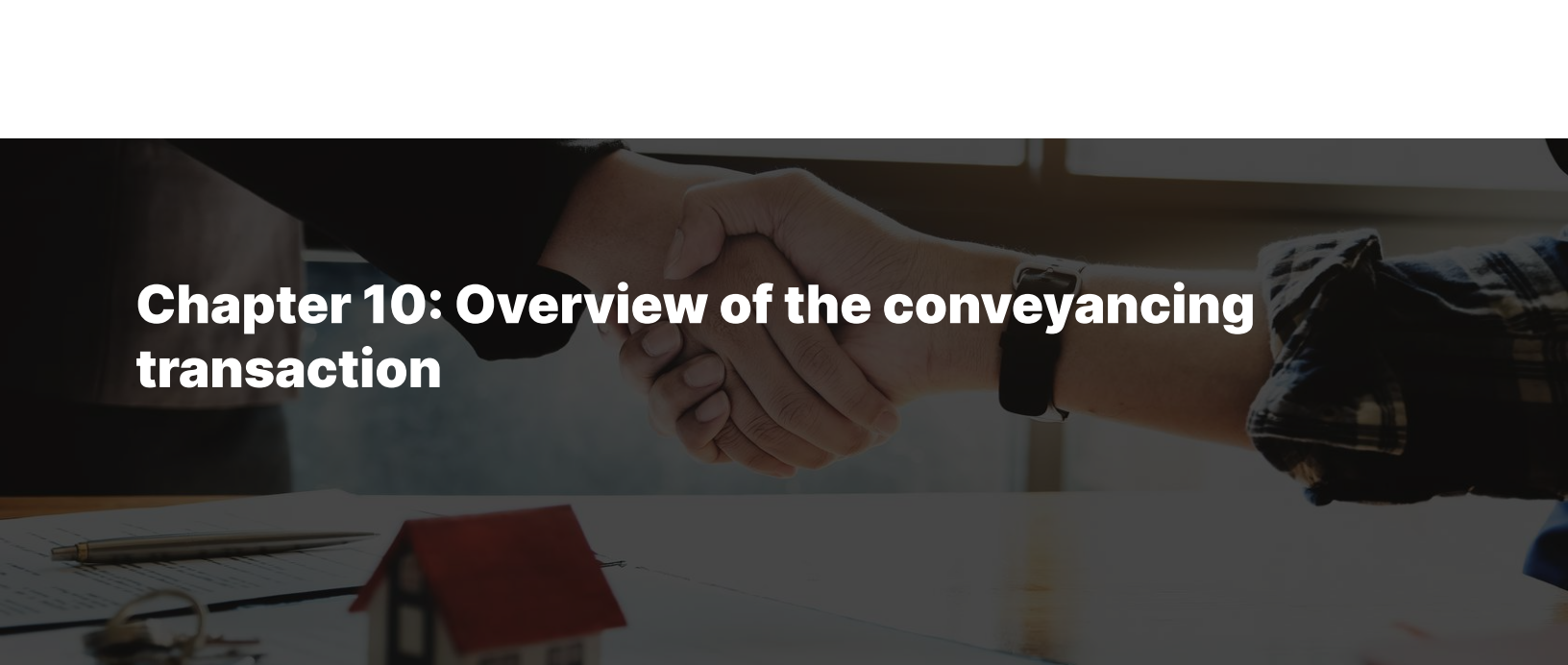




Chapter 10: Overview of the conveyancing transaction



Aims of this Chapter



10.1 Protocol and HMLR forms



10.2 Key stages



10.3 Pre-contract work



10.4 Exchange of contracts



10.5 Post-exchange/pre-completion work



10.6 Completion



10.7 Post-completion



Knowledge check



10.8 Chapter summary

Aims of this Chapter

It is very important for a trainee in a conveyancing department to understand the entire conveyancing process. You might have to answer a client's question on what happens next in a transaction to help manage their expectations. Recognising the steps in the transaction is a key part of your roles in a conveyancing transaction.

This chapter will cover:

- the stages of the conveyancing transaction in outline, and
- conveyancing flowchart.



Before we move on...

