



PEMBERTON  GREENISH

A Guide to Buying and Selling Residential
Property in England and Wales

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Introduction

It is sometimes said that buying and selling houses is one of the most stressful experiences that most people will ever go through. Yet this need not be so. To a large extent people find the experience stressful simply because they are often poorly informed as to the conveyancing process in England and Wales. The system itself is often criticised although the criticism itself sometimes arises from a lack of understanding of the procedure.

The purpose of this guide is to give a basic outline of the conveyancing process in England and Wales and it is therefore aimed principally at first time or overseas buyers. Hopefully it will also serve to assist those who have previous experience of conveyancing but were never quite sure what was happening and why. A subsidiary purpose is to show clients how they can assist their solicitor and thereby smooth the process.

Pemberton Greenish, May 2011





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1. Conveyancing Terms

Conveyancing, like most areas of law, has developed its own lexicon and to those who are uninitiated some of the expressions used must at first seem perplexing. While some efforts have been made in recent years to adopt plain English by, for example, replacing words like “vendor” and “purchaser” with “seller” and “buyer” it may still be helpful to give some guidance. A brief explanation of some of the more common terms used by conveyancers is therefore given below:

Assent

A form of transfer without consideration used particularly where the personal representatives of a deceased person pass a property on to a beneficiary entitled under the deceased’s will or intestacy.

Bankruptcy Search

A search made immediately before completion to establish that the buyer has not had a bankruptcy petition (or other judgment) registered against him or her. The search is only therefore normally necessary where the buyer is taking out a mortgage.

Chains

A string of linked sales and purchases. These generally occur when people are both buying and selling their own home at the same time.

Conveyance

The legal deed by which unregistered land is passed from the seller to the buyer. Because any sale for value now automatically triggers first registration of unregistered land, conveyances are now a thing of the past and are replaced by transfers.

Completion

The point at which the buyer pays the balance of the purchase price and the seller hands over possession of the property to the buyer. The date of completion is generally fixed at the time of exchange of contracts.



Deposit

The down payment made by the buyer to the seller on exchange of contracts. It is generally held by the seller's solicitors as stakeholder, which means it cannot leave the solicitors hands until completion, unless it is used to finance a deposit on a related transaction in England and Wales. Where a deposit is held by the solicitor "as agent" it may be released to the seller.

Disbursements

The expression solicitors use to mean any payments they will have to make on a client's behalf such as for local authority and other searches.

Energy Performance Certificate

A certificate giving information about actual and potential energy consumption for a property prepared by a qualified inspector. It is a legal requirement that an EPC must be obtained before a property can be sold.

Enfranchisement

The process by which lessees may acquire the freehold or a longer lease from their landlord (freeholder) by implementing statutory rights. For a more detailed explanation see our guide "A Short Guide to Leasehold Enfranchisement and Lease Extension."

Exchange of Contracts

The point at which the seller's and buyer's solicitors date the sale contract and therefore the point at which the transaction becomes legally binding. Solicitors generally exchange contracts by telephone according to a code of practice regulated by the Law Society.

Exclusivity Agreement

Another expression for a lock-out agreement.



Freehold/Leasehold Land

The freehold of a property is the best legal estate that can be owned. Properties held under a lease granted by a freeholder are only held by the lessee for a fixed number of years. Flats and maisonettes can only be leasehold although it is becoming more common for lessees to also own a share of the freehold. The longest lease that is generally granted is 999 years. The terms “lessee,” “tenant” and “leaseholder” are often used to indicate the same person as are the terms “lessor”, “landlord” and “freeholder”.

Gazumping

The practice of accepting a higher bid from a second buyer having previously accepted a lower bid from another buyer. This tends to happen in a rising market.

Gazundering

The practice of a buyer reducing the purchase price immediately before exchange of contracts. This tends to happen in a falling market.

HIP

Home Information Pack. A pack of information containing details of the title to the property, searches and replies to enquiries. Previously it was a requirement that the seller obtained a HIP before marketing the property but this was abolished in May 2010.

Land Registry

The central register maintained by the government which records the ownership of all registered land. To change the register a fee is normally payable, the level of which is generally linked to the value of the transaction in question.

Land Registry Search

A search made in the case of registered land immediately before completion, which, if clear, protects the buyer and his mortgagee provided application is made to register the purchase within the priority period (6 weeks).

Land Charges Registry

A branch of the Land Registry, which maintains a register of interests applicable to unregistered land.



Land Charges Search

A search made at the Land Charges Registry before completion in the case of unregistered land to establish whether anyone has registered rights over the property.

