



Buying a Residential Property

Buying a house can be very exciting, but it is also stressful and complicated. If you are a first-time buyer the whole process will be unfamiliar and if you already own a house you will probably be trying to organise your sale at the same time. The majority of buyers need a mortgage and there will be removals and utilities to arrange. For most people there will also be the anxiety that comes from entering into the biggest financial commitment that you will have made in your life so far.

This Guide is primarily aimed at people buying a property for their own occupation. It explains the key parts of the purchase process and some of the terms used by your solicitor or estate agent, which may be unfamiliar to you. The whole legal process of buying and/ or selling land and property is often referred to as “conveyancing”. There is a separate Client Guide dealing with the sale of residential property.

Please read this Guide carefully; it is particularly important that you read the final section entitled “Email Security and Anti-Fraud Precautions”.

Do I need to appoint a Solicitor?

In England & Wales the professionals who deal with conveyancing are solicitors and licensed conveyancers. We have several teams of experienced personnel dealing with the sale and purchase of residential property under the supervision of our conveyancing solicitors. In this Guide we refer to the person who handles your conveyancing as “your solicitor”.

If you try to deal with the legal aspects of buying a house yourself it is likely that you will face a number of problems. The legal process is complex and requires the assembly, preparation and agreement of several important legal documents, which could have significant financial and practical implications for you. If you are obtaining a mortgage the lender will not trust you to deal with the mortgage monies and will insist you instruct a solicitor to check the title on the property you are buying.

If you do not instruct a solicitor the Seller’s solicitor and the Land Registry (which is the agency responsible for the registration of all property transactions in England and Wales) will each require full identification evidence from you.

What does your solicitor do?

The solicitor’s job is to make sure you are able to buy the property you have chosen as easily as possible. We will guide you through the complex purchase process (set out below) and protect your interests by checking the seller’s legal title to the property and making searches and enquiries to find out as much as practicable about the property before you are legally committed to the purchase.

Your solicitor will liaise regularly with the seller’s solicitor to ensure that they are making suitable progress with the sale to you and any linked transactions (as your seller will often be buying another house too). We will negotiate the terms of your contract to purchase with the seller’s solicitor and ensure that any special terms such as fixtures and fittings being sold with the property or retentions for repairs or other works are properly documented. We will carry out the legal work connected with your mortgage and ensure that any existing mortgage or loans secured on the property by the seller are discharged in full at the time of your purchase. We will contact on your behalf local authorities, management companies, landlords, insurance companies and anyone else from whom information or assistance is required. We will generally try to ensure that you are able to proceed as quickly as possible to exchange contracts and then complete your purchase.

Video Guide

We have worked with the Conveyancing Association to produce a video aimed at guiding you through the process of moving. To view this, please follow this link - <https://www.youtube.com/channel/UC4ISUmK1-s0DeJhHmE-eY8Q>

The estate agent told me my purchase is part of “a chain”- what does this mean?

A large number of property transactions take place as part of a “chain” – essentially this means that your purchase is just one of a series of interdependent sales and purchases where the parties must all exchange contracts and complete on the same day. This is necessary because:

- The money from the sale of A’s property is needed to fund A’s corresponding purchase of B’s property and so on up the chain; and
- Most people want to avoid having to go into temporary accommodation between selling their existing property and buying the new one, so the completion dates all need to coincide; and
- To guarantee that all the required funds will be available for the same completion date everyone must exchange contracts on the same date.

Some chains will be relatively short; for example if you are a first-time buyer and the seller of the house you intend to buy is buying a new-build property from a developer there are just three transactions in the chain. Others can be much longer and may involve five or six different transactions, or even more.

The existence of a chain will inevitably have an impact on the timetable for your exchange of contracts and completion, as a delay occurring in just one of the transactions will delay all the others. Conveyancing is already a complex process and it can be very difficult to keep a chain together; most buyers in the chain will have to arrange a mortgage **and** many parties will have their own personal timetable (eg holidays already booked, work commitments, school terms etc). If just one of the transactions falls through this will break the chain and it may be several months before a replacement buyer or a new purchase is in place.

Involvement in a chain can also make you vulnerable to unexpected changes in the sale price of your existing property. If someone else in the chain has to accept a reduction in the value of their property (usually as the result of an adverse survey report) all the parties may be asked to accept a proportionate reduction in price so as to keep the chain together.

Solicitors and estate agents often have to explain to their clients that the chain can only move at the pace of the slowest party! If you are in a long chain you must accept that there may be periods when nothing seems to be happening – this will be very frustrating and occurs when there is a problem or delay elsewhere in the chain over which your solicitor or estate agent has no control. Your solicitor or agent will try to keep you informed but there may be times when we do not have much information to pass on to you.

Sometimes, it becomes necessary to break the chain to enable some of the transactions to proceed. One party may decide to go into temporary accommodation so that they can secure the sale of their property (and therefore progress their replacement purchase separately or find another property to buy.) Despite the practical upheaval that this may cause it can place that party in an advantageous position on their purchase – a cash buyer or one with no house to sell is always attractive! Breaking the chain in this way enables all the transactions below that point in the chain to go ahead but is not always practicable.

The problems associated with chains explain why some people choose to buy a new-build property from a developer via their part-exchange scheme or use one of the new house buying schemes that enable you to sell your house for cash. You need to be aware that most of these schemes will result in your existing property being sold at less than full market value. However they do offer certainty and avoid delay.

Do I need a Survey?

Whether or not you commission a full survey of the property you propose to buy is largely up to you - as the buyer you have to weigh the cost of a survey against the risk that the property is not in good condition and might require substantial repair or other works, or that the price you have agreed exceeds its current value. Your solicitor will not be able to advise you on these matters. You must understand however that the seller does **NOT** (except with a new build property) give any guarantee as to the property’s condition. It is up to you to discover any defects **BEFORE** you exchange contracts so you can negotiate the price or arrange for the seller to carry out repairs.

The property valuation organised by the lender when you apply for a mortgage on the property is **NOT** a full survey and will not necessarily reveal any defects in the property. If you are buying an older property we would always recommend that you obtain your own survey. Savings can normally be made by instructing the same Surveyor/Valuer as the Lender, who will then combine both exercises in a single visit to the property. There are various types of survey available, at different costs, and you should discuss with the Surveyor which type is most appropriate in your case.

