

# FERBRACHE & FARRELL

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A PRACTICAL GUIDE TO  
THE ENGLISH RESIDENTIAL  
CONVEYANCING PROCESS



There are different stages of conveyancing, but the end goal is transferring legal ownership of the land or property - known as the title - into the buyer's name. The new ownership will then be registered with the Land Registry.

There are key moments in all property transactions and to help you understand what happens and when, we've explained the conveyancing process, taking you step-by-step through the conveyancing timeline.

## What are the different stages of English conveyancing?

- Pre-exchange
- Post-exchange/pre-completion
- Post-completion



# Pre-exchange stage

## Offer

The conveyancing process starts when an offer has been made and accepted on a property or land. For buyers, they're making an offer; for sellers, they're accepting an offer.

## When to instruct Solicitors?

As soon as the offer has been accepted, the buyer and the seller should engage their solicitors.

The solicitors on both sides will begin their work, completing relevant forms and starting the conveyancing process.

When you are selling, you can expect to have to sign and complete various legal documents, other papers and forms.



# Forms

## Form TA6 (Property Information Form)

One of those documents is the Property Information Form, commonly referred to as the TA6. This is a comprehensive document that you are obliged to complete at the outset that will provide many details about the property that you're selling.

The questions are, for the most part, fairly straightforward, but some of the answers that you give might have to be very detailed. You should be honest with everything that you put on the TA6 because false or missing information can cause problems in the sale process, and even after the transaction completes.

Among the many questions you'll be asked on your TA6 is one that might seem relatively trivial but is actually incredibly important. The form will ask whether there is any Japanese knotweed on your land that is affecting the building in any way. You must answer truthfully, because this weed is an invasive species that damages concrete and tarmac. When left untreated it can become a major problem for your property which may require a lot of time and money to fix.

Another key question that will be asked of you on the TA6 is whether you are aware of any planned property development in the area. This can be significant because a buyer might not want to move into the property if there will soon be large construction in the area.

Other questions on the TA6 that you must answer include information on your property boundaries, access rights, including whether you are aware of any disputes that have happened in relation to your property or with your neighbours, and whether those matters are resolved or continuing.

## Form TA7 (Leasehold Property Information Form)

If your property is leasehold, you will also be required to complete a TA7 form. These are specific enquiries relating to leasehold properties including ground rent information, management company details, insurance, service charge and shared responsibilities.

## Form TA10 (Fixtures and Contents Form)

The completing of the Fixtures and Contents Form is a legally binding part of the selling process. What you are leaving has to be stated within this form which is then attached to the contract. If you stipulate that an item is to be left and then take the item with you, then you could face a legal claim in the future.

For more information, you can view the specimen TA forms on the Law Society website: <https://www.lawsociety.org.uk/en/topics/property/transaction-forms>

# Mortgage

If you are buying with a mortgage and already have an agreement in principle, you should pass that information on to your solicitor. They must also act on behalf of the lender, although in some instances the lender may have their legal representative (commonly called a 'panel solicitor').

If you are selling and the property is subject to a mortgage, please ensure you pass on the mortgage account information to your solicitor to enable them to liaise with the lender to confirm how much to repay to remove the borrowing from the property.





## Purchase

On a purchase, the buyer's solicitor will start to instruct property searches early in the transaction. These searches are an important part of the conveyancing process as they allow the solicitor to build a complete picture of the property and the area around it.

The searches are carried out by specialist firms who request the information from the local council, water, and sewerage companies. Some searches are optional, some are essential. It is the position in law that the buyers must satisfy themselves as to the property they are buying, so it is often better to ensure all relevant searches are carried out so any problems are identified before proceeding to the exchange of contracts.