Local Authority Search

A search made before exchange of contracts with the relevant local authority to inspect the local land charges register in respect of the property and to raise a standard set of enquiries about the property. This should give details of the planning history of the property and reveal such things as whether the building is listed or in a conservation area.

Lock-Out Agreement

An agreement which attempts to prevent or restrict gazumping by giving a buyer a period during which he or she has an exclusive right to purchase the property and during which the seller will not accept any offer for the property from any third party. A lock-out agreement cannot, however, be used to force a seller to actually sell the property but does put a party in breach at risk for the other side's costs. These are not really recommended as they often cause delays in the sale progressing, as parties spend time negotiating the terms of the agreement and by this stage committed parties could already have exchanged.

Mortgage

The legal document securing a lender's (mortgagee's) rights over a borrower's (mortgagor's) property. If the mortgagor fails to keep up the payments due under the loan agreement secured by the mortgage or legal charge the mortgagee has power to repossess and sell the property.

Pre-Contract Enquiries

Enquiries made by the buyer's solicitors before exchange of contracts. These are generally done using one of a number of standard printed forms but additional enquiries are also often raised.

Requisitions on Title

A set of enquiries raised by the buyer's solicitors after exchanging contracts and before completion. These used to contain questions regarding the seller's title to the property but now generally only contain information regarding the practicalities of completion.



Registered/Unregistered Land

This refers to registration at the Land Registry. Nearly all land in London and most urban land is registered but a large amount of rural land remains unregistered. The passing of land to new owners now almost always triggers first registration of unregistered land.

Stamp Duty Land Tax

A tax payable on legal instruments including transfers at a fixed percentage of the amount of the consideration. This is a personal tax payable by the buyer.

Standard Conditions of Sale

A standard set of contract terms prepared and printed by the Law Society and generally referred to in residential sale contracts.

Subject to Contract

Correspondence is often marked "Subject to Contract" in the period between acceptance of offer and exchange of contracts. This is to emphasise that there is no legally binding contract before actual exchange of contracts.

Survey

An inspection of a property carried out by a qualified surveyor. There are several different types ranging from a "home buyer's report", usually commissioned by a mortgage lender, to a "full building survey". The cost varies accordingly.

Transfer

The legal document by which title to the property is transferred from the seller to the buyer.

Title Deeds

The legal documents by which an owner proves ownership of a property. Where land is registered the principal document is the official copy entries and where land is unregistered the deeds normally comprise a string of old conveyances ending in the conveyance to the owner himself. For leasehold property the lease itself forms part of the title deeds.

Vendor/Purchaser

These expressions have generally now been replaced by the terms "seller" and "buyer".



2. Stages of a Transaction

Conveyancing transactions generally fall into a number of distinct stages. During each stage the buyer and the seller and their respective solicitors have particular roles to fulfil. These generally fall in to five stages and we will consider each in turn.

2.1. Stage One: Pre-Contract

The stage commences when the buyer and the seller agree the sale of the property and ends at the point at which each becomes contractually bound to buy and to sell the property. It is therefore generally the longest, as well as the most important, stage of the transaction. This stage can be broken down into a number of sub-stages, some of which can run concurrently.

- 2.1.1 The buyer makes an offer and the seller accepts it. The estate agent prepares a memorandum of sale, which is then distributed to the seller, the buyer, the seller's solicitors and the buyer's solicitors.
- 2.1.2 The seller's solicitors obtain the title deeds to the property from the seller or the seller's mortgagees and prepare a package containing the sale contract and title documentation. In the past the seller's solicitors would generally send to the buyer's solicitors only the sale contract and evidence of the seller's title to the property. It is now becoming more common for the seller to provide a more comprehensive package including replies to standard pre-contract general enquiries, a fittings and contents form, copies of planning consents, guarantees and any other relevant documentation including perhaps also a recent local authority search. This helps prevent delays and enquiries being raised unnecessarily.
- 2.1.3 The buyer's solicitors commence their investigation into the title of the property. At this stage the buyer's solicitor requests local authority, environmental and plansearch, chancel repair liability and drainage and water searches (unless they have already been supplied by the seller's solicitor) checks the legal title, reads the lease and (if applicable) other documents handed over by the seller's solicitor, raises pre-contract and additional pre-contract enquiries. The buyer also commissions a survey of the property. This stage can therefore take several weeks depending on how well prepared the respective solicitors are. If the seller's solicitor has provided a full package at the outset this stage should be very short and could be reduced to only a few days.



