

# Buying and Selling Property

Your legal rights



*Community  
Legal Service*



This leaflet explains your legal rights and tells you how to deal with many of the common problems you may have with buying or selling a house or flat. There is information on:

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 15 for sources of information and advice.

## Dealing with estate agents

If you are buying or selling a house or flat, your first contact will probably be with an estate agent.

Many agents belong to the National Association of Estate Agents (listed in 'Further help' on page 15) which has a code of practice for its members. When you make a contract with an estate agent to sell your house or flat, you should look for the following points:

- An agent should give you written confirmation that you have instructed them to sell and should state when you will have to pay commission. For example, if you grant the agent 'sole agency', they should make clear that you will still have to pay them commission if you then sell through another agent. If you grant them 'sole selling rights', they should say whether you will have to pay them even if you sell privately without using an agent at all.
- An agent should not discriminate against someone who wants to buy but does not want to get a mortgage through them (an example of discrimination would be not telling the seller about the potential buyer's offer).

- An agent should tell the buyer whether or not the seller is taking the property off the market after accepting an offer.

Remember that an estate agent's contract is with the seller, not the buyer. But if you have a complaint, either as buyer or seller, which you can't resolve with the agent or through the National Association of Estate Agents (if the agent is a member), you should contact the trading standards department at your local council. In extreme cases, where estate agents have behaved very badly, the Office of Fair Trading can stop them working as estate agents.

There is also an Ombudsman for Estate Agents, who will consider a complaint and can award compensation of up to £25,000 (though it is normally much less). However, many estate agents are not members of the scheme, and you may want to check before making a contract with one.

By law, sellers don't have to point out defects in a property to buyers, but they must answer a buyer's direct questions accurately. A buyer who has been given false information about the property before agreeing to buy it might have a claim against the estate agent or the seller under the Property Misdescriptions Act 1991.

## Offers, exchange of contracts and completion

If you are buying and you make an offer for a particular house or flat, you should make sure the offer is 'subject to contract'. This means that if a survey shows up a defect or there is some other problem, you can pull out of the deal. The estate agent may ask you for a small deposit at this stage, but neither you nor the seller is legally committed to the sale and you will get this deposit back if the sale falls through.

Once the contracts for the sale have been signed and exchanged, the buyer and the seller are legally committed to the sale and cannot pull out. Contracts are exchanged by their solicitors or conveyancers (conveyancers deal with the transfer of ownership of a property). At this point, the buyer will usually pay 10 per cent of the price they have agreed with the seller.

The sale is complete when the buyer pays the rest (the balance). The seller must then move out. If either of these things does not happen, your solicitor may serve a 'notice to complete' and take legal steps to make sure the sale goes through without further delay.

## Dealing with 'gazumping'

Gazumping is when a seller, after agreeing to sell to one buyer, accepts a better offer from another person. This can cause a lot of inconvenience and misery, but it is not illegal unless contracts have been exchanged. In the same way, if a buyer reduces their offer before the contracts are exchanged, the seller can do nothing to get a higher price if they still want to go ahead with the sale to that buyer.

If your offer to buy has been accepted, you might be able to prevent gazumping if you can persuade the seller to sign a 'lockout agreement'. This means they will not sell to anyone else as long as the contracts are exchanged within a set period of time. This may be in exchange for a sum of money which is taken off the purchase price if the sale goes through. Another possibility is a 'pre-contract deposit agreement'. This means both sides pay a deposit that either will lose if they pull out without a good reason. You should use a solicitor to draw up agreements like these.

## The 'home information pack'

The Government is planning new laws which will mean that the seller (or their agent) has to prepare a 'home information pack' before putting their property on the market. This will have to contain information about the property which at the moment the seller has to give only after they accept the offer. This would include a 'home condition report', which is broadly similar to a survey. The scheme is meant to speed up the selling process, but the new law will not make the seller any more responsible for providing accurate information than at present.

## What the price should include

The items normally included with a property when it is sold are often called 'fixtures and fittings'. There can be arguments over whether things like light fittings or built-in furniture should be:

- taken away by the seller;
- included in the sale; or
- offered for sale separately.

