

Matthew Arnold & Baldwin ^{LLP}
Moving Home



Giving you a lot **more than just law...**

Introduction

Since 1900 Matthew Arnold & Baldwin has been providing a complete range of legal services to both businesses and individuals. We offer a national service that combines the values of integrity and confidentiality with modern technology, giving an efficient, independent and personal service.

Moving home

Buying your home is a big commitment which needs careful thought and strict attention to detail. Whether you are a first-time buyer or a 'veteran' seller or buyer, we can help you through the legal, administrative and practical problems of moving with the least possible fuss and bother.

As solicitors, we have a duty to be honest and straightforward. We are independent of any financial institution or any other interest – in fact we may be the only truly independent advisers you meet throughout the home-moving process. So it's in your interest to talk to us as soon as you start thinking about buying or selling your home.

Moving home is not just about getting the keys. You will need practical and impartial advice about many things – for example tax liabilities, insurance, the legal implications of joint ownership and whether you should make or update your will. There are many pitfalls for the unwary. We are here to help you with a service which is fast, efficient and cost-effective. You will find us understanding and approachable.

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The process explained...

When you are negotiating to buy or sell your home, always use the words 'subject to contract' when putting anything in writing.



Negotiations

When you are negotiating to buy or sell your home, always use the words 'subject to contract' when putting anything in writing. If you don't, you might find yourself committed to something before you are sure everything is exactly right, which could have serious consequences. We recommend that you leave the correspondence to us. Remember: talk to us as soon as you think about your move.

Preliminary deposit

When you agree terms 'subject to contract' the agent selling the property may ask you to pay a deposit. This is not compulsory. A 10% deposit is normally requested on exchange of contracts.

If a deposit is requested before this stage is reached, we recommend that you pay no more than £500 as a preliminary deposit. To make sure that it is refundable, you should pay it to the seller's solicitors or their agent as 'stakeholder subject to contract' and obtain a receipt. This preliminary deposit is taken into account as part of the 10% deposit upon exchange of contracts. You should also insist that the property is no longer advertised or offered for sale. If you are buying from a developer the reservation form may state that some of the preliminary deposit is non-refundable if you do not proceed.



Deeds

When preparing the draft contract for a client selling their home we need to see the title of the property. If you have any deeds, please bring them to us or send them by a secure method.

These days your deeds will probably not be held as security by a building society or bank. However, if they are then please tell us your building society or bank's name and address and your account number or roll number. We are appointed solicitors for all leading building societies and banks and they will lend the deeds to us.

If you have any deeds, planning consents, approved plans, any Building Regulations approvals, damp and woodworm guarantees or documents of any kind which affect the property, please send them to us. In the case of leasehold properties, please let us have details of the service charges and the managing agents. If you are selling a property, at an early stage we will usually send you a request for information about the property that we need to provide to the buyer's solicitors. This usually takes the form of a questionnaire. Managing agents also charge for providing information required by the buyer's solicitors.

Contract

As soon as the seller's solicitors have received copy title from the Land Registry and have enough information to prepare the contract, they will send two copies to the buyer's solicitors for approval, together with any other relevant documents. If the buyer's solicitors approve the contract, they will return one copy for signature by the seller and retain the other for signature by their client.

The process explained...



Local and other searches

When we are acting for a client who is buying a property we carry out a search and make enquiries with the local authority to find out more about it. The replies relate only to the particular piece of land being purchased and do not cover neighbouring land or properties. If you are at all concerned about possible development near the property you want to buy, you should contact us immediately so that we can undertake the appropriate local searches. We initiate searches as soon as we are instructed by you to do so. We usually ask for payment of search fees in advance. Sometimes we must wait until we have the relevant plans or contract before submitting the search.

Apart from a local search, it is sometimes necessary for us to carry out other searches. This depends on the location of the property. For example, local searches do not report on mains drainage. We may need to check that a property is not affected by common land or village green registration. If the property is in a mining area, a search is made with the relevant authority.

Recent changes in environmental law place a heavy burden on land owners. Councils keep details of contaminated land and large fines can be levied for failure to comply with notices served by them requiring contamination to be cleared up. It is possible for us to carry out an outline environmental search on the property or land that you intend buying, to check for contamination. This is not yet standard practice and there will be an extra charge for this. If you would like us to carry out such a search, please let us know.

If you are in any doubt about the condition of the property you are buying, you should arrange for a survey by a chartered surveyor.

Furniture, fixtures and fittings, and other chattels

Anything that is permanently fixed to the land and the house is usually sold as part of the property. It is important that it is made clear between buyer and seller which items are included or excluded from the sale or offered for sale separately. This is usually dealt with by a list of fixtures and fittings included in or excluded from the sale. If you are selling we will ask you to complete this. If you are buying we will require your seller to provide this list for you to consider. The list will later form part of the contract, so if your position as set out in the list changes in any way, please tell us immediately.