- 2.1.4 While stages 2.1.1 and 2.1.2 are progressing, the buyer and his or her solicitors should be ensuring that finance is available for the purchase. Generally this will mean that the buyer should ensure his or her mortgage application is being processed by the lender (if applicable) and he should ensure the deposit is available. Generally a seller will require a 10% deposit on exchange of contracts but if the buyer does not have a full 10% available (if for example he or she is obtaining a 95% mortgage) a lower figure should be negotiated with the seller and his or her solicitors. Deposits of 5% are becoming increasingly common but the seller will rarely accept less than 5%. If the seller is himself purchasing another property, the deposit received in respect of his sale can generally be used as the deposit for his purchase (or part of it as the case may be). The deposit acts as compensation if the buyer fails to complete in accordance with the terms of the contract.
- 2.1.5 Each side's solicitors amend and agree the sale contract and then get it signed by their respective clients in readiness for exchange of contracts. The buyer's solicitor collects in the agreed deposit and pays it into the firm's client account (as at the time of exchange the buyer's solicitor must be holding cleared funds).
- 2.1.6. Each side agrees a completion date. The parties are then ready to exchange contracts.

2.2. Stage Two: Exchange of Contracts

The exchange of contracts is in fact one of the most straightforward parts of the whole process. While in the past it was generally done at a meeting between the respective solicitors it is now almost invariably done on the telephone using one of three formulas prescribed by the Law Society. Each formula is in fact a series of solicitor's undertakings and by simply referring to the name of the chosen formula (for example Formula B) the undertakings are deemed to be given and accepted.

Under the most widely used formula each party's solicitor confirms that he or she holds the contract signed by his or her client, and in the case of the buyer's solicitors confirms he holds the deposit in his firm's client account. Each party then enters the exchange date and the agreed completion date and makes a note of the precise time of the conversation and agrees to send



the contracts, and in the case of the buyer the deposit cheque, in the post the same working day. At this point the parties are legally committed to the sale and purchase and penalties will apply if either party breaches its obligations.

2.3. Stage Three: Pre-Completion

During this stage each party must get ready for completion. The buyer's solicitors must prepare the draft transfer for approval by the seller's solicitors and will raise requisitions on title to be answered by the seller's solicitors. The seller's solicitors must calculate the precise amount to be paid by the buyer on completion, which in the case of leasehold property means he must apportion the ground rent and service charge and prove there are no arrears due to the landlord.

Each party should get the transfer signed in readiness for completion and the buyer should get any mortgage deed executed. The buyer's solicitor must check that he has sufficient funds (or will have on the day) in order to complete. Each solicitor should send a statement to his or her client setting out the figures and it is usually at this stage that fee accounts are raised.

Immediately before completion the buyer's solicitors must carry out their pre-completion searches, which comprise the bankruptcy search, land charges search and land registry search (as applicable).

At this stage the Stamp Duty Land Tax Return is sent to the buyer for execution. Where Stamp Duty Land Tax is payable it has to be paid and submitted with the relevant return to Her Majesty's Revenue and Customs within 30 days of the actual date of completion. Failure to adhere to this time frame will incur a penalty.

2.4. Stage Four: Completion

On the date set for completion the buyer's solicitors ensure they have sufficient funds to complete and then arrange for these to be sent to the seller's solicitors by bank telegraphic transfer. This process should be completed by the time set in the contract, usually 1.00 or 2.00 p.m., although problems can sometimes arise due to the vagaries of the banking system. Once the money has been received the seller's solicitors will authorise the estate agents to release the keys to the buyer. It therefore follows that the sellers should have vacated and cleaned the property by noon at the latest.



2.5. Stage Five: Post-Completion

Following completion the seller's solicitors must immediately pay off any mortgage and forward the title deeds to the buyer's solicitors. The buyer's solicitors must pay any Stamp Duty Land Tax within 30 days and then arrange for the purchase to be registered at the Land Registry. The seller's solicitors must account to the seller for the sale proceeds (unless they have been used in a related transaction) and generally at this stage all agents, surveyors and solicitors fees are discharged.

Once the Land Registry has completed registration the buyer's solicitors forward the title deeds to the mortgagee (if any) or to the buyer or stores them in their own strong room.



3. How Much Will It Cost?

There are a number of costs that are fixed and these include Stamp Duty Land Tax, Land Registry fees and local and other search fees. Other costs, principally solicitor's surveyor's and estate agent's fees are generally flexible and there can be wide fluctuations depending on a number of factors, one of the most important of which is the value of the property bought or sold.

Stamp Duty Land Tax

This is payable by the buyer and is fixed according to the purchase price.

