



PROPERTY PRACTICE

SQE 1 PREP

LAW ANGELS

PROPERTY PRACTICE

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PREFACE

The practice of property law is the engine room of the legal profession, facilitating one of life's most significant transactions. It demands not only a meticulous grasp of black-letter law but also the practical wisdom to navigate a complex, document-intensive process from instruction to completion. This textbook is designed to bridge the gap between academic knowledge and the realities of practice, providing a clear and systematic guide to the conveyancing process.

Our approach is built on a simple belief: to excel in property practice, you must understand the 'why' behind the 'what'. We have therefore structured this text to be more than a procedural checklist. It deconstructs each stage of a property transaction, explaining the underlying legal principles, the purpose of each document, and the strategic considerations that protect your client's interests. You will find a consistent focus on due diligence, risk management, and the professional conduct obligations that are paramount in this field.

The SQE1 assessment and future practice require a deep, application-based knowledge. This book is tailored to that challenge. We integrate key legislation, such as the *Land Registration Act 2002*, and pivotal case law not as abstract concepts, but as the essential framework governing real-world outcomes. Practical checklists, sample clauses, and case studies are woven throughout to transform your understanding from theoretical knowledge to practical competence.

Our goal is to equip you with the confidence and skill to manage a property transaction from start to finish. Whether you are acting for a purchaser, a seller, or a lender, the following pages will provide the clarity, precision, and strategic insight you need to succeed.

Welcome to property practice. The detail is demanding, but the role of a solicitor in safeguarding a client's most valuable asset is one of the most vital in our profession.

Law Angels

ACKNOWLEDGEMENTS

The development of this textbook was a significant endeavor, and we extend our sincere gratitude to the collective efforts that made this publication possible.

At Law Angels, we are fortunate to be supported by a dedicated team whose commitment to legal education and excellence is the cornerstone of our work. The collaborative spirit, legal expertise, and tireless effort of our entire organization were instrumental in shaping this text from concept to completion.

We also extend our appreciation to the broader legal community. The insightful feedback from our academic and practitioner reviewers greatly enhanced the accuracy and clarity of the material. Their contributions, offered in a spirit of scholarly collaboration, have been invaluable in ensuring this resource meets the rigorous demands of the SQE curriculum.

We are also thankful for the unwavering support from our personal networks, whose understanding provided the foundation that allowed this project to thrive.

It is our privilege at Law Angels to contribute to the education of future solicitors, and we hope this text serves as a reliable guide for the next generation of legal professionals.

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GLOSSARY OF KEY TERMS

A

Actual Occupation: Physical presence and use of property by a person, sufficient to constitute an overriding interest under *Schedule 3 of the Land Registration Act 2002*.

Adverse Possession: The process by which someone who occupies land without the owner's permission can acquire ownership after a statutory period, usually ten or twelve years, through continuous and exclusive possession.

Assignment: The transfer of an existing lease or legal interest in property from one party (assignor) to another (assignee).

Authorised Guarantee Agreement (AGA): A guarantee given by an outgoing tenant to ensure performance of lease obligations by an assignee, commonly required by landlords under the *Landlord and Tenant (Covenants) Act 1995*.

B

Beneficial Interest: The equitable ownership of property, often arising from financial contribution or trust, entitling the holder to benefit from the property even if not the legal owner.

C

Caveat Emptor: The legal doctrine meaning "let the buyer beware," which places the responsibility on the purchaser to investigate the condition and title of property before buying.

Charge: A security interest over property, typically used to secure repayment of a loan, registered against the title at the Land Registry.

Chattels: Movable personal property that is not affixed to the land and therefore does not form part of the real estate.

Completion: The final stage of a property transaction when ownership transfers to the buyer, funds are paid, and possession is handed over.

Contract Race: A situation where a seller negotiates with multiple buyers and sells to the first to exchange contracts, provided all parties are informed of the competition.

Covenant: A promise contained in a deed relating to the use of land. Restrictive covenants prohibit certain actions, while positive covenants require affirmative duties.

D

Deed: A formal written instrument executed and delivered with specific formalities to create or transfer legal rights, such as ownership or leasehold interests.

Deposit: A sum, typically ten percent of the purchase price, paid by the buyer on exchange of contracts as evidence of commitment and security for completion.

Dual Representation: Acting for both buyer and lender (or in rare cases, buyer and seller) in a conveyancing transaction, permitted only under limited circumstances with informed consent and compliance with professional rules.

E

Easement: A right benefiting one parcel of land (dominant tenement) over another (servient tenement), such as a right of way, drainage, or light.

Encumbrance: Any right, interest, or legal burden affecting property, such as mortgages, easements, or restrictive covenants.

Environmental Search: A search assessing potential contamination, flood, or subsidence risks, required to ensure compliance with the *Environmental Protection Act 1990*.

Equitable Interest: A right recognised in equity that may not be apparent on the legal title, such as interests under a trust, contract, or proprietary estoppel.

Exchange of Contracts: The stage in a property transaction where the signed contracts are formally exchanged between solicitors, making the agreement legally binding.

F

Fixtures: Items attached to land or buildings that become part of the property and pass automatically with the sale unless excluded in the contract.

Freehold: Absolute ownership of land and buildings with indefinite duration, as opposed to leasehold ownership.

H

HM Land Registry: The government body responsible for recording and guaranteeing ownership of land and property in England and Wales.

I

Indemnity Insurance: A specialist insurance policy protecting against financial loss arising from title defects, restrictive covenants, or missing documentation.

L

Lease: A contractual arrangement granting exclusive possession of property for a defined period in exchange for rent, governed by express terms and statutory law.

Leasehold: A form of property ownership that gives the right to occupy and use land or premises for a fixed term under a lease agreement.

Legal Estate: The recognized ownership of property in law, including freehold (fee simple absolute) and leasehold (term of years absolute).

Licence: A personal permission to occupy or use land without conferring ownership or proprietary rights, terminable by the grantor.

M

Mortgage: A legal charge over land used to secure repayment of a loan, giving the lender rights of possession and sale in default.

O

Official Copy Entries: Certified copies of the Land Registry records showing ownership, burdens, and rights affecting a registered title.

Overriding Interest: A property right that binds a purchaser even if unregistered, such as short leases, rights of occupiers, or certain easements.

P

Positive Covenant: An obligation requiring the owner of land to take specific action, such as maintaining a fence or contributing to shared access costs.

Pre-Contract Enquiries: Questions raised by the buyer's solicitor to clarify matters affecting the property, based on standard forms such as TA6 and TA10.

Priority Search (OS1): A Land Registry search protecting the buyer's priority to register ownership for 30 working days following completion.

Professional Undertaking: A binding promise by a solicitor to perform or refrain from an act, enforceable by the court and regulatory authorities.

Property Information Form (TA6): A standard seller's disclosure document covering boundaries, disputes, utilities, and occupancy.

R

Restrictive Covenant: A promise restricting the use of land, enforceable in equity if it benefits neighbouring land and was intended to run with the land.

S

Searches: Investigations made before exchange of contracts, including local authority, drainage, environmental, and chancery repair searches, to uncover risks not visible in title documents.

Stamp Duty Land Tax (SDLT): A tax payable on property purchases in England, based on the purchase price and due within fourteen days of completion.

T

Tenancy in Common: A form of co-ownership where each owner holds a distinct share in property without the right of survivorship.

Title: The legal right to ownership of property, proved by registration or documentary evidence.

Title Plan: A Land Registry document mapping the property boundaries with a red line defining the extent of ownership.

Transfer Deed (TR1): The formal document transferring legal title from seller to buyer, executed as a deed and submitted for registration.

U

Undertaking: A professional and enforceable promise made by a solicitor, often concerning the discharge of mortgages, registration of title, or remittance of funds.

Unregistered Land: Land not yet recorded in the Land Registry, where ownership is proved by deeds tracing title for at least fifteen years.

V

Vacant Possession: The obligation of the seller to deliver the property free from occupants, possessions, and legal interests on completion.

Vendor: The person or entity selling the property

1

THE FREEHOLD TRANSACTION ROADMAP

Buying or selling a freehold property in England and Wales is a legally significant event with several procedural and legal steps. This chapter covers the entire process of a freehold conveyancing transaction from initial instructions to registration at HM Land Registry. It also covers conduct, finance, and planning issues that may arise along the way.

1.1 The Lifecycle of a Freehold Transaction

A freehold estate is the most complete form of ownership available in English law. When a buyer purchases a freehold, they acquire indefinite ownership of the land and any buildings on it.

The conveyancing process typically includes the following three stages: pre-contract stage, exchange of contracts and pre-completion stage, and completion and post-completion stage. Each stage involves specific tasks, responsibilities, and legal consequences.

1.2 Pre-Contract Stage

This is the beginning of the transaction. Solicitors will take instructions, verify identities (as part of anti-money laundering checks), and begin legal due diligence. Key elements at this stage include:

1.2.1 Taking Instructions

The solicitor's initial duties are centered on a meticulous fact-gathering and compliance process. A solicitor must gather all relevant details from the client, including whether they are buying or selling, the agreed purchase price, the use intended for the property and details of third-party involvement (e.g. lenders or agents). Crucially, the solicitor must also ascertain whether the client owns or occupies any other property, as this information is essential for tax considerations.

Following the data collection, the solicitor must also perform a conflict of interest check to ensure impartiality and issue the client with terms of business and a client care letter, including estimated costs and disbursements.

1.2.2 Deduction and Investigation of Title

The seller's solicitor must prove the seller has good title to sell.

For registered land, this is done by supplying the Official Copy of the Register (OC1), Title Plan, and copies of any Registered Entries or Documents.

For unregistered land, an epitome of title must be provided, showing a good root of title (typically a conveyance at least 15 years old). The buyer's solicitor checks title to ensure it is marketable and free from unacceptable burdens.

Caveat Emptor

This Latin maxim means “let the buyer beware.” It is a cornerstone of English property law. Under this doctrine, the buyer takes responsibility for investigating the physical and legal state of the property before committing to purchase. The seller has no general duty to volunteer information about defects unless specifically asked.

In ***Keates v Cadogan*** [1851] 10 C.B. 591, the court held that a landlord was under no duty to disclose that a property was uninhabitable. This case established the principle that silence does not constitute misrepresentation in property sales.

This principle means that if a buyer later discovers structural problems, planning breaches, or occupancy issues that were discoverable but not investigated before exchange, the buyer has little to no legal recourse unless there has been deliberate concealment or misrepresentation.

In order to safeguard their clients, solicitors for the buyer undertake thorough due diligence by raising pre-contract enquiries and ordering searches. This is typically done through standardized forms:

1. **TA6 Property Information Form:** It discloses information about boundaries, disputes, guarantees, planning, and occupiers.
2. **TA10 Fittings and Contents Form:** It specifies what items are included in the sale.
3. **TA7 Leasehold Information Form** (if the property is leasehold): This covers service charges, ground rent, landlord details, and lease terms.

It is crucial for the buyer's solicitor to scrutinize the seller's replies to these forms and to follow up with additional questions when needed. Inaccurate or misleading replies could lead to a claim for misrepresentation, but silence alone, unless it conceals an active defect, is not actionable.

For example, if the seller is aware of ongoing neighbour disputes or structural damage and deliberately answers dishonestly or inaccurately, the buyer could sue under misrepresentation law, supported by cases like *With v O'Flanagan* [1936] Ch 575. However, if the buyer fails to inspect the roof or drainage and finds issues post-completion, they generally have no claim unless they specifically asked about these matters and were misled.

The principle of *caveat emptor* thus underpins the importance of both legal and physical investigation, highlighting the proactive role that solicitors must play in protecting buyers.

1.2.3 Pre-Contract Searches

Pre-contract searches are an essential part of the buyer solicitor's due diligence and are crucial in ensuring that the buyer is fully informed about any legal, practical, or environmental risks associated with the property. These searches supplement the investigation of title and are

generally obtained from third parties, such as local authorities and utility companies. The goal is to reveal information that may not be apparent from the title documents or pre-contract enquiries.

1. Local Authority Search

This is a critical conveyancing search that informs the buyer about statutory matters affecting the property's use and value. This search gathers details from the local authority details on the property's planning history (including permissions and breaches), building control consents, and any active enforcement notices and designations like Conservation Area Status and Compulsory purchase orders. If the property is burdened by unapproved development or subject to enforcement action, the buyer's intended use could be significantly compromised, potentially leading to future financial penalties or the need to secure retrospective approvals.

Furthermore, the search clarifies road schemes and adoption status. A lack of road adoption may mean the buyer, not the local authority, is responsible for the maintenance costs.

2. Drainage and Water Search

This a compulsory inquiry directed to the local water and sewerage authority. This search reveals whether the property is connected to mains water and public sewage systems and maps the location of public sewers and drains within or near the property boundaries. The search further clarifies who is responsible for the maintenance of these pipes and sewers to ascertain the possibility of private responsibility.

This search is highly important for buyers planning future development. For example, if a public sewer runs beneath the property, it could restrict future extensions or building work.

3. Environmental Search

This is designed to identify potential environmental risks associated with the property and its immediate surroundings. The search specifically investigates historical and current land use to identify past industrial use and potential land contamination, as well as other physical risks such as flood risk zones and areas prone to landslip or subsidence.

Under the *Environmental Protection Act 1990*, a new landowner may be liable for the clean-up of contaminated land, even if they did not cause the contamination. Hence, performing thorough environmental due diligence is absolutely critical to avoid inheriting substantial and unexpected financial liabilities that could severely impact the property's value or the client's finances.

4. Chancel Repair Liability Search

This ancient liability obliges some landowners to contribute to the cost of repairing the chancel of a parish church. Although such obligations are now rare, they can still exist. A search reveals whether the property is located within a parish that has a recorded liability. This was highlighted in ***Aston Cantlow PCC v Wallbank*** [2003] 1 AC 1386, where the House of Lords upheld such a liability against a private homeowner.

5. Land Registry Search (Index Map Search or SIM)

This confirms whether land is registered or unregistered and whether any encroachments or overlapping titles exist. It helps establish the legal boundaries and avoid future disputes.

6. Optional Searches (Depending on Location or Property Type)

- **Coal Mining Search:** This search is essential for properties located in former mining areas like Wales or parts of Yorkshire. It reveals information about past workings and the potential risk of subsidence or movement.
- **Flood Risk Report:** This report assesses the property's vulnerability to flooding, providing data on its proximity to rivers, coastal areas, or low-lying ground, and its historical risk classification.
- **Radon Gas Report:** This report is commissioned to determine the level of naturally occurring, carcinogenic radon gas present to assess the resulting health risks for occupants.
- **High Speed Rail (HS2) Search:** This checks the property's location relative to the planned route of rail development, identifying potential impacts from noise, construction, or compulsory purchase.

Strategic Consideration

The strategic importance of pre-contract searches lies in how their results affect the entire transaction. Adverse findings, such as unapproved building works, contamination, or undisclosed liabilities, may necessitate further enquiries to the seller. Such findings may justify the renegotiation of the purchase price to reflect the true cost of remediation or risk. The search results also directly influence mortgage lender approval, as banks often refuse to lend on properties with serious unaddressed legal or environmental. An unacceptable level of risk may prompt advice to withdraw from the transaction entirely.

Searches must be up to date (usually valid for 3–6 months). Delays in ordering searches can postpone the transaction timeline, so timing and planning are key.

Search results are also included in the solicitor's report on title to the buyer and any lender. If any adverse entries are found, they must be clearly explained to ensure informed client decisions and compliance with the duty of care.

1.3 Exchange of Contracts

This is the point at which the transaction becomes legally binding. Up until exchange, either party can walk away with no legal consequence. Once contracts are exchanged, the parties are contractually bound to complete the transaction on the agreed completion date.

1.3.1 Standard Conditions of Sale

Most residential transactions adopt the *Standard Conditions of Sale (5th Edition)*. These conditions govern important terms such as:

- **Deposit:** A sum, usually 10% of the purchase price, must be paid by the buyer to the seller's solicitor upon exchange of contracts. This amount is typically forfeited upon the buyer's default.
- **Risk:** Unless contractually altered, the responsibility for insuring the property against damage or loss transfers to the buyer upon the exchange of contracts, regardless of whether completion has occurred.

- **Completion date:** This is the specific day on which the sale will be finalized and the keys handed over is fixed and legally agreed upon by both parties.
- **Chattels and fixtures:** This term refers to the pre-agreed list that clearly defines which non-integral items (chattels) will be included in or excluded from the sale, distinguishing them from items permanently attached to the property (fixtures).
- **Title guaranteee:** This clause specifies the level of legal assurance the seller gives about their ownership, classified as full (guaranteeing against all undisclosed rights) or limited (only guaranteeing that the seller hasn't created new burdens).

1.3.2 Legal Effect of Exchange

The exchange of contracts is the pivotal moment in a conveyancing transaction, legally binding the parties to the agreed terms. Once exchange has taken place, the contract is formally created, and the completion date becomes fixed. The seller becomes contractually obligated to sell the property, and the buyer is bound to complete the purchase and becomes liable for the property unless otherwise agreed. Non-performance of any of the parties at this stage constitutes a breach of contract and contractual remedies become available to the aggrieved party (e.g. specific performance, rescission, or damages).

In *Rayner v Preston* [1881] 18 Ch. D., the buyer had exchanged contracts to buy a house. Before completion, the house was damaged by fire. The court held that the buyer bore the risk from the date of exchange as per the contract, even though they had not yet taken possession. This emphasizes the need for insurance to be arranged from the date of exchange.

1.3.3 Method of Exchange

The process of exchange can be conducted via several Law Society-approved methods. The most common is *Formula B*. This formula involves each party's solicitor physically holding a signed counterpart of the contract. Exchange is then effected by the solicitors confirming over the telephone that the terms of both documents are identical. Then the exchange is confirmed and completion date fixed.

Other formulas (A and C) exist for different situations, such as when only one side has a signed copy.

1.4 Pre-Completion Stage

After exchange, both solicitors must work to ensure a smooth completion. This phase includes various legal and administrative steps.

1.4.1 Drafting and Approving Transfer Deed (TR1)

This is the legal document that transfers ownership of the property from seller to buyer. The buyer's solicitor usually prepares it, and the seller's solicitor approves it. Both parties must sign the deed prior to completion.

1.4.2 Raising Pre-Completion Enquiries

These are known as Requisitions on Title (typically using the Law Society TA13 form). They are sent near the completion of a conveyancing transaction to deal with final, practical matters. They seek to confirm that no changes have occurred to the property, make practical arrangements for key handover, secure undertakings to redeem mortgages and request for confirmation of occupiers.

