

# **Affordable Housing - A Guide to Buying and Selling your Home**

Welcome to our Guide to Buying and Selling your Home. In this Guide we shall explain the different types of property transaction that we deal with and a brief explanation of the legal process involved. We will also explain the financial side of the conveyancing transaction. We hope you will find the contents helpful. Whether you are thinking of buying, selling or re-mortgaging your home it pays to contact your solicitors at an early stage.

At FST Solicitors, our team of qualified property lawyers are on hand to help you with your move. For further assistance or information, contact us at one of our offices.

## **Types of Affordable Housing Property Transaction**

Although the buying and selling of a residential property follows more or less the same procedure, at FST Solicitors we specialise in New Build and Affordable Housing Transactions. This Guide focuses on the process involved in the various Affordable Housing Schemes promoted by RSLs.

The procedure involved in buying through an Affordable Housing Scheme varies slightly from a standard residential conveyancing transaction. This is because the Housing Association set down requirements which we must adhere to before we are able to exchange Contracts.

We thought it would therefore be useful to detail the different types of transactions that we progress at FST Solicitors, together with any quirks from the normal conveyancing procedure in order that the course of your transaction is clear.

## **Newbuild Homebuy**

This is where a Housing Association sells a newly built property on Shared Ownership terms. You buy an initial share of between 25% and 75% and pay a subsidised rent on the share retained by the Association. At any time in the future you can increase your share by a process known as “Staircasing” so that you can end up owning 100% of the property.

Sometimes the property has already been built, in which case the conveyancing process is not dis-similar to a standard residential transaction. In other cases, however, the Association will have sold off plan and you will be asked to exchange contracts with completion to take place “on notice”. Once the property has been completed the Housing Association will serve you with Notice requiring you to complete the purchase within the next 10 days.

In all cases, your mortgage must be approved by the Housing Association before you can proceed to exchange of contracts. We deal with this for you and if there are any discrepancies in your mortgage offer that would mean it may not be approved, we assist in resolving these either direct with the Lender or via your financial advisor.

Often a Housing Association will offer incentives on the sale of Newbuild properties if contracts are exchanged within a certain timeframe. We are used to this and are happy to work within the timescales imposed.

## **Shared Ownership Re-Sale**

These transactions involve a seller who has already purchased a Shared Ownership property and wishes to sell it on. A buyer is nominated by the Housing Association to purchase the property. As well as the Buyer and Seller each instructing solicitors, the Association may also instruct its own solicitors to oversee the process.

Financially, one matter for a seller to be aware of is that when the Housing Association instructs solicitors, often their fees have to be paid by the seller. From the buyer’s perspective, please be aware that on completion it is usual to have to pay

apportionments in respect of rent and service charge – these might be calculated up to the end of the month in which the buyer completes in or up to the end of the month plus another months rent and service charge in advance depending on which Housing Association is involved.

The conveyancing procedure for a re-sale transaction basically follows that explained in the next section of this Guide, however contracts cannot be exchanged until we have the Housing Association's consent and the Buyer's mortgage offer has been approved by the Association or their solicitors.

### **Purchase of Properties with the aid of an Equity Loan**

There are a number of different equity loan products currently available, these include MyChoiceHomeBuy, Ownhome, and various First Time Buyer Initiatives. All are designed to aid people who perhaps otherwise wouldn't be able to finance making that first step on the property ladder.

A Housing Association provides an equity loan, which is obtained in addition to a mortgage from a main lender. The equity loan is repayable when the property is sold as a percentage of the value of the property at that time. Under some schemes a monthly payment has to be made to the Association whereas in other cases this is not the case for the first few years.

FST Solicitors have to comply with a number of requirements laid down by the Housing Association and in some cases they require a copy of all documents in relation to the transaction i.e. the Contract, the register of the property, the Lease, etc. All Housing Associations will require a copy of the mortgage offer for approval together with a copy of the Homebuy survey or NHBC guarantee.

Once again, exchange of contracts is not possible without the Association's consent. Otherwise, aside from the requirements of the Housing Association, the procedure for a purchase runs as normal to an ordinary conveyance.

## **Social Homebuy**

This is a scheme which is offered by Some Housing Associations which enables Social Housing tenants to buy their current home. Subject to you being able to afford it, the property can be bought outright with the benefit of a discount (repayable in the event that you sell within the first few years). Alternatively, you can buy a share and if you did this you would get a proportionate discount.

In general terms, a Social Homebuy purchase proceeds along the same lines as any other conveyancing transaction, save that you are already living in the property and hence don't actually have to move anywhere!