The current rates from 6th April 2012 are:

Purchase price	SDLT Rate
£0 - £125,000	Zero
£125,001 - £250,000	1%
£250,001 - £500,000	3%
£500,001 - £1,000,000	4%
£1,000,001 and over	5%
£2,000,001 and over	7%

For purchases of over £2 million by certain persons including corporate bodies the rate of Stamp Duty Land Tax is now 15%. The higher rates on purchases over £2 million do not apply to mixed use properties .

It should be noted that duty is payable at a flat rate on the whole of the purchase price. It is possible for buyers to put a value on fixtures and fittings in a house (which do not bear Stamp Duty Land Tax) but all parties should be aware that any value placed on such items must be fully justifiable or it could amount to tax evasion.

Land Registry Fees

These are payable by the buyer and are charged at a rate prescribed by the Land Registry from time to time. The current rates vary from £50 - £920.



Local Search Fees

These are set by the local authority and are currently generally in the region of £150 - £280.

Other Search Fees

These are usually around £250 - £300 depending on which searches are necessary and the amount charged by a particular company and include drainage, chancel repair and environmental searches. In some areas of the country coal, mining and radon gas searches are recommended.

Surveyor's Fees

Building survey fees are paid by the buyer. They will normally be in the region of £600 - £2000 plus VAT depending on the type of survey undertaken and the value of the property. Where the buyer is obtaining a mortgage, the mortgage company will have an independent valuation carried out and the fee is often paid direct to the mortgage company. It is possible sometimes to combine the building and valuation survey.

Estate Agent's Fees

These are paid by the seller and can vary significantly depending on the locality, the state of the market and the level of competition in the area. Almost invariably they are quoted as a percentage of the sale price. Fees vary from 1% - 3.5% and are usually negotiable. VAT will be payable. Sellers should also check whether marketing and printing charges are included or will be added. In addition where the buyer has used a buying agent a separate fee will be payable to the agent.

Solicitor's Fees

Generally, each side must pay its own solicitors' costs. These are often fixed at the outset and should only change if the transaction becomes unusually complicated or protracted. Generally they are quoted exclusive of disbursements and VAT. Charges vary significantly and the subject is considered in more detail in point 6.



4. How Long Will It Take?

The English conveyancing system is one of the most flexible systems in the world. While it is generally maligned for being too slow it is possible to exchange and complete in one day! That depends on the seller being very organised with their information and the buyer usually “taking a commercial view” on some matters. It is therefore very difficult to generalise but the old guide of one month between acceptance of the buyer’s offer and exchange and another month between exchange and completion is still a reasonable time frame. It is common, particularly in London where conveyancing chains are less usual, for the offer to be accepted on the basis that exchange must take place within a fixed time scale, such as ten working days, from receipt of contracts by the buyer’s solicitor.

Delays can usually be put down to one or more of the following factors:-

4.1 Seller’s solicitors not ready

If the seller’s solicitor is only instructed once the sale has been agreed there may be a delay while the title deeds are obtained and the contract and other documents are prepared.

4.2 Buyer’s mortgage

The buyer should not exchange until he has obtained an actual mortgage offer. Mortgage companies tend to have rather inflexible procedures and obtaining the actual offer, even after it has been agreed in principle, can take some time.

4.3 Clients unavailable

Solicitors can only act on instructions and if no instructions are given the whole process will grind to a halt.

4.4 Delays by solicitors

If solicitors delay in dealing with correspondence or fail to return telephone calls the process obviously slows down. (See “Choosing a Solicitor”)

4.5 Chains

Chains must by their very nature move at the pace of the slowest party in a chain. It can happen that five or six other parties are waiting for one party to obtain its mortgage offer. Delays of this nature are probably the greatest single problem with the system today and are a likely area for reform by the government.



4.6 Managing agent's replies

It is important to obtain information on insurance and service charges from the agents or other person who organises such matters. There are standard i.e. usual enquiries which are made. Managing agents charge a fee for providing the information. This varies from between £150 to £500.

The earlier these enquiries are made the better so it is good to instruct solicitors early so that this preparation is in hand ideally, before a buyer is found.

4.7 Licence to Assign

It is fairly common for leases to include a provision that the seller must obtain the landlord's consent to sell the property to the buyer. References are usually obtained as evidence of the buyer's financial and social integrity. The consent normally takes the form of a Licence to Assign deed prepared by the landlord's solicitors with their fees being met by the seller.



5. Making the Process Easier

There are a number of ways in which clients can make the conveyancing process simpler and less stressful for themselves, their advisors and the person from whom or to whom they are buying or selling.

5.1 Choose the right solicitor

In particular clients should bear in mind that not all solicitors offer the same service. This is considered in more detail in the section “Choosing a Solicitor”.

