

ae<sup>LAW</sup>  
AVERY EMERSON



OUR GUIDE TO  
BUYING & SELLING  
YOUR HOME

AVERY EMERSON SOLICITORS

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**legalcare**

# OUR GUIDE TO BUYING & SELLING YOUR HOME

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## Buying and Selling your home: Why Choose Avery Emerson?

Buying or selling your home is recognised as one of the most traumatic experiences anyone can go through in life. At Avery Emerson we see it as part of our job to eliminate any such experiences for our clients. Our measure of success in achieving this is our clients' returning to us time and time again for their conveyancing needs.

The need for efficient, professional advice and specialised expertise coupled with good client communication skills is essential at the time you choose to buy or sell your property as for the majority of people, a property, as well as being a home, is also the most substantial investment or asset that they may own.

As a firm of solicitors we have a fundamental commitment to client care and professionalism. Avery Emerson achieved “**Lexcel**” and “**Investors in People**” within 9 months of opening its doors. To us, this is another very real example of our commitment and unerring drive towards exemplary standards in client care, professionalism and business acumen.

**Lexcel** is the Law Society's practice management quality mark. Written specifically for the legal profession, it allows any type and size of practice to undergo independent assessment to certify that the Lexcel Practice Management Standards are being met. Lexcel provides a competitive advantage and peace of mind for clients. The Lexcel quality mark is evidence of a well-managed practice committed to a quality.

**Investors in People** is an internationally recognised quality standard for the development of businesses and organisations through good workforce development practice. This in return means customer satisfaction for our clients.

## Moving Home – points to consider: Whether you're buying, selling or both

Inevitably, the main point of consideration is affordability and budgeting for the additional costs beyond just the purchase price of the property. We have listed below the main points to bear in mind, this is however not by any means exhaustive!

### *Removal Costs*

An obvious example! However, it is always worth starting to obtain quotes at an early stage. If possible, a provisional booking may be a good idea once you have an idea of the completion date that all parties are working towards. Once exchange of contracts has taken place, you will know the definite completion date enabling you to confirm the booking.

### *Savings / Deposit* □

At the point of exchange of contracts, if you are purchasing a property you will be expected to pay either a 5% or 10% deposit, it is therefore advisable to make sure that the funds are available at short notice and you are able to provide them to your solicitor as cleared funds for the purposes of exchange of contracts.



### *Mortgages* □

If you are selling a property that has an existing mortgage on it, this will need to “redeemed” or paid off at the point of completion.

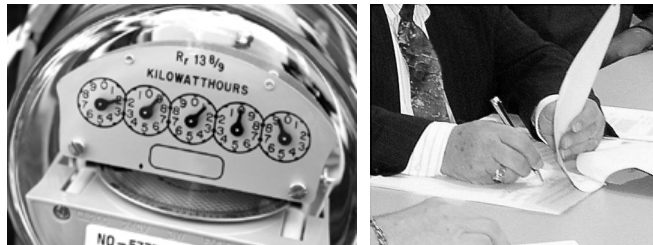
If you are purchasing a property your lender may lend up to 95% of the value of the property, subject to your lender’s valuation of the property. There are many different “types” of mortgages available, subject to your circumstances and income your financial advisor will be able to provide you with the most suitable option for you.

### *Utilities* □

It is of course necessary to notify all service providers and Council for your current address that you are moving and to provide them with your completion date as the date from which you will no longer be responsible for the bills. Conversely, if you are purchasing, it is worthwhile finding out from the seller which companies provide services to the property you are purchasing to enable you to notify them of your purchase.

### *Purchasing Property in Joint Names*

There are two different ways that property can be owned jointly. The first is a **joint tenancy** where when one of the owners dies the property passes to the survivor. The other is **tenancy in common** where when one owner dies their share of the property passes to their will or if there is no will, under the rules of intestacy.



## Buying your home: The process explained

### 1

We will write to the seller's solicitors on your behalf and receive the draft contract and supporting documentation which they will have collected from their client. We will go through the documentation and will consider whether any further questions need to be asked.

### 2

Searches will be instigated at the same time that the above is occurring

### 3

We will also decide whether the draft contract provided by the seller's solicitors is acceptable to you. You will have to arrange your mortgage if there is one.

