



Selling a Property

What your Conveyancer is doing for you

(2018 ed.)

- 1. Why you need Us**
- 2. Outline of a conveyancing transaction**
 - a. Pre-exchange
 - b. Exchange of Contracts
 - c. Completion
 - d. Discharge of Mortgage (& negative equity)
 - e. Payment of net sale proceeds
 - f. Storage of your file & documents
- 3. Producing the contract and deducing legal title**
 - a. Registered
 - b. Unregistered
 - c. Leasehold
- 4. The Buyer's survey and negotiating prices**
- 5. Answering questions from the buyer**
- 6. Buy-to-let properties**
- 7. Other things to consider**
 - a. Capital gains tax
 - b. Wills
 - c. Investment & financial advice

**IT IS IMPORTANT THAT YOU READ THROUGH THIS INFORMATION
THOROUGHLY**

Our Ripley office
Market Place
Ripley
Derbyshire
DE5 3BS
DX16873 RIPLEY
T: 01773 744 744
F: 01773 570 047
E: ripley@ellis-fermor.co.uk

Our Long Eaton office
35 Derby Road
Long Eaton
Nottingham
NG10 4FU
DX11607 LONG EATON
T: 0115 972 5222
F: 0115 946 1152
E: longeaton@ellis-fermor.co.uk

Our Beeston office
2 Devonshire Avenue
Beeston
Nottingham
NG9 1BS
DX11652 BEESTON
T: 0115 922 1591
F: 0115 925 9341
E: beeston@ellis-fermor.co.uk

Our Belper office:
8 Chapel Street
Belper
Derbyshire
DE56 1AR
DX15302 BELPER
T: 01773 821 665
F: 01773 826 634
E: belper@ellis-fermor.co.uk

1. WHY YOU NEED US

For many people, once the price is agreed, the survey is done and the mortgage is sorted, the legal work is seen as the necessary evil required to get their property sold.

Hopefully, yours will be one of the vast majority of house sales that goes through without complication. However, there can be many legal hurdles to cross before your sale can complete (e.g. making sure that all the contractual paperwork complies with Land Registry and other legal requirements), especially if yours is a probate or leasehold sale.

English & Welsh land law has lots of little pitfalls lurking in its depths to capture the unwary. Our conveyancing lawyers are highly trained specialists, looking for all of those nasties so that they do not cause you unnecessary problems.

We are here to help you sell your property as easily as possible (and in such a way that legal issues will not come back to haunt you!). If at any stage you have any questions, queries or doubts about your sale, you should contact the lawyer handling your file.

We shall do our best to make sure that your transaction proceeds as smoothly as possible.

2. OUTLINE OF A CONVEYANCING TRANSACTION

(a) Pre-exchange

Timescales

We would estimate that a straight-forward freehold sale with no hitches will take around 8 weeks from instruction to completion. However, please note that this is a very rough estimate! There are so many factors involved in the conveyancing process over which neither you nor we have any control (e.g. the buyer, the buyer's solicitors, the buyer's buyer, etc). This makes it impossible to guess at the beginning with any degree of certainty when a matter will complete.

Having said which, if you have a definite idea of when you would like to complete your sale, please do let us know: we are always happy to discuss these things with you and help formulate a plan to try and hit your preferred date where possible.

Before contracts are exchanged, we will prepare the contract and submit it to the buyer's solicitors (see '[Producing the Contract and Deducing Legal Title](#)' below). At the same time, the buyer's solicitors will carry out any investigations or searches they believe necessary, and the buyer will arrange his/her mortgage and survey.

If there are any negotiations to be had about price or completion dates, they must be completed during this period prior to exchange of contracts.

(b) Exchange of contracts

You will sign one copy of the contract, and the Buyer will sign another identical copy. The contract becomes binding once those two copies are formally exchanged between the solicitors.

Once contracts are exchanged, the property is still legally yours, but the completion date will be set, the price will be set and neither party will be able to withdraw from the transaction.

Deposit

Normally, the Buyer will be expected to pay a 10% deposit on exchange of contracts. If you are buying a property at the same time as selling, we would normally use the deposit from your sale on your purchase.

The deposit remains in the hands of the solicitors until completion. On completion, we can release the deposit to you or use it towards paying off your mortgage, legal fees, estate agent's fees, ongoing purchase price, etc.

