

A Buyer's Guide to Residential Property

Highlighting the key
considerations to help you
understand the process and
avoid the pitfalls

BLAKE 
MORGAN

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1. Introduction

Buying a property is one of the most important transactions you will face during your lifetime. The process is also subject to change and it is therefore important that, from the very beginning, you seek proper legal advice.

Blake Morgan's Residential Property team has compiled this guide to highlight some of the key considerations to help you understand the process better and to avoid the pitfalls.

For more information about any of the issues raised here or to find out more about how we can help you if you are considering buying or selling a residential property, please contact the team in the office most convenient to you.

Our Residential Property teams across the South

New Kings Court

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Harbour Court

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...or email our helpdesk at: residentialpropertyinfo@blakemorgan.co.uk.

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2. Identity procedures

Prior to accepting instructions, your solicitor will need to meet with you and make certified copies of:

- photographic form of ID (passport, driving licence plus counterpart) and
- bank or building society statement or credit card statement in your name, or
- utility bill confirming your address.

This is a compulsory check that we have to carry out with every client of the firm. This is in accordance with our legal obligation to follow procedures designed to make it more difficult for criminals to profit from their crimes through money laundering transactions.

However, this does not mean that you are under suspicion.

What is money laundering?

Most organised crime is directly or indirectly aimed at making money.

Money laundering is a term used to describe transactions which are designed to 'wash away' any criminal association with amounts of cash. A popular transaction for money launderers is the purchase of assets, such as property.

Practical implications for you

You will need to bring the documentation to one of our offices and we will make certified copies.

Alternatively, if you are unable to visit one of our offices, you can visit a local solicitor and ask them to make certified copies. It is important that the correct procedure is followed by that solicitor as otherwise there may be a delay later in the transaction.

A final option is to use the Post Office 'veri-fy' scheme. We will provide you with the appropriate form and you can take this along with your documentation to your local Post Office and ask them to 'verify' your identity using your documentation.

It is important that any money sent to us comes from our client or the approved lender. If money comes from another source, we might have to cease to act.

3. How long does it take?

The length of time a transaction can take depends on a variety of factors.

The following is an example timeline setting out a simple freehold purchase:

Seller	Seller's Solicitor	Buyer	Buyer's Solicitor
Weeks 1-4	PRE EXCHANGE		PRE EXCHANGE
Instruct Solicitors	Carry out ID checks on Seller and send out engagement letter with Property Information Forms	Instruct Solicitors Arrange Survey of the Property and arrange Mortgage Finance	Carry out ID checks on Buyer and send out engagement letter requesting monies on account for search fees
Complete and return Property Information Forms together with documentation relating to the property	Obtain evidence of Seller's legal title to the Property and draft the Contract. Send documentation to the Buyer's Solicitor Obtain redemption statement for any existing mortgage	Pay monies on account for searches	Receive contract papers from the Seller's Solicitor. Request usual conveyancing searches Review contract papers and raise and send to the Seller's Solicitors any enquiries arising from the documentation received
If required answer additional enquiries raised by the Buyer's Solicitor as requested by the Seller's Solicitor	Answer any additional enquiries received from the Buyer's Solicitor (where necessary with some input from the Seller)	Confirm to Buyer's Solicitor that survey results and terms of mortgage offer are acceptable	Receive search results and raise further enquiries if necessary Receive Buyer's Mortgage Offer Prepare and send full report on the contract papers, searches and mortgage offer to the Buyer Approve contract with Seller's Solicitor and prepare draft Transfer and SDLT return
Sign Contract and Transfer and any other documentation required Agree completion date	Receive approved contract from Buyer's solicitor and arrange for Seller to sign Contract and Transfer and any other documentation required	Receive report and confirm that findings are acceptable and happy to proceed Sign Contract and Transfer and any other documentation required Arrange to send cleared funds to Buyer's Solicitor to cover deposit due on exchange of contracts Agree completion date	Arrange for client to sign Contract, Transfer, Mortgage Deed, SDLT return and any other documentation required