A survey will often reveal defects or matters requiring repair or replacement and can be used to negotiate a reduction in the purchase price. It may also help you to avoid costly and unexpected repairs and problems in the future. If the survey does reveal that there are potential structural defects or other major problems you may want to organise additional

specialist surveys or reports to assess the extent and potential cost of remediation before you decide whether to proceed. In some situations the seller may agree to pay all or part of the costs of these specialist surveys etc, as it is unlikely that you or anyone else will be prepared to purchase until these are obtained.

How do I know if the central heating is working?

An ordinary survey will not cover the central heating, plumbing or electrical wiring. We would advise that you have these installations checked prior to exchange of contracts to ensure that they are in proper working order. The Surveyor/ Valuer may also recommend you have these installations checked as many older installations no longer comply with current standards.

I am buying a new-build property from a developer – does this make any difference to the legal process?

There are a number of potential differences to both the legal process and the timetable of your purchase.

Although your lender will still require a mortgage valuation you will not normally need a survey, provided the developer is supplying the usual NHBC guarantee or a suitable alternative insurance policy with the property.

The developer's solicitor will usually supply a complete package of legal information at the outset, which will reduce the need for us to make a number of standard enquiries about the property. However, the information provided is very extensive as it includes full details of planning approvals, building regulation consents, road and drainage adoptions relating to your chosen plot and the development as a whole. These are key concerns when buying a new-build property and we must check that all these matters are satisfactory and certify to your lender that all the necessary approvals are in place.

All the documentation issued by the developer's solicitor will be in a standard format appropriate to the development on which you are buying. This means that we can rarely negotiate any changes to the contract for sale or the transfer deed, even if we think they might be desirable and better protect your interests. The transfer document is usually far more complex than would be the case if you were buying a traditional property; it is likely to contain numerous rights and restrictions designed to benefit all the properties on the development. Modern developments often contain shared parking areas, private access roads and communal landscaping so the transfer document will include provisions relating to your right to use these shared facilities and the repairing obligations and costs which go with them. Your solicitor will explain these provisions in more detail as they will be different on each development.

The timetable for your purchase will depend on whether you are buying "off plan" (when the construction of the property has not started or is at a very early stage) or if the construction of the property is well advanced. The developer will want you to enter into the contract to buy as soon as possible but, rather than fixing a specific date for completion, will usually provide in that contract for a Notice to Complete to be served on you once the property is certified as ready for occupation (sometimes referred to as "Practical Completion"). The Notice will require you to complete the purchase within a specified timescale. This means you must be in a position to move quickly and put the necessary funds in place for your purchase once that Notice is issued. We can normally ensure that your mortgage funds will be available on time but it can be difficult to coordinate the sale of your existing property unless your buyer is also prepared to agree to completion being fixed by reference to the issue of the Notice. The developer will usually provide an estimated practical completion date when you exchange contracts but delays can occur due to bad weather or problems with the delivery of materials or service connections etc. In practice you will be able to monitor the progress on site and you should then have a fairly good idea of when the Notice is likely to be served.

Once the Notice to Complete is served you will have an opportunity to inspect the property and check if there are any defects – this "snagging process" should be done carefully and all defects, however minor, should be brought to the developer's attention as soon as possible. Unless you identify a serious defect (which might indicate that the property is not in fact fit for occupation) it is unlikely that the developer will permit you to delay completion of your purchase until these snagging items are dealt with. Most developers will make a genuine effort to put these problems right either before or shortly after completion but, if you notify us in time, your solicitor can at least try to obtain some form of acknowledgement in writing from the developer that these items need to be addressed.

What land am I buying with the house?

We will usually be able to show you a plan of the property as defined in the Official Copies of the registered title (formerly referred to as the Title Deeds). We advise you to check that the boundaries on site coincide with the plan and that they are well defined by fences, hedges etc. Your solicitor will NOT inspect the property and therefore cannot check the plan or the boundaries on your behalf.

You should look carefully for any gates or pathways that might suggest that other persons have a right of access through the property. Similarly, you must notify us if any part of the property you are buying is accessed over other land not included in your property (e.g. a separate garage or one in a communal block) or if there is a shared driveway.

Difficulties can arise if you are buying a new-build property, where the plot may not be defined very clearly on the ground at the time you are entering into the contract to buy. You will have been shown the proposed plot on the estate layout plan in the sales office and the developer will supply a plan of the plot as part of the sales information package. If you have any specific concerns about the extent of the plot or particular boundaries it may be worth asking the developer to mark out the plot for you on the site. In this case it might be advisable to take photos of the marker posts in relation to any other fixed points on the site (eg trees, existing roads or fences etc) in case these posts get shifted during building operations. Changes to site plans and plot dimensions as construction of a new development proceeds are not unknown. The developer should bring these to your attention so that you can assess whether these are acceptable or prejudicial to you or the value of the property.

Does it matter that I intend to extend or alter the house, or change its use?

If you intend to extend the house or to alter it in some way, you should check with the local planning authority, normally the local Council, that planning and building regulation consent would be given or that no such consent will be required. In some circumstances relatively minor alterations will require planning consent (eg changes to windows, new or extended driveways or paving, porches etc). There may also be special planning requirements if the property is located in a Conservation Area or a National Park or area of Special Scientific Interest etc.

Similarly, if you intend to run a business from the house you may need planning consent. The consent of your lender (and the Landlord if the property is leasehold) may also be required for extensions, other major alterations and changes of use.

If you are buying a property which is listed as a Building of Special Architectural or Historic Interest (whether Grade 1 or Grade 2) there will be significant restrictions on what you can do to the building and/or the land immediately around it (sometimes referred to as “the curtilage”). Depending on the details of the listing this may require consents for changes to door handles, paint colours, or floors in addition to more major alterations. You will require listed building consent for almost any changes and you should take detailed advice at all times from the Conservation Officer at the relevant local authority. Your Local Search will disclose whether the property is listed although the estate agents selling the property will usually confirm if a property is listed.

Should I be concerned if the house has already been extended or altered?

If you think the house has already been extended or altered in some way, we will need to check that all the appropriate consents were obtained. Please let us know immediately as the Sellers may need to obtain retrospective consents or provide copies of consents already given and this can take time. Your lender will insist that such consents are obtained. Failure to advise us at an early stage will cause a delay in your purchase.