## Typical searches

- **Local authority search** – this is arguably the most important type of search your solicitor will arrange. It will reveal information held by the local authority involving the property, including prospective planning permission or restrictions. They will also show who is responsible for maintaining roads and paths adjoining the property. Local Authority searches can take from one to six weeks to complete and can cost anything between £150 and £400 depending on which authority your property is located in.
- **Land Registry searches** - your solicitor will need to prove that the property seller is the legal owner of the property you are buying. They do this by checking the 'title register' and 'title plan' at the Land Registry. These checks cost around £3 each, and are legally required for the sale to go ahead. These are typically provided by the seller's solicitor to the buyer's solicitor at the outset of the transaction.
- **Environmental searches** - an environmental search is important as it will establish whether the property you are buying is built on or near contaminated land or water, or an old landfill site. Your lender may insist that this type of search is carried out before they will offer you a mortgage. The reason this type of search is required is because many properties are built on land which was previously used for industrial purposes, and toxic substances could remain in the ground. If these aren't uncovered before you take ownership of the property you could find yourself with a home that is impossible to sell later, or even worse is a health hazard. An environmental search should also show whether there is a risk of flooding.
- **Water & Drainage authority search** – this search will establish where your property is connected to mains water and drainage. It will also show where water comes from and whether there are any public drains on the property. This is vital as if there is one it could affect any building work you want to do in the future, such as an extension.
- **Location specific searches** - depending on the area where you are buying a property, your solicitor might suggest arranging some additional searches. For example, if you are buying in an area formerly used for mining, you may want to arrange for a mining search to be carried out, to establish whether the home you want to buy has been built on unstable ground and so is at risk of subsidence.
- **Chancel repair search** - a chancel repair search is necessary to establish whether you will be liable for the cost of repairs to a parish church. During the middle ages, property owners rather than monasteries became responsible for repairing church chancels. Following a law change in October 2013, the church must now establish and lodge liability with the Land Registry, but in certain circumstances the church can still insist a property owner is liable for repairs even if the liability hasn't been registered. A chancel repair search only costs a few pounds, and you may opt to take out chancel repair insurance instead, which typically costs around £30.

## How long do all the above conveyancing searches take?

As a rough guide, searches typically take around two to three weeks to complete, but remember that their results may prompt your solicitor to make further enquiries.

# Investigation of title and contract

The seller's solicitor needs to examine the title to be able to draft a contract for the sale of the property. The draft contract should clearly explain the terms and conditions of the sale, the land agreed to be sold by the seller, and so on. Without a thorough investigation, it is impossible to include all of these details accurately. Investigation also allows the conveyancing lawyer to anticipate problems that may arise in the future and how to deal with them.

Once the seller provides all documents related to the title to the land, it is the job of the buyer's solicitor to ensure that the seller is capable of transferring what he has contracted to sell, and that there are no defects that are likely to affect the interest of the buyer. Issues that are not to

the satisfaction of the buyer should be raised as queries to the seller's solicitor.

Modern day conveyancing makes it mandatory for the title to be investigated before the formal exchange of contracts (see below, when contracts are 'exchanged' a legally-binding contract is created). This is to allow the buyer an opportunity to raise questions regarding the title. By the time they enter into a contract, they would have full knowledge of all issues relating to the land. In fact, most contracts contain a provision that prevents a buyer from raising title issues once contracts are exchanged.

## What are the types of ownership of title?

**Freehold** - When purchasing a freehold property, you are buying the outright ownership of the property and the land on which it stands, and the entitlement to permanent residency for as long you wish. As the freeholder you are entitled to make alterations to the property within restrictions of the law and planning restrictions. You may need permission to make structural changes, particularly with listed buildings (old buildings). Most houses in England and Wales are sold freehold.

**Leasehold** - If you buy a leasehold, you are actually buying the property for a period of time, hence the "lease". Unlike a freehold, you aren't buying ownership of the property or the land the property stands on.

Most flats in England and Wales are leasehold. They are subject to ground rent and often a service charge, which are payable to the freeholder. The lease should stipulate how the

service charge is worked out, and how it is divided between the other leaseholders. It's important to calculate all these costs before committing to a leasehold property, as you may not have budgeted for the additional costs.

**Commonhold** – This is a relatively 'new' idea which was introduced at the end of 2004. Like leasehold properties, commonholds are typically found with flats and units. Commonhold is when a group of people mutually own, for example, a block of flats. There is no overall landlord. However, there is a freehold owner, and that is a company called a 'commonhold association'. The owner of each flat is a member of the association (i.e. if you buy a commonhold flat, you will be part of the association). The 'commonhold association' is responsible for maintaining the communal areas of the building. We do not often come across this type of ownership.



# Some examples of pre-contract enquiries

There may be issues not covered by the Sellers Property Information Form, the Sellers Leasehold Information Form or by standard searches and specific pre-contract enquiries may have to be raised. In that case, additional tailored questions are asked. These may include:

## 1. Building Regulations

*Where replacement windows have been fitted:*

“Please advise when the replacement windows were fitted. If after 31st March 2002 please supply a copy of the requisite FENSA certificate together with a copy of the 10-year guarantee.”