Week 5	EXCHANGE CONTRACTS	EXCHANGE CONTRACTS
Seller legally bound to sell the Property to the Buyer	<p>Buyer legally bound to buy the Property from the Seller</p> <p>Buyer to arrange buildings insurance from exchange of contracts</p>	
Complete and return completion information form to Buyer's Solicitor	<p>Arrange to send cleared funds to Buyer's Solicitors in time for completion</p>	<p>Send certificate of title and request funds to the Buyer's lender and request any balance due from the Buyer</p> <p>Send completion information form to Seller's Solicitor</p>
Obtain final redemption statement from existing lender		Carry out pre-completion searches
Week 7	COMPLETION	COMPLETION
<p>Discharge existing mortgage and send signed Transfer to Buyer's Solicitor with any other title documentation</p> <p>Pay Selling Agent's Fees</p>		<p>Submit SDLT return and pay SDLT</p> <p>Submit application to the Land Registry to register the Buyer as proprietor of the Property</p> <p>Deal with miscellaneous post completion matters</p>

However, there are a number of factors that may cause a delay.

Some of the most common causes of delay are:

- **Chain**

The first consideration is whether the transaction is part of a chain of transactions or not. If a transaction forms part of a chain, it is important to remember that the entire chain will only move at the speed of the slowest 'link.' There can be any number of links in the chain, and a delay at any stage of the chain will impact upon all participants.

- **Missing papers**

Copies of planning permission for any works of alterations or extensions that have been carried out at a property will need to be supplied to the buyer's solicitor. If the original papers have been mislaid, the seller's solicitor may have to apply to the local authority to obtain copies, and it can take a number of weeks for a local authority to process this request.

- **Searches**

Prior to exchange of contracts, the buyer's solicitor will need to carry out a number of different searches in order to provide the buyer with as much information as possible about the property. This can take anything from one day to a number of weeks depending on the Local Authority involved.

■ **Complications with a mortgage**

A buyer cannot safely exchange contracts without first receiving a written mortgage offer. Most lenders take three to four weeks to issue an offer once an application has been submitted. This can be delayed for a number of reasons:

- if a buyer decides to make their own insurance arrangements rather than using the lender's block cover
- if a buyer has outstanding balances on credit cards or a personal loan, a lender may require these accounts to be cleared
- if a buyer is required to apply for a life insurance policy or pension plan as part of their mortgage.

■ **Completion date**

Agreeing a suitable completion date for all parties in a chain can be a cause of considerable delay.

4. Do I need a survey?

Buyer beware!

It is the buyer's responsibility to check that a property is structurally sound and in a good condition before purchase. Once the contracts have been exchanged it is very unlikely that you will have a comeback against the seller if there are any problems.

It is advisable to arrange for a survey of a property. Your surveyor will be able to offer advice regarding the appropriate survey.

Valuation report

This is usually prepared for mortgage purposes as most lenders will require one before an offer is made. It is commissioned by the lender and you cannot rely on this if an error is made. A valuation report is not a survey. The report is limited in scope, and will contain brief details about:

- type of property
- age of property
- type of construction, and
- general observations about the state of repair.

There are three types of surveys available as listed below.

RICS Home Condition Report

This is not an in-depth survey but sets out a "traffic lights" ratings of the condition of the property. This report does not include a valuation of the property

RICS HomeBuyer Report

This includes all the features of the Home Condition Report together with valuation and insurance rebuild cost. It also includes advice on defects that may affect the value of the property and any repairs and ongoing maintenance required. A cost-effective arrangement is to instruct the surveyor, who is commissioned to carry out a valuation report, to provide a Condition Report or the HomeBuyer's Report at the same time.

RICS Structural survey

This is a much more detailed (and expensive) report on the property, and will indicate in far greater depth the need for repair or future maintenance. A structural survey is appropriate for:

- properties which have been poorly maintained
- properties which are of unusual construction, and
- older properties.

Specialist firms will provide reports on matters such as damp or woodworm, which may be a sensible precaution particularly when buying an older property. Further comprehensive enquiries could also involve the drains being tested and having an electrician and plumber check the wiring and central heating.

If the property is not on mains drainage specialist advice would also be recommended.

5. Deposits

It has become standard practice for a contract relating to a property transaction to incorporate the 'standard conditions of sale.' A copy of the conditions will be supplied to you at the same time as the contract.

The contract provides that a buyer must pay to a seller a deposit of 10% of the purchase price on exchange of contracts. You will need to provide this money to your solicitor as cleared funds before exchange. Your solicitor will hold the funds in a designated client account until they are required.

It may be possible to negotiate a reduced deposit amount of between 5% and 10% of the purchase price.

You should inform your solicitor immediately if you believe this will be necessary.

