

THE
HOBEN JOHNSON
HOME BUYERS' GUIDE

INTRODUCTION

It is said that this country has one of the most complex systems of house purchase in the world.

We at Hoben Johnson aim to make the legal aspects of the house purchase process as simple and straightforward as possible for you.

Whilst the guide cannot deal in details with every point which may arise nonetheless it aims to be a guide through the Conveyancing process.

***Always remember, we are here to help** and if you do have any queries, do not hesitate to let us know.*



1. **FREEHOLD AND LEASEHOLD**

Most houses are usually sold as '*freehold*' which means the buyer will own the whole of the property 'forever'. However, virtually all flats (and some houses) are sold as '*leasehold*' which is explained more fully in paragraph 5 of this Guide.

2. **SURVEYS**

Having chosen the property that you wish to buy and, if necessary, having arranged to borrow money from a Building Society, Bank or other Lender to assist in your purchase, you should then consider which type of survey you require to be carried out on the property.

If you are obtaining a mortgage advance, the Lender will insist that a qualified surveyor, which usual it will appoint, carries out what is called a 'Mortgage Valuation Report'. This is not an exhaustive examination of the property's structure, and does not go into any detail. This you will see when you receive a copy of the Report, which most Lenders now supply to you. It should be borne in mind that the purpose of this Report is only to enable the Lender to ensure that the property is worth at least the amount, which it is lending you.

Therefore, you should consider having a more detailed Report carried out on *your* behalf and should check with the Lender whether the Surveyor who will carry out its Mortgage Valuation Report will carry out such a survey for you – it may be cheaper and quicker that way.

There are two common types of more detailed Report:

HOUSE BUYER'S REPORT AND VALUATION

This covers the condition of both the interior and exterior of the property and the extent of the inspection is clearly defined so that you know what problems your Surveyor can be expected to pick up. As well as the Report the Surveyor will give you his opinion of the value of the property.

FULL STRUCTURAL SURVEY

This is useful for older or converted properties and will provide you with an in depth Report on the property, including foundations, roofs, gutters, chimney stacks, water and electricity systems, and even the condition of the boundary fences. The Report will be around 15 pages long and will cost upwards of £500.00.

In both cases the Surveyor may suggest further specialist tests are carried out, for example if evidence of wet or dry rot is found, or cracks in the brickwork indicate subsidence. If the Survey Report reveals anything unsatisfactory, you may wish to negotiate with the seller a reduction in the price of the property, or you may wish him to carry out remedial work before you proceed with the transaction.

Remember, nothing can be done about any defects which you discover after you are legally bound to proceed with the purchase (i.e after exchange of contracts) and the cost of remedying it will be your responsibility.

If you are purchasing a new house or flat then it should be covered by the National House Building Guarantee. The N.H.B.C. is a non-profit making body with about 25,000. members who build houses according to a set of standards. Houses built by N.H.B.C. members are covered by a 10 year guarantee, which is actually a 2 year undertaking by the Builder to repair most faults, backed by insurance cover for major structural faults in the following 8 years, caused by the Builder's failure to comply with N.H.B.C. standards. Subsidence is not covered nor are defects valued at £500.00 or less.

3. MONEY MATTERS

Traditionally, Building Societies or Banks were the first port of call for the Home Buyer requiring a loan to purchase and, whilst these still account for the majority of mortgage business, in recent years many other Lenders have entered this highly competitive market. Each Lender may be able to offer you many different types of mortgage. Unless you are opting for the simple repayment type of mortgage, where each month you repay part of the capital

sum which you have borrowed and interest, then you will almost certainly become involved in taking out a life or pension policy, proceeds of which will be used to repay the loan at the end of the mortgage term. Any Lender or broker giving you advice on such a policy should be registered with a Governing Body authorised under the Financial Service Act. If in doubt, ensure that you have obtained independent advice as to the best type of mortgage for you.

At Hoben Johnson we believe that it is important to ensure our clients have available to them financial advice which is both expert and independent. We achieve this through the Solicitor's Financial Services, a scheme set up by the Law Society, our governing body, to help practices such as our own to provide our client with advice which meets these high standards.

Please let us know if we can assist in obtaining quotes for life assurance, or supplying advice relating to pension or investment. Our policy is to share commission with our client, (subject to the Law Society rules). This may lead to sizeable refunds to clients, or a reduction in our fees. If you think we can help, we shall be pleased to arrange a meeting with our financial adviser to discuss the matter. There will be no charge for this.

Mortgage Indemnity Premiums

You may be required by your Lender to pay a "Mortgage Indemnity Premium". This is a premium payable to an insurance company to provide cover to the Lender in the event of the Lender having to sell the property in the future at a price less than the amount they have advanced to you. This protection is for the benefit of the Lender only and does not protect you as the borrower.

Futhermore, in the event of such a claim being made by the Lender against the policy, the insurers may come to you to pay back to them the amount they have to pay out to the Lender.