## **The Procedure for your transaction**

### **Buying**

#### **1. Initial Steps**

When you instruct us by returning the completed Instruction Forms to us, we open your file and write to you confirming that we have done so. If you have sent us any ID documentation we will return this to you immediately. At this stage we either will already have received details of the transaction from the Estate Agent or Housing Association, or will do so shortly. Once we have this information, we write to the seller's solicitors requesting the draft documentation.

#### **2. Investigation of Title and Searches**

On receipt of the documentation we will write to you to confirm we have received this and will send you a copy of the title plan to you to check. If you are buying a second hand property we will also send you a copy of the fixtures and fittings form that the seller has completed.

We will then proceed with the investigation of Title and carry out the necessary searches. We will also raise Pre-Contract enquiries with the Seller's Solicitors, if not already supplied. If the property is leasehold or shared ownership we also raise leasehold enquiries with the Seller's Solicitors if they have not already raised the same.

### **3. Mortgage and Survey**

You will have contacted your Building Society or Bank to make a Mortgage application if necessary. When you receive your copy of the Mortgage Offer, a copy will be sent to us at the same time. Having first checked it to ensure that it meets their requirements, we will then send a copy of the mortgage offer to the Housing Association or their solicitors for approval. However, it is important that you check the offer carefully yourself (particularly the Special Conditions) as you will know better than us what you have agreed with the Lender.

You may receive a copy of the Lender's valuer's report and you should look at this carefully. We would also recommend at this stage that you have your independent survey (Homebuyers Report) carried out as you may not be able to rely on the report prepared for the Lender. If you are buying under an Equity Loan scheme you are required to have a Homebuyers Report carried out and to supply a copy to the Association.

### **4. Reporting to You**

When all the preliminary matters have been dealt with we will prepare a detailed Contract Report and send this to you together with copies of any important documents. You will need to read through the report carefully, and ask us if you want anything clarified.

On exchange of Contracts, a deposit is usually payable. If you do not have a 10% available you should tell us as early as possible so that other

arrangements can be made (e.g. agreement of a reduced deposit or the use of your purchaser's deposit if you are selling). When buying a Newbuild Homebuy property the selling Association usually only requests a nominal deposit of £500 or £1,000 on exchange.

## **5. Exchange of Contracts**

Once you have signed the Contract and returned this to us together with any deposit, we are then ready to exchange contracts on your behalf. There may however be a delay at this stage if you are in a chain as we have to wait until all properties in the chain are ready to exchange at the same time.

Exchange of Contracts takes place by means of a formal telephone conversation between solicitors and from this point both parties are legally committed to the transaction. The date for completion is inserted in the Contract on exchange, although as explained above, in the case of some Newbuild properties a fixed completion date cannot be agreed and completion is set to take place "on notice".

If you are arranging your own buildings insurance (in the case of a leasehold or shared ownership property this is arranged by the Landlord) this must be placed on risk from the date of exchange. The level of cover will be specified in the survey report. Sometimes Lenders prefer to arrange their own insurance and there could be additional charges if you choose to make your own arrangements, we therefore suggest that you check this point with your financial advisor.

## **6. Preparing for Completion**

We complete the final searches and will send you a financial statement. We may require money from you to complete your purchase, and will ask for it before completion. We also obtain the Mortgage Advance from your Lender. All monies are needed at least the day before completion in order that we can send the funds to the Sellers Solicitors first thing on the day of completion.

We suggest that a few days before completion you contact the Seller to arrange a handing over of the keys. If there are Estate Agents involved, the usual arrangement is that the Seller will leave the keys at the Estate Agents for you to collect on the day of completion. If however this is a Re-Sale transaction, it may be best to arrange the transfer of keys between yourself and the Seller direct. In the case of Newbuild Homebuy purchases you should try if possible to arrange to meet someone from the Association at the property to hand over the keys on the day, as otherwise you will have to pick the keys up from their offices.

## **7. Completion and Beyond**

On the day of completion we pay the balance of the purchase price to the Seller's solicitors and completion takes place once the monies arrive in their account. We will advise you as soon as your purchase has completed and the keys have been released. For you this is the end of it, but not for us!

After completion we will deal with payment of Stamp Duty and registration of your Title at the Land Registry. The registration will usually be completed within three months. When the Land Registry have completed the registration, we will check that the Title is registered correctly. The Deeds will then be sent to the Lender if they require them, or if there is no Mortgage or your Lender does not require your Deeds we will send them to you at your new address. In all cases you will be sent a copy of the title for your records showing you as the registered owner.