Alternatively, if the Buyer does not complete on the contractual completion date, then (in most circumstances) we can release the deposit to you.

Money Laundering

Where there are large sums of money moving about, there are strict rules in place, dictating what we must check in order to prevent money laundering. These will result in us having to verify your identity. It is important that you supply any information requested as soon as possible.

(c) Completion

Completion should take place on the date stated in the contract. On the Completion Date, we would expect to receive the purchase monies from the Buyer's solicitors.

Once we have received this, you will have to hand over the keys and vacate the Property (normally by 1 p.m.).

We will normally use the sale proceeds to pay off your estate agent's fees, your mortgage and any other loans secured against the property (see below). We will also deduct our costs from the sale proceeds.

Unless otherwise agreed, you **must** remove from the Property anything that is not included in the sale, and you **must** leave the Property in the same condition it was in on exchange of contracts. Do not leave any unwanted items in the Property or the garden or garage. If anything is damaged between exchange of contracts and completion, please let us know straight away.

(d) Discharge of Mortgage (& negative equity)

Normally, unless you instruct us differently or we inform you otherwise, we will obtain a settlement figure from your mortgage lender (if any), and attend to repaying your mortgage from the sale proceeds.

Your Buyer's solicitors will require us to give a binding professional undertaking to make sure your mortgage is removed on completion. While this does not remove your personal responsibility for paying the mortgage, it does mean that we need to make sure that the mortgage is repaid in full on completion. To be able to do this, we will need to obtain written confirmation of the amount required to repay your mortgage before completion can take place. Most redemption figures are calculated to the exact date, so we cannot request a redemption figure until the completion date is known. Consequently, when negotiating a completion date with the Buyer, we will need to make sure that there is enough time to obtain a redemption figure.

Most Lenders require mortgages to be repaid by same-day Bank Transfer, rather than cheque. There will be an additional charge made to cover Bank Charges and the time required to effect this.

Negative Equity

If you are selling the Property with negative equity (i.e. the amount required to pay off the mortgage(s) is greater than the sale price) we will probably ask you to make a payment upfront of (a) the shortfall and (b) our fees. Please do not feel offended – the actions of a small minority in the past have caused this to be necessary.

(e) Payment of net sale proceeds

Once everything else has been settled, we will pay out the net sale proceeds to you. Unless you instruct us otherwise, we will send the net sale proceeds to you in the form of a cheque which we will post to you in the first-class post on the day of completion (or on the following working day, where completion takes place late in the day).

Alternatively, we can transfer the net sale proceeds to you by direct same-day bank transfer, but please note that that incurs extra fees.

If you would like us to send you funds by direct bank transfer, we will need your bank details, but please note that – due to reasons of internet fraud – **we do not accept bank details via email**. That's not to say that you must not send us your bank details by email, but please note that we will not be able to transfer funds to details received in that way until we have been able to confirm them with you.

(f) Storage of your documents

Once your matter has been completed and the mortgage paid off, your file will be closed and put into storage for 6 years.

We hope it won't happen, but sometimes matters fall through before contracts are exchanged. In that scenario, if you would like us to store your deeds for you, we would be more than happy to do so, but every 5 years, we will make a charge for this facility (currently £50).

3. PRODUCING THE CONTRACT AND DEDUCING LEGAL TITLE

We will produce the contract and send a copy of it to the buyer's solicitors for their approval. We will also send them a copy of your title to the property (i.e. the evidence that you have the legal right to sell the property), and any relevant standard information forms (e.g. the Property Information Form and the Fittings and Contents Form).

We will need to have **originals** of any documents you have affecting the property (e.g. glazing guarantees, old deeds).

Registered Title

Most land now is registered with the Land Registry. For registered land, it is the Land Register which provides the legal evidence of who owns the land and what legal matters affect it. We will have to provide copies of the land registry entries relating to your property to prove your ownership.

Unregistered Title

An increasingly small amount of property is still unregistered (especially where it has not changed hands for many years). For unregistered land it is still the old paper deeds which prove who owns the land and which matters affect it. An unregistered title is often more complicated and time-consuming to investigate, so it might take a little longer to comb through your deeds and pick out the relevant parts. It might also result in us having to increase our charges beyond our initial costs estimate, but we try to avoid that if possible. If it becomes clear that a title is unregistered and that this is going to result in us increasing our costs, we will let you know as soon as we can.