*Electrical works:*

“Please advise whether any electrical works have been carried out to the property since 31st December 2004. If so please supply a copy of the necessary Part P certificate.”

## 2. Drainage & Water

*Where the property is served by a septic tank*

“In relation to the septic tank please let us have replies to the following: -

- a Please mark the location of the tank on a copy of the filed plan
- b Unless the tank is within the boundary of the property please provide evidence of the necessary rights of drainage and access for repair
- c With how many properties is the tank shared?
- d Unless the tank exclusively serves this property, what arrangements are in place with respect to maintenance, repair and emptying costs?
- e How often should the tank be emptied?
- f When was it last emptied and what was the cost?
- g Please provide details of the company usually employed to empty the tank
- h When was it last serviced/inspected?
- i So far as the seller is aware, are there any outstanding items of repair or maintenance in respect of the tank?”

*Where the property is connected to a private sewage treatment plant or cesspool:*

“In relation to the sewage treatment plant please let us have replies to the following:-

- a Please mark the location of the plant on a copy of the filed plan
- b Unless the plant is within the boundary of the property please provide evidence of the necessary rights of drainage and access for repair
- c With how many properties is the plant shared?
- d Unless the plant exclusively serves this property, what arrangements are in place with respect to maintenance, repair and emptying costs?
- e When was it last serviced/inspected?
- f So far as the seller is aware, are there any outstanding items of repair or maintenance in respect of the plant?
- g Please provide a copy of the Environment Agency’s Consent to Discharge (if applicable)”