If the property is listed (see the section above) it is essential that the appropriate listed building consent has been obtained for all changes to the building since it was listed. It can be extremely difficult to obtain such consents retrospectively and the Conservation Officer can require that any unauthorised alterations be removed regardless of when they were made. This can be a very expensive process. Failure to comply with the listing requirements can result in potential criminal proceedings.

I am told the property I am buying is leasehold – what does this mean?

A lease of a house or of a flat gives you the exclusive right to the use, occupation and enjoyment of the property during the length of the lease, and provided you comply with the conditions in the lease. The length of the lease is known as its term. If you are buying a long lease of residential property then the term will usually be 99 years or more. Depending upon the lender, you will normally need at least 60 years remaining on the term for it to be mortgageable. If a lease has less than 85 years to run, then it would be sensible to see whether the seller will pay for the lease to be extended.

Most leases provide for the payment of an annual ground rent to the freeholder or head landlord. In older properties the ground rent is likely to be a nominal sum (often less than £5 per year) and may not even be collected. If the lease is more recent the ground rent may be much higher and there may be provision for it to be increased over the course of the lease term. If any services are provided by the landlord or the management company or there are communal areas which need to be jointly maintained the lease will contain service charge provisions. Service charge provisions can be complex and vary widely depending on the type and scale of the communal services provided; your solicitor will explain the particular arrangements applicable to your property. However, you should note that most leases provide for the payment of an estimated annual charge by regular instalments throughout the year and for the subsequent

collection of any extra sums due once the actual expenses incurred have been calculated. You should also bear in mind that the annual service charge figure quoted to you when you purchase is likely to increase over the years, as prices rise and the buildings and other structures age and require more substantial repairs.

If a leaseholder (the owner of a leasehold property) breaches the terms of his/her lease then, ultimately, the freeholder can forfeit the lease and repossess the property. That is usually a sufficient incentive to encourage compliance with the lease. There are legal safeguards in place to ensure that residential leases cannot be forfeited without a court order and every opportunity will normally be given to the leaseholder to enable breaches to be rectified before such an order is made.

The freeholder may be a company, or a private individual. In the case of purpose-built leasehold property, the freeholder can be a company owned jointly by all the flat-owners.

What do I need to know if I am buying a flat?

There are generally three different types of flat or apartment, and they all have their own distinct features and legal implications:

1. A flat in a purpose-built block (or large-scale conversion) containing a number of similar units, where there will be communal hallways, stairs and/or lifts, corridors, parking spaces and areas of soft and hard landscaping managed by either the landlord or a management company. A service charge will be payable by each flat owner to cover insurance, communal services and joint repairing costs. In some cases the flat owners each have a share in the company that owns the freehold reversion, and therefore have control over how the block is managed.
2. A flat or “maisonette” in a smaller, purpose-built block or terrace which is normally no more than two or three floors high and which may include one or more conventional houses. These flats may be sited over garages or shops or over part of another property. In many cases the unit will have its own front door at ground floor level or a private, external stairway. The flat owner is likely to be responsible for the majority of repairs to his/her own unit but there will be some areas of shared liability depending on the layout (eg shared walls, roof and external areas) for which a service charge is payable. This type of flat was popular in the 1960s and 70s and is also found on many residential developments constructed in the last ten years or so.
3. A flat which has been created by converting and dividing up an existing property (often a large house) into a small number of units. The resulting flats may differ widely in terms of access, size and layout. The flat owners will share liability for joint services and communal areas (if any) and external/structural repairs. The flat owners may each own a share in the freehold of the property and they will effectively manage repairs and maintenance of the communal structure between themselves. There may be no requirement for a regular service charge but the flat owners will have to agree and pay for repairs etc as needed. This can lead to problems if one flat owner will not co-operate or pay their share.

In almost every case a flat will be sold leasehold (see the section above on leasehold property) as this is usually the best way of ensuring that every flat owner is bound by the same restrictions and conditions, and that any provisions relating to repairs and the calculation and collection of service charges and other joint expenses are legally binding and enforceable.

Flat leases can be very complex, due to the need to make proper provision for insurance of the whole structure, the shared repair and maintenance responsibilities attached to the building in which it is located and any common services. The content of the lease will vary according to the type of flat and the building in which it is situated, as referred to above. Your solicitor will provide a detailed explanation of the lease and the arrangements applicable to your purchase property. Your lender will also require your solicitor to certify that the lease makes adequate provision for all these matters as a defective lease could make the flat very difficult to sell or prejudice its value.

It is obviously essential that you understand the extent of your own responsibility for maintenance and repairs, and the items which will be the responsibility of any landlord or management company. You must also bear in mind that you will have to pay a ground rent, any service charge (often monthly or quarterly) and/or put money aside for essential repairs to the common structure. The repair and maintenance of large blocks of flats or flats constructed by the conversion of historic mills and similar buildings can be particularly expensive. Although the management company will usually consult with flat owners regarding any substantial repair or refurbishment schemes, you should take these potential costs into account when considering your finances prior to purchase.

Some older flat leases (eg those relating to the substantial “mansion flats” found in fashionable areas of London and other large cities) provide for a “sinking fund” which is used to collect and hold funds for items of major expenditure which are likely to occur at longer intervals (eg replacement of lifts or the roof). The objective was to collect contributions on a regular basis and avoid sudden calls upon the flat owners for excessive amounts. However these can result in the accumulation of significant funds held on trust for the benefit of those persons who have made the contributions. This

can create problems when a flat owner wishes to sell the flat and recoup his/her share of any unused funds held in the sinking fund and they are seldom used in modern leases. Your solicitor will advise you if this arrangement is likely to affect you.

Your solicitor will make detailed enquiries on your behalf about the current service charge payments and expenses, future proposals for major expenditure and whether the seller is in arrears. It is essential that any arrears of service charge (or ground rent) are settled by the seller before or at completion of your purchase as you will otherwise become liable for them. Your solicitor will deal with this in the contract for your purchase, together with any potential liability for any additional charges over and above the estimated service charge already paid by the seller for the current year.

Flat owners have statutory rights to:

- be consulted about substantial repairs and expenditure to the communal structures;
- extend the term of their leases in certain circumstances; and
- be offered first option to purchase the freehold reversion of the block before it can be offered for sale on the open market.

The relevant legislation is complex and your solicitor can explain how these might apply to you and the flat you are buying.