### 4

Exchange of contracts will not happen until both we and you are satisfied that all the information which we need about the property has been obtained. At the same time as we exchange contracts on your sale and purchase, a completion date will be arranged.

### 5

This completion date may be anything from the same date to many weeks later. It is a matter for negotiation. In this period after exchange of contracts we will prepare various documentation. It will also be our responsibility to obtain the money on your mortgage for your purchase so that we can pay for the property on your behalf on the completion date.

### 6

If your buyer or seller changes his mind, there is nothing we can do about this before exchange of contracts. It may be that you have got as far as being ready to exchange contracts. It is very unusual for a buyer or seller to change their minds after exchange of contracts and at this stage, you would be entitled to damages.

**7**

Once exchange has taken place and the completion date has been inserted into the contract we will complete the payment due on your new house and receive money in on any sale. We will also redeem the mortgage on any sale.

**8**

After exchange of contracts your solicitor will raise further enquiries known as “requisitions on title”. The seller’s solicitors will provide the necessary answers to allow completion to take place on the completion date. Prior to the completion date we will drawdown your mortgage funds and ask for the balance of monies as cleared funds so that on the day of completion the correct amount can be forwarded to the seller’s solicitors to allow completion to take place.

**9**

If you are acquiring a leasehold property, then we will give notice of the transaction to the management company, dealing with the issue of a new Share Certificate if required and generally ensure that all the necessary procedures have been complied with on your behalf. If after the transactions have been completed you need to take advice with regard to your obligations under any covenants which may affect the property, the buildings insurance, boundary rights and so on, we are available to assist you.

**10**

After completion has taken place we will pay Inland Revenue the relevant amount of Stamp Duty payable. In return they will issue a “Land Transaction Return Certificate”. This document will form part of the package we send to the Land Registry in order to officially have the property registered in your name, together with registration of your lender’s mortgage over the property.

**11**

Once the documents return from the Land Registry we will provide copies to you and to your lender.

*If you have any other questions regarding the above, we will be happy to answer these for you.*

## Selling your home: The process explained

### **A**

Once you decide to put your property on the market you should contact us and we will obtain your title deeds and ask you to complete a number of forms in respect of your property. These forms will form part of the documentation, which we will send to your buyers' solicitors along with draft contracts.

### **B**

The Forms we ask you to complete, known as the Seller's Property Information Form; Fixtures, Fittings and Contents Form and Seller's Leasehold Information Form (if applicable) ask questions concerning your property, which only you will be able to answer. We would advise you to retain all receipts for any service charges, insurance, ground rent and planning permission/consent, as these will need to be forwarded to the Purchaser's Solicitor.

### **C**

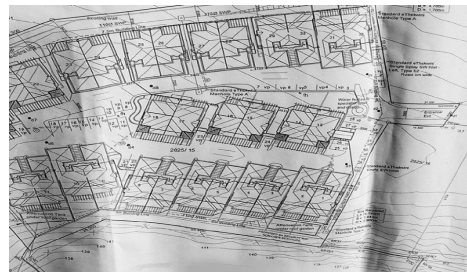
The buyer's solicitors will then raise enquiries, which will then enable them to report to their client before exchange of contracts can take place.

### **D**

We will answer any additional enquiries that are raised by the Purchaser's Solicitor, for example, specific questions concerning fixtures and fittings; alterations that have been made to the property or obtaining planning permissions and consents.

### **E**

We will then agree the terms of the contract and make arrangements for you to sign the contract in readiness for exchange. Until contracts are exchanged, the transaction is not binding on you or your buyer and you both have the right to pull out of the sale at any time before exchange of contracts.





## **F**

Once contracts have been exchanged then the transaction becomes legally binding and if either the Seller or the Purchaser fails to complete on the agreed date, then they will be liable to financial penalties.

## **G**

We will obtain the purchaser's signed part of the contract; deposit cheque and pre-completion enquiries from the Purchaser's Solicitor.

We will then send your signed part of the Contract to the Purchaser's Solicitor.

We will then obtain the mortgage redemption figures from the Mortgage Lender and reply to the Purchaser's Solicitors' final requisitions (queries).

