



EXCHANGE OF CONTRACTS INFORMATION SHEET

Exchange of Contracts is the key point in the legal transaction of buying and selling a house or other building or land. Up until exchange of contracts there is nothing legally binding between the parties and either is free to pull out without penalty however long the transaction may have been going on.

Exchange of Contracts is not the same as signing the Contract. The contracts (which are prepared in duplicate) have to be signed by the buyer and the seller before they can be exchanged but the contract is not legally binding just because it has been signed. It will only become legally binding once the formal process of exchange has been gone through by the solicitors acting for both parties.

It is usual for a deposit to be paid on exchange of contracts as this ensures there is a real enforceable penalty should the buyer pull out after exchange. The deposit will be forfeited by the buyer if this happens. Traditionally the deposit paid was 10% of the purchase price but it is often less nowadays.

If you are selling as well as buying it may be possible to use the deposit on your sale as the deposit on your purchase, although you may need to top it up if you are moving up the housing ladder. If you are a first time buyer you should certainly expect to have to provide 10% of the purchase price before completion to allow exchange of contracts with that deposit to go ahead.

Because this is such a key moment we always make sure that everything has been sorted out and agreed before contracts are exchanged as there is no going back without penalty afterwards. For this reason it can sometimes take longer to get to exchange of contracts than anyone would like in an ideal world.

It is also becoming more common for there to be no gap between exchange of contracts and completion so that everything will happen on the same day. Whilst this means that deposits are not required in advance and the transaction can complete as soon as all the i's have been dotted and the t's crossed it does leave considerable uncertainty as to whether people will actually be moving right up until exchange and completion day which can make it very difficult as it is then necessary to book removals, advise utility companies and take time off work without having the comfort of exchange of contracts. If a transaction fails at

simultaneous exchange and completion there is no financial penalty to be claimed from the defaulting party for expenses.

The traditional two weeks between exchange and completion gave everyone moving house time between knowing the transaction was definitely going ahead (exchange) and actually moving (completion). That time could be used for packing, arranging removals, sorting out services and mail redirection. With simultaneous exchange and completion people have to do all this without knowing for sure that they will be definitely be moving on a certain date.

Once the buyer and seller (and any other buyers and sellers in the chain) have signed their respective contracts, mortgage offers, if required, have been received, all issues identified on the offer, the Title or in connection with the property have been resolved and a completion date has been agreed, the conveyancers will exchange contracts.

The exchange process takes place over the phone under a prescribed formula set down by the Law Society and the date and time of exchange are recorded by both conveyancers and it is at that point that the contracts become legally binding.

If one of the parties is then not ready, willing and able to complete on the agreed completion date, the other party can service Notice to Complete on the defaulting party. Interest on the outstanding balance of the contract price (usually 4% above bank base rate) will start to run from the day completion should have taken place.

The Notice to Complete usually gives a further 10 working days for the defaulting party to complete. If a buyer fails to complete within the extra 10 working days the seller can rescind the contract, keep the deposit and claim any further losses which may have been sustained as a result of the buyer's failure to complete. If there is a prospect that a buyer has the money to complete but is unwilling to do so the seller can sue for specific performance of the contract or rescind the contract and sue for damages. Please be aware that if a seller fails to complete, the buyer can also sue for specific performance and damages.

Finally, a word of comfort, it is extremely rare for transactions to fail to complete after exchange of contracts. It is getting to the point of exchange of contracts which can be the tricky part.