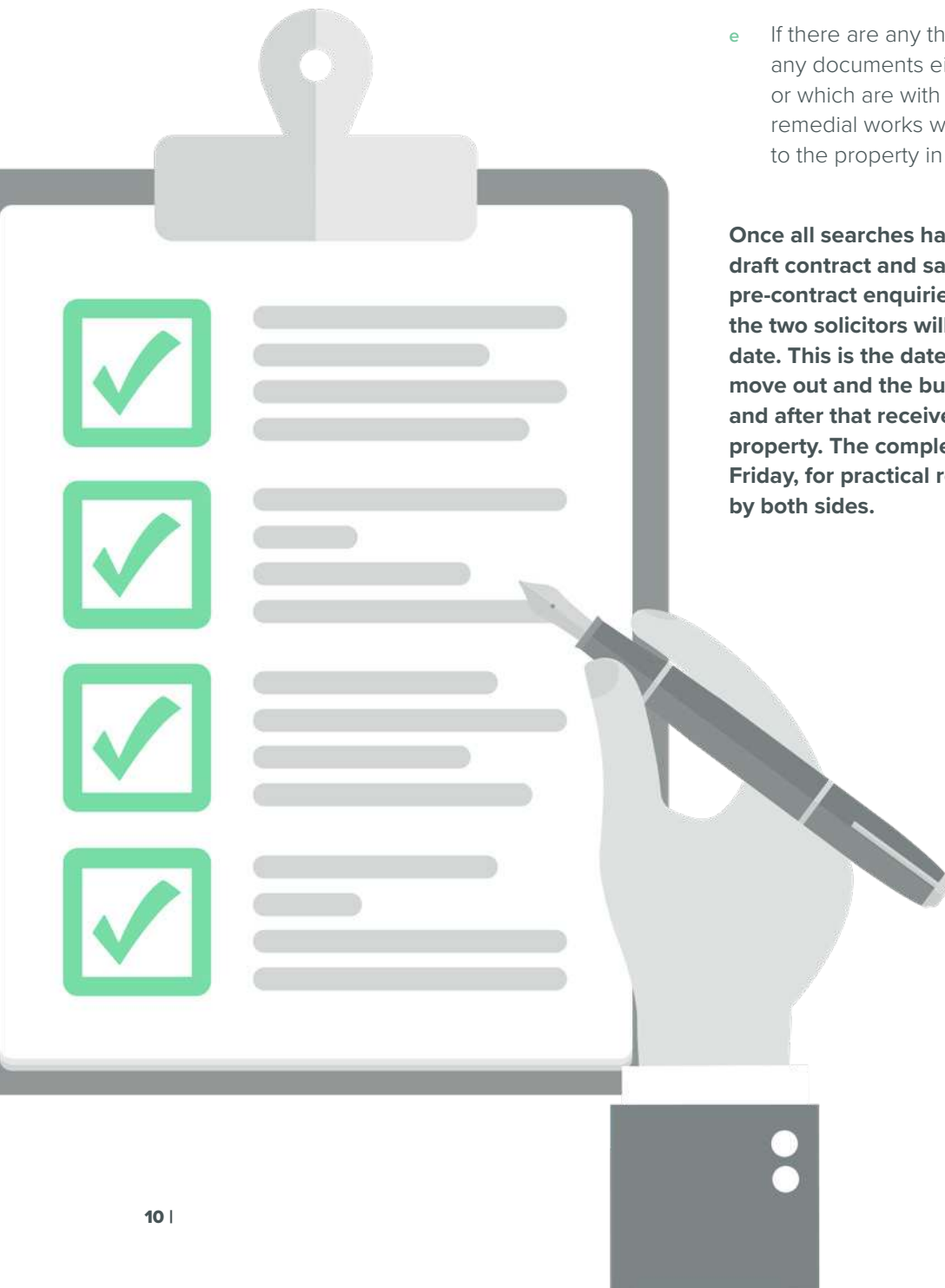
### 3. Environmental Searches

*Where an environmental search has returned a failed result*

“We have carried out an environmental search which has produced a failed result. Please therefore let us have replies to the following: -

- a Is the seller aware of any activity either during or prior to his ownership which may have caused the land to become contaminated?
- b Is the seller aware of any remedial work having been carried out in order to decontaminate the land? Is any such work planned?
- c Has the seller or, so far as he is aware, any predecessor in title, received any complaint, whether formal or informal, from any person or body in respect of any contamination affecting the land?
- d Has the seller received, or is the seller aware of, any notices served by the local authority or any other public body in respect of contamination or potential contamination of the land?
- e If there are any then please supply copies of any documents either which the seller has or which are with the deeds regarding any remedial works which have been carried out to the property in respect of contamination”

**Once all searches have been returned and the draft contract and sale price agreed, and all pre-contract enquiries satisfactorily answered, the two solicitors will negotiate a completion date. This is the date on which the seller must move out and the buyer pays the funds to buy, and after that receives the keys to their new property. The completion date is often set for a Friday, for practical reasons, but must be agreed by both sides.**



# Legal exchange of contracts

Exchange of contracts is the point at which the buyer pays a deposit, and the sale/purchase contract becomes legally binding.

Exchange of contracts is usually done by telephone, rather than by post or in person. Each solicitor will confirm their client is signing an identical document. Once contracts are exchanged, neither party can withdraw without suffering a sizeable financial penalty.



# Post-exchange/ Pre-completion stage

From the point in time when an offer is accepted for a property, the focus of most parties' attention is achieving an exchange of contracts. Up until that point either party can withdraw, thus certainty can only be enjoyed once contracts have been exchanged.

As we know, at exchange, the completion date is legally fixed and subsequently pre-completion procedural steps are dealt with.

Pre-completion searches are carried out by the buyer's solicitor including a priority search at the Land Registry (to protect the buyer) and bankruptcy search against the borrower (if there is a mortgage).

Completion is when the balance of the payment for the property is passed over to the seller's solicitor and ownership transfers to the buyer.

## What does your solicitor do in the time leading up to completion?

The Law Society's Code for Completion (last updated in May 2019) sets out the obligations on solicitors acting for the buyer and seller and records the practical steps that need to be taken for each party.

A solicitor acting for a buyer prepares a financial statement for the client setting out what funds are required to complete.

The net mortgage advance is requested direct from the mortgage lender and the balance needs to be received from the client, usually by electronic bank transfer at least two working days before completion.

The seller's solicitor will establish what amount needs to be paid to any lender on completion to redeem the mortgage (or mortgages) secured on the property being sold. The seller's solicitor will also confirm in Replies to Requisitions sent to the buyer's solicitor that any mortgage will be paid off immediately on completion.

The buyer's solicitor will have drafted the transfer deed for approval by the seller's solicitor and the seller's solicitor will have their client sign it and return it in hard copy to their offices before completion. The buyer will also need to sign a duplicate transfer deed where any covenant is given (i.e. agreeing to indemnify the seller for any future breach of any obligation attaching to the property).