1.4.3 Pre-Completion Searches

These searches provide final legal assurance by confirming that no adverse changes, like newly registered mortgages or liens, have affected the property's title between the time of the initial search and the completion of the sale. These last-minute checks include:

1. **OS1 Priority Search:** This search reserves the buyer's intended registration in the Land Registry queue, protecting the priority of their intended interest for 30 working days.
2. **Bankruptcy Search (K16):** This search is carried out against individual buyers or borrowers to confirm that they are not subject to bankruptcy proceedings, which could prevent them from legally raising a mortgage.

3. **Company Search:** This search is conducted when a corporation is involved as a buyer or seller to verify that the company is still legally registered and active and that there are no current proceedings for administration or liquidation.

Failure to conduct these searches may jeopardize registration or expose the buyer to prior competing interests.

1.4.4 Reporting to Lender and Drawing Down Funds

If a mortgage is involved in the purchase, the buyer's solicitor has a duty before completion to ensure the Certificate of Title is sent to the lender to assure due diligence and satisfactory title (based on *UK Finance Mortgage Lenders' Handbook*). In response to this certificate, the lender releases the mortgage advance funds to the solicitor, timed to arrive shortly before the agreed completion date, so the purchase can be completed.

1.4.5 Preparing Completion Statements

The crucial final step before the transfer of ownership is the preparation of Completion Statements. The buyer's solicitor prepares a detailed statement outlining the total sum due, including the purchase price, minus the deposit paid, adding critical costs such as Stamp Duty Land Tax (SDLT) or Land Transaction Tax (LTT), plus all legal fees and disbursements.

The buyer must send cleared funds to their solicitor in time for completion.

The seller's solicitor will prepare their own statement and ensure the redemption figure for any outstanding mortgage is accounted for.

This stage is critical for avoiding delays and ensuring financial transparency, legal compliance and efficient transfer of ownership.

1.5 Completion

Completion is the definitive, final stage of the conveyancing process, marking the precise moment when legal ownership of the property is transferred from the seller to the buyer. The buyer pays the balance of the purchase price, and the seller gives vacant possession and hands over keys.

1.5.1 Legal Consequences

Completion marks the final stage of the conveyancing process. The most crucial effect is that the legal title passes to buyer (subject to registration). Also, the seller discharges any outstanding mortgage on the property using the sale proceeds. Upon completion, the buyer becomes fully responsible for the property and all risk fully passes from the seller.

Completion can be by physical meeting and commonly by telegraphic transfer (electronic transfer of funds) and post (most common today)

If buyer fails to complete, the seller has immediate access remedies including service of notice to complete (usually giving buyer 10 working days), pursue forfeiture of deposit, and specific performance or damages

1.6 Post-Completion

Post-completion, the buyer's solicitor is responsible for finalizing the statutory and administrative requirements to secure the client's legal title. Their first duty is to pay the necessary property tax: Stamp Duty Land Tax (SDLT) in England (within 14 days) or Land Transaction Tax (LTT) in Wales (within 30 days). They must register the title at HM Land Registry; submit the Form AP1, the executed TR1 transfer deed, the mortgage deed (if applicable), and the SDLT/LTT certificate. They must ensure the title's priority is protected before the expiry of the search result (OS1 lasts 30 working days). Finally, they are to notify client and lender of registration outcome.

Seller's solicitor must use the sale proceeds to redeem any existing mortgage and then provide the buyer's solicitor with undertakings to ensure that certain documents are sent.

The Lifecycle of a Freehold Transaction



1.7 Planning Law and Building Regulations

Solicitors must alert buyers to potential planning and building control issues.

- Planning permission may be needed for "development" (*s.55 Town and Country Planning Act 1990*)
- No express consent is needed for "permitted development" under the *General Permitted Development Order 2015*
- Enforcement period for breach is 4 years for building or 10 years (change of use)
- Conservation areas and listed buildings have extra controls

1.8 Professional Conduct Duties

Solicitors engaged in conveyancing have several non-negotiable Professional Conduct Duties governed by the SRA Code of Conduct. They must avoid conflicts of interest, and ensure to obtain informed consent when acting for both the buyer and the mortgage lender on the same transaction. Solicitors must never mislead other parties, especially in competitive scenarios

(contract races). Finally, they must strictly honour all undertakings (solemn professional promise enforceable by the court).

Example: A solicitor promises to send deposit next day but client's funds do not arrive. If the solicitor gave an unqualified undertaking, they are personally liable.

Buyer's Solicitor Duties

-  — Take instructions & check ID
-  — Investigate title
-  — Raise enquiries & order searches
-  — Report to client
-  — Negotiate and approve contract
-  — Exchange contracts
-  — Draft & approve TR1
-  — Submit mortgage certificate of title
-  — Conduct pre-completion searches
-  — Complete
-  — Pay SDLT

1.9 Conclusion

This chapter has covered each step of a freehold property transaction from initial client engagement through to Land Registry registration. Understanding these stages and the legal principles behind them is essential for any aspiring solicitor seeking to master property law for the SQE1 and real-world practice.

2

ETHICS AND RISK MANAGEMENT IN CONVEYANCING

In conveyancing practice, technical legal skill must be matched with professional integrity and regulatory compliance. Ethical missteps can result in delays, litigation, regulatory sanctions, and irreparable damage to a solicitor's reputation. This chapter explores the conduct duties of solicitors acting in residential and commercial property transactions, focusing on conflict management, confidentiality, undertakings, and dealing with client vulnerability.

2.1 Core Professional Obligations

Solicitors must adhere to *Solicitors Regulation Authority (SRA) Principles* which lay down fundamental ethical standards. Key obligations include acting with integrity, upholding the rule of law and the proper administration of justice, and always acting in the best interests of each client. They must act in a way that maintains public trust and confidence in the profession.

SRA Code of Conduct (Solicitors) translates these principles into specific, enforceable rules. Particularly relevant to conveyancing are the rules concerning conflict of interests (r 6), maintaining confidentiality (r 6.3), honouring undertakings (r 1.3), and ensuring competence (r 3).

Failing to follow these rules can result in disciplinary action, client negligence claims, and reputational harm.

2.2 Conflicts of Interest

A solicitor must not act where there is a conflict of interest or a significant risk of one arising (*r6.2 SRA Code*), unless the clients have a substantially common interest, or they are competing for the same objective, and informed consent has been given the solicitor in writing.

2.2.1 Dual Representation in Conveyancing

Acting for both the buyer and the seller in a residential conveyancing transaction is generally prohibited due to the inherent risk of a conflict of interest. While clients may perceive benefits in cost-saving or convenience, the diverging interests of each party can create ethical and professional complications for the solicitor.

In particular, *rule 6.2 SRA Code of Conduct* prohibits acting for more than one client in a matter where there is a conflict or significant risk of one arising. The Law Society's Guidance makes it clear that the exception allowing for a "substantially common interest" between clients does not apply to typical residential sale and purchase transactions.

This is because the buyer and seller are in an adversarial, arm's-length transaction. Their interests usually diverge at various points, such as price negotiation following property searches, disputes over physical or legal defects in the title, completion dates and penalty clauses, and allocation of risk in the sale contract (e.g. late completion, chancery repair liability).

Example

A buyer discovers an adverse entry on the local authority search indicating a potential enforcement notice due to unauthorised development. The buyer instructs their solicitor to negotiate a £5,000 reduction in the purchase price to cover the risk. The seller resists, believing the matter is minor and temporary. Here, the solicitor cannot act for both sides, for doing so would breach their duty to act in each client's best interests and would place them in a position of divided loyalty.

Regulatory and Practical Consequences

- Breach of *r 6* may lead to SRA disciplinary proceedings

- Conflict may undermine client trust or expose the solicitor to civil liability
- Even with client consent, acting is not permitted where the matter is contentious or where confidentiality and impartiality cannot be maintained

Alternatives

Where clients insist on a joint approach (e.g., a related party sale or an inter-family transaction), a solicitor faces potential conflicts of interest and must take precautionary steps. The solicitor must fully assess and document the risks of acting for both parties and obtain written, informed consent from both parties. If the conflict is deemed too high to manage effectively, the solicitor must consider referring one party to another firm to ensure both clients receive independent and impartial advice.

Unlike residential conveyancing, in commercial property transactions, the parties are often sophisticated business entities (e.g., companies, developers, institutional landlords), usually supported by professional advisors. Because of this, the SRA permits acting for both buyer and seller in limited circumstances, but only where all of the following are met there is a substantially common interest in achieving the transaction, the matter is non-contentious and the parties are commercially experienced, informed consent is obtained from both parties, and where the solicitor reasonably believes they can act in the best interests of each client without breaching confidentiality or creating a conflict.

This might occur, for example, in: intra-group transfers within a corporate structure, pre-agreed deals where terms are fixed and the transaction is purely administrative, and some development transactions, where landowners and developers agree to use the same legal team to expedite the process.

Safeguards Required

Even when joint representation is permitted, solicitors must rigorously implement safeguards to manage its inherent risk. The solicitor must clearly identify and disclose any actual or potential conflicts to all clients. They must thoroughly explain the risks of joint representation to each client, detailing the limitations on confidentiality and the possibility of a conflict

arising. All advice given and consents obtained must be kept in detailed written records. They should be prepared to withdraw immediately if a conflict arises.

2.2.2 Legal Representation for Co-Purchasers

When acting for co-purchasers, a solicitor is permitted to represent both clients provided no actual conflict of interest arises. Solicitors must explain forms of co-ownership (joint tenancy vs tenancy in common), recommend a declaration of trust where appropriate, as well as discuss severance and survivorship implications.

This is to ensure the buyers make an informed choice regarding how they will hold the property's beneficial interest

2.2.3 Representing Both Parties in a Mortgage Transaction

This is permitted where the mortgage is a standard residential product and the lender uses the UK Finance Certificate of Title. However, the solicitor remains obligated to obtain written informed consent from both parties and disclose any material risks.

Where the lender has bespoke conditions or if the borrower is under duress, the potential for conflict becomes too high and separate representation is required.

2.2.4 Representing Co-Borrowers

A conflict may arise if only one borrower derives benefit (e.g., spouse using home for business loan). The solicitor must strictly follow the *Etridge Guidelines* to protect the non-benefiting party from undue influence or misrepresentation. They are required to conduct separate interviews where they are to explain implications and risks in plain English

2.3 The Etridge Guidelines

The *Etridge Guidelines* arise from the landmark House of Lords case **Royal Bank of Scotland v Etridge (No 2)** [2001] UKHL 44. The case addressed the issue of undue influence; where one party to a transaction (usually a spouse or partner) is persuaded to enter

into a financial commitment by another party, and the circumstances suggest the influence was unfair or coercive.

In conveyancing, undue influence often arises when one party agrees to a mortgage or loan secured against the family home, for the benefit of the other party (e.g. a spouse's business), without fully understanding the risks.

In ***Hewett v First Plus Financial Group Plc*** [2010] EWCA Civ 312, the wife had joined in granting a mortgage over the matrimonial home to refinance his debts, at her husband's urging. The Court of Appeal held that the husband's deliberate concealment of his long-term affair from his wife amounted to an abuse of the trust and confidence she reposed in him, and therefore constituted undue influence sufficient to vitiate the re-mortgage transaction.

To mitigate the risk of a mortgage being later challenged and set aside, solicitors must comply with the *Etridge* safeguards when advising potentially vulnerable clients.

2.3.1 Key Duties Under *Etridge*

Solicitors acting for lenders or borrowers must:

1. **Identify potential vulnerability:** If one borrower appears to derive no direct benefit from the loan, this is a red flag.
2. **Ensure independent legal advice:** The party at risk (usually the non-benefiting spouse) must receive advice from an independent solicitor.
3. **Meet the client alone:** The solicitor must interview the client without the presence of the other party to ensure their decisions are free and informed.
4. **Explain the nature and risks:** The solicitor must make sure the client understands the amount and terms of the loan, the implications of default, that the home may be repossessed upon default and that they have a choice on whether to proceed or not.
5. **Send a confirmation to the lender:** The solicitor must confirm to the lender, in writing, that the advice was given and that it was independent.

Failure to comply with these duties can result in the transaction being invalidated and the solicitor being liable in negligence or breach of professional duty.

2.3.2 Practical Considerations

- The advice should be documented thoroughly, ideally with a signed note or letter of confirmation.
- The solicitor must ensure no pressure is exerted by the other party, including emotional coercion.
- If the solicitor has acted for both parties previously, they must consider whether a true independence of advice can be maintained.

Example: A wife is asked to sign a mortgage for her husband's business loan. She receives no benefit. The solicitor must decline to act unless she is advised independently, in private, and confirms understanding and consent. Failing this, the mortgage may be unenforceable.

2.4 Confidentiality and Disclosure

Solicitors have a strict duty to protect the confidential information of each client. This is a cornerstone of professional ethics and is especially relevant in conveyancing where solicitors may act for multiple clients in a transaction (e.g., joint buyers or borrower and lender).

Under *r 6.3 SRA Code of Conduct*, solicitors must not disclose any information from or about a client unless such client consents, or they are under a legal duty to disclose (e.g., under anti-money laundering rules), or where the information is already lawfully in the public domain.

2.4.1 Confidentiality vs Disclosure Conflicts

Confidentiality often clashes with the solicitor's duty to keep another client fully informed. In such cases, the solicitor must stop acting.

Example: A solicitor acting for a buyer and a lender discovers that the buyer has lost their job and can no longer afford repayments. The solicitor cannot inform the lender due to the

duty of confidentiality. However, they also cannot continue acting for the lender without disclosing the material change. The solution is to cease acting for both parties.

2.4.2 Multiple Clients and Separation of Teams

Where firms act for more than one party, some use information barriers (also called “Chinese Walls”). These must be robust, including the use of separate teams, physical and electronic access restrictions, and senior-level oversight.

However, these barriers are rarely appropriate in small conveyancing matters and are discouraged where conflicts are foreseeable.

2.4.3 Breaches of Confidentiality

Breaching the duty of confidentiality may result in complaints to the Legal Ombudsman, formal regulatory action by the SRA and potential legal claims for professional negligence.

Solicitors must train staff regularly, store documents securely, and adopt policies to prevent accidental or deliberate breaches. Emails must be checked for correct recipients and sensitive documents must be encrypted where appropriate.

In summary, confidentiality is not only a legal requirement but a foundation of trust in the solicitor-client relationship. Its careful management is particularly critical in multi-party transactions where loyalties and obligations may compete.

Confidentiality and Disclosure in Property Practice

Duty of Confidentiality



- Protect client info
- Disclose only with consent or legal duty



Conflicts of Interest



- Confidentiality vs duty to inform
- Must cease acting in case of conflict



Information Barriers



- Separate teams
- Access controls
- Oversight



Breaches & Consequences



- Complaints
- SRA action
- Negligence

2.5 Professional Undertakings

An undertaking is a binding promise made by a solicitor or law firm, typically in writing, to do or not do something. These are enforceable by the courts and by the SRA, regardless of whether consideration (payment) is provided. Undertakings are especially common and critical in conveyancing, where timing, funding, and sequence of actions must be strictly coordinated.

2.5.1 Nature and Enforceability of Professional Undertakings

An undertaking given by a solicitor in their professional capacity is legally binding and goes beyond a mere contractual obligation. It can be enforced through court proceedings or by the Solicitors Disciplinary Tribunal (SDT). A solicitor's failure to comply may lead to personal liability, professional sanctions, and reputational damage.

Example: A seller's solicitor gives an undertaking to use sale proceeds to repay the mortgage on the title. If the solicitor fails to discharge the charge, the buyer may face legal difficulties with the lender, and the solicitor may face disciplinary action.

2.5.2 Giving and Receiving Professional Undertakings

When handling undertakings, solicitors must exercise extreme caution, only giving them when they are certain they can fulfil them, and should actively avoid giving personal undertakings unnecessarily. All undertakings must be clear, specific, and time-bound. The solicitor must also keep accurate records of every undertaking given or received.

If an undertaking is given by a solicitor employed by a firm, the firm may also be liable if it was given with apparent authority.

2.5.3 Common Conveyancing Undertakings

- To redeem an existing mortgage on completion
- To send executed documents or forms to the Land Registry post-completion
- To forward Stamp Duty Land Tax (SDLT) returns and pay duty on behalf of the client

If a solicitor is unsure whether a statement constitutes an undertaking, the safest approach is to clarify its nature and confirm it is not binding.

2.6 The Exchange Race

A race occurs when a seller invites offers from multiple buyers and commits to the one who exchanges first. This is legal only if all prospective buyers are informed.

A solicitor acting for the seller must inform all buyers about the contract race and withdraw if the client insists on concealment (due to *r 1.4* duty not to mislead).

2.7 Money Laundering and Fraud Risks

Property transactions are attractive to criminals looking to launder illicit funds because of the high values involved, the ease of disguising beneficial ownership, and the international reach

of the property market. As such, conveyancing solicitors must be particularly vigilant. Compliance is required under the *Money Laundering Regulations 2017*, the *Proceeds of Crime Act 2002 (POCA)*, and the *Terrorism Act 2000*, in addition to guidance from the Legal Sector Affinity Group (LSAG) and best practices from professional bodies such as the Law Society and the National Crime Agency (NCA).

2.7.1 Client Due Diligence (CDD)

Client due diligence (CDD) is the cornerstone of anti-money laundering (AML) compliance. It involves verifying a client's identity, understanding the purpose of the transaction, and assessing whether the transaction makes sense given the client's circumstances.

Solicitors must verify the client's identity using government-issued ID and proof of address, source of funds (the origin of the money used in the transaction) and source of wealth (how the client came to possess their funds in general) to verify the financial legitimacy of the transaction. In company or trust structures the identity of any beneficial owners should be verified. The legitimacy of any third parties providing financial contributions should be ascertained to ensure the transaction is lawful.

CDD must be carried out before establishing a business relationship or performing a transaction. Where this is not possible, the solicitor must decline to act.

Enhanced due diligence (EDD) is required in higher-risk cases. Cases involving politically exposed persons (PEPs), non-face-to-face clients, clients based in high-risk third countries (as identified by the Financial Action Task Force), transactions involving high cash volumes or unregulated digital currencies or use of complex offshore companies or opaque trust arrangements.

2.7.2 Suspicious Activity Reporting (SAR)

Under s 330 POCA, a solicitor must submit a Suspicious Activity Report (SAR) to the NCA if they know or suspect that a person is engaged in money laundering or dealing with criminal property.

Such report must be submitted promptly and include factual, non-speculative information. It should also clearly explain the basis for suspicion.

