process where the obligations in the lease are unclear or unsatisfactory as regards responsibility for ensuring buildings insurance is in place.

Caveat Emptor

An old Latin legal term which means "buyer beware". The phrase is significant as it still generally describes the underlying legal position on conveyancing whereby it is essentially up to the buyer to make appropriate searches and enquiries of a seller on a property transaction. In other words, it is not legally the seller's responsibility to reveal information which the buyer does not ask.

Certificate Of Title (Also Known As Report On Title)

Formal certificate provided by the buyer's solicitors to the mortgage lender stating that the title to the property is good and marketable and which triggers the request for release of the mortgage funds.

Chain

Term used to describe situation where there are a number of sales and purchases linked together, such that if there is a problem or delay in one part of the chain, this may cause problems or failure of other transactions which are dependent. Typically, the parties and their representatives ought to keep in touch to monitor progress as often all transactions will need to be synchronised in terms of exchange of contracts and completion dates, so that necessary funds can flow up the chain on completion to the ultimate seller.

Charge (Or Legal Charge)

Legal document, often a mortgage, which creates a financial burden (charge) against the property when the property. Following completion, the buyer's solicitor will need to register the mortgage against the title and the seller's solicitors will need to ensure any charges relating to the seller's ownership have been paid off and removed from the property title.

Client Care Letter

A Law Society requirement for solicitors, generally doubles up as an explanation of the process, the client's rights and service standards and sets out the solicitors' charges, and consequently represents the agreed contract of retainer between solicitor and client.

Completion Date

The date agreed in the contract when funds must be transferred and then upon receipt keys released by the seller with vacant possession. Completions are always on Monday to Friday and typically require cleared funds to be in the seller's solicitors' account by lunchtime, failing which penalties can apply. As stated above, the date for completion is normally a fixed date stated on exchange of contracts but can also be unspecified and triggered by an event, which is typically appropriate notice of weeks or months and commonly applies in purchasing "off plan" or new build properties.

Completion Statement

Form of financial statement which both the buyer and seller's solicitors will prepare for their respective clients between exchange of contracts and completion which details all monies received, all monies paid to date, all monies needed (if any) for completion and/or any balance due to the clients on completion. In the case of monies needed for completion, such will normally be required as fully cleared funds not later than the day before completion.

Conservation Area

The results of a Local Authority Search conducted by the buyer's solicitors will disclose whether the property in question is within a conservation area. Owning a property within a conservation area means consent will possibly be needed from the local authority when affecting repairs or alterations to the property or even to cut or lop a tree.

Contaminated Land

The results of a Local Authority Search conducted by the buyer's solicitors will disclose whether the property in question is potentially legally classified as contaminated. A positive result does not mean there is necessarily any health or other risk, it generally records the fact of previous commercial usage which could be classified as requiring some form of remediation, which importantly could be at the current owner's cost notwithstanding that owner has nothing to do with the past usage. There are potential solutions to this issue although this is another issue where not only the buyer will need to be advised and make a decision as to how to proceed but also his/her/their mortgage lenders.

Contract

Formal legal document setting out all the terms of the sale and purchase for the property. Residential property contracts are largely standardised in compliance with the current Law Society Standard Conditions of Sale

Contract Race

Refers to a situation where the seller issue a contract to more than one party and the first to exchange contracts will win the race. Under professional conduct rules, a seller's solicitor issuing more than 1 contract must advise all parties that this has occurred and the terms of the race.

Council Of Mortgage Lenders (CML)

An organisation sanctioned by most of the mortgage lenders by virtue of which they agree the majority of rules under which solicitors advising a particular lender (and usually the borrower/buyer also) must operate. Part 1 of the CML handbook contains general requirements and Part 2 provides specific instructions of a particular lender in areas where different lenders have different requirements.

Covenant

A covenant is in simple terms a legally binding agreement or promise either to do something or to refrain from doing something. Typical applications for property law are restrictive covenants on land which prohibit the use or access to land and which generally bind subsequent owners.

Deed Of Covenant

As above, a specific form of a covenant and as regards residential property, a typical example would be in relation to purchasing a leasehold flat where there is a management company and where the lease may stipulate that any new owner provides a direct contractual commitment from the new owner to comply with the terms of the lease and in particular service charges.

Deed of Gift

Document detailing fact that a part of the agreed purchase price has not been paid but instead gifted by the seller to the buyer. Whilst there are understandable and legitimate reasons and uses for such gifts, care needs to be exercised. It should be remembered that in most property transactions the buyer will need a mortgage. The buyer's solicitor will have to advise the lender of any gift since this typically means that the buyer is putting in less initial funding. A lender will of course want to be fully aware of any attempt to manipulate the purchase price.