## **H**

We then approve the transfer and arrange for you to sign the Transfer Deed. The Transfer Deed is a formal document confirming that the property has transferred from your name into the Purchaser's name, specifying the sale price and relevant Stamp Duty payable by the Purchaser. This document could also include any covenants or promises that the Purchaser must follow.

*If you have any other questions regarding the above, we will be happy to answer these for you.*



## Re-mortgages

*i*

Once you have instructed us we will request your title deeds from your existing lender and also request a redemption statement to find out how much is still owed on your existing mortgage, and any other loans you are paying off. We will await your mortgage offer and check the title documentation.

*ii*

We will check special instructions from the lender. In some cases it may be necessary to carry out searches against the property. (This depends upon the lender).

*iii*

We will forward the mortgage deed to you for signature and also send you the redemption statement for your existing mortgage (and any other loans, if applicable). We will then agree a completion date with you.

*iv*

Once the documentation is returned to us together with any balance payable (if applicable) we can arrange the completion. (Most lenders require one week's notice).

*v*

On completion day we will pay off your existing mortgage (and other loans, if applicable), collect our legal fees and disbursements and will forward any remaining money to you.

*vi*

We will arrange to register the new mortgage at the Land Registry. Once the title is registered we will supply a copy to you and send the original document to your lender.

*If you have any other questions regarding the above, we will be happy to answer these for you.*

## Commercial conveyancing

For business clients we can offer a professional service but more local than the City.

As with residential conveyancing, commercial property is either freehold or leasehold. If a commercial property is freehold, the system of conveyancing is much the same as with residential conveyancing except that you will be purchasing a commercial property rather than a house or flat. Consequently as well as the sale of the freehold or leasehold, there may be a simultaneous sale/purchase of a running business.

With Commercial leasehold transactions, the lease is very different from that of a residential lease. You can either be taking or granting to the tenant if you are the landlord, a brand new lease or granting or taking the assignment of an existing lease. Commercial leases have a much shorter term than residential leases with a few years not being uncommon. In addition, in a commercial lease there will normally be a rent review clause to enable the landlord to increase the rent and also a restriction on transferring the lease without the landlord's consent.

Obviously if you are taking an assignment of an existing lease, there is absolutely no room for negotiation on the terms of the lease since this is already in existence. On a new lease, terms can be negotiated, although it will depend on the landlord as to what they are prepared to be flexible on and what they are not.

In commercial transactions you may also be assigning or taking the assignment of goodwill and fixtures and fittings and you may even be taking over certain staff if you are taking over an existing business.

*If you have any other questions regarding the above, we will be happy to answer these for you.*

## CONVEYANCING 'JARGON-BUSTER'

### *Title Deeds*

These documents firstly act as evidence that the person selling the property actually owns it, and secondly set out any rights or obligations that affect the property.

If you are selling then valuable time can be saved if your title deeds can be obtained by us at an early stage. If you have a mortgage then your bank or building society will be holding on to your title deeds. We will need to know your mortgage account number and the name and address of the lender. Some lenders charge a fee to send out your deeds but this will normally be added to your mortgage account.

### *Property Information Form*

This is a questionnaire filled out about the property by the sellers. It covers such things as guarantees, neighbour disputes and boundaries

If you are buying then time can be saved if you tell us at an early stage if there are any particular points about the property that concern you. We can then ask the seller's solicitor the relevant questions.

If you are selling and the buyer's solicitor asks a question to which you do not wish to give an answer, for whatever reason, it is essential that you discuss it with us. Failure to disclose certain information could give the buyer grounds for taking action against you.

If the property is leasehold then there will be an Additional Property Information Form filled out as well. This mainly deals with certain aspects of the lease such as service charges, ground rent, and so on.



### *Fixtures Fittings and Contents Form*

This is a list of the items at the property which are being taken or left behind. It is completed at an early stage by the seller and sent out to the buyer, so that both parties understand what is included in the selling price.

If you are the seller, when you let us have the form we will send you a copy back straight away so you know what you put on it. If you are the buyer we send you a copy of the form as soon as it is received by ourselves from the sellers solicitors so that any difficulties can be resolved at an early stage.