5.2 Be prepared

If selling, it is worth instructing your solicitor as soon as the property goes on the market. This will permit the solicitor to obtain the title deeds and gather the information he will need to deal with a buyer’s solicitor’s enquiries and avoid a delay after the sale has been agreed. If buying, the buyer should consider how the transaction will be financed and if necessary, should try agreeing a mortgage with the lender in principle, so that long delays do not occur between acceptance of offer and exchange.

5.3 Communicate

Make sure your solicitor has proper instructions and is able to get in contact with you. If you are going away in the course of the transaction make sure you can be contacted and consider whether you need to grant someone power of attorney. It is often helpful if buyers and sellers are able to speak directly as this often allays suspicions that can otherwise arise although in some cases this can be counter-productive. When it comes to arranging practicalities like completion dates this is often best done directly between the parties. You should bear in mind that solicitors are forbidden by their code of practice from having direct contact with another solicitor’s client.

5.4 Be flexible

While it is difficult for a solicitor to act for a client who does not know what he or she wants, it is equally frustrating to deal with a client who is totally inflexible. Transactions sometimes break down because one or both parties feel the other has already pushed them too far and they are not prepared to make what may in fact be a relatively trivial concession. Conveyancing can



be a stressful experience and it is sometimes necessary to stand back from it and to try to consider the position objectively.

5.5 Be honourable

The English conveyancing system is based on trust but this does not prevent the unscrupulous from adopting practices such as gazumping and gazundering by those who do not feel their word is their bond. While there may be occasions where such practices are justifiable (such as where the other party has delayed unreasonably) they should not be encouraged. Generally solicitors will not advocate such practices as they cause considerable bad feeling and serve to give the whole system a bad name. If one party is delaying unreasonably it is generally best to impose a deadline after which the other party will feel free to deal elsewhere



6. Choosing a Solicitor

The public seems to have a perception that all conveyancing services offered by solicitors are the same with the sole exception that some charge more than others. While the end result should be the same whoever you use (unless of course mistakes are made), how you get to that position, how much stress you have to experience to get there and how well informed you are when you get there can and does vary considerably. Like most things in life you tend to get what you pay for.

While to many the over-riding, or indeed only, factor is how much a solicitor will charge, to others the level of service they receive is often more important. If you are the sort of person who expects to have daily contact with your solicitor throughout the transaction, wants everything explained in detail, has a tight timescale and/or would like to see a written report then a cut-price conveyancing firm is probably not for you. If, however, you are happy to let the transaction run its natural course and to sign whatever you are told to sign without worrying about it too much you may take a different view. Thus, conveyancing charges vary considerably. Until the early 1970s all conveyancers charged according to an agreed scale but now no controls apply and charges can vary from a few hundred pounds to thousands.

Generally charges are linked to the value of the property in question although other factors such as whether it is leasehold or freehold, whether it has a complicated title, and whether a tight timescale applies will affect cost.

You should also consider whether you need specialist advice and whether the solicitor you normally use has relevant experience of the type of property you are purchasing. Bulk conveyancing practices often only deal in freehold land so if you are buying a flat you may need to look elsewhere. If you are buying a flat with a short lease, you will be likely to need specialist advice on enfranchisement and you should bear in mind that this area in particular is very specialised. While solicitors do not normally visit the properties their clients buy or sell it is often helpful to do so and in such cases it is clearly sensible to employ a local firm. Although country firms are often cheaper than London firms this is not by any means necessarily the case and often any



saving made is more than offset by the difficulty of having a firm acting for you who are not so conveniently located and who may not have the necessary experience for the type of property you are buying and selling.

The message is therefore, think carefully before choosing a solicitor and make sure you choose a solicitor who is right for you. Cost is obviously an important factor but not the only one.

Whoever you choose, make sure they give you a fixed written quote and make sure they keep to it unless unforeseen circumstances arise!



7. Pemberton Greenish

The residential conveyancing team at Pemberton Greenish offers considerable experience and expertise in dealing with all types of residential conveyancing transactions.

The group has particular expertise in dealing with freehold and leasehold property in Central London. The group also acts for buyers and sellers of country properties particularly at the higher end of the market. We are able to act for most institutional lenders as well as buyers and can also advise on surveys, enfranchisement, service charges and all aspects of landlord and tenant law.

For further details please contact the residential property team:-

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Pemberton Greenish LLP September 2012

This guide is a general statement of the law at 1 September 2012. Each transaction needs to be considered in the light of its own facts. It is recommended that specific advice should always be obtained on the particular facts of each property transaction.









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