Where a solicitor has submitted a SAR and intends to proceed with the transaction, they must wait up to 7 working days for consent from the NCA. If the NCA objects, there is an additional 31 calendar day moratorium.

It is a criminal offence to inform a client that a SAR has been made. This is called tipping off, prohibited under *s 333A POCA*.

2.7.3 Common Property Fraud Risks

Fraud may occur independently or in connection with money laundering. Common scenarios include:

- **Impersonation fraud:** Criminals posing as owners of unoccupied or mortgage-free properties
- **Title fraud:** Registration of false charges or ownership details at HM Land Registry
- **Vendor fraud:** Sellers using fake identification or altering bank details
- **Mortgage fraud:** Inflated valuations, false income declarations, or third-party depositors
- **Cybercrime:** Hacking into email chains to divert funds

In *P&P Property Ltd v Owen White & Catlin LLP* and *Dreamvar (UK) Ltd v Mishcon de Reya* [2018] EWCA Civ 1082, court held that solicitors owe a duty to confirm that their client is the genuine owner, even when acting honestly. Liability can fall on the buyer's solicitors if due diligence is inadequate.

2.7.4 Prevention Strategies

To reduce risk and ensure compliance, solicitors and their firms should implement the following strategies:

At the Organisational Level

To effectively mitigate the risk of involvement in money laundering and ensure strict compliance with regulations, solicitors' firms must implement comprehensive Organisational Level Strategies. This requires maintaining an AML compliance policy tailored to the firm's size and risk profile. A Money Laundering Reporting Officer (MLRO), who is responsible for overseeing internal procedures and handling the submission of SARs should be appointed. The firm must continue professional education by conducting annual AML audits and update training for all fee earners to keep them current on evolving risks and regulations.

At the Transaction Level

Solicitors must implement robust verification procedures for every client and deal. They should Verify ID and addresses using certified copies and electronic platforms (e.g., LexisNexis IDU, SmartSearch). Due diligence extends to open-source intelligence checks (social media, LinkedIn, Google, adverse media) to spot red flags. The source of funds must be validated with independent evidence (e.g., bank statements, payslips, trust accounts) and the solicitor should obtain bank confirmation for third-party funders and large transfers. Any irregular client behaviour, such as resistance to disclosure or demands for urgent completions, must be immediately escalated for review.

Additional Measures

- Encourage clients to sign up for HM Land Registry's Property Alert to monitor title activity.
- Use the Law Society's scam alerts and guidance to stay informed on current fraud methods.
- Avoid sending sensitive banking details via unsecured email, but use encrypted portals instead.



Solicitor's Ethics in Property Practice



2.8 Conclusion

In conclusion, ethical conduct and risk management are central to conveyancing practice. Solicitors must balance legal precision with professional integrity; avoiding conflicts, safeguarding confidentiality, and remaining alert to fraud and money laundering risks. Upholding these standards protects clients, fosters public trust, and ensures that property transactions are carried out with fairness, transparency, and professional competence.

TITLE INVESTIGATION; EXAMINING OWNERSHIP AND RIGHTS

Title investigation lies at the heart of a solicitor's duty in a property transaction. It ensures that the buyer receives a good and marketable title, free from defects, encumbrances, or undisclosed rights that might reduce the value or hinder future saleability. A failure to conduct a thorough investigation can expose the solicitor to professional negligence claims and cause severe legal and financial consequences for the buyer.

This chapter outlines how solicitors investigate title through Land Registry documentation, assess legal and equitable interests, and advise clients on risks and remedies.

3.1 The Objective of Title Investigation

The solicitor's critical task of thoroughly examining the legal ownership of the property to protect the buyer's (and lender's) interest. The solicitor's primary goals are to confirm the seller's right to sell the property, identify any burdens, rights or covenants affecting the land, and subsequently, advise the buyer (and lender, if applicable) on defects or risks. Compliance with lender requirements under the *UK Finance Mortgage Lenders' Handbook* should be ensured to guarantee the property provides good security for any mortgage advance.

If title is defective or unclear, the solicitor must obtain indemnity insurance, suggest remedial steps, or renegotiate terms. In rare cases, the buyer may be advised to withdraw.

3.2 Registration Status of Title

Understanding the distinction between registered and unregistered land is fundamental to the title investigation process. The regime governing each system varies in its approach to proving title, protecting third-party rights, and determining how property transactions are effected.

3.2.1 Registered Land

Under the *Land Registration Act 2002*, registered land benefits from a centralised and state-guaranteed title system. The HM Land Registry maintains electronic records of land ownership, interests, and dealings.

Key Characteristics

1. Title is guaranteed by the state, reducing risks of defective title.
2. Ownership is recorded in a structured register:
 - **Proprietorship Register:** Names the registered owner and shows class of title and any restrictions (e.g. Form A).
 - **Property Register:** Describes the land and any rights benefitting it (e.g. easements).
 - **Charges Register:** Lists burdens such as mortgages, restrictive covenants, and third-party interests.
3. Official copies and title plans are used to investigate title.
4. Dealings must be completed by deed and then registered to take effect at law (*s.27 LRA 2002*).

Advantages for the Buyer

Registration of land offers significant advantages for the buyer by providing legal certainty and robust protection. There is less reliance on historic title deeds, as the key details of ownership and encumbrances are centrally recorded. This makes the identification of rights and burdens affecting the property easier and more conclusive. The registered title provides strong protection against third-party claims, and the buyer benefits from an indemnity from the Land Registry should any error in the register cause them loss.

However, not all rights are recorded. Some, such as overriding interests, still bind even if unregistered (*Schedule 3 LRA 2002*).

3.2.2 Unregistered Land

Unregistered land is governed by a paper-based title system. Ownership and rights are evidenced through physical title deeds.

Key Features

1. Solicitors must examine root of title, typically going back at least 15 years.
2. Title is deduced from a chain of documents (conveyances, assignments, mortgages).
3. Good root of title must describe the property clearly, show ownership without relying on earlier documents and contain nothing to cast doubt on title (e.g., conditions precedent, missing consents).

Disadvantages

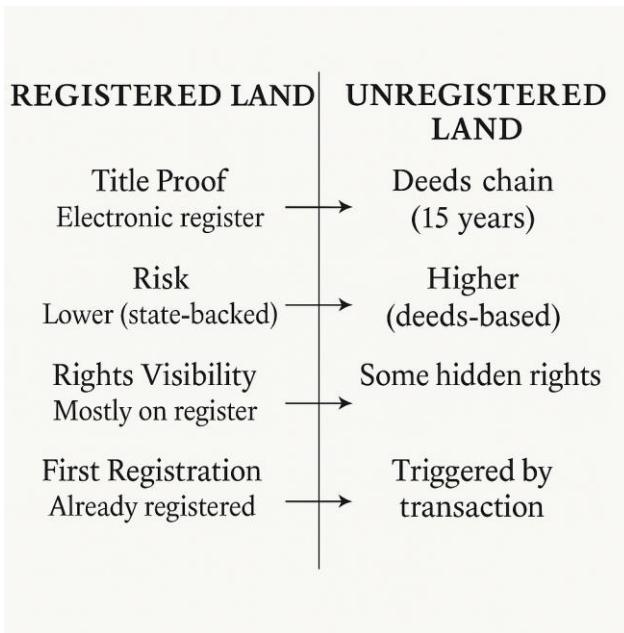
The disadvantages stem from the lack of a central, guaranteed record of ownership. The buyer faces the risk of lost or forged documents. Since title relies on a paper-based chain of conveyances and deeds, it is harder to prove title conclusively. Due to the lack of central record, solicitors must painstakingly trace and verify every deed to ensure the seller has the proper authority to sell, which can delay transactions.

3.2.3 First Registration and Triggers

Unregistered land becomes subject to compulsory first registration on sale or transfer of freehold or leasehold of more than seven years, or grant of lease of less than 7 years. Registration becomes compulsory also upon the creation of a legal mortgage creation.

The seller's solicitor must prepare an FR1 form and lodge supporting documents with HM Land Registry. Once registered, the land becomes subject to the registered land regime.

The buyer's solicitor must ensure registration is completed promptly to avoid gaps in title and potential fraud.



The solicitor's duty is to tailor their investigation method to the nature of the land and ensure the client is protected regardless of the system.

3.3 Official Copy Entries – Key Clauses and Warnings

In registered land transactions, title investigation relies primarily on examining the official copy of the register (commonly referred to as “OC1”). This document, obtained from HM Land Registry, is the authoritative source of title and replaces the need for historic title deeds. Understanding how to read and interpret the entries is critical for identifying risks, advising clients, and satisfying lender requirements.

3.3.1 Proprietorship Register

This section sets out the name(s) of the registered proprietor(s) and the class of title (e.g. absolute, possessory, qualified). It also details any restrictions on disposition, such as Form A restriction (co-ownership without survivorship), *Trusts of Land and Appointment of Trustees Act 1996 (TOLATA)* restrictions, and notices protecting matrimonial home rights under the *Family Law Act 1996*.

Therefore, restrictions must be addressed before completion. For example, where a Form A restriction exists, the buyer must ensure at least two trustees will give a valid receipt for purchase monies to overreach beneficial interests.

3.3.2 Property Register

This section describes the land being registered, listing the official address and providing specific references to the relevant title plan that visually defines the boundaries. It also enumerates any rights that benefit the land such as easements (e.g. a right of way).

3.3.3 Charges Register

This section records all burdens affecting the land, including:

- **Mortgages and charges:** These entries represent financial burdens on the property that must be removed and formally discharged on or immediately before the completion of the sale.
- **Restrictive covenants:** These are binding, negative promises made by past owners that limit the current or future use of the land such as prohibiting the running of a business.
- **Easements:** These entries detail rights that allow other parties to use the land for a specific, limited purpose, such as a neighbor having a right of access across a driveway.
- **Notices:** These are entries alerting a potential buyer as to the existence of a third-party interest or right. They are classified into two;
 - **Unilateral notice:** This entry is made without the registered owner's consent and usually indicates a disputed, claim or interest held by a third party.
 - **Agreed notice:** This entry is with the owner's consent or with verifiable supporting evidence, indicating an accepted and recognized third-party right, such as a long-term lease or a contract for sale.

Examples

- A buyer discovers a 1950s restrictive covenant prohibiting extensions without consent. This may affect a planned renovation and require indemnity insurance.
- A unilateral notice lodged by a beneficiary of an informal trust claim may require resolution or removal before completion.

3.3.4 Class of Title

The register will state the class of title:

- **Absolute title:** This is the standard form of ownership for residential freehold properties, confirming the owner's title is full, indefeasible, and guaranteed by the state.
- **Possessory title:** This is a lesser title granted when a person can prove long-term possession of the land, but lacks the formal documentary evidence. This title remains subject to potential challenge for a limited time by someone with a superior claim.
- **Qualified title:** This title is registered where the Land Registry identifies a **specific defect, gap, or exclusion** in the documentary evidence provided, making the title security subject to that known, stated problem.

Buyer and lender considerations: Where possessory or qualified title is identified, the solicitor must investigate the reason and advise on title upgrade applications or obtain indemnity insurance.

3.3.5 Cautions and Notices

Although the Charges Register details most burdens, a solicitor's title investigation must extend beyond it because not all rights appear therein. A solicitor must review registered cautions and notices; entries warning potential third-party claims. They must also check for pending applications at HM Land Registry that may affect the title. They must consider overriding interests which bind the buyer though not on the register (*Schedule 3, LRA 2002*).

3.3.6 Interpreting the Title Plan

The solicitor's primary duty is to confirm the physical reality of the property against the official plan. Solicitors must compare the red-edged boundary with physical inspection

(where possible) in order to identify discrepancies in access routes or encroachments. They must ensure that the registered land includes all structures the buyer believes they are purchasing (e.g., garages, driveways, garden extensions).

3.4 Legal and Equitable Interests

Understanding the distinction between legal and equitable interests in land is vital for identifying which rights bind a buyer and which do not. These interests determine who holds enforceable claims over the property and influence whether such claims must be disclosed, protected, or overridden at the point of sale.

3.4.1 Legal Interests

Legal interests in land are recognised at law and are typically registered on the title. These include freehold and leasehold estates (legal estates under *s 1 LPA 1925*), legal easements (rights of way, drainage rights created by deed), legal mortgages, and rights of entry or re-entry in leases.

Legal interests automatically bind third parties, including buyers, regardless of their knowledge or whether the interest is registered.

Example: A legal easement benefiting a neighbour, recorded in the charges register, will bind a buyer even if they were unaware of it.

3.4.2 Equitable Interests

Equitable interests are rights recognised in equity but not always evident from the legal title. They may arise through trusts, informal agreements, or proprietary estoppel.

Examples include beneficial interests under a trust (e.g., where two cohabitantes buy in one name), equitable easements (created by informal writing not meeting deed formalities), contracts for sale (protected by notice), and rights under proprietary estoppel (arising from reliance on a promise).

Equitable interests may or may not bind a buyer, depending on registration and occupation.

3.4.3 Protecting Equitable Interests

To bind successors in title, equitable interests must be registered by way of a notice (agreed or unilateral) in the charges register (*s.32–35 LRA 2002*). Otherwise, such interest must qualify as an overriding interest under *Schedule 3 LRA 2002*, most notably by virtue of actual occupation.

In ***Williams & Glyn's Bank v Boland*** [1981] AC 487, the wife contributed to the purchase of the matrimonial home and was in actual occupation but was not on the title. The court held her equitable interest bound the bank under *Schedule 3* because she was in actual occupation and had a beneficial interest.

Solicitors must enquire about non-owning occupiers (e.g. family members), as these individuals may possess rights that bind the buyer. The seller should be asked to complete the TA6 Property Information Form to disclose such matters. Where equitable interests are discovered, the solicitor must either obtain occupiers' consent forms confirming their agreement to vacate, or advise the buyer to utilize overreaching by payment to two trustees (to cut off equitable interests).

3.4.4 Overriding Interests

Some rights bind a buyer even if not registered, due to their special status under *Schedule 3* of the *LRA 2002*. Common examples of overriding interests include short leases (under 7 years), the rights of a person in actual occupation (e.g., an equitable co-owner living at the property continuously), also, legal easements that are obvious or known to the buyer.

Solicitors must physically inspect the property or raise enquiries to detect overriding interests that may not appear on the register.

3.4.5 Resolving Conflicts

Where a client's intended use of land may clash with equitable or overriding interests, the solicitor must advise on the risk of enforcement or interference and consider indemnity insurance, variation agreements, or refusal to proceed.

3.5 Easements and Covenants

Easements and covenants are among the most common third-party rights affecting land. They may restrict a buyer's intended use or create obligations that persist after completion.

3.5.1 Easements

An easement is a right enjoyed by one landowner (the dominant tenement) over the land of another (the servient tenement). Easements may be legal (if granted by deed and registered) or equitable (if created without formalities).

Common easements include rights of way over private roads or footpaths, rights of drainage or service conduits, rights of light or support, among others.

Creation of Legal Easements

Legal easements can be created by express grant or reservation by deed (and registered if post-2002). They can be implied by necessity or common intention. They can also be presumed by prescription (long use without force, secrecy or permission).

The legal test was stated in ***Re Ellenborough Park*** [1956] Ch 131. To qualify as an easement, the right must: benefit dominant land, be over servient land and be capable of forming subject matter of a grant (definable and not overly burdensome).

In ***Pwllbach Colliery v Woodman*** [1915] A.C. 634, an easement to use land for specific purposes was denied because it lacked sufficient clarity.

3.5.2 Restrictive Covenants

Restrictive covenants are promises not to do something on the land. For example, not to build more than one dwelling, not to operate a business from the premises, not to erect certain types of structures.

Requirements for Enforceability

For a restrictive covenant to be enforceable against a successor in title to the servient land in equity, core requirements must be met. The covenant must touch and concern the land (affect

its mode of use or value) and must have been intended to run with the land presumed under s.79 *LPA 1925* unless contrary intention is envinced. The benefitting landowner must be identifiable and retain adjoining land. In ***Federated Homes Ltd v Mill Lodge Properties Ltd*** [1980] 1 WLR 494 clarified that benefit of a covenant could pass to successors even without express wording, provided the land was identifiable

The court in ***Tulk v Moxhay*** [1848] 41 E.R. 1143 held that a purchaser with notice of a restrictive covenant could be bound in equity.

Registration

For registered land, it must be protected by entry in the Charges Register

For unregistered land, it must be registered as a D(ii) land charge to bind buyers

Impact on Buyers

It may affect intended development or use. The breach of such covenant can lead to injunctions or damages

Solutions for Existing Covenants

When dealing with existing restrictive covenants that may hinder a client's plans, a solicitor can advise on three main solutions. Securing an indemnity insurance to protect current owner and future buyers against enforcement. Alternately, a deed of variation or release can be negotiated with the party with benefit. The final resort is an application to Upper Tribunal (Lands Chamber) under s.84 *LPA 1925* to modify or discharge the covenant.

3.5.3 Positive Covenants

Unlike restrictive covenants, positive covenants (e.g. to maintain a fence or pay for upkeep of a shared facility) do not automatically run with the land in equity.

To ensure enforceability of positive covenants, key strategies include the use chain of indemnity covenants in each transfer, creating mutual benefit and burden schemes (***Halsall v Brizell*** [1957] Ch 169), and more structured solutions like rentcharges or management company structures (for estates).

3.6 Rights of Occupiers and Third Parties

Even when the legal title appears clear, occupiers or third parties may have rights that bind a buyer. These rights can override the register and, if undetected, may lead to costly disputes, unenforceable possession, or future claims.

Solicitors must investigate and advise on any non-owner occupiers or informal arrangements which could give rise to such rights.

3.6.1 Actual Occupation and Overriding Interests

Under *Schedule 3* of the *LRA 2002*, a person in actual occupation of property may have an overriding interest if they also hold an equitable interest (e.g. a beneficial interest under a trust or contributed to the purchase of the property).

These interests bind a buyer even if not recorded on the register, provided the interest-holder is in actual occupation and the occupation is apparent on reasonable inspection or known to the buyer

In ***Williams & Glyn's Bank v Boland*** [1981] AC 487, the court held that a wife in occupation, with an equitable interest through financial contribution, had an overriding interest that bound the lender. The bank's failure to enquire about her interest meant it lost priority.

3.6.2 Occupier Consent Forms

To prevent overriding interests from binding the buyer or lender, solicitors must undertake specific steps. All occupiers over the age of 17 must be identified. Occupier consent forms (or waivers), confirming they have no proprietary rights and agree to vacate upon completion or possession by the lender, should be obtained. If the consent cannot be obtained, the solicitor is obligated to report the risk to the lender.