The process by which interests in land are acquired, and transferred between owners, is known as **conveyancing**. The remaining chapters in this course book provide an outline of the entire conveyancing process, from the time when the client gives initial instructions to the time when the file is closed at the end of the matter. The day-to-day work on the file may be carried by various members of the firm's conveyancing team (e.g. an assistant lawyer, paralegal, secretary or a trainee may assist a conveyancing partner).

Key documents

We will include the main forms that you will encounter in a typical residential conveyancing transaction for a freehold registered title at the end of the relevant chapter.

CONTINUE

10.1 Protocol and HMLR forms

In earlier chapters, you were asked to download and keep the following forms for reference:

- Property Information Form – TA6
- Fittings and Contents Form – TA10
- Contract incorporating the Standard Conditions of Sale (5th edition – 2018 revision)
- Completion Information and Undertakings – TA13
- TR1
- AP1

Please ensure that you have these forms ready to refer to as you work through the rest of the course book.



Link to Practice

It is important to use consistent **terminology** when describing conveyancing steps. We will refer to the parties as **seller** and **buyer**, in accordance with modern practice and documentation. It is also possible to refer to the parties as **vendor** and **purchaser**. You might come across this terminology, especially in older documents such as a conveyance.



Link to Practice

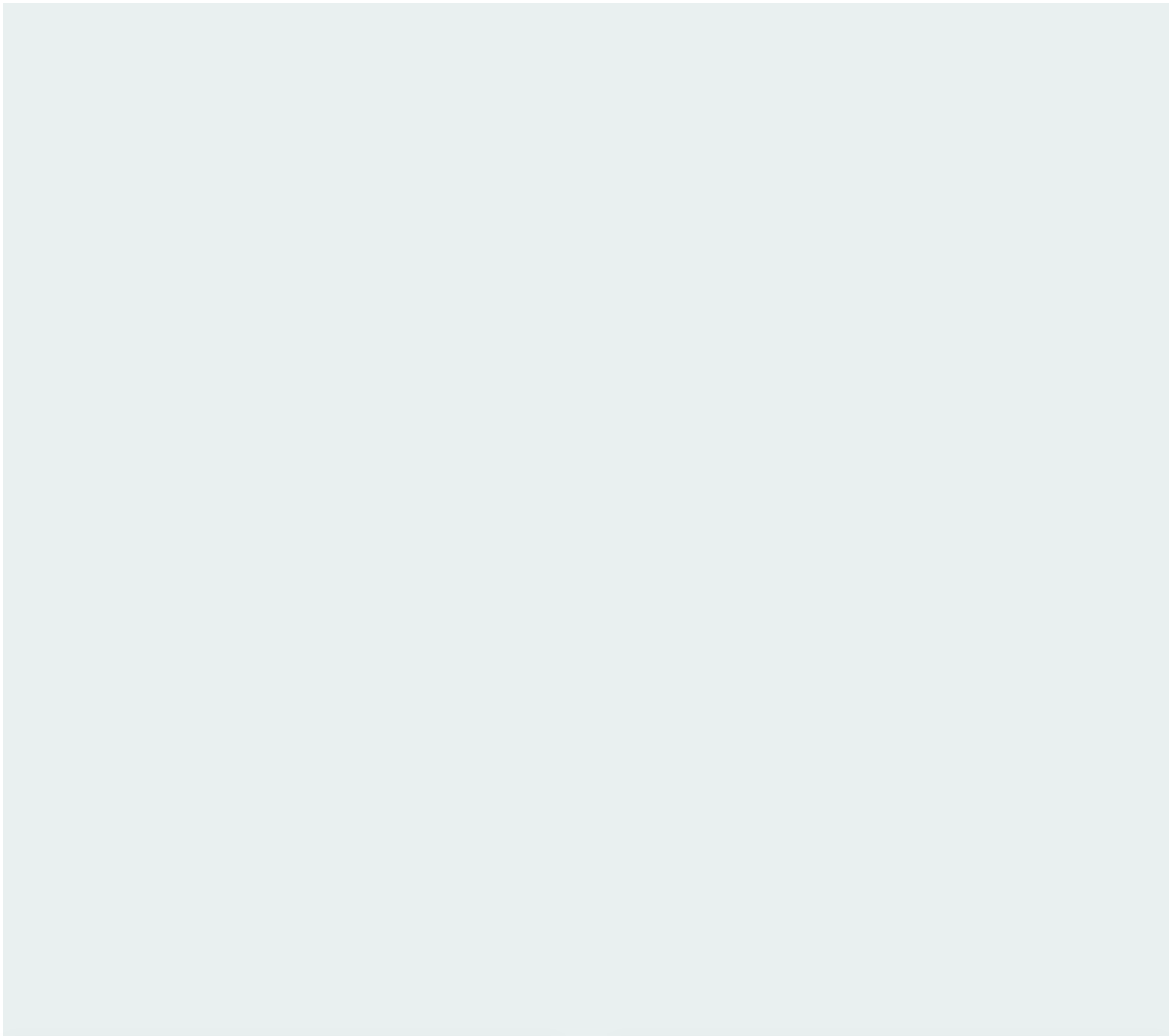
This course book considers the procedures adopted for the sale and purchase of freehold **residential** property with registered title.