The seller has two options when handling a deposit:

- to use the funds as a deposit in a separate purchase transaction
- to require his solicitor to hold the deposit until completion as a 'stakeholder'.

Where a deposit is held by a stakeholder, it cannot be recovered by the buyer unless the seller defaults, nor is the seller entitled to receive the money until the sale is completed.

A situation where a deposit is used by a seller in a separate transaction inevitably creates some (albeit slight) risk for the buyer, as the deposit cannot be recovered in the event that the sale does not proceed.

If you wish for your deposit to be held by the seller's solicitor and not used in a separate purchase, this should be discussed with your solicitor at an early stage in the process.

New property

Where a new-build property is purchased, the developer will usually require the deposit to be paid and released for its use on the date of exchange of contracts. The deposit will therefore be held as Agent.

However, most buyers will be protected in the event of default by provisions of the National House Building Council (NHBC) or similar scheme, which will form part of the contract.

6. Buildings insurance cover

Once contracts have been exchanged, the risk in the property passes to the buyer. It is therefore vital that appropriate Buildings Insurance Cover is purchased on exchange.

Furthermore, a solicitor often acts for the lender as well as the buyer. Nearly all lenders instruct their solicitor to comply with the requirements and provisions of the Council of Mortgage Lenders (CML) handbook.

A usual condition of a mortgage offer is to arrange appropriate insurance cover. The CML handbook requires us to report to the lender if the property is not insured in accordance with the lender's requirements.

A lender will require cover at least to the value of the mortgage. Where the property is part of a larger building (such as a flat) the total sum insured for must be not less than the total number of flats multiplied by the value of the mortgage.

A lender may also stipulate particular requirements, such as the insurance policy being in the joint names of the lender and the owners. Your solicitor will be able to advise you if this is the case.

The following is a non-exhaustive list of the usual risks that lenders require to be covered.

- | | |
|-------------------------|--|
| ■ Fire | ■ Theft or attempted theft |
| ■ Lightning | ■ Falling |
| ■ Aircraft | ■ Trees and branches and aerials |
| ■ Explosion | ■ Subsidence |
| ■ Earthquake | ■ Heave |
| ■ Storm | ■ Landslip |
| ■ Flood | ■ Collision |
| ■ Escape of water / oil | ■ Accidental breakage of glass and sanitary wear |
| ■ Riot | ■ Accidental damage to underground services |
| ■ Malicious damage | ■ Public liability |

If a property is at risk of flooding, you may encounter significant difficulty in obtaining appropriate insurance for the property.

7. Stamp Duty Land Tax

Stamp Duty Land Tax is a self-assessed tax and is payable on the purchase of a property or land in England if the purchase price is over the threshold current at the time of the purchase.

Standard rates of SDLT for residential property

The rate paid will depend on the purchase price, the relevant rate applying to each slice of the price:

Purchase Price Band	Tax Percentage on that Band at Standard Rates
0 - £ 125,000	0 %
£ 125,001 - £ 250,000	2 %
£ 250,001 – £ 925,000	5 %
£ 925,001 - £ 1,500,000	10 %
£ 1,500,001 +	12 %

For example if you buy a property for £275,000 and standard rates are payable you will pay £3,750, made up of:

- Nothing on the first £125,000
- £2,500 on the next £125,000 (at 2%) and
- £1,250 on the remaining £25,000 (at 5%).

The buyer will be required to sign a Land Transaction Return which is in effect a mini tax return to HMRC. Your solicitor will assist in the completion of the form, but it is the buyer's return and therefore the buyer who is responsible for checking and (if necessary) updating the information.

The SDLT payable is collected from the buyer before completion. This is particularly important where the buyer has a mortgage.

HM Revenue and Customs is entitled to carry out spot checks on SDLT returns. You must keep all records concerning SDLT for six years.

General advice on the amount of SDLT payable in relation to purchase will be given at the beginning of the transaction and is included in our fee quote. Sometimes more complex SDLT issues arise, for example those under the headings below. **Please let us know if you believe any of the below apply to you and we can provide an estimate of any additional fees for specific guidance or specialist advice as necessary.**

Higher rates of SDLT

There are times when an extra 3% of the entire purchase price may be due in addition to the SDLT calculated at standard rates. This can apply where a company buys a property or an individual buys an "additional" property. The rules are complex and can apply even when a person buys a property to live in as their home. For example the higher rates can apply if the buyers have other property interests counting against them or if there is a spouse or civil partner with property interests.