You should also bear in mind when buying a flat that the landlord retains a significant degree of control and this can occasionally cause problems if disputes arise.

What happens when I instruct you on the purchase?

Every purchase is slightly different, and much will depend on whether you are selling an existing property at the same time or involved in a long “chain” of transactions. However the initial legal steps in your purchase will usually be as follows:

- Once you instruct us to act we will issue to you our client engagement documents which contain our fee estimate or quotation. You must sign and return these to show that you accept our terms. You will also be asked to supply the relevant identification evidence for money laundering and anti-fraud purposes.
- We will ask you to complete and return our purchase questionnaire so that we have the basic information we require about the purchase property and your proposed mortgage (if any) plus any special terms you have already agreed with the seller.
- We will notify the seller’s solicitor that we are acting for you on the purchase and request the draft contract and standard package of information relating to the property and the legal title. We will ensure that the package sent to us contains all the required information and raise any additional enquiries about the property with the seller’s solicitor.
- We will submit the relevant property searches on your behalf and review the results, notifying you of any matters revealed in those searches which should be brought to your attention and/or might affect the value or enjoyment of the property. (An explanation of the various property searches is included in a later section of this Guide.)
- We will ask you to check the Fixtures and Fittings form supplied to us which lists all the items to be sold with the property, and those items which the seller will be removing. This will form part of the contract of sale. We will also ask you to check the plan of the property.
- We will review the seller’s legal title to the property and obtain from the seller’s solicitor any additional title information or other documents that we require. We will have particular regard to any title issues likely to be of concern to your lender (if you are obtaining a mortgage). We will notify you if we have any concerns about the title and discuss any possible means of dealing with these problems.
- At this stage we may also have to contact third parties for other essential information (eg if the property is leasehold)
- Once sufficient information about the property is obtained by us, we will prepare a report for you setting out the legal information you should know about the property.
- We will review the draft contract and try to negotiate with the seller’s solicitor any changes that we consider necessary.
- We will review the content of your Mortgage Offer and ensure that any mortgage conditions can be met, and that we can certify the title.
- We will liaise with the seller’s solicitor and you to discuss potential dates for exchanging contracts and completion.

What happens if you identify a problem with the title to the Property?

Occasionally we may notice there is defect in the seller's legal title which could cause a problem with your purchase. A defective title might make it very difficult for you to sell the property at a later date and would not be acceptable to your lender. In many instances we can liaise with the seller's solicitor to find ways of rectifying the defect. However, this is likely to involve us in extra work for which we will make an additional charge. If so, we will discuss this with you before incurring any extra costs.

In some cases the problem cannot be rectified but it may be possible for the seller to take out and/or pay for a defective title insurance policy which will effectively compensate you, as the buyer, in the event that the defect in the title leads to a problem in the future (eg if there is no legal right of way over a path that you would use to access the rear garden or there is an old restrictive covenant which could affect the use of the property even if it has never been enforced.) If a defective title policy is appropriate we will include this as a condition of the purchase contract. In most cases, we will not be able to identify that this type of policy is necessary until part way through your transaction. If we do so we will notify you and provide with full written details of the circumstances, the reasons why such an insurance policy is necessary or advisable, and the costs involved so that you can make an informed decision on whether you wish us to proceed with the purchase and to arrange or require such an insurance policy on your behalf.

Depending on the circumstances the policy can be obtained by us or the seller's solicitor but the seller will usually be responsible for the "one-off" policy premium. In simple cases it is often easier for us to obtain the required policy (via a small panel of reputable insurers) which enables us to obtain these policies on-line without delay. We do not normally conduct an analysis of the market where the insurance premium is £350.00 or less. We do not receive any commission for arranging such policies but if appropriate we may raise a fee in our final account to you for the additional administration involved. You should ask your solicitor if you require further details on indemnity policies obtained in this way.

However, in high value transactions or more complex situations the amount of the insurance cover required may result in a much higher premium and/or the seller may have to supply statutory declarations or other documents in order to obtain a suitable policy. In those cases the seller's solicitors may have to obtain the policy and we will have to carefully check the insurance terms and proposed level of cover. Alternatively we may need to obtain several different quotations for approval by the seller's solicitor. The work undertaken by us in obtaining quotations and arranging or checking the relevant insurance policy will be charged at our normal hourly rates.

What should I do when I receive my Mortgage Offer?

A mortgage is a loan provided by a Bank or Building Society to help finance your purchase. The loan will be secured against the property you buy so that, if you do not keep up the monthly mortgage repayments, the lender may seek to repossess the property and evict you from it – hence the standard warning that *"your home may be at risk if you do not keep up your repayments on a mortgage or any other loan secured on it"*

We strongly advise that you receive financial advice from an independent mortgage broker regulated by the Financial Conduct Authority before entering into any mortgage. There are numerous mortgage products on the market and a broker can advise which product is likely to be most suitable for you and your particular circumstances.

If you anticipate any difficulty in obtaining a suitable mortgage offer, either because of your personal circumstances or the condition or location of the property, you may want us to delay the submission of the usual property searches (and therefore not incur the cost of those searches) and other legal work until you have a satisfactory offer. This will cause some delay but will keep your costs to a minimum until you know you can get the required mortgage. You must notify us right at the outset if this is the case.

When you receive your offer of mortgage, you should check this carefully. If we are instructed to act for the lender also, we will receive our copy of the offer at the same time or one or two days later than you. Key points to consider will be:

- Are the details of all the borrowers' names and the purchase property address etc spelt and set out correctly in the Mortgage Offer? Minor errors of this type which are not corrected immediately can cause serious last-minute delays when we try to request the mortgage funds for completion of your purchase..
- Are there any deductions to be made from the mortgage sum you have requested? These might take the form of the retention by the lender of part of the mortgage funds that will not be paid to you until essential repairs to the property are completed, or a deduction for the lender's arrangement fee. These deductions can sometimes create difficulties as you must be able to find these funds from your own resources to enable your purchase to proceed. For a further explanation of these deductions, please contact your mortgage broker, your lender or your solicitor.