Consent forms are especially important in mortgage cases to ensure overreaching of beneficial interests.

3.6.3 Tenancies and Informal Possession Rights

Where property is subject to a tenancy or informal occupation the solicitor must conduct thorough investigations to protect the buyer. This involves identifying the terms of any lease or licence to determine the occupier's rights and obligations, and checking if the tenancy is protected (e.g. under the *Rent Act 1977* or *Housing Act 1988*). Finally, the solicitor must ascertain and secure contractual undertaking whether vacant possession will be given on completion, if the buyer does not intend to inherit a tenant.

Example: A buyer intending to occupy immediately would suffer financial loss if an assured shorthold tenant remained after completion.

In ***Hypo-Mortgage Services Ltd v Robinson*** [1997] 2 FLR 71, children living with a borrower did not have a separate equitable interest; the occupation was not treated as overriding.

3.6.4 Third Party Rights and Informal Agreements

A solicitor must consider various other third-party rights that may affect the land's title and use. This includes rights arising from proprietary estoppel (e.g., a promise to grant rights or interest relied upon by another to their detriment) and constructive trusts arising from shared ownership without legal title. The solicitor must assess licences with coupled rights, such as exclusive use or payment.

In ***Lloyds Bank v Rosset*** [1991] 1 AC 107, equitable interest was found where one party contributed to purchase and was in occupation.

In ***Epps v Esso Petroleum*** [1973] 1 WLR 1071, a licence granted for petrol station use lacked exclusive possession and was therefore not a lease. Thus, it did not bind the new owner.

3.7 Environmental and Physical Risks

Solicitors have duty to investigate environmental liabilities, which may be attached to land and bind buyer regardless of fault. The primary concern is contaminated land regulated under the *Environmental Protection Act 1990*, where a landowner may be liable for clean-up costs though they did not cause the pollution. Investigation must also cover flood risks (via

Environmental and Drainage Searches), as well as geographical hazards like radon gas exposure, mining subsidence, or protected trees.

These may be revealed via CON29 and CON29O local authority searches, desktop environmental reports and site inspection reports by surveyors.

3.8 Title Indemnity Insurance

Title indemnity insurance is a specialist form of legal protection used to mitigate the impact of defects or risks identified during the investigation of title. These risks may prevent registration, hinder resale, or expose the buyer to legal action. Rather than correcting the defect (which may be impossible or cost-prohibitive), indemnity insurance offers financial cover against potential losses arising from third-party claims or enforcement.

3.8.1 When Indemnity Insurance is Appropriate

Solicitors may recommend title indemnity insurance when a title defect or potential issue threatens the transaction. This insurance is advisable when the problem cannot easily be remedied (e.g. missing documents or consents), or poses a risk of future enforcement (e.g. breach of covenant). The insurance is favoured where the issue would delay the transaction if further investigation is pursued, and it is acceptable to the lender if appropriately insured.

Common scenarios include absence of rights of way over private roads, breach of restrictive covenants without known enforcement, missing planning permission or building regulation consent, defective or missing title deeds (especially with possessory title), and unregistered rights (e.g., unknown easements, mines and minerals rights).

3.8.2 Key Features of Title Indemnity Policies

Policies typically provide cover for the insured party's financial loss if a third party enforces the risk (e.g. halting development or seeking damages) and legal defence costs if a claim arises. A one-off premium paid at completion (no ongoing fees) is usually provided. These terms continue for successors in title and lender assigns

It is important to note that policies do not cure the defect, they simply insure against the consequences.

3.8.3 Underwriting and Disclosure

Solicitors must disclose all material facts to the insurer, including attempts to contact third parties or prior enforcement. They must avoid client contact with the party holding the adverse right (contact may invalidate cover). They also ought to accurately describe the defect, circumstances, and land use

Failure to disclose material facts can render a policy void and leave the buyer unprotected.

3.8.4 Limitations and Exclusions

Title indemnity policies are designed to cover existing, unknown or latent risks, and therefore they typically exclude coverage for several key scenarios. Policies typically do not cover known challenges or legal proceedings already underway. Furthermore, they are invalidated by future voluntary disclosure or contact with the party who holds the burden. Coverage also generally excludes development beyond the property's current use unless specifically underwritten, and will not indemnify against breaches committed after the policy's inception.

Example: A policy covering a restrictive covenant breach (e.g. building a shed contrary to covenant) may not cover the erection of a new dwelling unless expressly extended.

3.8.5 Lender Requirements

When acting for a buyer with a mortgage, the solicitor must ensure the lender accepts indemnity insurance as a solution and obtain written consent where required by the *UK Finance Mortgage Lenders' Handbook*. The solicitor must certify title as marketable subject to policy protections.

3.8.6 Practical Tips

1. Use reputable providers (e.g., Stewart Title, CLS, DUAL).

2. Keep the policy with the completion bundle for future reference.
3. Check whether the cover extends to successors in title, future use changes, and mortgagees.
4. For leasehold properties, consider policies for missing landlord consents.

3.9 Lender Requirements

When a property transaction is funded by a mortgage, the solicitor does not only represent the buyer, they also act as the lender's agent. This dual role imposes strict obligations, particularly under the *UK Finance Mortgage Lenders' Handbook*, which sets out the instructions solicitors must follow when acting for mortgage lenders.

3.9.1 Acting for the Lender

When acting for a lender, the solicitor owes a duty to ensure the lender receives a valid and enforceable first legal charge, disclose any adverse matters that may affect the lender's security and certify that the title is good and marketable, subject only to matters the lender accepts.

This dual duty must be managed with care to avoid conflict of interest or negligence claims.

In *Mortgage Express v Bowerman & Partners* [1996] 2 All ER 836, solicitors failed to report a crucial valuation issue to the lender. The Court of Appeal found them liable, affirming the duty to disclose matters material to the lender's decision.

3.9.2 UK Finance Mortgage Lenders' Handbook

The Handbook sets out lender-specific instructions on matters such as:

- Title defects and indemnity insurance.
- Acceptability of flying freeholds, absent rights of access, or non-standard constructions.
- Ground rent and service charge levels (especially in leaseholds).
- Building regulation and planning documentation.
- Gifted deposits and third-party contributions.

Therefore, solicitors must review the Handbook section applicable to the lender involved, comply strictly with requirements on title, searches, and reporting. In addition, they should use the CML Certificate of Title or equivalent to confirm acceptability.

3.9.3 Common Issues to Report to Lenders

Solicitors have a non-negotiable duty to the mortgage lender to report and receive approval for any material title issue that could affect the security of the loan. The report includes any discrepancies in the registered owner's details, all title restrictions, adverse notices, or boundary issues, and any unusual covenants or rights of way. Also, the solicitor must report if any indemnity insurance being relied upon by the firm and any indication of gifted deposits or potential fraud that might impact the lender's risk assessment.

Failure to report such matters could lead to the solicitor being held liable for any resulting financial loss.

3.9.4 Separate Representation

If the solicitor becomes aware of a conflict of interest, they may be required to cease acting or ensure separate representation. This is particularly likely where the buyer is connected to the seller (e.g. family sale or sub-sale) or there is suspicion of fraud or identity misrepresentation. This is also applicable where the lender's risk appetite is clearly exceeded by the transaction.

3.9.5 Lender-Specific Instructions

Many lenders impose unique requirements beyond the standard Handbook, particularly in relation to leasehold terms (e.g. minimum unexpired lease term), new-build warranties (e.g. NHBC or equivalent cover), planning conditions and consent.

Solicitors should always consult the Lender Exchange Portal or direct instructions to confirm lender policies.

3.9.6 Certification of Title

The solicitor must complete a Certificate of Title, which is the solicitor's final assurance to the mortgage lender. By issuing it, the solicitor warrants that the borrower has good title to the property, and confirms that there are no undisclosed encumbrances. The solicitor also guarantees that the lender's charge will be registered in priority over all other interests.

Once issued, this certificate forms a binding warranty. Any inaccuracy may expose the solicitor to a claim. Therefore, they should ensure that all title and search issues are resolved or reported prior to issuing the certificate.

3.10 Conclusion

Title investigation is a solicitor's most critical function in a property transaction. It is not a clerical exercise but a skilled analysis requiring legal judgment, communication, and forward-thinking. A properly conducted investigation safeguards the client's investment, reduces risk, and upholds professional standards. Ignorance, haste, or delegation without oversight can lead to serious liability.

4

PRE-CONTRACT ENQUIRIES AND SEARCHES

Before entering into a legally binding contract, the buyer's solicitor must carry out detailed investigations into the property. Responsibility lies with him to obtain sufficient information about the property so the buyer can make an informed decision on whether to proceed with the purchase. These investigations include sending pre-contract enquiries to the seller's solicitor, conducting essential searches, and managing the client's expectations through explanation of risks and next steps. These procedures form the basis of a thorough due diligence process, ensuring that the buyer is properly informed before exchange of contracts.

4.1 Purpose and Timing of Enquires and Searches

The primary purpose of pre-contract enquiries and searches in property transactions is to identify legal and practical issues with the property and to ensure the buyer knows what they are purchasing before committing to the transaction. These searches are to satisfy lender pre-requirements. Where any potential liability or encumbrance is discovered, it helps to appropriately allocate risk between buyer and seller.

This stage takes place before exchange of contracts, once the draft contract and supporting title documentation have been received from the seller's solicitor. The buyer has the option to withdraw from the transaction at this stage if they discover any undesirable information about the property.

The seller's duty of disclosure is highly limited, primarily restricted to matters affecting the property's title. Therefore, solicitors must tailor enquiries and searches to the nature and location of the property. A failure to investigate properly may result in professional negligence claims.

The case of ***Midland Bank Trust Co Ltd v Hett Stubbs & Kemp*** [1978] 3 WLR 167, ChD, established that a solicitor's failure to adequately protect a client's interest, by negligently omitting to register a property option as a land charge, constitutes a breach of their professional duty of care in both contract and tort.

4.2 Local Authority, Environmental, Drainage, Chancery, and Other Key Searches

Searches form a vital part of the buyer's investigation. They are conducted through regulated search providers or official channels. The key searches include:

1. Local Authority Search

This search comprises of Local Land Charges Register Search (LLC1) and the Enquiries of the Local Authority (CON29). The local land charges reveal statutory legal restrictions that bind the property or land such as conservation area status, listed building status, and whether the property is subject to a compulsory purchase order. The standard enquires check for issues like granted planning permissions, enforcement notices, compliance with building regulations, contaminated land designation, proposed road schemes affecting the property's access (highways), and outstanding financial charges.

These searches are crucial for identifying legal restrictions or outstanding notices on the property to be purchased.

2. Drainage and Water Search (CON29DW)

This search is essential for a buyer because it formally reveals whether the property is connected to mains water and sewerage systems. It also identifies the location of public sewers and water mains that run through or near the property. This is important because

they could affect or restrict any future development or building work the buyer may wish to undertake.

The enquiry is to ascertain whether the property's drainage and sewer systems have been connected to the public sewer. This is to prevent the buyer's liability for maintenance as opposed to the statutory authority.

3. Environmental Search

This search is performed to evaluate the property's exposure to significant hazards, assess the risk of contaminated land, its location within flood zones, potential issues with ground stability, and the presence of radon gas. Under the *Environmental Protection Act 1990*, the current owner can be liable for remediation which rests, not just on the occupier polluter, on the land.

A solicitor is likely to be found negligent if they do not conduct or recommend environmental searches and enquiries and fail to advise their client on the risks of such contaminated land.

4. Chancel Repair Liability Search

It investigates an historic liability under which the owner of certain land may be obligated to contribute to the cost of repairing the chancel of the local church. Although such liability is rare today, it can still bind land regardless of ownership changes unless overreached or indemnity insurance is in place.

5. Company Search

When the seller is a company, the buyer's solicitor must perform a company search at Companies House to verify the seller's capacity to contract and confirm the identity of the current officers authorized to execute the legal documents. This search is essential for discovering any fixed or floating charges secured on the property, which must be formally discharged upon completion. Furthermore, if the property is unregistered land, similar company searches should be run against any corporate estate owners revealed within the epitome of title to ensure the security of the purchase. For a leasehold, such search is conducted to verify the identity of the management company.

6. Bankruptcy Search

A solicitor acting for a lender must conduct bankruptcy or insolvency searches against the borrower just before completion, and often before exchange. For an individual borrower, this is historically done via a K16 form to the Land Charges department or now more commonly through an online bankruptcy search against the buyer's full name, often using the HMLR's online portal (as the bankruptcy register is a land charge register). This search reveals any pending or actual bankruptcy orders. Any such finding must be reported to the lender, which will almost certainly cause the transaction to fail as the lender will not proceed with a loan to an insolvent party.

7. Location-Dependent Searches:

- Coal Mining (e.g. in Wales or northern England)**

Its purpose is to confirm the risk of mining-related issues affecting the property, specifically whether it is located in an area with a history of past or future mining activity. It equally seeks to establish if there are any mine shafts on the property or the presence of underground workings that could lead to structural issues. CON29M, the Coal Mining Search form and report, is mandated for property transactions assess risks from past, present, and future. The report is a key tool for due diligence and provides a comprehensive assessment of the risks posed by coal mining to a property.

Other searches include: tin mining (e.g. Cornwall), commons registration search, HS2 search (proximity to proposed rail projects), infrastructure projects (road widening or airport expansion).

4.3 Property Information Forms and Seller Disclosures

The seller completes standard forms to assist the buyer.

1. TA6 Property Information Form

This is a standardized document completed by the seller, covering practical and legal aspects of the property such as boundaries, any history of disputes with neighbours, details of any past alterations or additions made to the property, the status of utilities, and a record of any past or pending planning applications. It is a key document in the buyer's

risk assessment as it provides relevant information that may not be available from third-party searches.

2. TA10 Fittings and Contents Form

It is a standardized document completed by the seller that provides a precise, room-by-room inventory detailing which specific items, fixtures, and contents will be included in the sale and remain at the property and which items will be removed upon sale. It clarifies what the buyer is purchasing beyond the structure itself, preventing later disputes between the buyer and seller.

3. TA7 Leasehold Information Form

This document is provided by the seller, for leasehold properties, to furnish the buyer with all the essential details about the lease arrangement. Specifically, it covers financial information like the amount of service charges and ground rent payable, provides contact and financial details for the landlord or management company, and outlines key lease terms, including the length remaining on the lease. These are vital for the buyer to fully understand the financial obligations and legal restrictions of owning such property.

Caveat Emptor

This is a Latin phrase meaning “Let the Buyer Beware”. This fundamental principle of property law means that the seller has no duty to disclose defects about the property, even significant ones, unless they are specifically asked. While a seller must avoid giving misleading or false replies to any direct and specific questions asked by the buyer, there is generally no legal duty to volunteer information regarding the property.

This absence of a general duty means the seller is not obligated to disclose, for instance, physical defects in the building, pre-existing disputes with neighbours concerning boundary fences or maintenance, or even whether the extension they built on the property was granted planning permission. Therefore, the burden of discovering defects and assessing risks falls heavily upon the buyer. Thus, the buyer's solicitor is to raise detailed and precise enquiries.

In ***Keates v Cadogan*** [1851] 10 C.B. 591, the defendant landlord leased a house to the claimant, knowing it was in an extremely ruinous and uninhabitable condition; however, he

did not inform the tenant. The tenant moved in and a large part of the house subsequently collapsed. Court held the landlord was not liable for failing to disclose uninhabitable conditions and the buyer bore the risk for lack of investigation. The common law rule of *caveat emptor* places the burden of investigation and risk for non-disclosed issues squarely on the buyer.



4.4 Common Issues Revealed and How to Address Them

Red flags uncovered during property enquiries and searches represent significant issues that can impact the property's value, use, and mortgageability, including planning breaches or the lack of building regulations consent for alterations, unadopted roads with unclear maintenance liability, lack of easement for access or drainage, the presence of contaminated land or flood risk, disputes with neighbours and short leases (under 85 years may affect mortgageability).

Remedies

When significant issues are discovered through pre-contract enquiries and searches, the available remedies allow the buyer to manage or mitigate the risk. These remedies include purchasing indemnity Insurance to cover financial loss for planning/building issues,

requesting retrospective consent or regularisation from the local authority to fix the defect, negotiating a retention of part of the purchase price or a direct price reduction from the seller to cover the cost of the issue and referring the matter to the lender, which may affect the mortgage offer.

In ***Cottingham v Attey Bower & Jones*** [2000] Lloyd's Rep. P.N. 591, the solicitor was liable for failing to advise buyer on lack of access right as court emphasised the importance of due diligence.

Red Flags and Remedies in Property Transactions

Red Flags

- ⚠ Planning or building regulation issues
- ⚠ Unadopted roads
- ⚠ Lack of easement
- ⚠ Contaminated land or flood risk
- ⚠ Short leases



Remedies

- ✓ Indemnity insurance
- ✓ Retrospective consent
- ✓ Price reduction
- ✓ Referral to lender

4.5 Instructing Surveyors and Managing Client Expectations

While not a legal obligation, instructing a survey should be strongly advised by solicitor. Solicitors should recommend an RICS HomeBuyer Report or full building survey while explaining the limitations of mortgage valuations (which only serve the lender). The solicitor must clearly clarify that their legal advice does not extend to the property's structural soundness, thereby delineating the boundaries between legal and surveying expertise.

Common Misunderstandings

One of the most common misunderstandings in a property transaction is the buyer's mistaken belief that the solicitor's searches or legal checks cover the structural condition of the property. Realistically, legal due diligence is limited to title, legal restrictions, and regulatory compliance. Also, buyers often rely too heavily on seller disclosures, failing to appreciate that these forms are not a substitute for an independent survey and are subject to the principle of *caveat emptor*.

Risk Management

Effective risk management for solicitors in property transactions requires a focus on clear communication and meticulous record-keeping. Solicitors must provide clear written advice on the scope of work being undertaken so the client understands the limits of your role; diligently keep file notes of all warnings given to the client, especially regarding risks, limitations of searches and the need for survey to demonstrate that due diligence was performed. Solicitors must refer to specialist professionals where needed to ensure the client receives comprehensive advice.

Duty of Seller's Solicitor

The seller's solicitor has a duty to provide accurate replies to pre-contract enquiries. These replies amount to representations made during the course of the transaction, and if they contain errors or omissions, they may give rise to an actionable claim in misrepresentation. While the principle of *caveat emptor* still places the burden of investigation on the buyer, misleading or incomplete answers from the seller's side can entitle the buyer to remedies such as rescission of the contract or damages. This reinforces the importance of the seller's solicitor checking instructions carefully with their client and ensuring that all disclosures are complete, truthful, and consistent with supporting documentation.