Note that firms may sometimes take certain conveyancing steps in a slightly different order, or at a slightly different time, to those described here. For example, some firms may deal with drafting the transfer deed prior to exchange of contracts so as to save time later.

CONTINUE

10.2 Key stages

The stages of a standard conveyancing transaction are based on two events:



Exchange of contracts

When the parties become legally bound.

Completion

When the purchase money is handed over in return for the title documents. In residential transactions, this is usually the day when the seller moves out of the house and the buyer moves in.

The entire conveyancing process revolves around these pivotal points, with the conveyancer ensuring that all relevant steps have been taken and all relevant enquiries made.

Now let's look at these stages in a little more detail. It is very important in practice and in an assessment to be able to quickly identify which part of the transaction you are dealing with.

CONTINUE

10.3 Pre-contract work

The conveyancers for the seller and buyer will take instructions from their clients and make contact with each other. The seller's conveyancer will check the title documents (i.e. the documents establishing ownership to the property) and prepare a draft contract of sale (in duplicate), which they will send to the buyer's conveyancers for approval. The contract will be accompanied by proof of the seller's title (ownership) to the property. Normally, it will be accompanied by other documents giving information about the property, as part of a contract package (sometimes referred to as a contract bundle).

The stages of the conveyancing process

Pre-contract

This is the stage of the transaction which involves most work for the conveyancers and takes the longest time. As well as file opening, anti-money laundering (AML), client identification and due diligence, the seller's conveyancer will send the contract package to the buyer's conveyancer who will submit searches, check the title, raise enquiries and resolve their client's financing.

It is only once all of these aspects are concluded that the parties can move on to the next crucial stage of the transaction.

Exchange

This is the stage of the transaction where the contract between the seller and the buyer becomes legally binding. The conveyancers acting for both parties will generally exchange contracts over the telephone, and there is a procedure to follow in this regard.

In most cases, the buyer will pay a deposit on exchange of 10 per cent of the purchase price.

Once exchange of contracts has taken place, the seller and buyer are contractually bound to proceed and neither party can withdraw from the transaction without financial consequences.

Pre-completion

This is the part of the transaction between exchange of contracts and completion where the seller and buyer are likely to be doing very practical things such as booking removals and packing their belongings whilst their conveyancers will be preparing for the completion day.

The seller's conveyancer will arrange for the seller to sign the transfer document which is prepared by the buyer's conveyancer and will obtain up-to-date redemption figures on any mortgages that the seller has over the property being sold.

In parallel, the buyer's conveyancer will carry out some pre-completion searches and will obtain the buyers funding to purchase the property (very often by requesting drawdown of the mortgage advance from a lender).

Completion

This is the moving date. This is the day which the seller and buyer have been waiting for. The seller will move out of the property being sold and the buyer will move in.

However, before this can happen, the buyer's conveyancer must pay the completion money to the seller's conveyancer.

Upon receipt of these funds, the seller's conveyancer will contact the estate agent to confirm that the keys can be released to the buyer, so that the buyer can move in.