If you are selling, your solicitor will normally get you to make a detailed list of what is included. This list will form part of the contract. If you are a buyer, check what is included and assume that anything not listed is not included.

If the seller takes away items that were included in the price, the buyer can ask for them back or ask for compensation.

## Property boundary problems

If you are buying a property that includes land, it's important to know exactly where boundaries lie and who has responsibility for maintaining things like fences. It can be difficult to resolve any disputes later. If plans in the deeds or at the Land Registry are unclear, ask the seller to sort this out before you exchange contracts.

## Buying with someone else

If you want to buy a home jointly with someone else, you should speak to a solicitor about which kind of joint ownership is best for you. There are two types of joint ownership:

- 'Joint tenancy' is where neither of you can sell without the other's agreement (unless you are a couple who separate and a court orders the sale). If one person dies, the joint owner automatically inherits the other's share. The property is normally held in equal shares.
- 'Tenancy in common' is where each owner can sell (or give away) their share as they wish, either in their will or during their lifetime. 'Tenants in common' can have unequal shares in the property if they want.
- For a solicitor, you can complain to the Law Society's Consumer Complaints Service (CCS) (see 'Further help' on page 15 for details). If it agrees with your complaint, the CCS can order your solicitor to refund your fees or pay you compensation. If you are not happy with how the CCS handles your complaint, you can then take it to the Legal Services Ombudsman.
- For a licensed conveyancer, you can complain to the Council for Licensed Conveyancers (CLC) (see 'Further help' on page 15 for details).

If your relationship with your co-owner breaks down and you cannot agree who should live in the property in the short term or whether it should be sold, this may have to be decided by a court.

For more about this, see the Community Legal Service Direct leaflet 'Living Together'.

### **Problems with solicitors and licensed conveyancers**

If you have had poor service from your solicitor or licensed conveyancer, and they haven't dealt with your complaint satisfactorily, you can do the following:

If you lose out financially because of negligence (that is, the solicitor or conveyancer didn't do something they should have done, or did something they shouldn't have done, and you lost out as a result) you may have a case for compensation. In this situation you need a solicitor to take your case, as the CCS and CLC do not handle negligence claims. The Law Society has a 'negligence panel' of solicitors who are prepared to take action against other solicitors. Solicitors and conveyancers must, by law, be covered by negligence insurance.

## Problems with the survey

There are three different types of survey and they will give you different amounts of information and detail.

- A valuation carried out by a mortgage lender has the least amount of information. It is only done to see if the price you have offered is close to the property's value, so that they can recover the loan if the property has to be sold.
- A 'house-buyer's report' is more detailed.
- A full structural survey or building survey is the most thorough type of survey.

If you are a buyer, you should check carefully what a survey covers and what it doesn't (for example, parts of the property that haven't been checked because the surveyor couldn't get access to them).

All qualified surveyors should be members of a professional association such as the Royal Institution of Chartered Surveyors (RICS) (see 'Further help' on page 15 for details).

If you lose out because of a surveyor's negligence (for example, the house you have bought has problems that the survey should have shown up), RICS has a complaints procedure and arbitration scheme

which you can use if the surveyor is a RICS member.

Going to arbitration is cheaper and simpler than going to court. You and the surveyor each prepare a statement, and the property may be re-inspected. The arbitrator's decision is legally binding on both sides. You can claim compensation up to £50,000 if the defect means the market value of the property is less than you paid.

## Buying a newly built home

If you are buying a house that is less than ten years old, it may be covered by a National House Building Council Buildmark scheme, or some other warranty. The warranty will transfer to a new owner, but will only cover defects that appear after the house has been sold. Defects that were (or could have been) spotted before the purchase won't be covered unless the person who owned the property before has already claimed. If your surveyor notices a problem that might be covered by the scheme, the seller (not you) must make a claim under the warranty to get it fixed. Contact the National House Building Council for more information (see 'Further help' on page 15 for details).