### *Local Authority Search*

This is a list of questions about the property which are sent to the local authority. It covers such things as whether the road serving the property should be maintained by the council, whether there have been planning applications on the property, and a number of other things.

The search is against the property only and does not cover the surrounding area. A word of warning - the search will not show any Planning Permissions or matters affecting land or buildings outside the boundaries of the property. It is important therefore for you to let us know at the start of a transaction if you want information on any particular point or if you wish us to ask any particular question of the local authority. We would not normally advise a buyer to exchange contracts without a satisfactory local authority search.

### *Survey*

This is a report carried out by a surveyor on the physical state of the property you are buying. If you are buying a property you should be aware that the property is "sold as seen". It is for you, as the buyer, to discover any physical defects by means of inspections and surveys.

Most houses are bought with the assistance of a mortgage and the bank or building society will require a mortgage valuation. However, this is not a survey - it merely ensures that the property is of sufficient value to protect the lender's interest. Our advice is that you should at least have an RICS Homebuyer's Report prepared by a qualified surveyor. This will cost more than a mortgage valuation but it is money well spent. It is possible to go one step further and have a full structural survey of the property. Initially you should not choose this option unless the surveyor who carries out the Homebuyer's Report thinks any matter should be investigated further.

### *Deposit*

This causes a lot of confusion. When most people talk about the deposit they are talking about the part of the purchase price that the buyer is putting down him/herself (i.e. usually the difference between the amount of the mortgage and the purchase price). When Solicitors talk about the deposit they are talking about money that is handed over to the seller's Solicitors upon exchange of contracts. This might be the same amount, but it might not.

On exchange of contracts the seller can insist on receiving from the buyer a deposit representing 10% of the purchase price. However, as many people are not contributing as much as 10% to the purchase, reduced deposits are often agreed. You should be aware, however, that if you are a buyer and you pay a reduced deposit then fail to complete the purchase through no fault of the seller you will, under the terms of the contract, be required to make up the deposit to a full 10%. You may also have to pay compensation to the seller if the seller loses out through your failure to complete.

### *Mortgage / Charge*

A loan made to help you buy the house. The loan is 'attached' onto your title deeds which means that you cannot sell the property without paying off the mortgage at the same time.

Contracts should not be exchanged until an acceptable written offer of mortgage has been received. It is not enough that you have had verbal confirmation from your bank or building society that they will grant you a mortgage - you need to have a copy of a written offer of mortgage on this particular property.

In many cases a mortgage will be supported by an endowment, pension or mortgage protection policy and in these circumstances we must confirm to the lender before exchange of contracts that either there are existing policies or arrangements have been made for new policies to be brought into effect as soon as contracts are exchanged.

If you are selling, we will contact your mortgage lender at an early stage to ask how much it will cost to pay off the mortgage - we will send you a copy of this figure. You may find that you will be charged a financial penalty if you pay off the mortgage early. This is obviously a consideration to be taken into account when agreeing a completion date, and often applies when your existing mortgage was set up on a fixed rate, or you obtain a 'cashback' when it was set up.

### *Contract*

This is the agreement between the buyer and the seller. It sets out the main terms of what has been agreed such as the address, the price, the names of the parties. It also deals with what happens if something goes wrong.

Rather than having to get the buyer and the seller together to sign the same contract, the sellers solicitor draws up two copies of the contract, and each party signs their own copy. When both parties are ready to commit themselves, these two contracts are exchanged.

### *Exchanging Contracts*

A very important moment. From the minute that contracts are exchanged, the sale becomes binding. From that moment on, the seller must sell, the buyer must buy, it must be done at the price stated in the contract, and this must all be done at the price set out in the contract. Until contracts are exchanged, NOTHING is binding - either party can walk away from the transaction with no penalty.

At the same time as contracts are exchanged a deposit is handed over from the buyers solicitors to the sellers solicitors. The balance of the money will be handed over on the completion date.

### *Completion Date*

This is the date that ownership of the house/flat passes from the seller to the buyer.