Finding a Deposit

When contracts are exchanged, a deposit will be payable to the seller. Where you have a house to sell, we usually try to make use of the deposit we receive on your sale, but this may not be possible, or may be insufficient. A deposit of 10% of the purchase price is usually required. If you do not think such a sum will be available let us know as soon as possible so that we may be able to negotiate a reduced deposit with the Seller's solicitor.

When buying a new house or flat you will usually be asked to pay what is known as a "Reservation fee". This will be treated as a part payment of the deposit if the matter proceeds to exchange of contracts. Always ensure that the document you sign when paying the reservation fee states that it is paid "subject to contract". Builders will often give a partial or, less frequently, total refund of the reservation fee if you are unable to proceed with the purchase.

If you are buying a "second hand" property through an Estate Agent, once again you may be asked to pay a "holding deposit" to secure the purchase, which again should be paid "subject to contract" and on the basis that it is fully refundable if you do not exchange contracts. Ensure you obtain a written receipt from the agents. There is no obligation on you to pay this "holding deposit".

Remember that in addition to our fee, you will usually also have to pay the following:-

Search fees - we have to carry out certain searches with the local authority, environment search and water supply company to check that the property is not subject to any matters which could affect your purchase, such as proposals for new roads to be built nearby, compulsory purchase orders, etc. and we have to pay a fee to the relevant authority for this service.

Stamp Duty Land Tax - the Government requires Buyers to pay a tax known as "*Stamp Duty*" if the purchase price of the property is more than

£125,000.00 The Tax is payable at a rate of 1% of the total purchase price between £125,000.00 to £250,000.00 3% between £250,000.00 to £500,000.00 and at 4% for a purchase price over £500,000.00 and is payable to the Inland revenue (through us) on completion of your purchase. Please refer to the accompanying information sheet for more information to Stamp Duty.

H.M. Land Registry fees – in all parts of the country purchases now have to be registered with the Government Department know as H.M Land Registry, to whom a fee is payable. This is on a sliding scale depending on the purchase price of the property and means that details of your Title (right of ownership) to the property are kept on a central register.

Insurance – it is an odd quirk of law that insurance of the property is usually the Buyer's responsibility from the time when contracts are exchanged – not from the day you actually move in. If you are obtaining a mortgage, your Lender will usually arrange this automatically. If the Lender does not arrange automatic cover, or you are buying without the aid of a mortgage, then we will let you know before contracts are exchanged so that you may make your own arrangements.

Remember the house **contents** should be insured during the move and in the new house immediately you move in.

4. PROCEDURE

The Contract

The Seller's Solicitor draws up a contract describing the property, the price, the names of the Seller and Buyer, whether the property is freehold or leasehold, and whether there are any restrictions on its use. The contract is carefully checked by us and you will be asked not to sign it until we are happy with its terms.

Property information

Once we have received the contract, we obtain replies to a set of questions known as the "*Property information Form*" from the Seller's Solicitor. They include, for example, who own the boundaries, whether there

have been any recent disputes with neighbours, whether the property has the benefit of any guarantees, what alterations have been made and whether permission has been obtained, and details of any fixtures and fittings included in the sale.

Also at this stage of the transaction, we make the local Search and any other relevant searches and there is often a delay whilst a Local Authority deals with our questions, but it is not advisable to proceed until we have their replies.

Mortgage Offer

If you are borrowing money from a Building Society, Bank or other Lender, we must have written confirmation from them of the details before we can advise you to proceed to exchange of contracts. This may raise additional points which we have to deal with before exchange.

Exchange of Contracts

When all the terms have been agreed and the Sellers and Buyers have each signed their own identical copy of the contract, their Solicitor will “*exchange Contracts*”. It is at this point that both the Buyer and Seller become legally bound to proceed with the transaction, and it is at this stage that a deposit is paid to the Seller’s Solicitor. When contracts are exchanged the “*completion date*” [i.e. the date when the purchase price (less the deposit on exchange) is paid to the Seller and the Title Deeds and keys are handed over] is agreed.

Between Exchange and Completion

From here on the process should be less nerve racking since there is almost no risk of you losing the property. During the period between exchange of contracts and completion, we will carry out further investigation of the Seller’s title to the property and send out the final searches to check nothing adverse has been registered against the property.

We will also apply for the mortgage money from your Lender, and complete the mortgage documents. We will prepare the final legal document which will transfer the ownership to you from the Seller.

If you are buying the property jointly with a spouse, partner or friend we will give you advice on the best form of ownership for your circumstances. There are two possibilities:

Joint Tenancy: If you hold the property as “*joint tenants*” then on the death of one of the owners, his or her share automatically passes to the survivor.

Tenancy in common: Where joint owners hold the property as “*tenants in common*” on the death of one of them, his or her share does not automatically go to the survivor, but passes under terms of the deceased’s Will, or if there is no Will, then the rules of Intestacy.

For unmarried couples or friends, it is usually advisable to hold the property as tenants in common. This is particularly relevant if the purchase monies are being provided in unequal shares or exclusively by one of you. A Declaration of Trust may be necessary to put in writing the terms on which the property is purchased and sets out what happens to the proceeds of any sale. Both parties should also make wills.