## **Selling**

### **1. Initial Steps**

When you instruct us by returning the completed Instruction Forms to us, we open your file and write to you confirming that we have done so. If you have sent us any ID documentation we will return this to you immediately. At this

stage we either will already have received details of the transaction from the Estate Agent or Housing Association, or will do so shortly. Once we have this information, we write to the buyer's solicitors confirming that we are acting for you in the matter.

## **2. Gathering Information**

We will need to obtain your Title Deeds. These are sometimes held by a Building Society or Bank if you have a Mortgage. Alternatively you may hold the originals of documents such as the Lease and Local Authority Consents and we would request you send these to us.

We will also ask you to complete a questionnaire and list of fixtures and fittings to enable us to give Property Information to the Buyer's Solicitors. If the property is leasehold or shared ownership you will also be required to complete a Leasehold Information Form and provide further supporting information.

## **3. Submission of Contract**

Once we have your Deeds and the completed information forms we will prepare a draft Contract and send this, together with the supporting documentation to the Buyer's Solicitors. If the property is a leasehold property we would also at this stage write to the Landlord/Management Agents requesting a leasehold information pack for the property.

Following receipt of the paperwork from us, the buyer's solicitors will carry out their searches and may raise some additional enquiries about the property. Should they do so, we will often have to pass these on to you for reply.

## **4. Signing the Contract**

When the Buyer's Solicitors are happy with everything and once they have received a satisfactory mortgage offer for their client, they will approve the

Contract. We will then send the Contract to you to sign. Once you have signed the contract and returned it to us we are ready to exchange contracts on your behalf, however there may sometimes be a delay until all other transactions in the chain are ready to exchange.

## **5. Exchange of Contracts**

Exchange takes place and the date for completion is inserted in the Contract. From this point the parties are legally bound to complete the purchase on the completion date. The completion date is the date when ownership of the property changes and is the date by which you must vacate your property. The property must still be insured until completion takes place.

## **6. Preparing for Completion**

You will be asked to sign the final transfer document shortly before completion. We will also ask you to approve the Agent's/Housing Associations administrative account and will then settle this from the sale proceeds at completion. In addition, if you have a mortgage on the property, we will obtain a redemption statement from your Lender and obtain your approval of the amount

## **7. Completion**

On completion we will pay off any mortgages (including any second charges in favour of a Housing Association) and pay the Estate Agents Commission or the Housing Associations Administrative costs. We will prepare a Completion Statement and will either account to you for the net sale proceeds or apply these towards any related purchase transaction.

## **Financial Aspects**

This Guide is generally sent to you at the same time as we send you an estimate of the costs and disbursements that you will be incurring in your transaction. Although the total cost may be several thousand pounds, the majority of the expense of your purchase is comprised in the “disbursements” and our own fees for acting for you on the conveyancing transaction often only comprise a small proportion of the total costs.

Disbursements are payments made to other parties during the course of the transaction, such as stamp duty and land registry fees. On a sale there are often very few disbursements, but on a purchase there tend to be more and some of the more pertinent ones are explained below.

### **Stamp Duty Land Tax (SDLT)**

Stamp Duty Land Tax is simply a Government tax on the purchase of land. Whilst the rates are subject to change, SDLT is currently charged at a flat rate of 1% on the total purchase price if it is over £175,000. If over £250,000 the rate is 3% and if over £500,000 the rate is 4%. SDLT is not payable on any separate price paid for any fixtures and fittings such as carpets or curtains.

If you are buying a new Lease please note that Stamp Duty is also payable on the average amount of rent payable over the remaining term of the Lease. In the case of the grant of a new shared ownership lease, the situation is more complex – duty can either be paid on the full market value (in which case no further duty is payable on the rent) or based on the premium and rent payable when the lease is granted. There are advantages and disadvantages to both ways and how you pay at this stage also affects what duty (if any) is payable upon final Staircasing. However, we have a separate information sheet which explains this in detail which we send at an early stage in the transaction to all clients who instruct us on a Newbuild shared ownership property.

Some properties are located in what are called “Disadvantaged Areas” for Stamp Duty purposes. If the property which you are buying is within a Disadvantaged Area, you may not have to pay Stamp Duty if the price is £150,000 or less.

### **Land Registration Fees**

After completion the purchaser’s title must be registered at the Land Registry and a fee is payable for this. The land registry charge a fee in accordance with a scale according to the purchase price. For example if the purchase price is between £100,000 and £200,000 the fee is £150. If you are buying a new Lease then there is may be a higher Land Registry Fee payable as a result of the rent element.

### **Local Search Fee**

An up to date Local Land Charges Search is always required for a property purchase. If the seller has provided a HIP then a search will be included. Similarly, this is included as part of the solicitor’s information sent to us on a Newbuild purchase. However, please note that some sellers require a contribution to the cost of search fees and similarly it is common for Housing Association’s solicitors to charge a proportion of the cost of such searches to all buyers.