Post-completion

The seller and buyer have moved house and have achieved what they set out to do. However, the conveyancers have some very important work to do after completion and this can be a risky part of the process.

Having received the balance of 90 per cent of the purchase money from the buyer's conveyancer, the seller's conveyancer must pay off the seller's mortgage, if any, and will date and send the transfer document (together with any other relevant papers) to the buyer's conveyancer.

The buyer's conveyancer must submit the stamp duty land tax (SDLT) return and pay any stamp duty land tax that is due to HM Revenue and Customs (HMRC). They must also make the application to register the change of ownership of the property with HM Land Registry (HMLR). There are strict time limits within which these two tasks must be carried out.

The buyer's conveyancer will check all the documentation very carefully and will make all necessary searches and enquiries. These will concern various factors affecting the property and the decision to purchase.

For example:

- 1 Has planning permission been granted?
- 2 Is a new road going to be built near the property?
- 3 Are there any disputes with the neighbours?

Even where some of the information has already been provided, the buyer's conveyancer must still check all the information carefully and must make additional searches and enquiries where matters have not been fully covered.



- The buyer's conveyancer will also check the seller's title to the property to make sure there are no problems and will raise any queries on the title (called requisitions) at this stage. This process of checking the title is known as "**investigating**" the title.
- The buyer's conveyancer will then check the results of all the pre-contract searches and enquiries, ensure that the clients have made suitable financial arrangements (e.g. that they have a mortgage offer) and approve the contract terms.
- The buyer will send their conveyancer the deposit of 10 per cent of the purchase price which is payable on exchange. The buyer's conveyancer must ensure that this money is

cleared into the firm's client account before relying on it otherwise this will be a breach of the Accounts Rules.

Both parties will sign a copy of the contract and exchange of contracts may take place once all pre-exchange matters have been satisfactorily dealt with.

CONTINUE

10.4 Exchange of contracts

Prior to exchange of contracts, either party is free to withdraw from the transaction or to suggest variations in the terms of the transaction. For example, a buyer might withdraw because a survey revealed major structural defects, or because the building society refused to make a mortgage offer on the property; a seller might withdraw because they could not find another house to buy, or they might try to increase the price because they needed more money to fund the purchase of another house.



“Exchange” means an exchange of the contracts signed by each party. The methods of exchange will be explained later, but as a result of exchange, the seller will hold a copy of the contract signed by the buyer, and the buyer will hold a copy of the contract signed by the seller. Once exchange of contracts has taken place, the parties are legally bound to proceed with the transaction. After exchange, neither party can normally withdraw from the transaction without being in breach of contract and facing substantial penalties (e.g. payment of damages or forfeiture of the buyer’s deposit).

Prior to exchange, the transaction is often said to be *“subject to contract”*, and this phrase may be written on conveyancers’ letters or seen on estate agents’ particulars. Before 1989, this phrase was used to prevent a binding contract being formed between the seller and buyer by accident, such as via an oral agreement and correspondence. There was a change in the law in 1989 to prevent this from occurring, so the wording *“subject to contract”* is arguably no longer strictly necessary although it will often be encountered in practice. The phrase highlights the fact that, whilst an offer has been made on the property and the legal work is proceeding, there is as yet no binding contract in existence. A binding contract only comes into existence on exchange.



Activity

You have previously obtained a copy of the contract incorporating the Standard Conditions of Sale, the Property Information Form and the Fittings and Contents Form. Look at these documents again to remind yourself of the contents and purpose of each document as we will look at them in more detail in the following chapters.

CONTINUE

10.5 Post-exchange/pre-completion work

At this stage, the work involves preparation for completion.

Pre-completion procedures will be confirmed on a standard form (e.g. How much money is due on completion? Where will completion take place?).

The buyer's conveyancer will draft the purchase deed (the document passing ownership from seller to buyer, which in registered land is called a transfer) and the seller's conveyancer will approve it.

The approved transfer will be signed by the seller (in some cases the buyer must also sign) in readiness for completion. The buyer's conveyancer must ensure that the money is available to pay for the property, whether from a lender such as a building society or from the client's own funds. Where the buyer is using a mortgage, the new mortgage deed must be prepared, and signed by the buyer. Both conveyancers will send a bill to their respective clients, together with a financial statement.