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- The purchase price stated in the mortgage offer must be correct. If you are receiving an allowance or deduction from the purchase price or an incentive of any kind (as sometimes provided by developers of new-build properties) the lender must be informed. This could affect the amount that can be lent to you and the lender may issue a revised mortgage offer, causing further delays.
 - Are you receiving funds from some other party (whether as a gift or a loan) in order to purchase the property? The lender must be informed if this is the case, even if the proposed additional funding will come from a parent or other close member of your family.
 - Are there any mortgage conditions imposed in the Offer? You may, for instance, be required to obtain additional specialist reports for consideration by the lender. Your Lender will not make the mortgage monies available, and in most cases we would advise that you do not exchange contracts, until these conditions have been met. You should discuss with your solicitor the implications of any conditions that have been imposed.
 - Have your financial circumstances changed since you applied for the mortgage? If for example you have been made redundant or changed your job you must notify the lender.

You must ensure that any acceptance or other forms are returned to your lender promptly and that any outstanding conditions are dealt with as quickly as possible. If these matters are not attended to the mortgage funds will not be released to us in time for completion. We cannot complete the purchase if the mortgage monies are outstanding or uncleared at the date of completion.

Under the terms of your Mortgage Offer it is likely that any persons, age 17 years or over, who are to occupy the property with you or in your absence, will be required to sign letters of consent to the mortgage, or a deed of disclaimer. This includes any older children or other family members who will be living with you.

We do not recommend that you instruct your solicitor to exchange contracts until you have a firm offer of mortgage. There is no law that says you cannot exchange without a mortgage offer but if the mortgage offer does not materialise in time you may have insufficient funds to complete the transaction on the date fixed when contracts were exchanged. This can be embarrassing: you may be liable to forfeit the deposit to the seller (who can then sell the property elsewhere) and also be liable for the financial losses directly caused to the seller and to all the parties higher up the chain of transactions.

Your mortgage offer may have a statutory cooling off period. This will normally run for a period of 7 to 14 days from the date that the mortgage offer is produced by your lender. You should still sign and return any acceptance documentation to your lender as quickly as possible.

Why do you need to do Property Searches?

There are three basic reasons for doing searches against the property you intend to buy before you exchange contracts:

1. To check whether there are any matters which might affect its value or your enjoyment of the property or your decision to buy it (eg compulsory purchase orders or previous claims for compensation arising from mining activity);
2. To identify if there are any matters which would be prejudicial to you which we can potentially resolve with the seller or a third party before you exchange contracts, such as local authority charges requiring the repayment of grants or other funds;
3. To comply with your lender's requirements if you are obtaining a mortgage.

We would always recommend that property searches are undertaken. If you are not obtaining a mortgage and you wish to dispense with the usual searches we will require you to confirm this to us in writing.

How long do these searches take and what will they cost?

Depending on the local authority responsible for the property and which searches are required they usually take between one to four weeks from the date on which we submit the search request. Nowadays most of the searches are requested and returned to us on-line.

The cost is typically between £300 and £400. We ask you to pay for these searches in advance and the search fees requested in our initial letter will then be deducted from your final account on completion.

We will normally do these searches on your behalf as soon as possible. If you do not wish us to submit searches until a later stage then you should inform us in writing of your decision. Receipt of search fees will be regarded as your authority to proceed. If you wish, you may wait until your offer of mortgage is received before paying this sum to us. However, some authorities can take several weeks to return searches and delays in exchange of contracts may result if they are not submitted at an early stage.

In many cases we may commission a search company to undertake the necessary pre-contract local searches against the property. This means that an employee of the search company will access the records of the relevant local authority (or other organisation) and view the local land charges registers and any other relevant plans and documents to provide the information which we would otherwise obtain by means of an official search. A Regulated (Personal) Local Authority Search provides the same information as a Council (Official) Local Authority Search. It uses the same Local Authority data, but is put together by the search agent rather than being supplied directly by the Local Authority.

The results of a Regulated Search are not guaranteed by the local authority (or that organisation against which the search is conducted) but Regulated Search results are backed up by an insurance policy provided by an independent insurer so that, in the case of an inaccuracy in the search result which is found to be prejudicial to the value of your property, the insurance policy should provide the appropriate financial redress. The companies we use to carry out Regulated Searches must also abide by the Search Code drawn up and monitored by the Property Codes Compliance Board.

We use Regulated Searches in numerous cases and problems are very rare. However, we do not normally recommend the use of personal searches for commercial properties, or for residential properties which are of high value (i.e. worth over £700k) or with unusual features or locations (e.g. properties adjacent to rivers, or with additional land). If you have any queries about the use of Regulated Searches please contact us for more details.

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Is there any alternative to these searches?

We may be able to obtain an insurance policy under which you pay a one-off premium for a policy which will pay out an appropriate level of compensation to you/your lender in the event that something prejudicial occurs which would have been revealed by the property searches. The policy is likely to be cheaper and can be much quicker than waiting for the search results. This may be useful if you need to proceed very quickly. However insurance is not available in all cases and lenders all have different policies on its use. If the property is not conventional, has more land than usual, or there are potential issues with its location the lender may not accept an insurance policy.

What sorts of searches are required or advisable?

A **Local Search** is obtained from the relevant local authority and will reveal:

- the planning history of the property;
- whether the road outside the property is adopted (ie maintainable at public expense);
- whether there are any local land charges registered against the property (eg if the local authority previously carried out pest control at the property and the seller failed to pay their fees, the local authority can register the debt as a local land charge which is similar in effect to a mortgage);
- other matters which could directly affect your use and enjoyment of the property (and therefore its value) such as future development proposals which would directly affect it.

The Local Search will reveal any current planning proposals directly affecting the property, but it will not necessarily disclose planning proposals relating to adjacent land or properties. Although the seller is required to disclose any development proposals of which he is aware we would advise that you make specific enquiries at the local planning department to check the planning status of the land in the vicinity and whether there are any development proposals that might affect the property. This is particularly advisable where the property is adjacent to open land, or not situated in an established residential area. You should note that in agricultural “green belt” areas farmers might readily obtain planning consents for barns and other agricultural installations, which may be unsightly.

A **Coal Search** is obtained from the Coal Authority and will reveal the existence of any mineshafts within the boundaries of the property, and also any past claims relating to subsidence. This search is only appropriate where there is a history of mining in the area. Similar searches are also strongly advisable in areas where brine extraction, limestone mining or tin mining (amongst others) have taken place.