We will ask you questions on a conveyancing information form to see if the higher rates of SDLT might be payable. Sometimes the higher rates will not apply even though other properties are owned, for example where a previous home has been sold and the new property is being bought for the buyers to live in. The rules can be very complex.

Companies buying residential property can sometimes be caught by an even higher rate. If the purchase price is more than £500,000 the SDLT can be as high as 15% of the whole purchase price. Whilst reliefs from the 15% may be available (subject to conditions and clawback) similar reliefs are not available for the extra 3%.

First time buyers' relief

A relief worth up to £5,000 can apply where each buyer qualifies as a first time buyer and the buyers are buying a home to live in for up to £500,000.

There are some complications, for example the relief can be lost if a property has been inherited.

Multiple dwellings relief

Partial relief may be available where the property being purchased includes two or more "dwellings". The second "dwelling" could be a separate building, a granny flat or even a basement which is suitable for use as a separate dwelling. The property might count as two dwellings if each part has its own separate front door and each has the normal living accommodation that you would expect of a dwelling including facilities to cook and wash, a sleeping area and a living area. The services such as heating, electricity, gas, cold and hot water would normally be capable of separate operation and isolation for a separate dwelling.

If a property comprises several dwellings other complications can arise, such as the interaction with the higher rates of SDLT and mortgage finance can be made more complicated.

Mixed use property

If part of the property is used for non-residential purposes such as a field used for farming or an outbuilding used in a separate business then the mixed use rates of SDLT might apply. These can be considerably less for higher value properties as the top rate of SDLT for mixed use property is 5%.

HMRC appear to be taking a particular interest in cases where the mixed use treatment is applied.

Who is the buyer for SDLT?

For the purposes of SDLT we do not just look at whose name a property is bought in. It is more important to know who the underlying owners are. So for example if an unmarried couple A and B buy a property in the name of A, but with B putting in money and with B's share being protected by a declaration of trust, then both A and B are buyers.

This can be relevant when establishing whether the higher rates of SDLT apply or seeing if first time buyers' relief is available.

Linked Transactions

Extra SDLT can be due if the purchase is one of a number of "linked transactions". The transactions may be linked if:

- a) The seller for each transaction is the same (or are parties connected with each other) and
- b) The buyer for each transaction is the same (or are parties connected with each other).

For example if a property is owned so that the home is held by Mr V and some extra garden is held by Mrs V and a deal is agreed for Mr V to sell the house to Mr P and Mrs V to sell the garden to Mrs P then there will be a "linked transaction"

You should tell us if there may be a linked transaction.

Changes in SDLT rules and Budgets

The rates of SDLT and the rules frequently change, with changes announced in the Budget sometimes applying immediately and sometimes at a later date. You might need extra advice if there are changes in the rules during the progress of your transaction.

Generally speaking the rules and rates that apply will be those in effect at the date of completion of the purchase. Usually transitional provisions give some protection against adverse changes to those who exchanged contracts before the announcement of the change.

8. Buying together

If two or more people buy a house or land together they can do so either as a 'joint tenancy' or as 'tenants in common.' When choosing between the alternatives, it is important to consider the background circumstances to the situation and the financial implications involved since this will affect how the proceeds of any future sale are dealt with.

Joint tenants

- There are no "shares" in the entire property and it is owned jointly by both owners.
- In the event of the death of either owner, the property automatically passes to the survivor.
- One owner's interest cannot be disposed of by Will.

Tenants in Common

- Each co-owner has a defined share of the property, which can be in equal or unequal proportions.
- Either owner can give away or sell his share, either during their lifetime or by Will.

It may be sensible to consider the tenants in common arrangement where one person is making a greater contribution to the purchase price, particularly if you are an unmarried couple, or where one or both owners have children from a previous relationship.

The manner in which the property is to be held is recorded at the Land Registry. In many cases it would be recommended to prepare a Declaration of Trust which will record the position in greater detail. Your solicitor will be able to provide you with more information about this service. Depending on the circumstances, it may be necessary for one or both of you to seek independent legal advice as we would not be able to give advice for one against the other – there would be a clear conflict of interests.

We also advise all clients when purchasing a new property to ensure that they have a valid Will which sets out how a property is to be dealt with after death. Your solicitor will be able to provide you with contact details for a member of our Succession and Tax team if you would like further information.

Unmarried couples

In law, cohabiting couples are not treated in the same way as married couples if they separate, regardless of the length of their relationship.