The buyer's conveyancer will check that there have been no changes in the title or any addition of third-party interests since the investigations made prior to exchange (e.g. the registration of a new mortgage by the seller). This is done by making pre-completion searches.



Activity

You have previously downloaded a copy of the most common form of transfer used in conveyancing, that is the TR1. Look at the document again to remind yourself of its content and purpose.

CONTINUE

10.6 Completion

This is the stage when the purchase money is paid by the buyer's conveyancer to the seller's conveyancer and the latter hands over the title documents to the property and, in most cases, arranges for the estate agent to handover the keys.

In residential transactions this is usually the day when the sellers move out of the house and the buyers move in, although this does not have to be the case (e.g. the sellers may move out before completion, or the buyers may choose to move in at a later date, especially if there is a lot of work to be done on the property first).



Completion may be carried out in person (with the conveyancers meeting to complete at the selling conveyancer's offices) or, far more commonly, by post. These methods are considered in a later chapter.

CONTINUE

10.7 Post-completion

The buyer's conveyancer will ensure that stamp duty land tax (or land transaction tax in Wales) is paid where appropriate and will register the change of ownership at HMLR. All relevant forms must be sent to HMLR and the application will usually be made electronically via the portal. The HMLR application involves payment of a registration fee which is based on a sliding scale according to the value of the property.





Activity

Follow the link below to the HMLR website. A standard registration resulting from the purchase of a property will incur fees under Scale 1. You will see that an application using the portal is half of the cost of making an application by post to HMLR.

How much are the Land Registry fees if an application is made for registration via the portal where the purchase price is £276,000?

HMLR fees (and any SDLT payable) are two of the important disbursements which you will remember must be shown in the client care letter, and they will be included on the buyer's completion statement.

The current link to Scale 1 fees is:

 **GOV.UK**



HM Land Registry: Registration Services fees

Fees for common applications, for example Scale 1 and Scale 2 transactions, charges of registered land, leases, large scale and fixed fee applications.

READ MORE GOV.UK

The Land Registry has a fee calculator which can be found at: [Fees Calculator](#)

You might like to use this to find the fees for the transaction mentioned in the Activity.

Once confirmation of the registration is received, the conveyancer will send the title documentation to the client (if there is no mortgage over the land), or deal with it in accordance with the lender's instructions (if there is a mortgage). Both sets of conveyancers will check that their accounts are clear, that the clients have paid their respective bills and will then close their files. The files should be retained in a safe place in case later queries arise.

10.7.1 The use of checklists

You can see that conveyancing is very process driven. Many firms help their conveyancing fee-earners manage this process and the risk involved with conveyancing by the use of checklists. Whether kept electronically on a case management system or stapled to a file cover, a checklist will set out the key stages in the transaction which the conveyancer must carry out before moving on to the next step. Hopefully this ensures that no important aspects are forgotten about.



Activity

If you work in a law firm, speak to a conveyancing colleague and asked for copies of the checklists which they may use on a residential sale and purchase transaction. Familiarise yourselves with the stages outlined as we will cover most of them in the following chapters.

If you do not work in a conveyancing department, do not worry! Please start to create your own checklist for a sale and purchase using the five stages of the conveyancing transaction listed in this chapter. You can then add to your checklists as we reach each part of the transaction in the following chapters. By the end of the course book, your checklists will be complete.

10.7.2 Synchronising a related sale and purchase

Many clients who are moving from one house (their sale) to another house (their purchase) want to do so on the same day. Think about the practicalities of moving house. The contents of the property being sold will be packed into boxes so that on the day of completion, the seller can move out and leave an empty house (only leaving behind those items which they have listed as “included” on the fittings and contents form). Most sellers will not want to incur the cost or inconvenience of having to put all of their furniture and belongings into separate storage; they will want to unload their removal van into the house that they are moving to on the same day. This is known as “**synchronising**” the sale and purchase. It is important for their conveyancer to take instructions and understand whether their clients wish to synchronise the sale and purchase. Where clients have a sale and purchase which are dependent on each other, these are known as “**related**” transactions (they might also be referred to as “linked” or “dependent” transactions).