A **Drainage Search** is obtained from the relevant water company and will confirm whether the company supplies mains water to the property, and whether waste water drains into the public sewers. It will also confirm whether there is a sewer running within the boundaries of the property. In rural areas, where properties may not always be connected to mains drainage we will need to make further enquiries of the seller to establish whether there is a septic tank or other device and whether this is located within the property or shared with other properties etc.

An **Environmental Search** is carried out mainly to obtain a certificate confirming that the land on which your property is built is not considered to be contaminated. The mere fact that the rest of the search reveals entries does not necessarily mean there is any cause for concern but it is important that you are aware of the previous uses of the property or land in the vicinity of the property.

An increasing number of new houses are built on former “brown field” land (ie former industrial sites and other locations where contamination is likely to have occurred). In such cases we will need to check that the developer supplies full details of surveys and tests undertaken to identify any contamination, the steps taken to remediate this and the local authority’s certificate that the relevant remediation works have been completed.

A **Flood search** may also be required by your lender to establish if the property is in an area which has been, or might be, affected by flooding. In recent years flooding has become a major problem in many areas and we generally recommend that all buyers obtain a flood search.

It is possible for you to check if the property is at risk of flooding by using the relevant search facility on the Environment Agency website. This will produce an indication of risk based on the post code of the property but will not necessarily reflect the actual risk applicable to the individual property (which may for instance be higher or lower than other properties in the same post code area.) It can be difficult and/or expensive to obtain buildings and contents insurance for properties which have a medium to high risk of flooding, and a lender may refuse to lend on high risk properties. It is therefore advisable for buyers to make this preliminary check for themselves before incurring expensive searches and survey fees.

It is possible that other searches will also be required depending on the geographical location of the property that you are buying.

Will the seller’s existing mortgages and loans on the property be settled when I buy it?

When we check the seller’s legal title we will identify all the mortgages and any other loans or financial liabilities which are registered against the title at the Land Registry. If the seller has owned the property for over 30 years or the property has not been transferred on the open market during that time the legal title may not be registered at the Land Registry and we will have to examine the title documents and make other searches to ensure that we have identified all mortgages, loans and other financial liabilities which have been legally secured against the property. We will then require the seller’s solicitor to undertake to us that all these mortgages and loans will be paid off and removed from the title when you complete the purchase. This ensures that you receive a clear title to the property and that any mortgage that you are obtaining is registered as a first charge against the property (as your lender will require this).

In most cases we will be happy to rely on the seller’s solicitors’ undertaking to discharge any mortgages registered against the property, as these are professional undertakings enforceable directly against the legal firm that gives them. However, where there are private mortgages (eg money lent by a private individual or company rather than a bank or building society) the discharge process is less predictable and in order to protect you and your lender we may insist that the seller’s solicitors produce evidence of full discharge before we complete your purchase. Your solicitor will notify you if there are likely to be any problems in this regard.

If you are buying a property which has been repossessed by the lender due to mortgage arrears we will conduct the same checks and ensure that all mortgages and loans and any other restrictions secured against the title are discharged. Occasionally the proceeds of the sale to you may be insufficient to pay off all these mortgages and loans (and the accrued interest and costs) in full and in that case it is essential that we ensure that the relevant lender(s) have agreed to accept this and will still give an effective discharge (so that you will get a clear title). You must also bear in mind that the previous owner may have had other personal debts and unsecured loans which remain unpaid at the date of your purchase. You will not be responsible for these but you may encounter some short-term problems with debt collectors or obtaining credit yourself until the relevant credit data for the property is updated!

What does “Exchange” or “Exchange of Contracts” mean?

The term “exchange” is shorthand for exchange of contracts. The contract is the legal agreement between you and the seller for the sale and purchase of the property. There are two copies; one copy is signed by the buyer, one by the seller.

Exchange will only take place when both parties wish to be legally bound by the contract. In almost all cases exchange will take place in a formal telephone conversation between the buyer’s and the seller’s solicitors. Both solicitors must hold their client’s signed part of the contract. A completion date is fixed and inserted in the contract and the two copies of the contract are then dated and the respective solicitors record that exchange has taken place. The two hard copies of the contract are then swapped between the respective solicitors, in the post. In many instances both your solicitor

and the seller's solicitor will be trying to co-ordinate this transaction with a number of other linked sales and purchases in the "chain". As explained earlier in this Guide this means that all the relevant buyers and sellers in the chain of connected transactions must be in a position to exchange at the same time. This is often the cause of aggravating delays which we cannot easily prevent.

You should never arrange moving dates, book time off work for the move or book removal firms without first checking with us that everything is ready and that contracts have been exchanged with a firm completion date (sometimes referred to as the "contractual completion date".)

Will I have to pay a deposit at exchange?

You will be required to pay a deposit (usually 10% of the purchase price) at exchange and this money will normally be held by the seller's solicitor until completion takes place. Sometimes we may agree with the seller's solicitor that the deposit monies can be used to pay the deposit on any new house that the seller is buying at the same time (if that is the case).

What if I change my mind once exchange has taken place?

Once contracts are exchanged the agreement is binding and cannot subsequently be altered save with the agreement of both parties.

The binding nature of the contract means that all the investigation work (both legal investigations and searches, and also any physical survey) has to be completed before contracts are exchanged. All the buyer's solicitor's enquiries have to be satisfactorily answered prior to exchange. It will be too late to query anything after contracts have been exchanged. For better or for worse, you and the seller are stuck with the transaction!

We will not normally exchange contracts without checking with you first, but should there be any sudden change in your circumstances that might cause you to stop or delay your purchase this must be reported to us immediately.

I have a spouse, a long term partner or someone else who will be living with me - should I buy just in my own name or in both names?

In normal circumstances a husband and wife should purchase their home jointly. Many lenders will require this.

Sole legal ownership by one spouse only may be appropriate in some cases, for example where one spouse is individually wealthy (and a pre-nuptial agreement has been entered into), second marriages where husband and wife may have agreed to keep their respective assets separate or where one spouse is in a "high risk" type of business and the potential of bankruptcy needs to be considered. We strongly advise you to seek specific legal advice from us on this point, if you are considering purchasing your property in one spouse's name only.

Where a number of persons are purchasing a property together they should normally purchase jointly particularly if they are contributing monies to the transaction, either as capital for the deposit or by payments towards the mortgage. It can be very difficult and costly to establish the existence of an interest in the property if you are not named as a co-owner in the purchase deed, even if you have lived there for many years.

