



BUYING AND SELLING HOUSES

Client guidance – February 2021

We're committed to helping those who want to buy and sell property to do so in a way which minimises risk and also reflects the **Government advice**.

Every transaction will be different. This guidance is intended to explain the options open to you. It's important that you read it carefully and make sure that you fully understand these options and the advantages and disadvantages associated with each.

If you're unclear, it's essential that you ask, and we'll be happy to explain further.

Government advice

Advice from the Government includes:

- “You are free to move home. However, you may find the process of searching for and moving into a new home is different, as property agents, conveyancers and other professionals have modified how they work to reduce the risk from COVID-19”.
- “Once you have exchanged contracts or signed a tenancy agreement, you have entered into a legal agreement to purchase or rent the property. We encourage all parties to be as flexible as possible and be prepared to delay moves if necessary, for example if someone involved in the transaction becomes ill with COVID-19 during the moving process or has to self-isolate. You should not expect to move into any home where people are ill or self-isolating”.
- “Your legal adviser should be able to help you to ensure that any contract you enter into has sufficient flexibility to allow the purchase to be delayed in the event that an individual in one of the parties contracts COVID-19 or has to self-isolate”.

Exchange of contracts

The buyer and seller each sign an identical contract.

When the property lawyer acting for each of them exchanges the two parts of the contract, a completion date is fixed, and the transaction becomes binding on both parties.

Completion

The date that is agreed between the parties when contracts are exchanged when the seller moves out of the property and the buyer moves in.

For a variety of reasons, there are occasions when one or other of the parties is unable to complete the transaction on the completion date and, very occasionally, the transaction is never completed.

In these circumstances, the party who fails to complete suffers a financial penalty which can be very substantial, especially if the transaction is one of a chain of transactions.

The impact of coronavirus (COVID-19)

As lockdowns are continuing to be implemented and lifted, people who have exchanged contracts may be unable to complete on the agreed date for a variety of reasons.

The fact that COVID-19 is likely to remain a problem for some time to come means that there are continuing risks to buying or selling a property.

New risks

The new risks which have arisen since the start of the pandemic are:

- you or your buyer/seller or someone in your or their household may be unable to move out, either through illness or the need to self-isolate
- you or your buyer/seller may be in hospital
- there may be a further lockdown which prevents you or your buyer/seller from moving
- moving might be in breach of Government regulations or contrary to Government guidance
- there may be difficulties in obtaining removal services
- your or your buyer's mortgage offer might be withdrawn or the financial position of one of the parties might change, for example, if completion is delayed past the end date of any Government imposed stamp duty land tax concession
- the UK financial system fails to deliver the purchase or mortgage money
- any of these problems might occur to another party in the chain of transactions on which your move is dependent

There may be other risks arising from COVID-19 of which we are not currently aware.

If the number of COVID-19 cases continues to fluctuate, these risks may be more or less prevalent but will continue to exist for some time.

First choice

You enter into a standard contract in the same way as you would have done prior to COVID-19.

Risk:

You, your buyer/seller or someone in the same chain of transactions as you, is unable to complete on the date agreed for **completion**.

If it's you, you will suffer a significant financial penalty. The longer the chain of transactions, the greater the loss.

Even if it's not your fault, you will not be able to move, will suffer considerable inconvenience

and possibly financial loss as well.

To minimise the risk, the period between **exchange of contracts** and **completion** should be as short as reasonably possible.

Second choice

Exchange of contracts and **completion** take place on the same day.

Risk:

You will have to arrange to be ready to move on the date agreed by all parties in the chain for **completion**, including booking removers but will not know for certain until the day whether **completion** will take place.

If it does not, you may lose any deposit you have had to pay to your removers.

You will not be entitled to compensation from the party who is not ready to move, but equally if it's you, you will have no liability to any other party in the chain.

Third choice

This is designed to achieve as far as possible the flexibility contained in the Government advice.

You ask your property lawyer to add a clause to the contract which specifies certain situations (which may reflect some or all of the **new risks**) in which **completion** can be delayed if one of the stated situations arises after **exchange of contracts**.

It will be necessary for all contracts in the chain of transactions to contain similar provisions.

If as a result of one of the **new risks** you're unable to proceed with the transaction, you will not have any financial liability to the other parties in the chain.

Risk:

Although contracts have been exchanged, it will still be a possibility that completion will not take place on the agreed **completion date** if you, your buyer/seller or someone in the chain is affected by one of the **new risks**.

It's also possible that the chain could collapse if one party is not able to proceed as a result of one of the **new risks**. If that occurs, you may not be entitled to any compensation from the defaulting party.

- Your, or your buyer's, mortgage offer might be withdrawn, or the financial position might change of one of the parties, for example, if completion is delayed past the end date of any Government imposed stamp duty land tax concession.