Outline of a simple conveyancing transaction

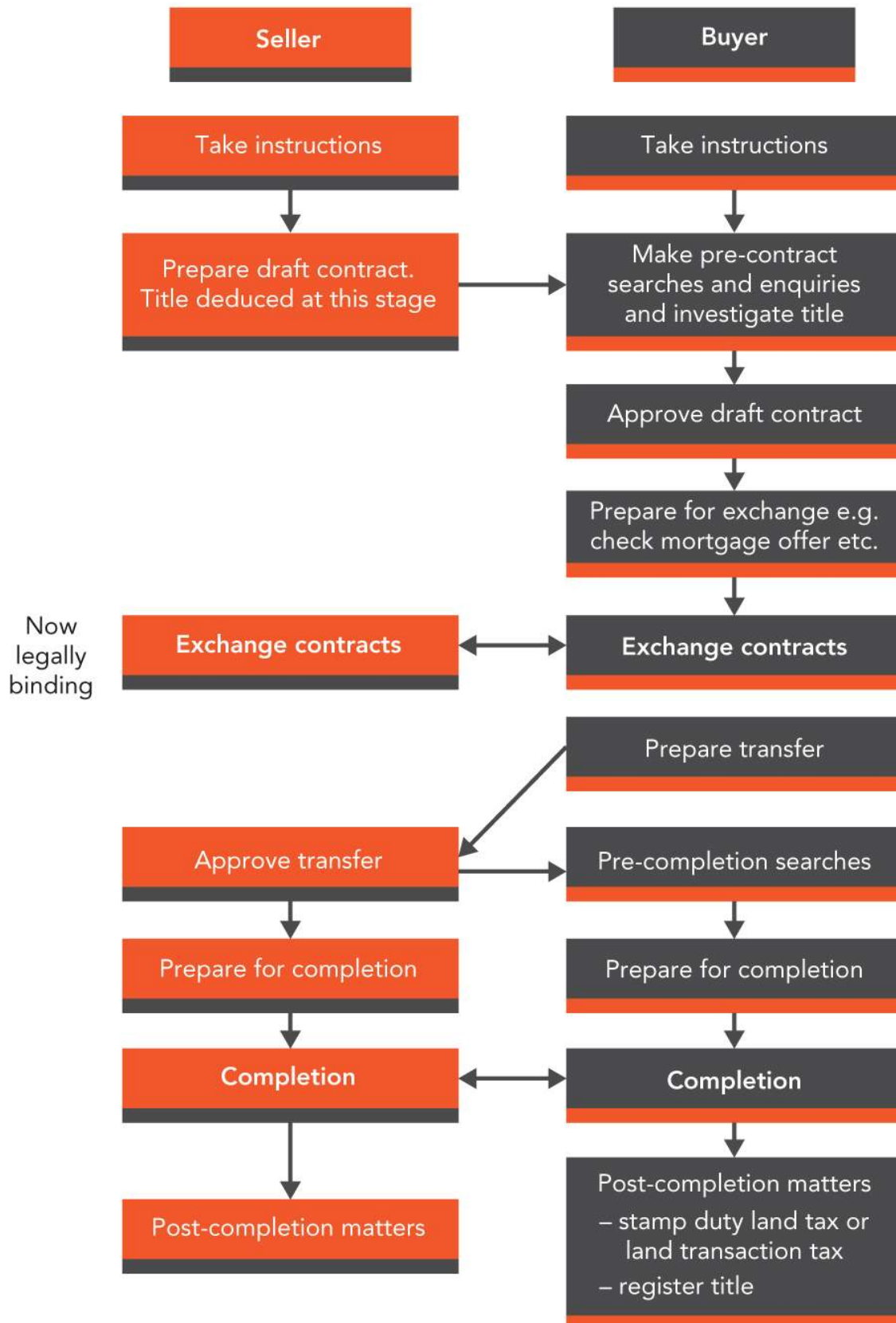
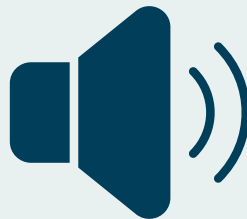