## Leasehold and freehold properties

If you buy the freehold of a property, you own both your home and the ground it stands on. Most flats and some houses are sold leasehold. This means you own your home for the period of the lease, and you have to pay ground rent to the freeholder (or their managing agent). The freeholder is often called the landlord. The lease may be as long as 99 years or even 999 years to begin with. But it reduces over time, and may be much less at the time you are buying or selling (see 'When the lease runs out' on page 10).

The lease lists the rights and responsibilities of you and the freeholder. Often a lease is a complicated document and you may need to get your solicitor to explain some points. You could lose your home or have to pay compensation if you break the terms of the lease, but the freeholder must give you written notice and time to put things right before they can go to court to enforce this. In the same way, a leaseholder can take legal action against the freeholder if they break the terms of the lease, for example by not maintaining common parts of the property properly (see 'Management and service charges' right).

The lease may also include a third party who is appointed manager of the premises. This can sometimes be a resident management company, run by the tenants. If the lease includes a third-party manager, they will also be able to take action against you if you break the terms of the lease.

## Management and service charges

If you buy a leasehold property, your lease will usually spell out the freeholder's responsibility to keep the structure, outside and common parts of the whole building maintained and in good repair. If they or their managing agents don't do this, you may be able to take court action to get compensation or to get repairs done.

As a leaseholder, you will pay a service charge to get repairs done. The lease should say how the service charge is worked out, and how it's divided between all the leaseholders. The charge may vary from year to year, depending on what is done. You may also have to pay a fixed amount into a reserve or 'sinking' fund each year to cover the cost of major repairs, such as replacing the roof. The freeholder must consult leaseholders before doing major work.

Common service-charge problems include:

- being charged for things that are not listed in the lease;
- a lease that does not say who is responsible for particular repairs;
- service charges that are too high for the work done;
- work that is done badly or not at all; and
- a freeholder who won't give a breakdown of how the service charge is worked out.

In cases like these, you should try and sort out the problem with the freeholder first. If that doesn't work, you may need to take legal action to sort out the problem.

You can apply to a leasehold valuation tribunal (LVT) to deal with certain problems. These include cases where:

- you think the service charges are unreasonable;
- you are unhappy with the insurer the freeholder has chosen for your building; or
- in the case of flats, you want to replace the manager of the block because they aren't doing their job properly.

You can also apply to an LVT if you think the price the freeholder wants you to pay for a new lease or to buy the freehold is unreasonable.

Other problems, such as enforcing the landlord's obligations under the terms of the lease, may mean you have to go to court. The Leasehold Advisory Service can give you more information about your rights as a leaseholder, and put you in touch with your local leasehold valuation tribunal (see 'Further help' on page 15 for details).

Whatever your problem, don't withhold service charges or ground rent without first getting advice.

### **Residents' and tenants' associations**

A residents' (or tenants') association is a group representing the leaseholders, which is recognised by the freeholder or the local Rent Assessment Committee. If there isn't a residents' association in the flats you are buying, you could consider setting one up. This would make it easier to deal with the freeholder, and also to get rights that you wouldn't have as an individual tenant. You can get advice on setting up a residents' association from the Rent Assessment Committee. You'll find its number in the phone book.

## **When the lease runs out**

If your lease runs out and the freeholder gives you written notice to end your lease, you will become a tenant. For more on your rights as a tenant, see the Community Legal Service Direct leaflet 'Renting and Letting'.

But there may be problems before a lease runs out. For example, a property with less than about 60 years of the lease left may be hard to sell. The rules are different for houses and flats.

## **Extending the lease on a house**

Most leaseholders have the right to extend their lease. If you have a long leasehold on a house (a lease of 21 years or more), you usually have the right to extend the lease for 50 years. You cannot extend it more than once. However, you can buy the freehold, even after extending the lease. You do not have to pay to extend the lease, but you do have to pay any expenses for doing this, such as legal fees. And you will have to pay a new ground rent under the extended lease, which will be set at current values and will probably be much higher than the one you pay now.

The freeholder can refuse to extend the lease only if they want to demolish or rebuild the house, or if they or their own family want to live in it. But if they want either of these things, they will have to apply to the court, and you would be able to claim compensation.