4.6 Conclusion

Pre-contract enquiries and searches are the backbone of property due diligence. They provide vital insight into legal, physical, and financial risks. The solicitor's role is not just to order and

review documents, but to interpret them, raise precise enquiries, and clearly communicate their significance to the client. A well-handled investigation protects both buyer and solicitor from future liability and ensures the buyer proceeds with full awareness of the property's condition and legal status.

5

CONTRACT NEGOTIATION, EXCHANGE AND COMPLETION

This chapter covers the critical transition from agreed terms to completed transaction. It addresses how contracts are drafted and negotiated, how funds and title are managed, and what responsibilities solicitors carry through to final registration.

5.1 Drafting and Negotiating Contracts (SC and SCPC Terms)

The sale contract is the legal foundation of the property transaction. It records the agreement between the buyer and seller and determines the terms upon which the property is transferred. It must be clear, complete, and reflect the parties' agreed intentions.

Solicitors typically use the *Standard Conditions of Sale (5th Edition)* (SC) for residential conveyancing and the *Standard Commercial Property Conditions (3rd Edition)* (SCPC) for commercial transactions.

These conditions provide default terms unless the parties agree otherwise. Solicitors can supplement or amend them via special conditions.

5.1.1 Core Components of the Contract

Every binding property contract must contain the names of the parties (buyer and seller), the specific property details (address, title number, plan reference), the purchase price and the required deposit amount, along with the agreed completion date. The contract will also specify the title guarantee the seller is providing, list the encumbrances disclosed in the title (e.g.,

easements or restrictive covenants), and incorporate either the Standard Conditions (SC or SCPC). Any special conditions which are bespoke to that particular transaction.

Comparison Between SC and SCPC

Feature	SC (Residential)	SCPC (Commercial)
Risk	Passes to buyer on exchange	Passes on completion
Insurance responsibility	Buyer insures from exchange	Seller insures until completion
Chattels	TA10 used to clarify fixtures/fittings	More reliance on express drafting
VAT	Rarely applicable	Often addressed in special conditions
Tenancies	Rare	Common – must be disclosed

5.1.2 Negotiation Points

In negotiating a property contract, solicitors must focus on several critical areas to protect their client's interests. Solicitors have a key responsibility to carefully negotiate and clearly explain the Completion Date to their clients. While the default or standard period is typically 20 working days after the exchange of contracts, this is negotiable between the parties. The completion date may be made conditional, that is, transaction will only be finalised if a specific event occurs, such as final mortgage approval or sale of another property.

The Deposit Amount is a key financial term, usually set at 10% but reducible with mutual agreement and lender consent. Solicitors must also address Title Defects or Rights by negotiating the inclusion of specific seller warranties, establishing future financial obligations through overage clauses, or ensuring the buyer is covered by indemnity insurance obligations. Attention must be paid to the Fixtures and Fittings to ensure that all agreed-upon inclusions or exclusions are clearly documented to prevent post-completion disputes.

Negotiation extends to add detailed conditionality, where the entire deal might be made contingent on securing planning permission, funding or surveys. Solicitors must also correctly

calculate and agree upon apportionments and adjustments common in commercial property sales for dividing costs like rent, service charges, and insurance premium. Finally, the contract must clearly define and agree upon the limitation of the seller's liability especially where the seller is a fiduciary party, such as a trustee, receiver, or executor, to reflect their non-personal capacity and limited knowledge of the property.

5.1.3 Solicitor's Responsibilities

A solicitor responsible for drafting the contract has a professional duty to ensure the document is legally sound and accurately reflects the deal. This involves verifying that all property details precisely match the Land Registry documents, confirming the contract reflects the terms actually agreed upon between the buyer and seller, meticulously checking for and removing hidden risks or ambiguous clauses, using clear language and properly cross-referencing any incorporated documents or rights; and critically, drawing the client's attention to any unusual or onerous clauses that may affect their interests.

The court in ***Commission for the New Towns v Cooper (Great Britain) Ltd*** [1995] 2 WLR 677, emphasised that the contract must reflect the entirety of the agreement. Extraneous oral promises are not enforceable unless included.

Solicitors owe a duty of care to ensure the contract is legally effective and does not disadvantage their client.

5.1.4 Special Conditions

Special Conditions are included in a contract to address specific risks or arrangements unique to that transaction and must be used with caution, as they are not part of the standard contract terms. They are typically employed to address issues like rectifying title defects (e.g., specifying who buys the indemnity insurance), arranging the retention of part of the purchase price until a specific action is completed (such as the seller completing agreed-upon works), making completion subject to obtaining planning or building regulations consent, or granting the buyer early access or licence to occupy the property before the sale is completed.

Each must be carefully drafted and tailored to avoid unenforceability or disputes. Courts generally construe special conditions narrowly.

A solicitor should always explain special conditions to clients in plain English and confirm understanding in writing.

5.2 Deposit Handling, Title Guarantees, and Insurance Risks

5.2.1 Deposit Handling

A fundamental contractual requirement is the payment of a deposit, typically 10% of the purchase price. The deposit secures the buyer's commitment and provides a remedy for the seller in the event of buyer default.

Stakeholder vs Agent

In most residential sales, the seller's solicitor holds the deposit as stakeholder, meaning it cannot be released to the seller before completion. In rare cases, it may be held as agent, allowing release pre-completion. This arrangement exposes the buyer to risk and must be explicitly agreed.

Reduced Deposit

A buyer may negotiate a lower deposit (e.g., 5%) if they cannot afford the full amount upfront. The standard conditions (*SC 2.2.5*) provide that if a reduced deposit is paid, the full 10% becomes payable if the buyer fails to complete.

Consequences of Default

If the buyer defaults, the seller is entitled to rescind the contract, retain the deposit, and may sue for damages.

In *Johnson v Agnew* [1980] AC 367, the court confirmed that forfeiture of deposit is valid, and that damages for further loss may still be awarded in addition.

5.2.2 Title Guarantees

These are contractual assurances about the quality of the seller's title. They are implied by the *Law of Property (Miscellaneous Provisions) Act 1994*, unless expressly excluded.

There are two types of title guarantee given by seller which dictate the extent of their liability to the buyer. Full Title Guarantee, the standard for individual sellers, implies the seller has the right to sell and the property it is free from all encumbrances, charges, and adverse rights other than those already disclosed. Limited Title Guarantee typically used by trustees, executors, or corporate sellers who may have limited personal knowledge of the property's history. This implies that the seller has not personally encumbered the property during their period of ownership, but does not guarantee issues that existed prior.

Example: Michael, a lender, in selling a repossessed property will give a Limited Title Guarantee.

5.2.3 Insurance Risks

Understanding who bears the risk of loss or damage between exchange and completion is essential. Under SC, typically used for residential transactions, the risk passes to the buyer on exchange of contracts, meaning the buyer should arrange insurance immediately. Conversely, under the SCPC, the seller generally retains the risk until completion, unless the property is let or stated otherwise.

This means that a residential buyer should arrange buildings insurance immediately after exchange. Also, Commercial buyers may rely on the seller's insurance up to completion, but should check the policy and consider obtaining additional cover

In ***Rayner v Preston*** [1881] 18 Ch D 1, the court held that the seller, who suffered fire damage post-exchange, was not liable to use their insurance payout to repair the property before completion, as risk had passed to the buyer.

5.2.4 Mortgage Conditions

When financing a property purchase, lenders typically impose specific mortgage conditions requiring the borrower to provide evidence of buildings insurance effective from the date of exchange of contract, noting the lender's interest. Failure to comply with this condition can constitute a breach of the mortgage terms and will almost certainly delay completion, as the lender will not release the funds until the insurance requirement is satisfied.

5.3 Exchange Mechanics: Procedure, Authority, and Timing

5.3.1 Legal Effect of Exchange

The moment of exchange is a legal turning point in the transaction. Upon exchange, the contract becomes legally binding on both parties. The buyer acquires an equitable interest in the property, while the seller simultaneously holds the legal title on a constructive trust for the buyer pending completion. The buyer assumes the risk of the property subject to contract terms. Legal remedies such as specific performance, claims for damages, or the forfeiture of the deposit become immediately available to the non-breaching party should either side fail to complete the sale.

In *Lysaght v Edwards* [1876] 2 Ch D 499, court established that upon exchange, the buyer is the equitable owner and the seller becomes a trustee for the buyer.

This principle underscores the importance of ensuring all searches, enquiries, funding, and contractual terms are settled before proceeding to exchange.

Exchange of contracts is the point at which a property transaction becomes legally binding. Before this point, either party may withdraw without penalty (subject to reimbursement of incurred costs). Once exchange occurs, the buyer and seller are contractually committed to complete the transaction.

There are three principal methods of exchange used by solicitors, as prescribed by the Law Society's formulae:

1. Formula A; Single-Holder Exchange

Formula A is the simplest of the three methods for exchanging contracts. It is used where one solicitor holds both signed parts of the contract, the seller's and the buyer's before the exchange takes place.

At the point of exchange, that solicitor dates both parts of the contract and confirms by telephone to the other solicitor that the exchange has been completed. The contract becomes legally binding immediately. The deposit will already have been received by the seller's solicitor (who holds it as stakeholder or agent, depending on the contract terms).

Because one solicitor physically holds both parts of the contract, this formula is only suitable where both parties trust a single solicitor to act in the exchange, and there is no chain of linked transactions. It is rarely used in modern practice because it offers limited flexibility.

Formula A – Single-Holder Exchange



2. Formula B; Dual Holder Exchange with Postal Dispatch

Formula B is the most commonly used formula for ordinary, straightforward transactions. Here, the buyer's solicitor holds both signed contracts, their client's and the seller's until exchange.

During a telephone conversation, the solicitors confirm that they are exchanging under Formula B. At that moment, the exchange becomes legally binding, even though the seller's part has not yet been physically sent. After the call, the buyer's solicitor dates both contracts, keeps the buyer's copy, and sends the seller's signed part and the deposit to the seller's solicitor, usually the same day.

This method provides a simple and secure way to exchange contracts between two firms and is used widely for both residential and commercial sales where no chain is involved.

Formula B – Dual Holder Exchange with Postal Dispatch



3. Formula C; Linked or Chain Exchange

Formula C is used mainly when there is a chain of dependent transactions, where several buyers and sellers are relying on one another to exchange on the same day. Under this formula, each solicitor holds their own client's signed contract, and the buyer's solicitor holds the deposit as stakeholder until all links in the chain are ready to exchange.

Exchange occurs by a series of telephone calls between solicitors, each confirming that their client is ready and that they are authorised to exchange under Formula C. Once every link in the chain has confirmed readiness, all parties exchange simultaneously. After exchange, solicitors date their own contracts and undertake to send the deposit and counterpart documents as agreed.

Formula C provides a reliable structure for multi-party exchanges, preventing one party from becoming contractually bound before others in the chain. However, because it involves multiple undertakings and coordination between several firms, it is more complex and time-consuming than Formulas A or B and is therefore used less often.

Formula C – Linked or Chain Exchange



5.3.2 Authority to Exchange

Solicitors must have explicit authority from their client before proceeding to exchange. This can be written (via signed letter, email, or contract instruction) or verbal (recorded in file notes, but riskier).

It is best practice to confirm that the client understands the implications of exchange, that mortgage offers are received and acceptable, that survey and searches are complete and satisfactory and that funds are available for deposit and completion.

Exchanging without client's authority could result in serious disciplinary consequences or claims for professional negligence.

5.3.3 The Role of Completion Date

At exchange of contract, the completion date is fixed. This is the legally binding date on which the buyer must pay the balance of the price and the seller must transfer the property. In residential transactions, this date is typically set for 20 working days after exchange, but it can be specified as a fixed date (e.g., 1st July) or conditional (e.g., 10 working days after planning consent). Time is usually of the essence, meaning strict compliance is required, and failure to complete on the exact day constitutes a breach of contract.

In ***Union Eagle Ltd v Golden Achievement Ltd*** [1997] AC 514, a 10-minute delay beyond the stipulated completion time justified the seller rescinding the contract and retaining the deposit. This underlines the importance of punctuality and clarity in exchange agreements.

5.3.4 Best Practices in Exchange

To ensure a secure and professional transaction, best practices at exchange require the solicitor to use a standard exchange script/checklist and confirm client readiness and authority to proceed. It is vital to verify the signed contracts are identical in all respects and record full, detailed notes of the exchange call. After the successful exchange, the solicitor must confirm the exchange and the fixed completion details to the client in writing and send an exchange memo to all involved parties.

5.4 Drafting and Executing the Transfer Deed

The transfer deed, commonly referred to as *Form TR1*, is the legal instrument used to formally transfer ownership of the property from the seller to the buyer at completion. It is a key document that must be correctly prepared, executed, and submitted for registration at the Land Registry.

5.4.1 Purpose and Content of the TR1

The TR1 is a Land Registry-prescribed form to effect the legal transfer of a property's title from the seller to the buyer upon completion. This includes the full names and addresses of the transferor (seller) and transferee (buyer), the description and title number of the property, the consideration (price paid), and the date of transfer (usually the completion date). The TR1 is also used to formally record any agreed-upon covenants, easements, or declarations from the contract, specifies the type of title guarantee being given (full or limited), and contains a declaration of trust to clarify how multiple buyers will hold the property ((if the buyers are holding as tenants in common).

It may also include additional clauses, such as indemnity clauses for known defects, restrictions on future dealings or use, and overage or claw back provisions

5.4.2 Drafting the TR1

Typically, the seller's solicitor drafts the TR1 after exchange. The buyer's solicitor must ensure that the details are accurate and consistent with the contract and title documents and verify that the appropriate title guarantee is used. The solicitor can insert or agree to any additional covenants required by the buyer or lender and must confirm that any trust declarations match the client's instructions (joint tenants vs tenants in common).

Example: Where two friends purchase a property in unequal shares, a declaration of trust is inserted into Panel 10 of the TR1, supported by a separate trust deed if needed.

5.4.3 Execution Requirements

To be valid and registrable, the TR1 must be signed by the seller (the transferor), signed by the buyer only if giving covenants or where required for a declaration of trust and properly witnessed by an independent adult (over 18, not a party to the transaction).

For companies, it must comply with *s.44 Companies Act 2006*, either signed by two authorised officers, or one director in the presence of a witness. The same witness may act for both signatures if present for both and is independent.

5.4.4 Lodging for Registration

After completion, the buyer's solicitor is responsible for submitting the TR1, AP1 application form, SDLT1, and any mortgage deed to HM Land Registry. They are to pay Stamp Duty Land Tax (or submitting a nil return if exempt) and comply with any Land Registry restrictions (e.g., Form A or Form LL restrictions).

This must be done within the priority period obtained from the OS1 search (usually 30 working days) to protect the buyer's interest against adverse registrations.

The TR1 is the legal foundation of the transfer of ownership. Its accurate preparation, correct execution, and prompt registration are critical to ensuring the buyer acquires valid legal title. Any delay or error can cause the transaction to fail or expose the solicitor to liability.

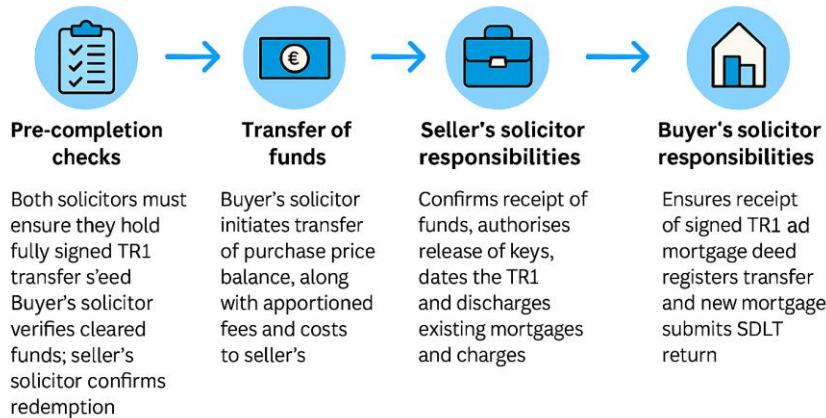
5.5 Completion Logistics and Funds Transfer

Completion is the final stage in the property transaction process. It is the point at which legal title formally passes from the seller to the buyer, funds are transferred, and the buyer takes possession of the property.

5.5.1 Key Steps on Completion Day

1. **Pre-completion checks:** Both solicitors must ensure they hold the fully signed TR1 transfer deed, and the buyer's solicitor must hold the executed mortgage deed and verify sufficient cleared funds are available in the client account. The seller's solicitor must confirm redemption statements from seller's lender are accurate.
2. **Transfer of funds:** The buyer's solicitor then initiates the transfer of funds by sending the balance of the purchase price, plus any apportioned fees and costs, to the seller's solicitor, usually via a high-speed CHAPS bank transfer
3. **Seller's solicitor responsibilities:** The seller's solicitor confirms receipt of these funds, authorizes the release of keys to the buyer (via estate agent or directly), and formally dates the TR1 transfer deed. They then fulfil their professional undertakings by immediately using the completion monies to discharge all existing mortgages and other charges secured against the property.
4. **Buyer's solicitor responsibilities:** This entails the post-completion administration to secure the client's title. This involves ensuring they have received the duly dated signed TR1 and mortgage deed. They register the transfer of the property and any new mortgage charge at HM Land Registry, and submit SDLT return to the Registry and pays any duty within 14 days (30 days for transactions before 2021).

Key Steps on Completion Day



5.5.2 Undertakings and Redemption of Charges

The seller's solicitor will normally give a solicitor's undertaking to discharge any existing mortgage or legal charge and provide a Form DS1 (discharge form) to the buyer's solicitor post-completion. Breach of these can result in regulatory action.

The buyer's solicitor must not release funds unless confident that any mortgage redemption figure will be paid and the charge released.

5.5.3 Risk Allocation and Access

This is determined by contract's standard conditions. Under the SC, typically used for residential deals, the risk passes to the buyer on exchange, requiring them to secure insurance immediately. Under the SCPC, the seller retains the risk until completion. If the property is damaged on or before completion, responsibility will fall according to the terms in the contract, regardless of the standard condition.

It is important to ensure appropriate insurance is maintained by the buyer or seller depending on the terms.

Access should only be granted after completion unless a prior licence to occupy has been agreed.

