

Know your rights

Mark Slade, managing partner at legal firm Fidler & Pepper answers legal questions relating to the property purchase process



Gazumping

Q. I hear gazumping being spoken about in the media - what exactly is it?

A. The media love this term but generally don't paint a full picture of what actually happens. Gazumping is where a sale has been agreed (but contract not yet exchanged), and a third party comes along and offers more - where a third party gazumps the original buyer. Gazumping is a nightmare for the original buyer as they've no comeback against either of the other two parties. In order for gazumping to happen, the seller would have to accept the higher offer, although they don't have to. I know of cases where a seller received higher offers but stuck to the original because they felt it was the honourable thing to do; I know of other cases where gazumping saved the chain - the original buyer was not taking it seriously and the chain was about to fall through - the new buyer moved ahead quickly and the whole chain completed. Gazumping normally occurs more often in a rising housing market, but probably not as much as the papers would have you believe.



Survey and searches

What is the difference between a survey and searches?

A mortgage valuation of your new home will generally be arranged by your mortgage company. Please note that a mortgage valuation is just that, a valuation to see if the property is worth the amount you are asking to borrow, it is not a survey of the property. If you are not using a mortgage to pay for your property you can still arrange a survey independently. The surveyor will visit the property and check the value of the house, and will confirm any obvious defects. But if you are concerned about the property you can have a HomeBuyer Report (which is detailed) or a Building Drainage Search (which is even more detailed), and any further problems will be highlighted with advice from your surveyor.

A search is carried out by your legal adviser and depending on the area it may be necessary for the search pack to include:

w Local search - this is carried out by your legal adviser with the local authority and will confirm the planning history for the property. If any entries are revealed on the search, your legal adviser will make further enquiries with the seller's solicitors to investigate any issues on your behalf.

w Environmental search - this will reveal the history of the site on which your house has been built on, it will check if it has been built on a waste or landfill site, and if the property is within a flood plain.

w Drainage search - this is carried out with the local water authority and will confirm if the property is connected to the main drains, and whether the property is on a water meter or not.

w Mining search - if the property is within a mining area, a search with the Coal Authority will be made to check when the last workings were in the area, and if there has been a mining claim on the property, and if so how the claim was settled. If a claim is revealed, a request will generally be put to the seller's solicitors to provide a schedule of repairs from the Coal Authority with details of whether the claim was settled by repairs or compensation, and the amount if so.

Indemnity insurance

Q. Someone's mentioned indemnity insurance - what is it and do I need it?

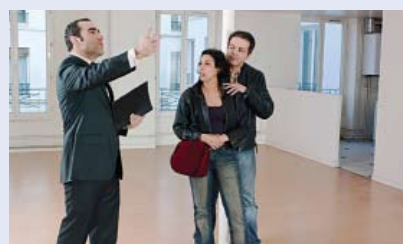
A. Basically it involves taking out an insurance policy to protect you against problems that have cropped up on the property you are buying. For example: if there is a problem with the property you are buying but it's a relatively obscure legal problem, for example a problem with the deeds with virtually no chance anyone is going to make it a problem in reality, but to sort it out means going to the other party involved and can make the process very expensive, very slow or impossible.

In these sort of cases an indemnity policy is ideal - should the unusual problem ever show its face then you are covered by the policy. If you're offered such a policy, it's important to bear in mind what it does and doesn't cover. For example a policy in respect of missing Building Regulations will not cover the cost of doing the work properly, but only the cost of following through any action taken by the local authority - if they don't take any action (and they won't after the works have been up for a year) then you won't be able to claim. Your legal adviser can advise on the policy for you.

Homebuying process

Q. In the homebuying process, at what point am I committed and cannot pull out?

A. The key point here is when contracts are exchanged - right up until that point any party in the chain can withdraw with no penalty. This can lead to tears, anger and lots of frustration. Once contracts are exchanged everyone is bound by the terms of the contract - if anyone wants to pull out after that point it will cost them many thousands of pounds, as a starting point it is usually 10 per cent of the purchase price and then any damages that flow from their actions. Because of this, generally the best advice is to buy the property and put it on the market as soon as you can. Depending on the market at that time you may lose a little money, but potentially considerably less than if you'd withdrawn from the sale.



Solicitor issues

Q. I bought my house wanting to build an extension but found out there is a problem with my boundary wall and feel my solicitor was negligent. What do I do next?

A. Firstly, talk to your solicitor and see what they say. If this doesn't get you any further then talk to another solicitor about the problem.