Before completion, we will send you a financial statement showing how much money is due from you to complete the purchase, together with the Mortgage and Transfer documents for your signature.

THE BIG DAY – COMPLETION

This takes place when we hand over the purchase money and in return receive the deeds to the property.

In practice, the purchase money is often sent to the Seller's Solicitor via the banking system. The keys are often left with the Estate Agents. The Seller's Solicitor will telephone the Estate Agents to release the keys to you as soon as the money has been received. The Title Deeds then follow in the post.

AT LAST YOU OWN YOUR NEW HOME

After completion

We will pay any Stamp Duty due on the transaction and register your ownership at the Land Registry. This can sometimes take several weeks but when registration is complete all the Deeds of the property will be sent to your Lender, if you have a mortgage, or, if there is no mortgage, will be retained by us in our strongroom, free of charge, if you wish.

5. LEASEHOLD PROPERTIES

Leasehold

Leasehold means that the flat (or house) will belong to the Buyer ("*the tenant*") but only for a fixed number of years (the "*term*" of the lease). The freehold will still be owned by someone else ("*the Landlord*") who is the person who grants the lease.

The Lease

The lease is a document in which the term is stated and the various rights of the Landlord and Tenant are set out. The lease is usually a very long document, but the more that is set out in the lease, the less likely it is that disagreement will arise later, as the Landlord and the Tenant will both hopefully know exactly where they stand and what their rights and obligations are. The lease should contain a detailed description of the property, and this maybe by reference to a plan.

The Term

The lease will specify the number of years for which it to run. You may be offered a new lease, or you may be buying a lease which is already in existence, in which case some of the lease will be “expired” and you will be buying the number of years remaining on the term. At the end of the term the lease comes to an end and, in theory, you will have to vacate the property. However, there are statutory provisions relating to the right to a new lease. As the term of the Lease nears its end, the value of the property *may* begin to decline. You should therefore ask how many years are left to run on the lease.

Rent

The lease will set out what rent is to be paid by the Tenant to the Landlord. This is a “*ground rent*” and is usually only a nominal sum, payable yearly, half yearly or quarterly.

Insurance

In the case of leasehold flats, the lease usually provides for the Landlord to insure the whole building, and the Tenant of each flat in the building will reimburse the Landlord a proportion of the total cost. You should ask to have a copy of the insurance policy and proof that the latest premium has been paid.

Maintenance

The lease must clearly state who is responsible for maintaining and repairing the property, the main structure of the building, the common areas such as passages, staircases, etc. In cases of flat, it is usually the Landlord’s responsibility to maintain the main structure and the Tenant’s responsibility to maintain the inside of the flat. You should ask whether there have been any major repairs or any redecoration recently or whether any such works are due in the near future. You should also ask whether there have been any problems with the Landlord in this respect.

Service Charge

In addition to the ground rent and insurance premium, the Tenant will usually also have to pay the landlord a “*service charge*”. This is to cover the cost of maintaining the common areas, lifts etc. and may also cover such matters as employment of cleaners, caretakers, managing agents, etc. Service charges for a flat can be substantial and when buying a flat, it is impossible to tell how much future charges will be, but past services can be a guide. You should ask the following questions:-

1. What have the service charges been for the last three years?
2. Ask for copies of the audited accounts
3. What is included in the service charge?
4. Does the Landlord employ managing agents?
5. Have there been any disputes with the landlord or his Agents relating to the Service charge?
6. Is there a reserve fund for potential expenses? If so how does it operate?

Covenants

Leases contain various “*covenants*” which include a long list of “do’s” and “don’ts”. These can relate to the general use of the property, such as noise levels at certain hours, the type of pets you can have, where you can dry washing etc. there may also be covenants restricting alterations to the property without the Landlord’s consent, restricting sub-letting of the property, etc. Before you finalise your purchase, check that these restrictions will not create too many problems for you personally, and that there are no restrictions which are likely to affect your ability to sell the flat should you decide to move.

Management Companies

Some blocks of flats etc. are run on the basis that all owners of the flats each become shareholders in the “*Management Company*” which will deal with the day to day running of the flat e.g. maintenance of common areas etc. In some cases, when all the flats have been sold the Landlord will transfer his interest in the property to the Management Company so that the Company in effect becomes the Landlord. Alternatively, the Landlord may keep his

freehold interest, but transfer the running of the property and the obligations relating to repairs, etc. to the Management Company.

Where there is such an arrangement, the flat owner's share in the company will be transferred to the new owner every time the flat is sold. As a shareholder, you will have some say in the running of the Management Company, and therefore some degree of control over the running of the property.

Conclusion

We at Hoben Johnson will, of course, check the details of the lease and advise you on its terms. However, you can help yourself by asking the right questions about the property. We can advise you on what the lease says but it is up to you to find out as much as you can about how this actually works in practice and what problems there have been.

Hoben Johnson