Defective Lease

Difficulties can arise in residential leases whether due to negligent drafting when the lease was initially drafted or due to many leases having commenced decades ago when the law and practices were different, and consequently the lease may not accord with modern standards, particularly of lenders. Examples of defective drafting might include inadequate rights of way granted over common parts or forfeiture clauses which would severely affect a lender's interests. Possible solutions can be a deed of variation for the lease, but this will typically be expensive and will delay matters and/or a defective lease indemnity policy.

Deposit

The amount payable by the buyer to the seller on exchange of contracts. The deposit amount is generally held by the seller's solicitors and not released to the seller. The deposit may be passed up the chain of transactions and form part of a larger deposit held by the ultimate seller's solicitors. The standard sum payable on exchange of contracts is 10% of the purchase price but a lower percentage can sometimes be agreed, although most seller's solicitors will advise to resist this and to require, at the very least a full explanation of why the buyer does not have the full 10%.

Disbursements

Payments which are not the lawyer's fees but which the lawyer must pay on the client's behalf, whether seller or buyer, to third parties, in order for the transaction to proceed. Examples can be local authority searches, bank transfer fees, Land Registry fees.

Easement

A legal right to use or access land or property owned by someone else. Easements can arise by formal written agreement and be recorded against a property title or can arise by informal use unopposed over a long period of time. The buyer's conveyance will check and advise on these issues but the buyer should advise his/her/their solicitor of any obvious signs of a right of way or other right observed when viewing the property.

Environmental Search

A standard form of pre-contract search which will disclose any previous industrial use of the land or of land in the vicinity of the property being purchased. It is important for a buyer to understand that such a search is a standard requirement of lenders so even if the buyer doesn't want such a search to be undertaken or to pay for it, such a search is a necessity. In the event where contaminated land entries are revealed that cannot be fully investigated a conveyancing solicitor may need to refer the result to a mortgage lender for instructions on how to proceed.

Estate Agents Fees

Conveyancers do not generally get involved in negotiation of agent's fees but such fees are generally paid by the seller's solicitor to the agent on completion from the sale proceeds unless the seller specifically instructs otherwise.

Estate Agents Particulars

Important to note that such particulars do not form part of the contract and consequently any statements made should be carefully checked and treated with a degree of caution by the buyer.

FENSA Certificate

Type of certificate which shows that newly installed windows are safe and use required materials.. Since 1st April 2002 a FENSA certificate or Building Regulation Completion Certificate has been required when replacing windows and the absence of this can create problems on a conveyancing transaction.

Filed Plan

Official Land Registry plan for an interest in land, drawn to a standard scale.

Fixtures, Fittings and Contents Form

Form completed by the seller and supplied by his/her/their solicitor as part of the standard pre-contract package to the buyer. The buyer should consider this list carefully and if necessary, re-attend and check the position at the property before exchanging contracts.

Forfeiture

Forfeiture relates to a legal right to end a property contract due to a fundamental breach. This situation very rarely applies to a residential lease since most leases are for lengthy terms and there are very few, if any, breaches serious enough for a court to make such an order when other remedies, such as a damages award, are available.

Freehold

This term relates to an interest in land with no time limit. Consequently, a freeholder can grant a lease of the land for a fixed period, on expiry of which the interest in the land reverts back to the freeholder. With long residential leases, in practice, it is highly unlikely the land will ever revert to the freeholder, as leases can now be extended by law, hence a freehold interest where a long lease has been granted is worth a very small amount compared to the long leasehold interest.

Full Title Guarantee

Full Title Guarantee is by far the most common and best guarantee given to the purchasing conveyancing client under the terms of the contract. The guarantee by the sellers is that he/she/they have the right to sell the land and that it has not got any adverse rights or incumbrance which have not been disclosed.

Gifted Deposit

Refers to a sum of money deducted from the purchase price by the seller where caution generally needs to be exercised and which the buyer's solicitor, if also acting for the lender, must advise the lender of. The most common scenario for a gifted deposit offer relates to off-plan or new build properties as an incentive.

Ground Rent

With long residential leases ground rent is generally a nominal sum, typically less than £100.00 per annum (although with new build developments there is a trend towards a slightly higher ground rent and increasing over the term of the lease. Ground rent payment is a contractual obligation and technically should be paid to the freeholder whether or not demanded each year and a receipt obtained. A seller will need to be able to prove ground rent is paid up-to-date to the buyer's conveyance's satisfaction.