Survey

As a general rule you buy a property as you find it – the seller gives no warranty as to its condition. If you apply for a mortgage loan, the lender will arrange an inspection for valuation purposes.

Some building societies offer a more detailed survey report for you, if required. However, the building society surveyor is mainly concerned to see whether the value of the property justifies the loan being offered, and this is not the same as a structural survey.

If you are in any doubt about the condition of the property you are buying, you should arrange for a survey by a chartered surveyor. You will have to pay a fee for the survey but it can prove very worthwhile as it may show that there are defects or that major works of repair and maintenance are needed. We would also advise that you check on the condition of central heating, wiring, and water and drainage systems before exchange of contracts. Please also note that there is no implied warranty by the seller that appliances are in good working order.

Exchange of contracts, mortgages and insurance...



Exchange of contracts

From a legal point of view this is the crucial stage in the whole transaction. You may be involved in a 'chain' with several sales and purchases across the country. Few people can afford to commit themselves to buying without being sure that their own home is sold – and few people would wish to experience the inconvenience of selling their home before buying another.

Exchange of contracts cannot take place until the last person in the chain is ready. If a delay occurs we try to find out why and we will do what we can to resolve any problems. Occasionally a chain will collapse, but not if we can help it! Although you may have signed your contract, you are not legally bound until the lawyers acting for both parties have exchanged contracts and a date for completing your sale and purchase has been agreed. We let you know as soon as formal exchange of contracts has taken place and confirm the completion date. If you are buying a new property from a developer you may well not get a set date, but will exchange 'on notice' of the property being structurally complete. Because of this please do not agree a completion date or make commitments such as booking your removals before exchange. Please consult us first.

Deposit on exchange of contracts

When the contracts are ready to be exchanged, the buyer will be asked to pay a 10% deposit. In appropriate circumstances – for example if a 95% mortgage is being obtained – we can negotiate a reduced deposit. If you are selling at the same time, we can usually pass on the deposit you receive from your sale to represent at least part of your own deposit on your purchase. This deposit is paid as security for the buyer's obligations under the contract.

Even when a smaller deposit is paid, the full 10% deposit can be claimed (if the contract says so) if a buyer defaults from completing the purchase. We are required to pay deposits from cleared funds, so please let us have your cheque, a banker's draft or bank transfer five working days before the foreseen date for exchanging contracts. If you foresee any difficulty, please let us know. Please note that we cannot accept cash.

Although you may have signed your contract, you are not legally bound until the lawyers acting for both parties have exchanged contracts.

Mortgage loan

If, like most people, you are not able to pay for your new house out of cash and the sale of your existing house, you will need to borrow money from a building society or bank. We must rely on you to ensure that you have sufficient funds to complete your purchase. Please tell us at the earliest possible opportunity if there is any second mortgage over the property or if you think there may not be enough money to pay off existing loans.

We strongly advise you not to exchange contracts until your mortgage has been approved and confirmed in writing and any conditions imposed on it are apparent. Normally all conditions on the mortgage offer must be complied with before funds are released. Please note that if you are receiving incentives from a developer, your lender has to approve these in writing before we can exchange contracts. Please check with your lender whether they will charge you any early repayment or other penalties for which you may not have budgeted.

In many cases the building society or the bank will also instruct us to act for them, which will save you some legal costs. If you have any difficulty in making satisfactory mortgage arrangements, please consult us. Remember that your home is at risk if you do not keep up repayments on a mortgage or other loan.

Buildings insurance

If you are buying a house it is normally your responsibility to insure it from the time when you exchange contracts, even though this may be some weeks before you move in. Insurance may be arranged by your lender if you are taking out a mortgage. If you are arranging your own insurance some lenders will require full details from you of this before they release the mortgage funds and completion may be delayed without this. We will need details of building insurance from you or completion may be delayed.

For leasehold properties the insurance is usually organised or controlled by the landlord or managing agents. If you are buying from a developer they will usually insure the property until completion.

Rent receipt – leasehold properties

If you are selling a leasehold property, the last receipt for rent (and any service charges) has to be produced for the buyer's solicitors on completion. Please let us have the receipt before exchange of contracts so that we can make arrangements to apportion the rent and service charge between yourself and your buyer before completion. For technical reasons the buyer's solicitors may refuse to complete without seeing the rent receipt.

Completion and moving in...

There is no hard and fast rule about when the completion date should be – other than that it must be a working day.



Completion date

The completion date is the moving date, the date when full payment is made for the property and the keys are handed to the buyer. It is inserted in the contract when the contracts are exchanged. If you are buying a new house which is still being built the completion date will often be fixed when the builder notifies that the property is structurally complete, and not on exchange of contracts. Buyers should note that any dates given by site representatives are only guidelines and not legally binding. Completion dates can be earlier or later than expected when buying a new house and no firm arrangement should be made until 'notice' is given.