## What happens if the property is damaged or destroyed between exchange and completion?

If disaster strikes and a property is severely damaged or destroyed between exchange and completion, the contract needs to be clear about what happens. In most cases a buyer will “assume the risk” in the property at the point of exchange, meaning that if it is damaged the buyer will still have to complete the purchase for the full price and will then use the proceeds of their insurance policy to rebuild (and presumably to rehouse themselves in the meantime).

This may seem hard on the buyer who, after all, has no control of the property until completion and will not physically be in possession of it making sure that everything is safe and secure. This

arrangement is necessary however where there is a chain consisting of three or more properties; the buyer at the top of the chain will be unconcerned about what happens lower down the chain provided that the relevant purchase funds flow to allow that buyer’s purchase to complete; their purchase cannot and should not be conditional on anything happening further down the chain, and in the interests of certainty the sale and purchase must be completed in accordance with the contract, even if material damage or complete destruction of the property has occurred since exchange. It is for this reason that the buyer will always need to insure the property they are buying from exchange of contracts.

## What do I need to do before completion?

The good news is that it is not necessary for either the buyer or the seller to be physically present at completion, either at the property or at their solicitors’ office. The Code for Completion sets out requirements for the solicitors to deal with the flow of funds and the parties themselves simply need to focus on physically moving in or out of the property.

The contract will specify the time that completion needs to occur on the completion date, normally 1pm or 2pm. When the seller has moved out, they should deliver all the keys for the property to the estate agent. Once completion funds have been received by the seller’s solicitors bank, the solicitor will contact the buyer’s solicitor to complete and should immediately let the estate agent know that the estate agents have authority to release the keys to the buyer.

## How long between exchange and completion?

Completion should normally be no less than five working days after exchange, although commonly two to four weeks is agreed. Completion can however be any period that the parties agree on, even months apart if that is what the parties want.

It is important to note that the actual completion date is agreed and written into the contract at the time of exchange and must either be a specific date or must be easily determinable (for example, four weeks after the issue of a relevant planning permission). Where the completion date is settled in relation to a certain event taking place, that event must be linked to a long stop date by which completion must happen in case, for whatever reason, the contingent event fails to occur.



## What happens on the day of completion?

As soon as possible on the morning of completion, the buyer's solicitor sends the balance of purchase monies by bank transfer to the seller's solicitors. Where there is a chain (i.e. multiple property transactions on the same day), the onwards transfer will be dependent on completion funds being received in respect of the property down the chain. Where there is a long chain, all parties need to be aware of how important it is to send the funds early to enable sufficient time for all onwards purchases to be completed.

One of the steps that your solicitor takes to seek to minimise the risk of any delay is to always ensure that mortgage funds and any balance of purchase money required from the client are drawn down at least the working day before completion, so that completion funds can be sent as early as possible on the completion day itself.

Final security checks are made to ensure the funds are being sent to the correct venue (compliance requirements provide for a protocol to be used to counteract the threat of fraud in order to protect client money) and the client is called or sent a text to advise them that completion has occurred.

Once the sale is completed, the seller must hand over the keys to the property and move out. The buyer will then receive the keys. This process is usually handled via the estate agents.