Her Majesty's Land Registry (HMLR)

Under the English & Welsh registered land system the Land Registry is the legal body responsible for certifying definitively who owns a particular interest in land. The Land Registry's real time records are conclusive as to ownership and an up-to-date copy of a title number for any given property interest is effectively the proof a buyer needs as to who owns the property. Consequently, it is the Land Registry's computerised records that prove ownership and not any historical deeds for registered land. A small proportion of land interests still remain "unregistered" (in which case historical deeds and documents are vital) and this will be apparent and explained to a buyer by his/her/their solicitor as soon as it becomes apparent this is the case. Fees are payable by new owners to the Land Registry on completion to change the ownership records at which time any new mortgage will also be recorded and the seller's mortgage removed. The Land Registry will not record the change of ownership without appropriate proof that stamp duty has been paid where applicable.

Her Majesty's Revenue and Customs (HMRC)

Stamp duty land tax is payable to HMRC and a completed form and payment must be provided to HMRC within 30 days of the completion date. The buyer's solicitors normally complete this form and will require the funds to be on their account to pay stamp duty on completion, so as to protect the buyer's lenders.

Homebuyers Survey and Valuation Report

A basic form of valuation which is commissioned by the lender but paid for by the buyer. Will contain very little, if any, information as to the property condition

Joint Tenant

One of the 2 ways in which property interests can be co-owned. The legal owners hold the property on trust for the beneficial owners, often the same. The crucial point about this form of co-ownership is the presumption of 50/50 beneficial entitlement (which may or may not reflect the intended position, contributions etc.) and that in the event of the death of one of the joint owners that parties share automatically goes to the surviving owner regardless if any will or other wishes. This is known as the right of survivorship. The buyer's conveyancers will explain the co-ownership options to the buyers in good time before completion and registration at the Land Registry.

Land Registry Fee

Scale fee payable to the Land Registry by reference to the purchase price. The fee is for the Land Registry updating the register of title and is payable on submission of the application for registration by the buyer's conveyancers following completion of the purchase and payment of any stamp duty.

Lease Term

The length in years for which the lease is granted. Some buyers become confused by the fact the lease term does not always start from the date of the lease but can be months or even a few years later. This applies when the freeholder creates leases in a building over a period of time but wants all the leases to technically start and end at the same time. With residential leases, the remaining term can generally be significantly extended and this is now very common with a lease with less than 80 years remaining. There are technical reasons why it can be important for the seller to extend the lease before the buyer proceeds and so with any residential lease of around 80 years or less this is an issue which the buyer should raise with the seller at the earliest opportunity. Estate agents should be familiar with this issue also.

Leasehold

Leasehold is a form of ownership of property where the property is owned for a set period of time as opposed to Freehold where a property is owned forever.

Leasehold Enquiries

With leases there are many additional enquiries which need to be raised due to the legal involvement in the building of the freeholder and often a management company. Standard enquiries will relate to annual service charges payable to the landlord or Management Company, proof of payment to date, whether there are any plans for the building which could be chargeable to leaseholders and include requests for copies of documents such as building insurance block policy documents. The buyer's conveyance will also need confirmation that the freeholder and/or Management Company are aware of any breach of the lease by the seller.

Local Search

Formal records kept by a local authority recording legal matters relating to planning and such like for an individual property and general plans for the area which may affect the property or its' value. Such a search is fundamentally necessary, and will need to be paid for by the buyer before exchange of contracts. The fee varies from local authority to local authority but is typically around £200.00. Local Search

Management Company

Generally applies with leasehold transactions and most commonly with large modern developments. With such leases the management company is commonly set up at the time of development and is a party to the lease, collects service charge and administers and maintains the building. The leaseholders will each have a share in the company. This enables the developer to remain as freeholder and simply collect ground rent but without the hassle of dealing with the running of the buildings. Conveyancing solicitors acting on behalf of the purchasers will need satisfactory up-to-date information from the management company before exchange of contracts.

Mortgage Redemption Penalty

A fee which may be payable to the lender if the mortgage is paid off before a certain period has elapsed after the mortgage started. Sellers should always double check the position on this before proceeding with a sale and a buyer should consider the implications and applicability or otherwise of this to the mortgage product offered to them.

Mortgage Redemption Statement

Seller's solicitors will generally request an up-to-date statement from the seller's lender both at the outset of the transaction and again just before completion. Copies will be provided to the sellers to check.

Mortgage Retention

Sum of money retained from the mortgage advance by the mortgage lender in lieu of the borrower or purchaser of the property adhering to a particular mortgage condition. Most commonly applies where essential repairs or maintenance are required to be carried out to the property.

Mortgage Term

Length of the mortgage loan, typically with residential mortgages the period is between 25-35 years.

Mortgagee

Term used to describe the borrower from a mortgage lender.

Mortgagor

Term used to describe the mortgage lender.

National House Building Council (NHBC)

An organisation which is generally accredited by lenders for monitoring the standard of quality of new properties constructed. Most importantly, runs an insurance scheme whereby an NHBC certificate represents a 10 year guarantee of structural quality. A buyer's solicitor will require evidence of the guarantee with new build houses and a subsequent buyer will get the benefit of such guarantee term remaining when buying.