## **Renewing the lease on a flat**

If you have the leasehold on a flat, you usually have the right to renew the lease for a further 90 years, as long as you have been a long leaseholder (which means the lease has 21 years or more to run) for at least two years. The freeholder can refuse to renew the leasehold if the property is to be redeveloped. But they will have to apply to the court to do this. You should get advice if this happens. You will have to pay for a new lease and the 'reasonable' costs of the freeholder, but you won't have to pay ground rent under the lease.

## **Buying the freehold**

If you are a leaseholder (or you are buying a leasehold property), you may have the right to buy the freehold of your property. This is called 'enfranchisement', and it can be a good idea, particularly if the existing freeholder doesn't maintain the building properly. The rules are different for houses and flats.

## Buying the freehold of a house

You normally have the right to buy the freehold of a house if you have held a long lease (21 years or more) for at least the past two years. However, business tenants face different rules, which are not covered here.

You must give the current freeholder written notice that you want to buy. You should also get legal advice.

You will pay the price of the freehold and the landlord's costs. You may also need to pay a share of what is called the 'marriage value' (the increase in value from joining the leasehold and freehold interests).

You may need to apply to a leasehold valuation tribunal or the court if you cannot agree terms. The Leasehold Advisory Service can give you more information on how to do this (see 'Further help' on page 15 for details).

## Buying the freehold of a flat

If you own a flat, you and the other leaseholders of the flats in your building may have the right to buy the freehold jointly (also called 'enfranchisement'). However, the conditions that you must meet to do this are complicated. You have the right to do this if:

- you have a long lease of 21 years or more;
- the leaseholders who agree to buy the freehold of the building are leaseholders of at least half the flats in the building (if there are only two flats, both leaseholders must want to buy);
- only up to 25 per cent of the building is for non-residential use; and
- the freeholder converted the building into up to four flats, but neither they nor an adult member of their family have lived in any of the flats during the past year. For this to apply, the freeholder must have owned it since before the conversion.

If the leaseholders buy the freehold of your building but you do not join them in the purchase, your rights and responsibilities as a leaseholder do not change – it's just that your freeholder will be the group of neighbours who have joined. Future changes in the law will mean leaseholders will have to buy the freehold through a specially formed company.

You can get more information about buying a freehold from the Leasehold Advisory Service (see 'Further help' on page 15). However, the actual process of valuing and buying a joint freehold is long and complicated. You will need expert help from a valuer and a solicitor. The valuation will be based on not just the open market value but the 'marriage value'.

There are other ways to obtain the freehold of your building. In most cases, a freeholder who wants to sell the freehold of a block of flats must first offer the leaseholders the chance to buy it before offering it to anyone else. Leaseholders may also have the legal right to buy a freehold when the landlord has a poor record of carrying out their role, for example, in maintaining the property.

### **The future of freehold**

There are proposals from the government to introduce a new form of ownership called commonhold. Commonhold is likely to apply mainly to new developments, but it may be possible for some leaseholders to convert to commonhold if they wish. For more information contact the Leasehold Advisory Service.

### **Mortgage and money problems**

A mortgage is a loan secured on a property, which means that you cannot sell the property without repaying the loan. If you do not keep up your repayments, the lender ultimately has the right to go to court for an order to repossess and sell your home. But there are certain processes to go through before it gets to that stage. If you are having problems with your mortgage (or rent or other bills), see the Community Legal Service Direct leaflet 'Dealing with Debt'.

### **Negative equity**

If the value of your home has dropped since you bought it, or you haven't made all the mortgage payments you should have, you may find that, if you sell, the amount you get is less than the amount you owe on your mortgage. This is known as negative equity.

If you are in negative equity, your mortgage lender may refuse to allow you to sell your house or flat. It could also go ahead with legal action to repossess your property, unless you can show you can pay off the amount you owe. But you may be able to get the lender to agree to transfer the negative equity to a new home if, for example, you have to move because of your job.