I am buying the property together with my spouse/ my partner /a friend - how should we hold the property?

In law, co-ownership of land can only exist through the medium of a trust of land. The trustees (the co-owners) hold the property in trust for themselves. There are two methods of holding the property in trust, and the type of trust that you select will be declared in the transfer deed or occasionally in a separate Trust Deed.

1. Joint Tenants

In this instance none of the co-owners will be entitled to a separate proportion of the property and the equity in it; each one owns the whole of it. The most obvious feature of the joint tenancy is the right of survivorship on death, which means that the property automatically passes to the surviving co-owner(s). None of the co-owners can leave any share in the property to another party under their respective Wills.

This option is usually selected by a husband and wife, unless there are special reasons for not doing so. You should discuss this with your solicitor who will be able to provide further advice.

2. Tenants in Common

Where a tenancy in common is selected each co-owner holds a specified proportion of the equitable interest in the property. This specified interest can be disposed of e.g. by a lifetime transfer, or under the co-owners' Wills. Co-owners who hold the property as tenants in common can hold the property in equal shares or specify any different proportions if appropriate.

Tenancies in common are most often used where the co-owners are an unmarried couple, or where unrelated parties are buying a property together and/or the co-owners have contributed financially to the property in different proportions. If you are considering holding the property as tenants in common you should contact your solicitor for further advice.

Will Stamp Duty Land Tax be payable?

Stamp Duty Land Tax (SDLT) liability is assessed on the value of the transaction, which will normally mean the purchase price of the property as stated in the Transfer document if you are buying on the open market. The value of any special fixtures and fittings that you are buying with the property can be ignored for this purpose. Special rules apply if you are buying by way of part exchange, shared ownership or lease.

You will not be liable to pay SDLT if the relevant value of the property you are buying falls within the nil rate band applicable at the date of your purchase.

A detailed SDLT Return must also be completed and submitted to HMRC very shortly after completion and penalties are payable for failure to submit the Return and/or pay the SDLT by the due date. For this reason you will be asked to supply the relevant information for the Return and to sign the completed Return before you complete your purchase.

In recent years there have been regular changes to the SDLT rules, tax bands and rates payable. For this reason it is not practicable to provide up to date details in this Guide. Your solicitor will advise you on the potential SDLT liability arising from your proposed purchase and circumstances, and will prepare and submit the necessary SDLT Return on your behalf. However your solicitor is not a tax expert and cannot advise you on all scenarios. Ultimately tax is assessed on the returns submitted which are you responsible for completing.

What will my solicitor be doing between Exchange and Completion?

Your solicitor will prepare for the completion of your purchase by taking the following steps:

- We will produce and issue to you a full completion statement and invoice for our costs, showing any balance required from you to complete. Our costs are included in the statement as a total, and itemised on the Fee Invoice accompanying the statement. Any balance shown as payable by you must be paid at least five days before completion. **IF ANY MONIES ARE OUTSTANDING ON THE DAY OF COMPLETION THEN WE SHALL BE UNABLE TO COMPLETE.** Payment cannot be accepted by cheque, so please arrange a bank transfer to ensure that the money arrives with us in good time to complete.
- To reduce the possibility of fraud when arranging the transfer of funds please read the final section of this Guide very carefully – it explains the precautions we take for your protection and the ways in which you can protect yourself.
- We request the mortgage advance from your lender in good time as lenders usually require at least three working days notice of the completion date before releasing the advance. If the purchase money is not paid to the Seller's solicitors on the date set for completion, you would be in breach of contract. For this reason we generally request the mortgage advance for the working day prior to your actual completion date.
- We will settle the Transfer documentation with the seller's solicitor and arrange for you to sign all the relevant documents, including any Mortgage Deed. Completion cannot take place if you have not signed them so it is essential that you are available at this time. If you expect to be away on holiday or business it may be possible for us to organise a Power of Attorney in which you appoint a trusted person (or your solicitor) to sign these documents on your behalf but we must have advance notice and there will be an additional charge.
- We will make a number of pre-completion searches at the Land Registry to ensure there have been no changes to the property title since we checked this at the outset of your purchase and that no further changes can be made for a specified "priority period" (to allow us sufficient time to register you as the new owner). These searches are made for your protection and will have to be produced to the Land Registry when we register your title after completion.
- If the property is leasehold we will have to check that any final sums due in respect of outstanding ground rent and service charges will be paid by the seller at completion and ensure we (or the Seller's solicitor) can deal with any specific property transfer notifications or other requirements of the lease.

Please remember that if you have a linked sale of an existing property your solicitor will also be undertaking all the legal work connected with that sale (see our Guide to the Sale of Residential Property).

What should I be doing between exchange and completion?

You must ensure that your new property is insured (unless buildings insurance is already included in the service charge payable on a leasehold property). We normally advise that you arrange buildings insurance to be effective from the date of exchange. Your survey or mortgage valuation report should indicate the appropriate insurance value of the property (which may not necessarily be the same as the purchase price.) You should also read the guidance provided by your insurer(s) very carefully before deciding on the amount of buildings and contents insurance required, as under-insuring can have serious consequences in the event that you need to make a major insurance claim in the future. Contents insurance should be arranged to start from the date of completion if you are moving in on that date. If you will not be moving into the property immediately on completion and the property will be vacant, you should advise your lender or Insurance Broker immediately as your Building/Contents insurance may otherwise be ineffective.

You must book any necessary removals. Whilst school and bank holidays are often popular times to move house you should remember that removal companies will be correspondingly busy at these times and may be booked up weeks ahead.

Completion cannot take place if you have not signed all the required transfer documents and any Mortgage Deed so it is essential that you are available at this time. You must either be prepared to attend at our offices to sign the documents, or sign and return them promptly if we agree to send them to you in the post. Electronic signatures on emailed or scanned documents are not currently acceptable. If you expect to be away on holiday or business during this time it may be possible for us to organise a Power of Attorney in which you appoint a trusted person (or your solicitor) to sign these documents on your behalf but we must have advance notice and there will be an additional charge.

You should arrange with the seller to have any utility meters read, either on or shortly before the contractual completion date so that the relevant charges are correctly allocated between you and the seller and all the utility companies are aware that ownership of the property is changing. If you have not previously had accounts for these services you will need to sign supply agreements with the relevant utility companies and you should organise this before the completion date.