Non-Ownning Occupier

Adult person living at a property without being a legal owner of the property. To avoid difficulties of enforcement and obtaining vacant possession in the event of mortgage default a non-owning occupier will be asked to sign a form generally known as an "Occupiers waiver" suspending their rights as occupier of the property in favour of the mortgage company. Such a form may need to be signed by the occupier having received separate independent legal advice.

Notice To Complete

Document served on a seller's or buyer's conveyancers in the event of failure by the other party to complete on the completion date. The Notice triggers a further period of grace for the defaulting party and also triggers liability of the defaulting party for interest and/or costs as appropriate caused by the default. A Notice to Complete may also be used in a different situation relating to new build property. When such properties are sold off plan, when contracts are exchanged there is no fixed completion date. Instead the contract will provide that the seller developer will serve a notice to complete to trigger completion and this will need to be served in good time before completion.

Occupiers Consent Form

Also known as an Occupier's Waiver, this is a form required to be signed by a non-owning adult occupier of a property where mortgage finance is required. The lenders require such a waiver, which is in standard form and requires the occupier generally to have received independent legal advice, in order to avoid a delay should repossession be necessary based on a claim by the non-owning occupier that he/she/they have a legitimate interest in the property, which could create problems and delay for the lenders on a repossession.

Official Copy Entries (OCE)

Usually refers to the official copies of Land registry title and other documents which the buyer and his/her/their solicitors rely on to be satisfied as to seller's ownership and rights and liabilities which pertain to the property. Office copy documents are also provided for other uses such as office copy entries from the Probate Registry.

Party Boundary

Refers to common situation where a boundary walls or fences are owned jointly by adjoining properties. In such cases the boundary should be maintained by both parties but this is not always the case and the position is rarely if at all clear from the Land Registry title documents. A Purchaser's solicitors should raise enquiries with the sellers on this issue.

Planning Permission

Many alterations to property, such as extensions or change of use, require formal planning applications and permission from the planning department at the Local Authority. The position on any planning applications and permissions, either current or historical, for a particular property or piece of land, will be recorded on the results of a Local Authority search obtained by the buyer's solicitors. A permission obtained but not yet auctioned will remain available for a set period of time and any buyer will get the benefit of such permission ie the permission relates to the property and is not personal only to the party that applied for it.

Planning Permission Indemnity Policy

Specialised form of conveyancing insurance policy which may or may not be available and/or acceptable in a situation where an existing owner has carried out works or altered the property use without planning permission or in breach of planning permission. Even if a buyer is prepared to proceed with an insurance policy in these circumstances, his/her/their lenders will need to agree also, and this may or may not be given ie agreement. Forms of conveyancing indemnity policy are usually available at fairly modest cost for sizeable cover, and are typically available on a one off premium rather than an annual premium payable.

Post Completion

A considerable amount of work is still required from the buyer's solicitors after the transaction has completed and the buyers have moved in. The seller's conveyancers will also have to attend to certain formalities such as redeeming any mortgages over the property and liaising with the buyer's solicitors. The purchasers conveyancers will need to pay Stamp Duty and register the buyer's interests and that of any lender at the Land Registry and with leasehold purchases there will be additional paperwork and formalities. Within a month after completion, the buyer should ordinarily expect to receive an updated set of Land Registry office copy entries showing the new ownership together with copies of any other relevant important documents to keep for future reference.

Power of Attorney

Refers to document used by a person to delegate certain legal powers and authority to another person. May apply to conveyancing where a seller or buyer is abroad and cannot sign necessary documents, so they may grant a formal power of attorney to someone else.

Pre-Completion Searches

Term used for searches carried out just before completion on a conveyancing purchase or re-mortgage. One of the most important searches is a priority protection search which means that the buyer's will from the date of the search result have effective priority and protection against any other party seeking to register any kind of interest or charge against the property. In addition, a bankruptcy search will be carried out against the buyers on behalf of the lenders.

Pre-Contract Enquiries

In a typical transaction the sellers will be asked to fill out some standard forms of questions by their conveyancers and the answers to which will then be passed on to the buyer's conveyancer. The buyer's conveyancer will also have commissioned various standard searches such as Local Authority and environmental searches. After the results are in and the buyer and his/her/their conveyancers have considered all the paperwork and answers received thus far, the buyer's conveyancer will then raise further enquiries. These are often a source of contention; from the buyer's perspective, the more questions are asked, the more information the buyer has. From the seller's standpoint, numerous enquiries may be largely irrelevant and the seller may not be able to answer a number definitively. This part of conveyancing transactions can often create delay and a degree of friction.

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