Not registered and no deeds? If you own a piece of land that is not registered and you do not have any paper deeds for it, this will not necessarily stop you from treating the property as yours and selling it. However, please let us know if this is the case as soon as possible. If the deeds cannot be found for an unregistered title, this is a serious issue which will lead to delay and additional costs.

Leasehold

If you are selling leasehold property, we will need all sorts of details from the freeholders/landlords, and this can delay matters. It is often also the case that the freeholders/landlords will charge for providing this information and that is something that unfortunately cannot be avoided. You might want to contact them now to see if they provide a standard seller's pack that you can request.

4. THE BUYER'S SURVEY AND NEGOTIATING PRICES

It is highly likely that the buyer will want to conduct some sort of survey of the property. We would recommend that you allow this, as refusal would probably cause most buyers to pull out.

It may be that the buyer will then want to negotiate with you on the price. We normally recommend that negotiations are carried out via the estate agents, as this is generally quickest (they can speak direct to both you and the buyer). However, once an agreement is reached, you **must** tell us, because it will have to be recorded in the contract.

5. ANSWERING QUESTIONS FROM THE BUYER

If you are asked a specific question about the property, you must tell the truth.

You must give accurate answers to any questions you are asked about the Property, even if your answer is 'not known'. Please do not guess at anything!

Perhaps more importantly, you must not make any statement which could be incorrect. If you do, and the buyer purchases the property, the buyer could subsequently take legal action against you, which could be very expensive for you. If you deliberately make a statement you know to be untrue, then this will be even more serious, even more expensive, and possibly even a criminal offence.

If you answer any questions in general conversation with the buyer, please let us know.

Furthermore, it is essential if your reply to a question would change at any stage during this transaction if that question were repeated, that you let us know straight away. You should assume that your replies to any questions could amount to contractual obligations. Please note, however, that this is not legal advice about the status of similar information provided in connection with any purchase you may be making.

Obligations on us to disclose

The Consumer Protection and Unfair Trading Regulations 2008 (CPUT) puts a requirement on us and your estate agents to disclose to your buyers any information we receive that might affect their decision to buy your property. This has not yet been tested in the courts, but it is thought that this probably **overrides our duty of confidentiality to you**.

Please bear this in mind when sharing information with us and giving us instructions on how you want us to proceed.

6. BUY-TO-LET PROPERTIES

If you are selling the property subject to an existing tenancy, you will be contractually obliged to apportion the rent on completion. In other words, if the completion date falls between rent payment days, you will have to account to the buyer for any overpayment of rent you will have received as a result. This is normally dealt with by the buyer deducting the correct amount from the sale price they pay over on completion.

Deposit

If you have a deposit in a protected deposit scheme, you or your letting agents will need to contact the scheme after completion, and arrange for them to release the deposit. This is not covered in the work we carry out.

Notice to quit

If you are intending to sell the property free from the existing tenancy, you must follow the correct procedure to make sure that the tenant has vacated the property before completion. This applies even if the fixed term of the tenancy is meant to come to an end between then and now. If you do not follow the correct procedure, the tenant could refuse to leave, which would put you in breach of your contract with your buyers, and could have severe financial consequences.

Preparing and serving a notice to quit is not covered in the work we carry out, but we do have lawyers here who can help with this. Please speak to your conveyancer if you would like additional help and advice on this point.

7. OTHER THINGS TO CONSIDER

(a) Taxation issues (including Capital Gains Tax)

We do not generally advise you as to whether your transaction will have any tax implications for you. However, as a rule of thumb, if you are selling a property you own that you have not occupied as your main residence in the last 3 years, capital gains tax may be payable. For further general advice, please ask the lawyer handling your matter. For more detailed advice, or for help in submitting a capital gains tax return, you will need to speak to chartered accountant. If you would like help in finding a chartered accountant, please talk to the lawyer handling your matter.

(b) Wills

It is always important to consider what impact changes in your property are going to have on your estate. If you would like more advice, please speak to the lawyer handling your matter, or a member of our Wills Department.

(c) Investment & financial advice

Once you have sold your property, you may have a large sum left from the sale proceeds. If you would like financial advice as to what to do with that sum, please let us know, as we can put you in touch with an independent financial adviser.