To protect both parties' interests and to avoid conflict in the event of a separation, it is advisable to prepare a Declaration of Trust, and also a Living Together Agreement, colloquially known as a Cohabitation Contract.

A Cohabitation Contract provides further legal protection in the event that you separate. The document will set out the shares owned in the property, and can also cover matters such as business interests, debts, gifts, cars, bank accounts and pensions. This adds a layer of protection which the law does not currently provide to cohabiting couples.

Your solicitor will be able to provide the contact details for our Family law team if you would like further information.

9. ATED

The annual tax on enveloped dwellings ("ATED") was introduced on 1st April 2013.

It is an annual tax payable by companies and non-natural persons who buy or own a property which includes a dwelling valued at £500,000.00 or more.

There could be reliefs available but registration with HMRC is required.

Our standard fee quote does not include any advice on ATED and for further information on the reliefs available please contact us and we can provide an estimate of any additional fees for specific guidance or specialist advice as necessary.

Chargeable amounts for 1 April 2019 to 31 March 2020

Property value	Annual charge
More than £500,000 up to £1 million	£3,650
More than £1 million up to £2 million	£7,400
More than £2 million up to £5 million	£24,800
More than £5 million up to £10 million	£57,900
More than £10 million up to £20 million	£116,100
More than £20 million	£232,350

10. Completion

The date of completion is the day that the purchase monies are sent to the seller's solicitor and the keys are released to the buyer. It is usually 'moving day'.

The day on which the transaction will complete will have been agreed prior to exchange of contracts, as this forms part of the binding agreement of the transaction. The date will be a term of the contract and, as such, is fixed. Any delay in completion may result in financial consequences for the party at fault.

Standard contract provisions state that the seller must receive the funds by the time specified in the contract (usually 2.00 pm unless amended in the contract) on the day of completion. Any funds received after this time will be deemed to have been received the next working day and you, as the buyer, may have to pay interest on the purchase price at Law Society's rate

Before completion

Your solicitor will complete all of the necessary steps leading up to and during completion on your behalf. However your input and cooperation with a number of matters can help to ensure that the process is as smooth as possible.

Please ensure that:

- any money that you are due to pay on completion is sent to your solicitor as cleared funds at least a day prior to completion
- you return any documents that you are requested to sign promptly.

On completion

As a buyer, you should:

- arrange contents insurance – you should have arranged building insurance on exchange
- read the meters as soon after completion as possible
- if moving into the property that you have purchased, you may wish to redirect your mail to the new property from your previous address.
- Change the locks

After completion

Following completion, your solicitors will attend to the post-completion formalities on your behalf.

11. About Blake Morgan's Residential Property team

One of the most stressful times of anyone's life is buying or selling a home. Even seasoned home buyers can find themselves dealing with unexpected and potentially costly problems.

Restrictive covenants, rights of way, lease provisions and other apparently straightforward issues can catch out the unwary.

A commitment to quality service

Our Residential Property teams aim to take the stress out of buying, identifying and resolving such issues as early as possible, as quickly as possible. An experienced lawyer, specialising in residential property is assigned to your case and is responsible for liaising with all parties, chasing progress on your behalf and keeping you updated and fully informed throughout your move.

We are also delighted to have been accredited under the **Law Society's Conveyancing Quality Scheme**, the mark of excellence for the home buying or selling process.

What you can expect from us under the Conveyancing Quality Scheme Client Charter

- When you contact us to discuss your sale or purchase, we will explain clearly the steps in the process and what you can expect from your solicitor.
- We will tell you what the costs will be.
- We will keep you informed of progress in your sale or purchase.
- We will work in line with the quality standards of the Law Society's CQS.
- We will:
 - treat you fairly
 - be polite and professional
 - respond promptly to your enquiries
 - tell you about any problems as soon as we are aware of them
 - ask for your feedback on our service.

More than just conveyancing

Property transactions rarely involve just the house move. Our team is also able to offer assistance across a whole range of other related residential property matters and is able to call upon experienced staff from other specialist teams within the firm to deal with, for example, any SDLT or other tax, trusts and planning law issues, as well as construction law and agricultural property matters.

Local knowledge





For over 135 years, our Residential Property teams have been serving the local communities in which they operate. It is this local knowledge, combined with our use of modern premises, each with easy access and free parking (with the exception of the London office), that sets us apart and makes us the natural choice.



Offices in:

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Oxford
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