Figure 10.7

CONTINUE

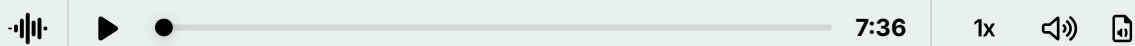
10.7.3 Key steps to take on behalf of seller and buyer in a freehold residential conveyancing transaction

Please consider the flowchart in Figure 10.7 carefully. This sets out the process of a straightforward sale and purchase. We will work through these stages in the remaining chapters of this course book.



Law Explained

In this recording we're going to think about **why** an understanding of the various stages of a conveyancing transaction is so important.



Audio Transcript —

In this recording we're going to think about why an understanding of the various stages of a conveyancing transaction is so important.

We'll be thinking about this in the context of a standard transaction for the sale or purchase of a residential freehold property, such as a freehold house or freehold bungalow. The stages can vary slightly for some other types of transactions such as commercial leases of shop or office premises.

The starting point is to think about what the stages actually are.

Basically, there are five stages to a standard conveyancing transaction and these are normally termed pre-contract, exchange, pre-completion, completion and post-completion. Sometimes, you might hear people refer to a sixth stage, which would take place before the stages just mentioned. This might be termed the pre-market stage and would include the work done in relation to a property sale before the lawyers for seller or buyer became involved. In other words, activities such as marketing the property with an estate agent.

In any event, it is essential to recognise that the two key stages in the list are exchange of contracts and completion. In practical terms, think of everything else as fitting around these as, without exchange and completion, the other stages have no real purpose!

So, what's so important about these two stages? Let's think about each in turn.

Exchange of contracts is the point at which the conveyancing transaction becomes legally binding. Up until the point of exchange, either seller or buyer is free to simply withdraw from the transaction, and can walk away without even giving a reason to the other party. For instance, a seller might have received a higher offer for the property from someone else and decide to sell to that other person instead. A buyer might have received a survey report revealing so many defects in the property, that they no longer wished to buy it. There could be many reasons, including the fact that a seller has simply changed their mind about moving or a buyer has found another house they prefer!

Before exchange, the transaction is said to be "subject to contract", meaning that, although the legal work is progressing, there is, as yet, no binding contract.

The period just before exchange can often be the most stressful part of the whole conveyancing transaction for both clients and lawyers, as it's possible for the other party to pull out right up until the last minute before exchange, so nobody can really relax until exchange has taken place.

So, exchange produces a binding contract. After exchange, neither party can normally withdraw from the transaction without incurring substantial penalties for breach of contract. The buyer is not yet the legal owner on exchange, but the buyer does have an equitable interest in the property (called an estate contract) which is essentially a right to have the legal ownership transferred to them at a future date.

There are specific procedures that must be adopted by lawyers to exchange contracts. The most common way is to exchange by telephone using standard formulas produced by the Law Society. These are basically sets of steps to follow, backed up by binding undertakings.

So how does this all differ from the other key stage of completion?

Completion takes place after exchange. It is usual to agree a completion date when exchanging contracts. The time between exchange and completion can vary widely but, typically, completion might be several weeks after exchange. For example, the lawyers for seller and buyer might exchange contracts on 14 May 2021 with an agreed completion date of 11 June 2021.

Completion is basically the 'moving day' in most standard residential transactions. It's the day on which the purchase money is paid over from the buyer's lawyers to the seller's lawyers and the day on which the seller vacates the property. Most buyers will collect the keys and move in on the same day, unless they've planned to move in at a later date for some reason, for example if they want to upgrade the property first. Completion is also the day when most buyers will think of themselves as the legal owners of their new property, although in fact in registered land transactions, they don't actually become the legal owners until they're registered as such at the Land Registry.

Again there are set procedures which lawyers will adopt to carry out a successful completion. Completion normally takes place by post, in accordance with procedures set out in a specific Law Society code for completion.

It is very important to appreciate that exchange and completion are distinct legal steps. As you can see from what we've said so far, each step is carried out in a different way by the lawyers and each has different legal and practical effects.