You may want to contact other service suppliers (eg telephone, satellite TV and internet etc) to arrange the appropriate connections; in some areas it can take up to eight weeks to secure an internet or landline connection!

If practicable it can be useful to arrange a brief meeting at the property with the seller shortly before the completion date so you can obtain the codes for any pre-set alarms and be shown how the boiler and central heating etc work.

You are reminded that other authorities may also require notice of your change of address (eg HMRC, DVLC and your motor insurer). You can arrange for your mail to be redirected to your new address for up to a year by completing the relevant Royal Mail form and payment of a fee. This is a very useful service and will ensure that you continue to receive all your important post, allowing you extra time to notify your change of address to friends and family and other agencies and companies with whom you have regular dealings.

If you are selling an existing property and moving out on the same date you will also have a similar, long list of tasks to deal with on your sale! Please consult our Guide relating to the Sale of Residential Property.

When does Completion of the sale take place and what happens?

Completion is the stage in your purchase when you pay over the full purchase price to the seller and you take full legal ownership of the property. The seller must vacate the property at completion and you are entitled to move in. The completion date will have been fixed by agreement at exchange and set out in the contract for sale. Most of the legal process on the completion day will be dealt with over the telephone by the parties' solicitors and all the money due to the seller will be transferred using a same day bank transfer.

Ideally there will be an interval of at least two or three weeks between exchange and completion so that all the preparations for completion take place in an organised manner, but this doesn't always happen. Occasionally, exchange and completion will take place on the same day, which means that both parties' lawyers (and you) will have to do absolutely everything required for completion before the exchange of contracts. The concern on a simultaneous exchange and completion is the lack of certainty. There is no guarantee that the transaction is going to happen until it does. That can be unnerving, especially if there is a chain of several transactions to synchronise: you and all the other parties in the chain can be left waiting anxiously in removal vans, frantically telephoning the solicitors and estate agents and not knowing for certain if everything will come together and completion can take place!

It is not usually necessary for you to attend at our offices on the day of completion. The keys to your property will normally have been left with the seller's estate agent once the seller has moved out. The agent will only release them to you once the seller's solicitors notify the agent that completion has taken place. Please telephone us late morning or lunchtime on the relevant day to check whether completion of your purchase has taken place. The contract will normally stipulate that completion must take place by a fixed time (usually sometime between 1 and 2.30pm). Provided we have your mobile telephone number we will try to make contact with you to confirm completion or to let you know if there is any delay.

What happens after Completion of your purchase?

For peace of mind you may wish to have the locks on the front and rear doors of the property changed once you have moved into the property. You will then know for certain that no other person has keys to your property.

Shortly after legal completion has taken place, your lender will contact you with details as to when, where and how to make your mortgage repayments. You should make enquiries of your building society/bank as to when your first mortgage repayment will be due.

You will need to notify the relevant local authority of your new address as soon as possible, or the authority may demand immediate payment of any arrears of Council Tax that have accrued by reason of your delay.

Your solicitor will arrange the payment of Stamp Duty Land Tax to HMRC. It is important that you return the SDLT Return form as soon as possible, as your solicitor only has a short period of time following completion to send it to HMRC before you start incurring penalties. We will send you the form well in advance of completion because of this.

Once any SDLT has been paid your solicitor will send all the relevant Transfer documents to the Land Registry, for registration of your title (and any mortgage). The registration process can take up to six weeks. We will notify you and your lender once registration has been completed satisfactorily.

When all the legal work relating to your purchase has been dealt with we will close your file and confirm this to you in writing.

What is the Land Registry?

The Land Registry holds the official record of nearly all land and properties in England and Wales. If there is a dispute about ownership of any property, the Land Registry record will normally prevail.

The official record (which is open to public inspection) shows:

- the extent of the land in each registered title number (as shown on the official plan);
- whether it is freehold or leasehold;
- who the registered proprietors are,
- any mortgages registered against the land;
- any other rights or liabilities registered against the land.

However, the relatively large scale of the official plan means that it can only define the **approximate** boundaries of the registered property. If you have a dispute with your neighbour over the exact position of a boundary it may not always be possible to resolve this by checking the official plan.

EMAIL SECURITY AND ANTI-FRAUD PRECAUTIONS

PLEASE READ THIS SECTION CAREFULLY FOR YOUR OWN PROTECTION

If you communicate with us by email, or ask us to email you, it is important that you understand that email is not a completely secure method of communication. Although we take all reasonable precautions to safeguard our own IT systems it is possible for others to intercept emails that pass between us. This means we cannot guarantee client confidentiality in these circumstances.

In some cases criminals have used email interception to defraud legal firms or their clients. Residential Conveyancing appears to be a high risk area for this type of fraud. The fraudster operates by intercepting genuine email correspondence between legal firms and their clients; at the appropriate point in the transaction the fraudster will issue one or more bogus emails which appear to come from a legal firm or party involved. These bogus emails can take various forms but will generally request that money is transferred to a stated bank account for the purposes of the transaction. The request will often appear very plausible but the account details provided are false. If the fraud is not detected the transfer is made to the fraudulent account and may not be recoverable. You should note that when you request a funds transfer your bank will not generally check for a match between the account name and account number supplied by

you, nor will banks accept any responsibility if they make the transfer to the account number as you directed. Some of these frauds are very sophisticated, and people have lost considerable sums of money as a result. To help prevent this type of fraud:

- We will not normally notify you of our bank account details by email. If we require funds from you for a transaction we will ask you to telephone us, using the telephone number on our initial engagement letter, to obtain these account details directly from your solicitor;
- We are members of the “Safe Move” scheme – we will explain to you how you can use the scheme to verify that any bank account details supplied to you for this firm
- are genuine;
- We will NEVER send you an email notifying you of a last-minute change in our bank account details;
- Contact your solicitor immediately if you receive emails which appear to come from us (or any other party or legal firm) requesting you to pay money to a specified account. Do NOT use the telephone number on the suspect email as this may be false and the criminals might maintain the deception by answering it as if you have rung this firm. Do not authorise any requested financial transfer until you have verified that the request is genuine;
- We will verify any bank details you supply to us by email (where money is to be transferred to you). We will normally telephone you to check these details and if we cannot contact you we may delay the transfer until we can do so;
- We now verify any bank details supplied to us by other legal firms using a reputable external agency recommended by the Law Society.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.