There is no hard and fast rule about when the completion date should be – other than that it must be a working day. It is generally left to the parties to agree a provisional date and then confirm it at exchange of contracts. If, however, the parties cannot agree or if there is a long chain of transactions all of which have to be completed together, the general rule is that completion is not less

than two weeks from exchange of contracts. This is to enable the seller's and buyer's solicitors to deal with:

- preparing, approving and signing the transfer mortgage documents
- making pre-completion searches and title checks
- reporting on the title to the mortgage lender and obtaining the funds for the mortgage loan (and arranging re-inspection if required)
- obtaining an accurate figure on any existing mortgage from the lender
- arranging for all the money needed to be available at completion in cleared funds

These steps are all essential to safeguard your interests.



Completion finance

When you are buying, we need to have enough money to pay the balance of the purchase price and any other amounts payable. This money normally comes from the sale of your previous home, from a mortgage loan or from your own finances – and usually from a combination of all three. We will deal with the arrangements for the first two and we will send you a statement advising you of the financial position and in particular of any monies required from you to complete your purchase. It will be your responsibility to arrange for a cheque to be with us at least eight working days before completion. That leaves time for the cheque to be cleared so that we can comply with the Solicitors' Accounts Rules. If this is not possible then a banker's draft or a direct transfer of funds from your bank will be required. Please note that there are strict time limits on completion. Again, if you anticipate any difficulty, please speak to us soon as possible.

Completion

This is the second big stage in moving home. While the buyer and the seller are physically moving home, the solicitors are completing the legal and financial side of the transaction. Completion always takes place on a weekday and generally keys will not be available for collection until lunchtime. If there is a long chain of transactions, it can be later. It is best to bear this in mind when making arrangements for removals or deliveries.

Keys

The keys of the property you are selling should not be handed to the buyer until they have paid for the property. Usually keys will be left with the selling estate agent on the understanding that they will only be released to the buyer when the seller's solicitors have received the purchase money.

After completion...

If you are the seller we will send you the net proceeds of the sale as soon as possible. This will usually be by cheque on or shortly after completion. If you would like the money to be sent by bank telegraph transfer, payment of an additional fee will be required.

Mortgage redemption

If you are selling your house, when the sale is completed we will make arrangements to repay your mortgage out of the proceeds of the sale.

Registration of Title

If we are acting for a buyer we have to pay any stamp duty and register the transfer of title at the Land Registry. The registration of the title can take anything up to four months to complete. When the registration is completed, the Title Information Document will be sent to your mortgage lender. However, they no longer want the other deeds such as leases, and we will be happy to look after them for you in our deeds safe. Similarly, if you have no mortgage

we will happily store these. This is at no extra charge if we later act for you on the resale of your property; otherwise, a retrieval fee is charged. We strongly recommend safe storage of these vital documents in secure facilities.

Fees

We understand that you need to budget for your house move and we will always be happy to give you a written estimate of the costs and expenses of your transaction including any fixed fees for registration and other items.

The experience and expertise of our lawyers, backed by our commitment to information technology, mean that we can provide clients with a first-class, fast-moving service that represents good value for money.

We understand that you need to budget for your house move and we will always be happy to give you a written estimate of the costs and expenses of your transaction.



Matters we leave to you...

You must remember:

- to arrange for the connection or disconnection of gas, electricity, water and telephone services and appropriate meter readings
- to cancel or transfer your insurance of the contents of your house and also of the building if you have no mortgage or your mortgage lender is not arranging this
- to make your own removal arrangement (we suggest that you give your removers only a provisional date until the completion date is fixed at exchange of contracts)
- to liaise with your mortgage lender to cancel or change your standing order or direct debit for mortgage instalments as soon as possible after exchange of contracts
- to rearrange Council Tax payments and water charges

We will provide you with a helpful list to assist with all of the above.

Conclusion

Moving home need not be stressful. In every case, we do all we can to make your move easy and we hope this leaflet will help. It does not, however, cover every situation which can arise and so it is always important that we keep in close touch with you as the transaction proceeds. We hope all your financial and practical arrangements work out satisfactorily when you move. We are confident that you will be pleased with your decision to use us and trust that you will allow us to help whenever and wherever you move home again.

Always take advice

This leaflet provides a brief and simplified explanation of a complex subject. While we believe the contents to be correct, they should

not be regarded as sufficiently full or precise to apply to every situation. For this reason, we cannot accept any responsibility for any loss suffered by any person acting in reliance on the contents of this leaflet. You should always seek specific advice at the appropriate time about the subjects referred to in this leaflet.

Other services

We are a full service law firm and can also advise on:

Corporate & Commercial

- Corporate
- Commercial, IP & IT
- AIM
- Commercial Litigation
- Employment

Banking & Finance

- Litigation
- Lending
- Corporate Recovery & Insolvency
- Debt Recovery

Property

- Commercial Property
- Construction
- Property Litigation
- Residential

Private Client

- Tax, Trusts, Probate & Wills
- Family



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