5.5.4 Completion Duties

Buyer's solicitor must pay SDLT (Stamp Duty Land Tax) and submit SDLT1 form, submit AP1 application to the Land Registry to register the buyer's ownership and any lender's charge, and respond to Land Registry requisitions promptly.

Failure to register within the priority period (from OS1 search) could result in the buyer's interest being lost to third parties.

For post-completion best practice, the solicitor must keep all signed documents securely, confirm the completed registration with the client and update lender with final title documentation if mortgage is involved.

5.6 Conclusion

From initial contract negotiations to final registration, this stage of the transaction demands diligence, accuracy, and procedural discipline. Solicitors must safeguard client funds, draft binding documents, comply with standard conditions, and coordinate with lenders and counterparties. Success at this stage ensures legal transfer of ownership and prevents disputes or delays that could unravel a complex transaction.

6

POST-COMPLETION; REQUIREMENTS AND REGISTRATION

Once contracts have been exchanged and completion has taken place, the solicitor's work does not end. The post-completion phase is a critical part of the conveyancing process where the buyer's ownership is formalised and the legal framework underpinning the transaction is completed. Any failure at this stage can lead to invalid title, unenforceable mortgages, or penalties. Solicitors must act promptly and meticulously to meet statutory deadlines, satisfy lender obligations, and ensure clear registration at HM Land Registry.

6.1 Stamp Duty Land Tax (SDLT) and Land Transaction Tax (LTT)

6.1.1 Overview and Jurisdiction

In England and Northern Ireland, most purchases of residential and commercial property attract Stamp Duty Land Tax (SDLT), governed by the *Finance Act 2003*. In Wales, SDLT is replaced by Land Transaction Tax (LTT) under the *Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017*.

The amount of the tax is calculated based on the consideration exchanged for the property. While this is typically a monetary payment, consideration can also be based on the value of services rendered (work performed), the value of other property involved in an exchange, or

the amount of an outstanding mortgage assumed by the transferee (buyer), among other non-cash equivalents.

6.1.2 Filing and Payment Deadlines

SDLT returns must be submitted to HMRC within 14 calendar days of completion. While LTT returns to the Welsh Revenue Authority must be submitted within 30 days of completion. Late filing triggers automatic penalties and daily interest on unpaid tax.

6.1.3 Solicitor's Duties

A solicitor's duties concerning Stamp Duty Land Tax (SDLT) or Land Transaction Tax (LTT) primarily involve the accurate and timely filing of the required return using approved electronic platforms. This necessitates a disclosure of all components of the purchase price, which must include any apportioned consideration, chattels, or details of linked transactions. The solicitor must also assess the transaction's eligibility for any applicable reliefs, such as First-Time Buyer Relief, Multiple Dwellings Relief, or Charities Relief, to ensure the client pays the correct amount of tax.

6.1.4 Risk Management

For effective risk management in property transactions, the solicitor must ensure that client funds intended for SDLT/LTT are received and held in a cleared form well before completion. Upon submission, the solicitor is under the duty to send the client confirmation of filing and payment and to securely retain the SDLT5/LTT certificate for the subsequent submission to the Land Registry. To mitigate the risk of financial errors, solicitors should routinely utilize reliable SDLT calculators to accurately determine the correct tax liability and avoid costly underpayment or overpayment based on current tax thresholds.

6.2 Land Registry Application and Title Registration

6.2.1 Legal Framework

The legal title for registered land does not transfer automatically upon completion. It becomes legally perfected only upon registration at HM Land Registry under the *Land Registration Act 2002*.

6.2.2 Submission Deadline

The solicitor must adhere strictly to the submission deadline for the land registration application, made using Form AP1, ensuring it is submitted within the 30 working days of the priority period established by the official pre-completion search (OS1). Failing to register the transaction within this window carries the significant risk of losing priority, meaning another charge or interest registered during this lapse could take precedence over the client's property ownership.

6.2.3 Documents Required

- Form AP1 (application to change the register).
- SDLT5 or LTT certificate (from HMRC or WRA).
- Transfer Deed (Form TR1 or TP1).
- Mortgage Deed (Form CH1) if applicable.
- Evidence of identity (Form ID1/ID2 if not represented).
- Any consents, certificates, or plans (e.g., new lease plan under Land Registration Rules 2003).

6.2.4 Special Considerations

1. New Builds

Special considerations apply to certain types of property purchases, such as new builds. These transactions necessitate the creation of a new title at the Land Registry and

commonly involve multiple documents, including specific plot transfers and extensive estate documentation.

2. First Registration

A separate procedure is required when dealing with unregistered land, a process known as First Registration (FR). In these cases, the standard registration form, AP1, is not used; instead, the solicitor must submit a FR1 application within two months of completion to create the very first official title record for the property. This application, along with the prescribed fee and accompanying documents, must include a duplicate list of all accompanying documents on Form DL.

To enable the Registrar to investigate the title and determine the class of title to be allocated, the submission must contain; all original title deeds and evidence supplied by the seller, pre-contract searches and replies, the contract, requisitions on title and replies, pre-completion search certificates, the transfer deed, any discharged mortgage, SDLT/LTT certificate, and Form DI (declaring overriding interests so they are recorded on the register).

Upon processing, the Land Registry will register the buyer as the new proprietor and the lender as the registered proprietor of the charge. An official copy of the register entries, known as the Title Information Document (TID), is then issued to the buyer's solicitor.

This process is vital, as it shifts the property onto the modern system of guaranteed, state-backed land ownership.

6.2.5 Common Pitfalls

Land Registry requisitions are official queries often raised due to missing documents or incorrect execution of forms. The delay in processing the application can significantly affect the buyer's ability to resell or remortgage the property promptly. Most importantly, a buyer left with an unregistered title, faces potential risks related to fraud, difficulties with enforcement of their rights, and major obstacles when trying to resell the property in the future.

6.3 Registering the Mortgage

6.3.1 Securing the Lender's Interest

A mortgage or charge must be registered at the Land Registry to be legally effective. This applies both to residential mortgages (typically individual buyers) and corporate mortgages (secured by legal or equitable charge).

6.3.2 Process

During the registration process, the solicitor must submit the CH1 mortgage deed concurrently with the transfer document (AP1) for registration. This action ensures that the lender's charge is correctly entered against the registered title. Also, the priority of registration is governed by the official pre-completion search results (OS1), meaning the entire application package must be submitted to the Land Registry within the 30 working days priority period granted by that search.

6.3.3 Solicitor's Duties to the Lender

A solicitor's duties to the lender in a mortgaged transaction involve strict adherence to all instructions outlined in the *UK Finance Mortgage Lenders' Handbook*. The solicitor must proactively report any variations, defects, or undisclosed risks discovered during the process that could affect the lender's security. Upon successful registration of the charge, they are required to send the lender the Title Information Document, and must also securely hold the registered deed or a copy of the title on the lender's behalf where specified.

6.4 Discharging the Seller's Mortgage and Satisfying Undertakings

6.4.1 Seller's Mortgage Discharge

Most properties are sold subject to an existing legal charge, typically the seller's mortgage. To provide the buyer with a clean, unencumbered title, this existing legal charge must be fully discharged and removed from the Land Registry record.

6.4.2 Undertakings

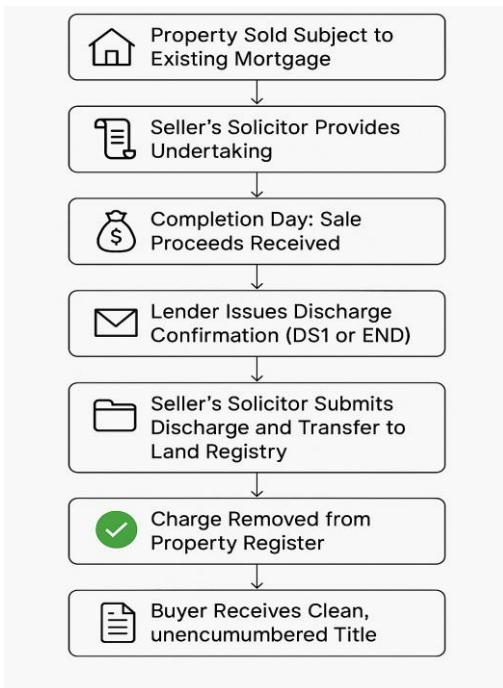
To guarantee a clean transfer of title, the seller's solicitor provides a formal solicitor's undertaking to the buyer's side, which is a legally binding promise to redeem the existing mortgage either on the day of completion or immediately thereafter. This undertaking is a legal mechanism, as it is fully enforceable by the buyer's solicitor or the lender, protecting the buyer from inheriting the seller's debt.

6.4.3 Discharge Process

The Discharge Process begins once the seller has successfully redeemed the mortgage using the proceeds from the sale. In response, the lender is obligated to send the appropriate discharge confirmation; a DS1 for older, standalone legal charges, or an END (Electronic Notification of Discharge) for modern electronic discharges. Afterwards, the solicitor submits them to the Land Registry along with the transfer of title to ensure the removal of the charge from the property's register, thereby finalizing the clean title transfer.

6.4.4 Buyer's Solicitor's Checks

The Buyer's solicitor has checks to perform regarding the seller's mortgage discharge. They must first confirm that the undertaking from the seller's solicitor is received in writing and is satisfactory before sending the purchase funds. Post-completion, the solicitor's duty is to scrutinize the updated Land Register to confirm the full removal of the charge, ensuring that no residual restrictions or entries remain that could adversely affect the clean title being transferred to the buyer.



6.5 Dealing with Late Completion, Notices to Complete, and Rescission

6.5.1 Standard Conditions of Sale

Under the *Standard Conditions of Sale (5th Edition)*, the formal completion of the property transaction is scheduled for and fixed on the agreed contractual date. However, "time is not of the essence" on that date, meaning a short delay is not automatically a breach allowing contract termination, unless one party formally serves a Notice to Complete on the other.

When a contract specifies that "time is not of the essence", a simple delay in completion doesn't grant the innocent party the right to immediately pull out of the transaction, though they can still claim contractual interest/compensation from the breaching party.

6.5.2 Interest on Late Completion

Upon late completion, the defaulting party pays contractual interest (e.g. 4% above base rate) on any unpaid balance from the contractual completion date until actual completion.

6.5.3 Notice to Complete

If completion is not achieved on the agreed date, the non-defaulting party gains the right to serve a formal Notice to Complete, which grants the other party an additional period of 10 working days to finalize the transaction. The Notice to Complete can be served at any time after the contractual completion date by the party who is ready, willing, and able to complete. The innocent party's solicitor handles the service, but they must first confirm the client's instructions, as a notice may be unnecessary if the delay is minor (e.g., a brief lender transfer delay) and completion is expected soon. If the buyer paid a reduced deposit, they must immediately pay the balance to bring the deposit up to the full 10% upon receiving the notice. The Notice to Complete is only relevant in the event of non-completion on the contractually agreed date. It is not needed if completion has already taken place, even if it was late. The effect of this action is that time immediately becomes of the essence, making the new deadline mandatory and non-negotiable. If completion remains unachieved by the expiration of this notice period, the non-defaulting party may then exercise the right to rescind the contract.

6.5.4 Rescission and Remedies

If the contract is rescinded following the expiration of a Notice to Complete, the innocent party is entitled to certain remedies. They have the right to keep or recover the deposit paid on the exchange of contracts. Furthermore, the innocent party can claim damages for any actual losses suffered as a result of the breach, such as costs related to removals, temporary accommodation, or rent. Finally, if appropriate, they may also choose to seek a court order for specific performance, compelling the defaulting party to complete the sale as originally agreed.

6.6 Client Care, Reporting, and Risk Management

6.6.1 Reporting to Clients

Upon the successful completion of the land registration process, the solicitor must promptly confirm to the buyer that their ownership of the property has been officially registered. This key communication involves sending the client the updated Title Information Document (the

official copy of the register) and clearly explaining the key entries within it. Furthermore, the solicitor must ensure the client is fully notified of any restrictions, rights of way, or covenants that continue to affect the registered title.

6.6.2 File Retention and Audit

Solicitors must adhere to strict requirements for file retention and audit, ensuring that all important documentation, including completion statements, SDLT/LTT receipts, client ID checks, and Land Registry confirmations, is securely retained for a minimum period of six years, or potentially longer if the file involves a lender. Equally important is the need to conduct a thorough check for, and ensure the discharge of, any outstanding undertakings that were given, particularly those made to third parties such as management companies.

6.6.3 Professional Obligations

In all property matters, a solicitor's overriding professional obligations require strict compliance with the Solicitors Regulation Authority (SRA) Code of Conduct. This mandate includes maintaining absolute client confidentiality and establishing clear audit trails for every transaction. Furthermore, the solicitor must avoid any form of delay, must act with diligence throughout the process, and is fundamentally responsible for protecting all client money held in trust.

6.7 Conclusion

The post-completion phase is the solicitor's final and most technical checkpoint. Legal title, tax compliance, lender security, and risk minimisation all converge in this final act. A failure to act promptly and thoroughly may not only jeopardise your client's investment but expose the solicitor to regulatory sanction and negligence claims. By adhering to statutory deadlines, lender protocols, and professional diligence, a solicitor ensures that the transaction is not just completed, but perfected in law.

7

FINANCE, MORTGAGES, AND PLANNING LAW

Property transactions are rarely conducted in isolation. They often involve complex financial arrangements, tax implications, and regulatory constraints related to planning law. A competent property solicitor must therefore be equipped to deal with these dimensions of practice, not just the title transfer. Understanding the different sources of finance, types of mortgages, solicitor obligations under the *Financial Services and Markets Act* (FSMA), and the implications of tax and planning law is essential to protecting the client's interests and ensuring compliance with professional and legal standards.

7.1 Sources of Finance and Advising on Affordability

Most property transactions require external finance. The majority of residential buyers rely on mortgages, while commercial purchasers may use more complex financial structures. The solicitor's role is not to act as a financial adviser, but to ensure that the transaction is legally sound, mortgage conditions are met, and that the source and structure of funding is transparent and legitimate.

A solicitor who fails to investigate or properly advise on financial arrangements could expose their client to legal risk and themselves to negligence or disciplinary proceedings.

7.1.1 Common Sources of Finance

1. Residential Mortgage Lending

This is primarily provided by banks and building societies to fund property purchases. The agreed-upon funds are released to the borrower's solicitor either on the day of or shortly before completion, and the loan is secured by a legal charge placed on the property. Repayment of this debt is structured to occur over a predetermined fixed or variable term.

Example: Nathan borrows £240,000 to purchase a £300,000 house and contributes a £60,000 deposit from savings. The mortgage lender requires a clean title and compliance with its handbook conditions.

2. Cash Purchases

Cash purchases involve no borrowing, as the buyer funds the entire purchase of the property solely from their own personal assets. Although this eliminates the mortgage process and often leads to faster transactions, the solicitor's role remains crucial; they must still verify proof of funds to comply with stringent anti-money laundering (AML) rules. Furthermore, the solicitor must diligently advise the client to still consider essential precautions like surveys and planning searches, as legal and physical risks to the property still exist even without a lender's involvement.

Example: Mr. Smith, a downsizer sells a previous home and uses the proceeds to fund a new purchase mortgage-free. Solicitor still needs to carry out due diligence.

3. Gifted Deposits

This is often received from parents or relatives. The lender is to be notified as a mandatory requirement. The solicitor's key duty is to obtain formal documentation, such as a gift letter or statutory declaration, which must explicitly confirm that the donor has no beneficial interest in the property and will not reside there after completion. It is a critical risk management point that any failure to disclose the use of gifted funds to the lender could be construed as an attempt at mortgage fraud.

Example: A first-time buyer receives £40,000 from a parent as part of their deposit. The solicitor must inform the lender and confirm that the gift is non-repayable.

4. Third-Party Loans or Informal Finance

In instances of Third-Party Loans or Informal Finance where a client receives a loan rather than a gift, the solicitor is responsible for ensuring the arrangement is properly documented. They must advise the client on the inherent risks of creating equitable interests in the property by the lender, as well as on the need to satisfy the main mortgage lender's requirements for occupier consent forms or waivers to prevent any third-party claim from jeopardizing the primary legal charge.

Example: Diane borrows money from Marcus to form part of her deposit for a property and intends to repay it over 5 years. The solicitor should consider a declaration of trust and confirm the lender will allow this arrangement.

5. Shared Ownership and Help-to-Buy

Shared Ownership and Help-to-Buy schemes introduce complexities by involving a part-purchase and part-rent arrangement, typically with a housing association or a government body. The client initially owns a share, 25% to 75%, and pays rent on the remaining portion. The solicitor's duty is to scrutinize the transaction, focusing on key elements such as the lease terms, the ability for staircasing provisions (the right to buy further shares over time), and any restrictions on assignment and subletting. Furthermore, in the case of Help-to-Buy equity loans, the government places a charge over the property that the solicitor must register and advise on.

Example: A buyer purchases 40% of a shared ownership property and must pay rent on the remaining 60%. The solicitor must ensure the lease reflects the correct ownership proportion and lender consent.

6. Bridging Finance

Bridging Finance consists of short-term, high-interest loans utilized to quickly bridge a gap between the sale and purchase of properties, to facilitate a rapid auction purchase, or to fund

refurbishment before the property is either resold or refinanced. Due to the very nature of these loans, they are characteristically high risk and often come with strict contractual conditions or substantial fees. Consequently, the solicitor's duty involves conducting enhanced due diligence and ensuring the client is fully aware of all the associated financial risks before proceeding.

7.1.2 Solicitor's Role: Advising and Managing Financial Risk

Although solicitors are not financial advisers, they have legal and ethical responsibilities to:

1. Verify Source of Funds

A core professional duty is to verify the source of funds in compliance with the *Money Laundering Regulations 2017*. This process requires the solicitor to identify the origin of the client's deposit and the overall purchase funds. To satisfy this obligation and maintain a clear audit trail, the solicitor must retain supporting evidence on file, which typically includes documents such as bank statements or confirmations of asset sales.

2. Disclose Third-Party Interests

One key duty imposed on a solicitor is to disclose third-party interests to the mortgage lender if any part of the purchase price is being funded by an individual or entity other than the named borrower. Furthermore, the solicitor must proactively advise the client whenever a contribution from a third party, such as a parent, could give rise to a trust arrangement or a beneficial interest in the property, especially if that third party expects a future share or a financial return.

3. Check for Potential Conflicts

Solicitors must diligently check for potential conflicts of interest, especially when acting for both the buyer and the mortgage lender, which is a common scenario that necessitates strict compliance with the detailed requirements of the *UK Finance Mortgage Lenders' Handbook*. Furthermore, if the client intends to use funding from a private or unregulated lender, the solicitor has an enhanced duty to assess whether that specific funding arrangement is both lawful and acceptable to the buyer's primary institutional mortgage lender to prevent jeopardizing the main loan.