Your new solicitors can review your file of papers from your original solicitor and see if, on the face of it, your first solicitor was negligent. If they were then they, or their insurers, should cover the cost of your reasonable losses arising from the mistake.

It's important to bear in mind though that your solicitor will generally act for you in the conveyancing - buying your property - he/she is not guaranteeing that you can do whatever you want on the property for years to come. If you have some specific plans or concerns that you are worried about then you should let your solicitor know about it and get them to investigate those aspects before you exchange contracts. If your solicitor has missed something that they should check on, then they are negligent; if they have missed a special requirement that you had (and it's out of the ordinary) then they aren't - unless you made them aware of this requirement and asked them to investigate it.

Full house

Q. The seller was supposed to leave the house empty but I've received the keys and it's still got some of their stuff that I will need a skip to remove. Is there anything I can do?

A. The legal position here is clear, but the practical position isn't. Legally they should have cleared the property and you can take action against them to clear it or clear it yourself and sue them. However you're usually talking about a couple of hundred pounds at the most and it could cost a lot more than that in legal fees to sue them. As the case would be in the small claims court, even if you win the court cannot order that the loser pays your legal fees (all monetary claims below a £5000 value are treated this way). You could start the case up yourself and see how you get on. Doing it this way costs your time and effort and the court fee (around £50). Unfortunately the most practical solution to all this is to hire the skip and remove the items yourself, at your own cost. Sometimes one letter from your solicitor to the seller can result in them making a payment or collecting some stuff but economically it's really not worth taking it any further than that.

Carpets

Q. I loved the carpets in the house and asked that they be left as part of the agreement but I see they've now been removed. I'm really annoyed - is there anything I can do?

A. Here you're actually in the same position as the previous point in relation to clearing rubbish out of the property - they are in breach of contract. It then comes down to the same point - as to whether it's economically worth suing over it. You need to make sure before you start anything like this that the sellers did in fact indicate that they were going to leave the carpets. They will have completed a form advising what they were taking and leaving. If they did then the main factor will be how much the carpets were worth. If they were very valuable then it could be worth you taking legal action, if not then probably you'll be throwing good money after bad. Either way, if you take legal action then you will have to lay out money in legal fees (that you're unlikely to get back if the claim is worth less than £5000). If they indicated in writing that they would leave the carpets, then that should be sufficient for a court to make a judgment in your favour but getting a judgment against someone who is penniless gets you nowhere. If it was a verbal agreement then please be aware that a court can only judge the case on the verbal evidence it hears, and make a decision on the day whose version the court prefers.



Water damage

Q. The contracts have been exchanged but the sale hasn't been fully completed but I've just found out a water pipe has burst. Who is liable for the damage to the property?

A. The legal position here is that the seller is required to convey the property to you in the physical state it was in at the point that contracts were exchanged, so the seller is responsible. However it is always good practice to insure a property against such damage immediately from exchange, and your solicitor should have advised you to do this. It might seem like overkill, but those few days of cover provide peace of mind, and if the seller decided to cancel their insurance and the damage happened, whilst you may have a claim against the seller, it would be a messy business. It would be easier to let your insurer deal with it for you, let them chase the seller for recovery and allow your purchase to complete as soon as possible and enjoy your new home as soon as you can.

If you hadn't insured the property from exchange then you have a right to the property in its proper condition (ie in the condition it was when you exchanged). If the seller can't put the damage right before the agreed completion date then you could serve a notice to complete demanding either specific performance of the contract (ie forcing the seller to put things right so you get your home in the condition it should be in) or damages for breach of contract.

Owner tenants

Q. If we are buying a property in joint names I understand we could hold it as tenants in common or joint tenants - what does this mean?

A. In spite of the word 'tenants', this has nothing to do with renting the property. It's all to do with what happens if one of you dies.

Joint tenants - if your names are written on the deeds as 'joint tenants' then if one of you dies the other one (the survivor) gets the whole of the property straight away.

Tenants in common - if your names are written on the deeds as 'tenants in common' then if one of you dies, the will is examined to see what should happen to their share. If there is no will, there are rules about this and they would be followed. Tenants in common is usually used where either party has children by a previous relationship and wants to make sure that on their death, their share in the house goes to their children. If one person is putting in more than their partner then as tenants in common you can also hold it in unequal shares (eg 70 per cent to one, 30 per cent to the other). However in this case you should consider drawing up a Trust Deed as well to protect your interest.

Mark Slade is the managing partner at Fidler & Pepper Solicitors with over 20 years experience in residential conveyancing. For more information on the services Fidler & Pepper offer, contact www.fidler.co.uk or www.legalmove.com.