# What happens after completion?

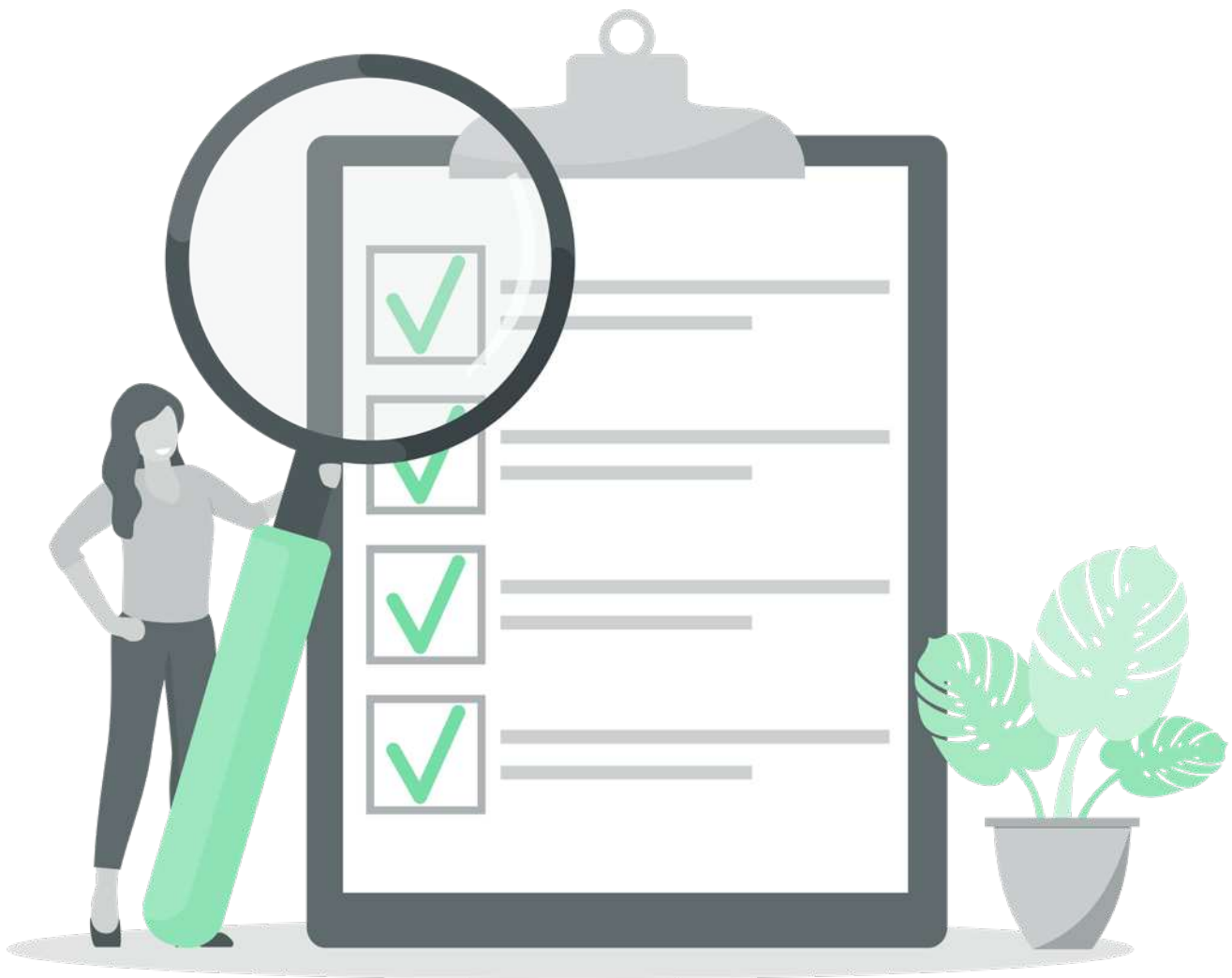
On completion, the seller's solicitor will date the transfer deed and then send it in hard copy to the buyer's solicitor.

The buyer's solicitor will complete stamp duty (Stamp Duty Land Tax - SDLT) formalities within 14 days of completion by lodging an online SDLT application with the buyer's consent and will pay the SDLT premium due. The online application will generate a form of receipt known as an SDLT5 and this document will be required by the Land Registry when application is made to register by lodging the transfer deed, any mortgage deed and the SDLT5.

Most straightforward transactions are usually dealt with by the Land Registry in a few weeks, but complicated matters can take up to several months, depending largely on the Land Registry's workload.

Technically, in the vast majority of property cases, Title Deeds no longer exist. A buyer's proof of ownership is simply an official copy of the register maintained by the Land Registry. A copy of this will be sent to the buyer by the buyer's solicitor following completion of registration.





## Summary

Whether you're the seller or the buyer, it's worth having a clear idea of all the different stages of the conveyancing process.

It can help you understand your solicitor's actions and allow you to make decisions about your sale or purchase, and more importantly get ahead of the game with collating of the various forms and documents for your solicitor.

It is also worth pointing out, that as soon as the conveyancing process is underway, the buyer or the seller must provide proof of their ID to their solicitor. This is always photo ID, usually a passport or a driving licence, and confirmation of your address through a recent bank statement or utility bill from the last three months. Solicitors are obliged to confirm your ID to meet the money laundering regulations and deal with your case on-boarding process, so this step is of paramount importance.

We hope the above gives you a flavour for what the English residential conveyancing process entails. Our UK Real Estate team is always on hand and ready to help you with any enquiries you may have.



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