Should the search which has been supplied to us be older than is acceptable to your Lender we may have to carry out our own search. Should this be necessary, the fee is wide-ranging and different fees are charged by each Local Authority. The average fee is however between £150 and £200.

### **New Properties**

If you are buying a new freehold or leasehold property (including a Newbuild shared ownership property) then the Seller’s Solicitors may charge for preparing the documentation.

## **Landlord's Registration Fee**

If you are buying a shared ownership or other leasehold property, it is a usual requirement to register the transfer to your name and any mortgage with the Landlords' Solicitors. The registration charge varies widely but is normally between £30 and £60. The charge will normally be specified in the Lease.

## **Bank Transfer Fee**

On the completion of a purchase there is usually a Bank transfer effected. Our charge for this is £30 plus VAT. In addition, if you wish us to send funds direct to your new or existing Bank account following a sale, we are happy to do this at the same charge. This may in fact save you money as opposed to waiting for a cheque to come through the post and be cleared.

## **Staircasing, Re-Mortgages and Transfers of Equity**

### **Staircasing**

This is where an owner of a Shared Ownership Property elects to purchase further shares of the property from the Housing Association who owns the remaining part. An owner can usually purchase in blocks of 10% or more. Once the final share is purchased, the owner will own 100% of the property and the Housing Association's interest in the property is extinguished.

If the property is a house then former shared owner will become the owner of a freehold property following final staircasing. With a flat, the property will still be leasehold but certain provisions of the Lease will be excluded so that it is no longer a Shared Ownership Lease e.g. the nomination procedure when you come to sell the property will no longer apply.

The rules regarding stamp duty on staircasing transactions are extremely complicated, however FST Solicitors are fully familiar with the guidelines surrounding staircasing and are happy to advise on each individual transaction.

Depending on whether the owner is purchasing the final share of the property or not, any mortgage offers will usually have to be approved by the Housing Association before we can proceed to completion. The Housing Association will also instruct their own solicitors to oversee the transaction and in some cases the owner will be liable to pay their costs.

## **Re-Mortgages**

This is where the current mortgage secured over the property is redeemed and a new mortgage is secured in its place. Owners of properties often re-mortgage as their current mortgage terms have come to an end and a new mortgage offers a better deal. This is a relevantly straightforward transaction, however with a Shared Ownership Property the Housing Associations consent is required and the new mortgage offer has to be approved by them before proceeding to completion. A signed Mortgage Deed is also required before completion.

One point to note is that some lenders will require a full Local Authority Search to be carried out as is undertaken in the case of a purchase transaction. Other mortgage lenders, however, are happy to accept Search Indemnity Insurance which is a policy that protects the lender financially against matters which would have been revealed had a full search been carried out. Search Indemnity Insurance is a far cheaper option than a brand new search so we will always select this route for you if at all possible!

No stamp duty is payable in respect of re-mortgages.

## **Transfer of Equity**

“Equity” is the difference in value between the amount of the outstanding mortgage and the value of the property. A transfer of equity occurs when, for example, a single

owner of a property wishes to transfer it into joint names. Similarly, when joint owners want to transfer a property into just one of their names or one of them wishes to retain their interest but the second wants to transfer their interest to a third party, a transfer of equity takes place.

There are a number of reasons for arranging a transfer of equity, however the one of the most common reasons is the dissolution of a marriage or when co-habitees decide to separate. Dependent on the couple's financial situation, they may either want to sell the property and divide the net proceeds or one partner may wish to continue living in the property but with the property being transferred into their sole name, which is where a transfer of equity would be necessary. Conversely, when there is a new relationship and the parties wish to not only live together but jointly own their home, a transfer of equity is again necessary.

If the property was subject to a mortgage which is intended to continue after the transfer of equity it will be necessary to obtain the permission of the lender first to the transfer. Any co-owner being removed from the title to the property would also be released from their responsibilities to the lender from the date of completion. Likewise, anyone who becomes a co-owner following a transfer of equity would from completion become liable for the existing mortgage

Alternatively, some borrowers may use this opportunity to arrange a new mortgage with a different lender and there would therefore also be a re-mortgage transaction at the same time as a transfer of equity. Indeed, we sometimes find that we are instructed on not only a transfer of equity but at the same on a re-mortgage and a Staircasing transaction all rolled into one!

The Housing Association would firstly have to approve the Transfer of Equity transaction (and again they may have certain requirements to fulfill before they provide consent) and secondly have to approve any new mortgage offer or require confirmation from the current lender that the transaction is approved before completion could go ahead.

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