4. Warn About Overstretching

Solicitors have a professional duty to flag signs that a client is committing to a transaction beyond their means, and they should be particularly vigilant for several red flags. These include situations where the client is borrowing from multiple sources to fund the purchase or where there appears to be no realistic repayment plan, such as with interest only mortgages that lack a corresponding endowment or investment vehicle. Furthermore, the solicitor should caution the client if the property itself has significant repair liabilities or high service charges that could become unsustainable financial burdens post-completion.

5. Protect Lender Security

When acting for a lender, the solicitor's paramount duty is to protect lender security by ensuring that the mortgage will constitute a first legal charge over the property, granting the lender priority. This requires meticulous due diligence to ensure that no prior unregistered interests threaten the lender's security, meaning the solicitor must investigate and address any potential overriding interests or unregistered rights of way that could undermine the value or enforceability of the charge.

6. Maintain Transparency and Scope

Solicitors have a duty to maintain transparency by ensuring that clear retainer letters are provided to clients, explicitly stating that advice on financial products like mortgages is outside the solicitor's scope of service. If clients nonetheless seek such financial advice, the solicitor must responsibly refer them to a properly qualified and FCA-authorised mortgage adviser or financial planner to ensure the client receives competent guidance.

Illustrative Scenario

Deborah is a first-time buyer purchasing a £400,000 flat. She has £60,000 of her own savings, £30,000 gifted from her grandfather, and a mortgage for the remainder.

Solicitor actions:

- Verify that the gift is from a non-occupying donor and obtains a gift declaration.
- Disclose the gift to the lender, who is satisfied no legal interest will be created.
- Advise Deborah that if her grandfather had any expectation of repayment or control, it might create a constructive trust, risking breach of lender terms.

- Check that her own funds are from verifiable savings accounts and are transferred from a UK-regulated bank.
- Send a letter confirming that the solicitor is not providing financial advice on whether the loan is affordable or sustainable.

7.2 Types of Mortgages

Mortgage arrangements are at the heart of many property transactions. A solicitor advising in a residential or commercial context must be able to identify the type of mortgage involved, understand the legal implications of each structure, and satisfy lender requirements as set out in the *UK Finance Mortgage Lenders' Handbook*. This section explores the principal types of mortgage products, their operation, associated risks, and the specific issues solicitors must address.

7.2.1 Capital Repayment Mortgages

A capital repayment mortgage is a standard loan where the borrower repays both the interest and a portion of the capital with each monthly payment.

Key Features

- The principal balance of the mortgage reduces over time until fully repaid at the end of the term.
- Typically lasts 25 to 35 years; providing a fixed timeline for the borrower to achieve outright ownership of the property.
- Most residential owner-occupier loans use this structure.

Legal and Practical Implications

The use of a repayment mortgage structure carries significant Legal and Practical Implications, offering clear predictability for both the borrower and the lender regarding the loan's timeline and outstanding debt. A major benefit is that the risk of the property falling into negative equity is lower over time, as the borrower is continuously reducing the capital balance.

Furthermore, this structure is straightforward as it requires no separate repayment vehicle, simplifying the borrower's financial management.

Solicitor's Role

The solicitor's role in a mortgaged transaction requires them to first check that the mortgage deed aligns precisely with all the terms specified in the formal offer from the lender. They must ensure that completion occurs only after satisfaction of all lender conditions, which includes securing a clean title, completing all necessary searches, and confirming adequate insurance is in place. Furthermore, the solicitor is obliged to disclose any factors that could potentially affect the property's marketability or undermine the lender's security, such as third-party occupation or any title defects discovered.

7.2.2 Interest-Only Mortgages

The borrower pays only interest during the mortgage term. The capital remains outstanding and must be repaid in full at the end.

Typical Use Cases

- High net-worth individuals.
- Buy-to-let landlords.
- Borrowers with a separate investment or repayment vehicle (e.g., stocks, sale of property).

Risks and Issues

There are distinct risks and issues associated with interest-only mortgages, primarily the danger that if the intended repayment vehicle underperforms, the borrower may face a shortfall at the end of the term. If the capital sum remains unpaid, this can ultimately result in repossession or a forced sale of the property to clear the debt. Consequently, lenders have significantly tightened their lending criteria in recent years, driven by regulatory and internal concerns over borrower affordability and the risk of non-repayment.

Solicitor's Responsibilities

These responsibilities are highly focused on legal and compliance matters, starting with the strict rule to not provide financial advice on the suitability of an interest-only mortgage, as this falls under the regulated activity of *FSMA 2000*. The solicitor must confirm that the lender is fully aware of and accepts the client's proposed repayment strategy. If the property is a buy-to-let, they must also verify that the intended use complies with the lender's requirements and that Assured Shorthold Tenancies (ASTs) are permitted. Above all, the solicitor has a duty to clearly warn the client that they will still owe the full capital sum at the end of the term, unless a lawful and executable plan exists for its repayment.

Example: A client takes a 25-year interest-only mortgage for £300,000 secured on an investment property, planning to repay using the sale proceeds. The solicitor must ensure that this intention is disclosed to and accepted by the lender.

7.2.3 Offset Mortgages

An offset mortgage links the borrower's savings or current accounts to their mortgage balance. Interest is calculated on the net balance (mortgage minus savings).

Advantages

Most significant advantage is the ability to reduce the overall interest payable over the life of the loan. This structure provides the borrower with flexibility in managing finances, allowing them to make additional payments when they can afford to. Furthermore, for high-income clients, the ability to rapidly reduce the debt can sometimes prove to be a more tax-efficient approach compared to other investment strategies.

Considerations

While offset mortgages offer benefits, they come with certain considerations. Lenders typically impose higher arrangement fees or slightly increased interest rates for the flexibility they offer. This type of mortgage requires disciplined financial management by the borrower, as the responsibility for actively paying down the capital faster than the minimum required rests entirely with them.

Solicitor's Role

In an offset mortgage, the solicitor's role is to confirm with the lender whether the specific linked account arrangements form part of the legal charge over the property. They must carefully ensure no terms in the mortgage deed create conflicts, such as set-off rights that could compromise the clarity of the capital repayment schedule. Finally, the solicitor must clearly warn clients that any misuse of the linked accounts, particularly sudden large withdrawals, could quickly negate the intended interest-saving benefits of the product.

7.2.4 Shared Ownership and Government-Backed Loans

These are not mortgage types per se but may involve unique financial structures that interact with standard mortgage lending.

Shared Ownership

This is a unique property model where the buyer purchases a share of the property, typically ranging from 25% to 75%, from a housing association while concurrently paying rent on the remaining portion. This structure necessitates a dedicated shared ownership lease which contains specific provisions governing the arrangement. Due to this complexity, mortgages for these transactions are usually provided by specialist lenders who are experienced and familiar with this particular financing structure.

Solicitor's Duties

A solicitor's duties in such transaction are critical, beginning with the need to review the lease thoroughly to ensure it satisfies all of the mortgage lender's specific requirements. They must then advise the buyer on their staircasing rights which is the contractual option to buy further equity shares in the future. Finally, the solicitor must report to the lender on any issues that could impact their security or the property's value, such as existing rent arrears, unresolved service charge issues, or any covenants that might hinder future resale.

Help-to-Buy Loans

Under the Help-to-Buy Loan scheme, the government provides an equity loan, typically covering 20% of the purchase price, which is secured against the property by a second legal

charge. The buyer is contractually required to repay this loan, along with an amount reflecting the property's value growth, upon the eventual sale of the home or after a predetermined term. Consequently, the solicitor's duty is to ensure the equity loan is correctly registered and to formally confirm the priority of the charges with the Land Registry, verifying that the main lender's charge takes precedence over the government's second charge.

7.2.5 Buy-to-Let Mortgages

Key Features

These mortgages possess several distinctive features; they are generally not regulated by the Financial Conduct Authority (FCA) unless the property is let to an immediate family member. Lenders impose specific, strict conditions, which include maximum loan-to-value (LTV) ratio, and a minimum rental income ratio that typically requires the expected rent to cover 125% to 145% of the mortgage interest. Furthermore, lenders will often dictate the permitted tenancy types, usually requiring the use of Assured Shorthold Tenancies (ASTs).

Solicitor's Duties

In a Buy-to-Let transaction, the solicitor's key duties involve a careful review and report of any existing tenancies or occupants to the lender. They must also ensure that the property meets all mortgagability requirements, such as compliance with necessary EPC ratings and any licensing obligations under *Housing Acts*. Finally, the solicitor is responsible for thoroughly reviewing and confirming adherence to all specific buy-to-let conditions detailed within the mortgage offer.

7.2.6 Commercial and Corporate Mortgages

Commercial and Corporate Mortgages are specialized financial instruments applicable to entities that borrow for business purposes. They are primarily used by company borrowers, property developers, and parties financing the acquisition of mixed-use or purely commercial buildings, reflecting the distinct risk and legal structures associated with business property finance compared to residential lending.

Features

These transactions possess distinct features that differentiate them from residential lending. They often involve bespoke loan agreements and debentures and may include cross-collateralisation, meaning the security can extend over multiple properties or company assets. The legal charges must be registered not only at the Land Registry but also at Companies House under the *Companies Act 2006*, due to the company structure of the borrower.

Solicitor's Tasks

These tasks are highly specialized, requiring them to draft or thoroughly review loan facility agreements. They must guarantee the correct execution of mortgage deeds in line with strict company formalities. They must meet the deadline to file the MRO1 form with Companies House within 21 days of the charge creation to ensure its validity against other creditors. The solicitor must also effectively liaise with both the lender's and borrower's legal teams to ensure full compliance with complex commercial conditions.



7.3 Regulated Mortgage Activity: *FSMA 2000* and Solicitor Duties

7.3.1 Overview of *FSMA 2000* and Regulated Activities

The *Financial Services and Markets Act 2000* (*FSMA 2000*) is the key piece of legislation governing financial services regulation in the UK. It created the comprehensive framework for the regulation of investment advice, insurance distribution, mortgage lending and advice, and consumer credit, ensuring these activities are conducted transparently and fairly.

Mortgage activities are defined in the *Regulated Activities Order 2001* (*RAO 2001*). Specifically, *Article 25A* of the *RAO 2001*, dictates that regulated mortgage activities encompass several key functions including advising on mortgages which means recommending a specific product to a client, as well as the act of arranging a regulated mortgage contract and the task of administering those contracts throughout their term.

These activities require authorisation by the Financial Conduct Authority (FCA). It is a criminal offence to carry out a regulated activity without authorisation, unless an exemption applies.

7.3.2 What Counts as “Advice”?

FSMA and the *FCA Handbook* define “advice” as:

“A personal recommendation to a client in respect of a regulated financial product.”

For mortgage advice, this includes suggesting that a client should or should not take out a particular mortgage, recommending a specific lender or product and expressing views on interest rates, affordability, or repayment terms.

Example of prohibited advice

- “I think you should go with XYZ Building Society for they offer the lowest rate.”
- “A tracker mortgage is better for you because fixed rates are going to rise.”

Such comments would constitute regulated advice, unless the solicitor is FCA-authorised, which most are not.

7.3.3 The Exemptions for Solicitors

Solicitors are not granted automatic authorization under the *FSMA 2000* but are instead permitted to rely on the “exempt professional firm” regime, under *Part 20 of FSMA*. This regime allows them to conduct certain regulated activities, provided four core conditions are met: the solicitor must be properly regulated by the Solicitors Regulation Authority (SRA); the activity must be merely incidental to the legal work they are already performing; the activity must not be separately charged for as a main source of income; and finally, the client must not be misled into believing that the solicitor is acting as an independent financial adviser.

Under the "exempt professional firm" regime, solicitors are permitted to carry out activities that are strictly incidental to the core legal work of the transaction. These tasks include explaining the legal consequences of the mortgage documents, liaising with the lender regarding title issues, necessary consents, or the disbursement of funds, and ensuring the mortgage meets all legal requirements such as proper execution and registration. Furthermore, sending the mortgage funds and dealing with the lender's undertakings is a permitted activity.

However, solicitors are explicitly not permitted to engage in activities that fall within the scope of regulated financial advice. This means they must strictly avoid advising on which mortgage product to select or offering any opinion on the loan's financial viability, affordability, or overall suitability for the client. A solicitor cannot recommend the client take or not take a loan, as this constitutes regulated financial advice that must be provided by an FCA-authorised financial adviser.

7.3.4 Risk Management and Professional Conduct

Solicitors should follow these best practices to stay within the *FSMA* exemption

1. Clear Scope of Retainer

To establish this, a solicitor must explicitly state in the client care letter that financial advice is not provided and falls outside their professional capacity. This clarification ensures the client understands that the solicitor's role is limited to handling the legal

documentation of the property transaction and ensuring compliance with the mortgage lender's instructions regarding the security.

2. Avoiding Personal Recommendations

To ensure compliance and stay within the scope of legal services, solicitors must avoid personal recommendations. They should never express opinions on interest rates, specific products, or individual lenders. If a client explicitly seeks advice regarding their mortgage or financial viability, the solicitor must immediately refer them to an FCA-authorised mortgage broker or financial adviser.

3. Training and Staff Awareness

In upholding compliance, firms must implement rigorous training and staff awareness programs, ensuring that all staff clearly understand the legal boundary that separates the provision of routine legal services from regulated financial advice. Support staff should be thoroughly trained not to make offhand comments or offer casual opinions about a client's specific mortgage options or suitability, as this risks crossing into unauthorized and unregulated activity.

4. Maintaining Objectivity When Acting for Lender and Borrower

When acting for both the borrower and the lender, solicitors have a critical professional duty to maintain objectivity. This requires them to formally disclose any potential conflicts of interest that may arise. They must strictly follow the instructions and compliance requirements detailed in the *UK Finance Mortgage Lenders' Handbook*. The solicitor must diligently report to the lender any title defects, short leases, or third-party interests that could diminish the property's value or compromise the lender's security.

5. Monitoring Changes to FSMA and the RAO

To ensure ongoing compliance, solicitors must diligently implement a process for monitoring changes to *FSMA* and the *RAO*, which involves continuously staying updated with FCA guidance and SRA alerts concerning the regulatory scope and the limits of the professional firm exemption. This vigilance is essential because the legal framework governing regulated financial activity can shift, especially after major financial crises or

legislative reforms, potentially altering the rules on what legal professionals are permitted to do.

7.3.5 Consequences of Breach

Engaging in regulated activity without required authorisation or exemption can lead to severe consequences. These range from Criminal liability under s. 23 FSMA, potentially leading to substantial fines and up to 2 years' imprisonment, to strict disciplinary action by the SRA, which may impose sanctions or refer the solicitor to the Solicitors Disciplinary Tribunal. Furthermore, the solicitor faces the risk of negligence claims from clients who suffered loss after relying on improper advice, and in certain cases, the breach could lead to the voidability of the contract, thereby affecting the validity of the mortgage or associated liabilities.

Example: A solicitor, while acting for a residential buyer, tells the client that a particular lender offers better terms than another and encourages them to switch. The client later suffers losses due to interest rate changes. The solicitor could face regulatory and civil liability, even if their advice was well-intentioned.

Case Example and Analysis

James, a first-time buyer, asks his solicitor, “Should I go for the 2-year fixed or the tracker mortgage? My broker said both are suitable.”

Appropriate Response from the Solicitor:

“I can’t advise on which product you should choose. That’s a financial decision best made with your mortgage broker. My role is to ensure the legal side is sound – such as confirming your mortgage is properly registered, that the lender has a valid charge, and that there are no title issues.”

Inappropriate Response from the Solicitor:

“I’d go with the fixed rate. Interest rates look like they’ll rise next year.”

Why? That crosses the line into regulated advice, and breaches the exemption under FSMA. Even though the solicitor’s view was personal and informal, it may still be actionable.

7.4 Planning Law and Property Development

Planning law, which is imposed by local authorities, regulates whether a building can be constructed, altered, or extended, and also specifies the authorized use of a property, ensuring that uncontrolled development does not take place. Planning law, in regulating the use and development of land and buildings, balances private property rights with public interest in controlling urban and rural environments. Because planning matters and any associated breaches run with the land, solicitors must not only understand how planning law affects property transactions, but also be able to identify risks, advise on consequences, and ensure buyers are fully informed of any restrictions or outstanding breaches.

Ignorance or omission in this area can lead to enforcement notices, financial losses, loss of resale value, and even criminal liability, especially in listed building cases.

7.4.1 Legislative Framework and Key Authorities

The statutory framework is primarily governed by:

- *Town and Country Planning Act 1990 (TCPA 1990)*
- *Planning (Listed Buildings and Conservation Areas) Act 1990*
- *National Planning Policy Framework (NPPF)*
- Local Development Plans produced by Local Planning Authorities (LPAs)

LPAs administer planning applications, enforcement powers, listed building consent, and local plans and development frameworks.

The solicitor must understand what powers are devolved to LPAs and how these powers intersect with private rights.

7.4.2 What Constitutes Development?

Section 57(1) TCPA 1990 legally requires planning permissions to carry out any development of land. Under s.55 of the *TCPA 1990*, “development” includes the carrying out of building,

engineering, mining or other operations on, over, or under land. It also includes any material change of use of land or buildings.

Examples of Development include erecting or demolishing a structure, subdividing a single dwelling into multiple flats, converting residential property to commercial use, or hanging agricultural land to residential gardens.

What is Not Development?

Development that requires planning permission does not include certain minor actions. Actions that are not considered development include among others internal alterations to a building that do not affect its external appearance, general maintenance works, such as roof or chimney repairs, and the erection of certain temporary structures, depending on their intended duration and the overall impact they have on the surrounding area.

Furthermore, certain material changes of use are excluded from the definition of development under s.55(2) *TCPA 1990*, specifically a change of use that remains within the same Use Class, as categorized by the relevant *Town and Country Planning (Use Classes) Order*. For example, in England, a change from a clothes shop to a restaurant does not require permission as both fall under the broad Class E (Commercial, Business and Service), which was introduced in September 2020 and includes retail, food/drink consumption on premises, and offices. In contrast, a change from one class to another (e.g., from an office, Class E, to a dwelling house, Class C3) generally will require planning permission.

Sui generis uses, considered unique or potentially disruptive, include establishments like pubs, hot food takeaways, and cinemas, are subject to stricter control. A change to or from a *sui generis* use will always require planning permission, unless a specific permitted development right automatically grants that consent.