The seller and buyer should discuss dates between themselves and then notify their respective solicitors who will obviously try to fit in with the suggested date. If there are unforeseen delays, for example, if the buyer does not receive a search or mortgage offer in time or the "cash buyer" turns out to have a dependant sale then the completion date may have to be revised. For this reason you should not make any firm commitments such as giving notice on a job, arranging removals or making holiday bookings without first contacting us so that we can advise you whether you are in a position to make such a commitment.

Only when contracts are exchanged and a completion date is fixed can you be virtually guaranteed that the completion date will be met. It is not essential for you to be present on the completion date but if you are going to be away then you should let us know so that we can arrange for one of your relatives (or ourselves) to act for you through a Power of Attorney.

### *Land Registry*

A central body that keeps a record of who owns what land, and under what conditions. This was set up in 1925, when it was decided that this would be a good idea. However they still don't have records of all the land in England and Wales. This is partly because they can only insist on the land being registered with them when it is sold, and partly because it is such a huge task. The Land Registry have their own web site and are making good efforts to provide useful information. See our Links page for a link to their site.

### *Stamp Duty*

This is simply a tax charged by the government, and only affects you if you are buying for more than £120,000.00. It is paid by the buyer, not the seller.

If you buy for exactly £120,000 you pay nothing in stamp duty; if you pay £120,001 then you will pay £1200 in stamp duty. For prices from £120,001 to £250,000 stamp duty is charged on the whole of the purchase price at 1% of the purchase price. From £250,001 to £500,000 it is charged at 3%, on the whole of the price, and above £500,000 it is charged at 4% of the whole of the price.

### *Transfer Deed*

This is the document that passes the ownership of the property from the seller to the buyer

It is dated with the completion date, and will be sent to the Land Registry after completion. The Land Registry need this deed to change their records, and show the buyer as the new owner of the property.

### *Redemption Fee*

Penalty sometimes incurred if paying off a mortgage early.

### *Easement*

A right held by one person to make specific, limited use of land owned by another person. An easement is granted by the owner of the property for the convenience, or ease, of the person using the property. Common easements include the right to pass across the property, the right to construct and maintain a roadway across the property, the right to construct a pipeline under the land, or a power line over the land. ...



### *Covenant*

A legally binding promise contained within a deed, This may be positive in nature. E.g. a promise to do something such as maintaining a fence, or negative, such as not to build on land

### *Chattels*

In the common law systems personal property may also be called chattels, it is distinguished from real property, or real estate or realty. In the civil law systems personal property is often called movable property or movables, any property that can be moved from one location or another. This term is in distinction with immovable property or immovables, such as land and buildings.

### *Freehold*

A type of property ownership status. Freehold means that you own the property absolutely.

### *Leasehold*

A type of property ownership status. Leasehold means that you own the property for a period of time governed by a lease. Inevitably, flats are always leasehold, There will be a Landlord who will be the Freeholder who owns the property subject to the lease and to whom you will pay rent.

### *Mortgagee*

A term which describes any lender who secures a mortgage over property.

### *Mortgagor*

A term which describes the borrower who takes a mortgage.

*And finally..... we are here to help .*

*If you have any queries then you should ask for assistance.*

## Avery Emerson - PRACTICE AREAS

### *Business Matters*

Company formation ☐  
Company Disputes ☐  
Partnership Agreements ☐

### *Civil Litigation*

Debt Collection  
Landlord Tenants  
General Litigation

### *Conveyancing*

Residential: Freehold / Leasehold ☐  
Commercial ☐

### *Employment*

Unfair Dismissal  
Redundancy ☐  
Compromise Agreements

### *Family*

Divorce ☐  
Ancillary Relief ☐  
Contact ☐

### *Immigration*

Work Permits  
Business Visas  
Marriage Visas ☐  
Highly Skilled Migration Programme

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## Avery Emerson - CONTACT DETAILS ☐

### AVERY EMERSON SOLICITORS ☐

Gloucester House ☐  
335 Green Lane ☐  
☐ Ilford ☐  
Essex IG3 9TH ☐

Telephone: ☐ 0208 215 0884 ☐  
Fax: ☐ 0208 599 9442 ☐  
Email: ☐ [advice@ae-law.co.uk](mailto:advice@ae-law.co.uk) ☐  
Web: ☐ [www.ae-law.co.uk](http://www.ae-law.co.uk)

DX 41908 GOODMAYES



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