It is especially important to recognise exchange and completion as completely different steps, if they actually take place on the same day or within a very short timeframe. It's very easy to confuse the two steps if this happens, but it's still important to hold onto the fact that they are distinct and separate, even where exchange is followed rapidly by completion.

A short time gap between exchange and completion has become increasingly common in the last year or so, due to the difficulties posed by the Covid-19 pandemic. At the height of the pandemic, sellers and buyers naturally faced huge uncertainties, making them very cautious about committing to a sale or purchase until they were absolutely sure they would be able to complete on the agreed date. One solution often adopted in practice was to delay exchange (i.e. the binding moment) until shortly before completion, making it less likely that factors such as an unexpected requirement to self-isolate, or sudden illness, would intervene.

So, having recognised these pivotal points, you can hopefully see more easily how the other stages fit around them.

The pre-contract stage (when nothing is binding) is when all the work is done to prepare for a binding transaction. For example, the seller's lawyer has to draft the contract of sale and provide all the vital information about what the client is selling, such as proof of the seller's legal ownership and all sorts of other information about the property. The buyer's lawyer has to make all the investigations and

enquiries that are necessary, to enable the buyer to make an informed decision about whether to commit to the purchase. You wouldn't normally want to pay £2,000, let alone £200,000, for an item, without being absolutely sure you were 100% happy! This is why this is normally by far the longest stage of the transaction.

Conversely, the pre-completion stage is normally much shorter, as the transaction is now binding and the legal work at this stage is basically to get everything ready for completion day. For instance, the purchase deed which is to be used to transfer the property from seller to buyer must be finalised and signed in readiness, and the buyer's lawyer must obtain any completion funds from the client or the client's new mortgage lender.

The post-completion stage is normally quite short as well. The clients won't be overly involved in the legal work, since sellers will already have left their old home and buyers will already be in their new home! This stage is basically where the lawyers tie up the legal work. For example, the buyer's lawyer must take the vital steps of dealing with stamp duty land tax requirements (land transaction tax for properties located in Wales) and apply to the Land Registry to register the buyer as the new registered owner of the property.

It's very important to be able to recognise these distinct stages and to appreciate exactly what work is done and when. For example, if you were asked by your supervisor to order the necessary pre-contract searches, these would be completely different from ordering pre-completion ones. If you were asked to carry out the necessary post-completion steps on a file, these would be completely different to the pre-completion ones.

So, although firms may sometimes carry out some of the conveyancing work in a slightly different order to others, or at a slightly different time, the essential stages of the conveyancing transaction are based on the above structure and are very important for the reasons we've discussed.

CONTINUE

Knowledge check

This knowledge check is a self-assessment to see how well you understood the content of this chapter and it does not count towards your course mark.

There are 2 questions in this knowledge check.

1. In conveyancing a binding contract will only come into force when contracts are exchanged. True or false?

-
- ☐ a. True
 - ☐ b. False

SUBMIT



Complete the content above before moving on.

2. At what point in the conveyancing process are the keys to the property handed over?

- ☐ a. Exchange of contract
- ☐ b. Completion
- ☐ c. Post-completion

SUBMIT



Complete the content above before moving on.

10.8 Chapter summary

(1) Stages of the conveyancing transaction:

- (a) pre-contract – contract drafted, searches submitted, enquiries raised, financing resolved, report to client;
- (b) exchange – this is the stage when the transaction becomes legally binding;
- (c) pre-completion – this is the stage between exchange of contracts and completion where the pre-completion searches are carried out, transfer is drafted and signed and the financing for the purchase drawn down;
- (d) completion – this is the moving date upon which the buyer's conveyancer sends the balance of the purchase money to the seller's conveyancer to complete the purchase; and
- (e) post-completion – the seller's conveyancer will send the transfer (and any other relevant documents) to the buyer's conveyancer and will pay off (redeemed) the seller's mortgage, if any; the buyers conveyancer will submit the SDLT and HMLR application.

(2) Clients who move from one house (their sale) to another house (their purchase) on the same day are said to synchronise their transactions.

You have completed Chapter 10.

EXIT