## Voluntary repossession

If you feel there is no other way out of your debt, you may feel you have to 'hand over your keys' to your mortgage lender. Only do this as a last resort. If you do it, you will have to pay for alternative accommodation and still pay your mortgage, any arrears and interest until the lender can sell the property. You should get independent advice before deciding to do this.

If voluntary repossession means you become homeless with nowhere else to live, you may find that your local council does not have to offer you accommodation. There is a separate Community Legal Service Direct leaflet, 'Losing your Home', which explains your rights if you face being homeless.

## Neighbour disputes and anti-social behaviour

If you are buying your home, it is best to sort out any possible problems over boundaries (usually, problems about exactly where they are) before you exchange contracts with the seller. You should do this even if it delays the sale.

If neighbours repeatedly trespass on your land, you can apply to the court for an injunction to stop them. On the other hand, if you have good reason to go onto a neighbour's land (for example, to look after your own property) and your neighbour refuses to let you, you can apply to the court for an order under the Access to Neighbouring Land Act 1992.

If you are often disturbed by too much noise from your neighbours, you should contact the environmental health officer at your local council. They have the power to serve an 'abatement' notice or, in some cases, to take away equipment (such as a stereo system) under the Noise Act 1996. Or you can apply to get an injunction in the county court to stop the noise. You can also use these procedures for some other kinds of nuisance.

If you are selling a property, you must answer truthfully a buyer's direct questions about problems with neighbours. If you make a false statement, you could be sued.



## Further help

### Community Legal Service Direct

A free, easy-to-use service to help you solve your legal problems.

Call: 0845 345 4 345

to speak to a qualified legal adviser about Welfare Benefits, Debt or Education or find local advice services for other problems.

Log on at: [www.clsdirect.org.uk](http://www.clsdirect.org.uk) to search for a quality local legal adviser or solicitor or find links to other sources of online information and help.

### Shelter

Shelterline: 0808 800 4444

24-hour advice and information line covering the whole of the UK.

[www.shelternet.org.uk](http://www.shelternet.org.uk)

Shelter also has a network of local Housing Aid Centres across England and works closely with partners in Wales (Shelter Cymru).

In England phone: 020 7505 4699

[www.shelter.org.uk](http://www.shelter.org.uk)

In Wales phone Shelter Cymru: 01792 469 400

[www.sheltercymru.org.uk](http://www.sheltercymru.org.uk)

### The Law Society

phone: 020 7242 1222

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

### Leasehold Advisory Service

phone: 0845 345 1993

[www.lease-advice.org.uk](http://www.lease-advice.org.uk)

### National Association of Estate Agents

phone: 01926 496800

[www.naea.co.uk](http://www.naea.co.uk)

### Ombudsman for Estate Agents

phone: 01722 333306

[www.oea.co.uk](http://www.oea.co.uk)

### Royal Institution of Chartered Surveyors (RICS)

phone: 0870 333 1600

[www.rics.org.uk](http://www.rics.org.uk)

### Council for Licensed Conveyancers

phone: 01245 349599

[www.conveyancer.org.uk](http://www.conveyancer.org.uk)

### Solicitors Consumer Complaints Service

phone: 0845 608 6565

[www.lawsociety.org.uk:80/choosingandusing.law](http://www.lawsociety.org.uk:80/choosingandusing.law)

### Office of the Deputy Prime Minister (ODPM)

– Free literature section

For free housing information leaflets

phone: 0870 1226 236

[www.housing.odpm.gov.uk](http://www.housing.odpm.gov.uk)

### National House Building Council

phone: 01494 735 363 or 01494 735 369

[www.nhbc.co.uk](http://www.nhbc.co.uk)

## The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the CLS Direct website at [www.clsdirect.org.uk](http://www.clsdirect.org.uk)

Community  
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## The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) or find the details for your local Legal Services Commission office in the phone book.

legal services

COMMISSION

The leaflets are also available online at: [www.clsdirect.org.uk](http://www.clsdirect.org.uk)

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The leaflets are also available in Welsh, Braille and Audio

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343** or email [LSCleafletline@stivesdirect.com](mailto:LSCleafletline@stivesdirect.com) or Fax 01732 860 270



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