Effect of Permission

Once obtained, planning permission generally runs with the land, benefiting the property and all future owners unless the permission itself specifies otherwise. However, planning permissions are not indefinite; they usually include a condition requiring them to be implemented within a set timeframe, after which they will lapse if the development hasn't

started. This standard period is usually three years from the date of permission in England, and five years in Wales.

7.4.3 Planning Permission: When is it Required?

If development is proposed, planning permission must be obtained unless the work falls within Permitted Development Rights (PDR) or it qualifies as non-material alterations to existing permissions. Where a proposed development does not benefit from deemed permission, the owner must apply to the local authority for express planning permission, which may be either outline or detailed. Outline permission establishes the principle of development subject to reserved matters, which must be approved within three years, with work commencing within two years of that approval. Detailed permission, by contrast, requires full plans and is more costly, but once granted allows development to begin subject to planning conditions. Any detailed permission lapses if development is not started within three years of its grant.

Permitted Development Rights (PDR)

Even if development within the definition of s 55 is proposed, it is not always necessary to apply expressly for planning permission as, in some cases, the right is automatically granted. These rights, established by the *Town and Country Planning (General Permitted Development) Order 2015 (GPDO)* in England and *Town and Country Planning (General Permitted Development) Order 1995* in Wales, are a crucial element of property law that allow homeowners and developers to undertake specific minor construction and alteration works without the need to apply for express planning permission from the local authority. These rights cover common projects such as small rear extensions (which are subject to strict limits on height and footprint), loft conversions that fall under specified cubic allowances, and the installation of features like solar panels or outbuildings within the property's curtilage.

Limitations on PDR

There are significant limitations on PDRs, which can restrict or entirely remove a property owner's ability to undertake works without applying for full planning permission. These restrictions may be imposed through an *Article 4 Direction*, which local authorities frequently

use to control development in sensitive areas. LPAs can issue an *Article 4 Direction* to effectively exclude the application of PDRs in specific areas, like conservation areas. This measure allows the LPA to maintain stricter control over development. Consequently, property owners must apply for express planning permission even for minor changes, such as installing new windows or erecting a porch.

Furthermore, PDR can be constrained by conditions attached to previous planning permissions for the site, or by the property's status as a Listed Building, which effectively removes most PDR entirely, demanding a higher level of consent for virtually all external or internal changes.

Solicitor's Role

Solicitor's Role is in identifying these limitations and ensuring compliance. The solicitor must first confirm whether any existing works were lawfully permitted, either through PDR or express consent. This requires a thorough review of the planning history of the property, cross-checked against the information disclosed in the Local Authority Search (CON29). Ultimately, the solicitor must advise buyers on the necessity of obtaining retrospective planning permission for unlawful works, or, where appropriate and acceptable to a lender, advise on securing indemnity insurance to cover the financial risk of potential enforcement action. The solicitor must consult the most recent version of the GPDO and ensure that no *Article 4 Direction* has withdrawn the permitted development right in question.

7.4.4 Listed Buildings and Conservation Areas

Listed Buildings

Under the *Planning (Listed Buildings and Conservation Areas) Act 1990*, buildings of special architectural or historic interest are granted protection.

Grades of listing:

- Grade I – Buildings of exceptional interest.
- Grade II* – Particularly important buildings.

- Grade II – Nationally important and of special interest.

Key Legal Points

- Listed Building Consent (LBC) is required for any works affecting a listed building's character even internal alterations.
- Works without LBC are a criminal offence, not just a civil breach.
- Consent is needed in addition to planning permission.

Example: Removing a Victorian fireplace from a listed terrace without LBC may result in prosecution and a requirement to reinstate it at the owner's cost.

Conservation Areas

Conservation Areas are formally designated by LPAs as areas possessing special architectural or historic interest, leading to the application of additional planning controls beyond the norm. These controls are put in place to protect the character of the area, and typically include restrictions on demolition, requirements for the use of specific designs or materials in any alterations, and, trees are often protected automatically, irrespective of whether a *Tree Preservation Order* (TPO) is in place.

Solicitor's Duties

These duties regarding conservation areas are essential for protecting the buyer. The solicitor must perform thorough due diligence to check if the property is listed or located within a conservation area and then provide specific advice regarding the planning history and any previous consents granted. They must explicitly warn the client that due to the heightened protection and scrutiny in these areas, applications for retrospective consent for unauthorized works are typically unlikely to succeed, exposing the buyer to the risk of costly enforcement action.



7.4.5 Planning Enforcement: Powers and Time Limits

LPAs have tools for enforcement when development is carried out in contravention of planning control. Failure to comply with enforcement, stop, or condition notices is a criminal offence and can result in significant fines.

Enforcement Notices

They can serve these when unauthorised development has occurred by virtue of *s.172 TCPA 1990*. An enforcement notice specifies the exact breach of planning control, such as an unauthorized extension, and requires the recipient to take specific remedial action, for example, demolition or alteration, within a set timeframe specified by the LPA. Enforcement warning notices may be served on all interested parties where the LPA considers there has been a breach of planning control and it becomes effective within 28 days. The notice is to invite the recipient to apply for retrospective permission to regularise matters before further enforcement

Time Limits for Enforcement

Until April 2024, the enforcement time limits under the *TCPA 1990* provided a four-year rule for unauthorised building works and for change of use to a single dwelling house (*s.171B(1)*), and a ten-year rule for other changes of use and breaches of condition (*s.171B(3)*). Following the *Levelling-up and Regeneration Act 2023*, which came into force on 25 April 2024, England has abolished the four-year rule, meaning that a single ten-year limit now applies to all breaches of planning control, including operational development and single dwellings. The ten-year limit will not apply where the alleged operational development or change of use to a single dwelling-house occurred before 25 April 2024. In contrast, the position in Wales remains unchanged, with a four-year period applying to building works and single dwelling use, and ten years for all other breaches.

It is important to note that these timeframes can be extended if deception or concealment is involved (*Welwyn Hatfield BC v Secretary of State* [2011] UKSC 15).

Stop Notices

LPAs can issue Stop Notices under *s.183 TCPA*, which are formal directives used to prohibit all further activity on a site while underlying planning enforcement issues are being resolved. These notices are a powerful tool for quickly halting unauthorized work and can be issued either simultaneously with or following the service of an initial enforcement notice. They cannot be issued independently.

Planning Contravention Notice (PCN)

A PCN serves as a preliminary investigatory tool utilized by LPAs to obtain essential information regarding a suspected planning breach before they decide on issuing a formal enforcement notice. The recipient of a PCN is legally obligated to respond truthfully and accurately to the questions posed, as a failure to do so, or providing false or misleading information, can result in fines.

Solicitor's Role

Their role is to identify any live enforcement action or the inherent risk of future action. This necessitates a careful review of the CON29 results (Local Authority Search) for any existing notices or a history of planning breaches. Based on this due diligence, the solicitor must then accurately advise the buyer on their potential exposure to enforcement action and recommend appropriate measures, such as the need for indemnity insurance or the attempt to achieve regularisation of the unauthorized development.

7.4.6 Section 106 TCPA 1990 Agreements and Community Infrastructure Levy (CIL)

Section 106 Agreements (Planning Obligations)

These are legally binding contracts made under *s.106 TCPA 1990*, whose purpose is to make a proposed development acceptable to the local authority where it would otherwise warrant refusal. These agreements impose various obligations, which commonly include requirements for affordable housing provision, financial contributions to local infrastructure such as schools, highways, and parks, and measures for environmental mitigation. These agreements are registered as a Local Land Charge and must therefore be fully disclosed in all property searches, as the obligations are binding on future owners.

Community Infrastructure Levy (CIL)

The CIL is a fixed charge per square metre imposed by local authorities on certain types of new developments, primarily residential and retail projects. Introduced under the *Planning Act 2008* and implemented via the *CIL Regulations 2010*, its purpose is to help fund infrastructure needed due to development. Local authorities publish specific CIL charging schedules. Failure to pay the CIL on time results in serious consequences, including financial penalties, the withholding of completion certificates by the local authority, and significant difficulty in the future resale of the property.

Solicitor's Duties

These duties regarding CIL are essential for due diligence and compliance. The solicitor must first review the planning permissions to determine whether the development is subject to CIL or a s. 106 obligation. They must then ensure that all CIL-related conditions have been properly discharged before completion. It is vital to warn buyers if any outstanding CIL obligations exist, a common issue in developer sales. Finally, the solicitor must check if any CIL exemptions, such as those for self-build projects, legally apply and have been registered properly with the local authority to ensure the client is not improperly charged.

7.5 Conclusion

In practice, conveyancing sits at the crossroads of finance, regulation, tax and planning, and the solicitor's value lies in managing these interfaces with precision. They must verify and document sources of funds, protect lender security, and stay within FSMA's limits while coordinating mortgages ranging from standard repayment to shared-ownership and commercial structures. Equally, planning diligence; PDR limits, listed-building controls, enforcement risks, and s.106/CIL obligations, protects value and avoids future liability. Clear retainers, conflict checks and rigorous reporting to lenders anchor professional conduct.

8

LEASEHOLD TRANSACTIONS; GRANT, ASSIGNMENT AND ENFORCEMENT

Commercial leases form the backbone of property-based business arrangements, defining how property, profit, and risk are shared between landlord and tenant. Their structure governs possession, rent, repair, insurance, and long-term control of premises, making precision vital. Mastery of lease formalities, execution, registration, and SDLT compliance ensures enforceability, while well-crafted covenants on repair, user, and alienation protect value and prevent dispute. This chapter explores assignment, underletting, breach remedies, and the *Landlord and Tenant Act 1954* regime for renewal and termination, core principles that anchor stability, fairness, and commercial certainty in every leasing relationship.

8.1 Structure and Content of Commercial Leases

8.1.1 Parties and Premises

Leases identify the landlord and tenant, including their registered address and legal status (e.g. company, LLP, individual). The demised premises must be clearly described, ideally with a plan compliant with Land Registry requirements (*Practice Guide 40*).

8.1.2 Key Terms

- **Term:** Commencement and duration (e.g. 10 years).
- **Rent:** Frequency, amount, and review provisions.
- **Break clauses:** Right to terminate early, subject to conditions.
- **Service charges:** Recoverable costs for shared services (often in multi-let buildings).

8.1.3 Form of the Lease

The form and legal execution of a lease are critical to its enforceability, especially for leases exceeding seven years or those intended to bind third parties. Understanding the correct form of lease helps avoid invalidity, rejection by the Land Registry, or unenforceability against subsequent purchasers or tenants. Below is a detailed breakdown of when a lease must be executed as a deed, when registration is required, and how short leases are treated differently from long leases.

1. Lease by Deed – Legal Requirement

Under the s.52(1) and s.1(2)(b) of the *Law of Property Act 1925*, any lease for a term greater than three years must be created by deed. This applies to a newly granted lease for a fixed term of more than 3 years, assignments of such leases and lease variations that extend the term beyond 3 years or affect a legal estate.

Definition of a Deed

By virtue of s.1 *Law of Property (Miscellaneous Provisions) Act 1989*, a document must:

1. Clearly state that it is a deed.
2. Be signed by the individual executing it.
3. Be witnessed and attested.
4. Be delivered as a deed.

This means that both landlord and tenant must sign in the presence of independent witnesses (not spouses or minors), and the lease must expressly state it is “executed as a deed.”

2. Leases Not Required to Be by Deed (Short Leases)

Under *s.54(2) LPA 2025*, a lease for a term not exceeding 3 years, taken in possession (i.e., immediate entry), and at the best rent reasonably obtainable without a fine can be made orally or in writing without a deed, and still create a legal tenancy.

This exception applies to top-up shops, short-term commercial licences and temporary office tenancies.

However, many landlords still prefer formal documentation for clarity and enforcement.

3. Registration Requirements – Leases Over 7 Years

Under *Land Registration Act 2002*, leases granted for more than 7 years must be registered at the Land Registry by way of a new title (using Form AP1), and accompanied by the lease itself (or a certified copy), plan, SDLT/LTT certificate, and fee.

The lease must be drawn to comply with Land Registry’s requirements for plan clarity (*Practice Guide 40*). It must be executed properly as a deed.

Triggering Events for Registration

- New lease of more than 7 years
- Lease assignment (if previously unregistered)
- Lease with an option to renew that may extend beyond 7 years
- Variation of an existing lease that increases the term to more than 7 years

Failure to register means the lease has no legal effect against third parties, though it may still be enforceable as a contract between the parties.

4. Leases Between 3 and 7 Years

These leases must be in writing and signed by both parties, must be by deed, do not require registration unless they fall into other categories (e.g. lease of unregistered land that triggers first registration) and they can be protected by noting the interest (e.g. a notice on the landlord's title under s.32 *LRA 2002*).

While registration is not compulsory, practitioners often recommend noting the lease to ensure it is enforceable against future purchasers or lenders of the freehold.

5. SDLT and Lease Term Considerations

All leases exceeding 7 years are also subject to Stamp Duty Land Tax (SDLT) (or Land Transaction Tax (LTT) in Wales), based on the premium paid (if any) and the Net Present Value (NPV) of rent over the lease term. SDLT must be paid within 14 days of the effective date (usually completion), certified using the SDLT5 certificate and submitted as part of the Land Registry application

Failure to file the SDLT return or include the SDLT5 will result in rejection of registration.

8.2 Key Leasehold Covenants

Covenants in a lease are legally binding promises made by either the landlord or the tenant. In commercial leases, these covenants allocate responsibility and risk, and they form the core of the legal relationship between the parties. A breach of covenant can lead to enforcement action, including damages, injunctions, or forfeiture.

8.2.1 Repair and Decoration

Tenant's Repair Obligations

Most commercial leases are on a Full Repairing and Insuring (FRI) basis, meaning the tenant is responsible for all repairs to the demised premises. Absolute repair covenants require the tenant to maintain the premises in good and substantial repair, even if the property was in poor condition at the lease's start. This can impose a hefty liability, especially near lease expiry (due to dilapidations claims).

Limiting Repair Liability

Schedule of Condition can be annexed to the lease, evidencing the state of the property at the start, and limiting the tenant's duty to keep the premises "in no worse condition." In *Jervis v Harris* [1996] Ch 195, it was stated that landlords can include a clause enabling them to enter and carry out repairs at the tenant's cost.

Decoration

Most leases require internal redecoration every few years and external decoration periodically. End-of-term clauses often require redecoration regardless of prior compliance.

Solicitor's Role

To advise tenant clients to negotiate a schedule of condition, clarify the extent of liability and the condition of the property, to ensure the repair clause protects asset value for client landlords.

8.2.2 Insurance

Usually, the landlord is responsible for the insuring the structure and common parts. The tenant reimburses the insurance premium as part of the service charge.

Standard perils covered include fire, flood, storm, lightning, subsidence, vandalism, and loss of rent cover (12–36 months typically).

Tenant Obligations

They are not to do anything to invalidate the policy. They are to notify the landlord of damage or risk events, and may be required to insure contents and fit-out themselves.

Key Issues

The lease should define what is covered, the insured amount, and how premiums are apportioned. If damage renders the property unusable, the lease should provide for a rent suspension clause.

Solicitor's Role

They are to ensure the client knows what they are (and are not) insured against, to confirm replacement cost is used in cover, not just market value, and check rent suspension clauses and clarify who bears the risk gap.

8.2.3 User Clause

This clause restricts how the premises may be used. It protects the landlord's reversionary interest and the value of other tenancies in multi-let buildings.

The common wording of the clause is, "The property shall be used only as offices within Use Class E of the *Town and Country Planning (Use Classes) Order 1987*."

Risks for Tenants

Tenants operating outside the user clause may breach covenant, void insurance. This breach may lead to enforcement or forfeiture. Planning permission may be needed for a change of use.

8.2.4 Alterations

Landlords aim to restrict the extent of a tenant's alterations, fearing that changes customized for the current tenant might deter future tenants, and therefore, they include specific covenants to prevent a tenant from making any desired change in the absence of such a restriction.

Structural alterations affect foundations, walls, or roof, and are usually prohibited. Non-structural alterations, including Internal layouts, signage, fittings, are often allowed with consent.

Common Lease Provisions

Alterations subject to landlord's consent not to be unreasonably withheld per s.19(2) *Landlord and Tenant Act 1927*.

Landlord may impose conditions such as restoration at lease end, approved contractors/designs, payment of costs and reinstatement bond.

Fit-Out Works

These may require a licence for alterations, including detailed plans and specifications, and method statements and building control approval.

Solicitor's Role

They are to ensure that the client's intended use is lawful and falls within the permitted use as well as, advise tenant to seek landlord's consent or variation if use is borderline.

8.2.5 Rent and Rent Review

Base rent is rent payable quarterly in advance unless otherwise agreed. Leases typically state it is "clear of deductions or set-off." Rent reviews mechanisms include upward-only open market review, which is the most common, index-linked (e.g. RPI/CPI), and turnover rent which is based on business income, used in retail.

The review process is triggered at defined intervals (e.g. every 5 years). If parties disagree, a surveyor or arbitrator resolves the issue. Interim rent may be payable pending resolution of the issue.

Solicitor's Role

The solicitor is to ensure review clauses are clear and comply with *RICS guidelines*, warn tenants about uncapped rent increases, and landlords should retain discretion on comparable premises and terms.

8.2.6 Alienation (Assignment and Subletting)

Assignment

This is the transfer of the whole lease to another party. It usually requires landlord's written consent, which is not to be unreasonably withheld (*s.19(1) LTA 1927*).

It may be subject to incoming tenant meeting financial criteria and the Authorised Guarantee Agreement (AGA) provision by the outgoing tenant.

Underletting

This entails the creation of a lease within a lease. It is often limited to a part or whole of the premises. It must be at market rent and must not undermine the superior lease (e.g. term must be shorter).

Solicitor's Role

The buyer's solicitor checks lease terms carefully to confirm alienation is permitted, and advises the tenant on the risk of continued liability under AGA. For landlords, the solicitor is to draft clear licence to assign/underlet with appropriate conditions and cost recovery clauses.

8.3 Granting a Lease or Underlease: Procedures and Documentation

The grant of a lease or underlease involves a series of technical and legal steps that must be completed with care. Whether acting for the landlord or the tenant, a solicitor must ensure that the lease is legally valid, reflects the parties' commercial agreement, and protects the client from future liability. Mistakes in drafting or process can lead to defective tenancies, unenforceable terms, loss of income, or unexpected obligations.

8.3.1 Pre-Lease Procedures

1. Heads of Terms (HOTs)

These are documents negotiated by agents or solicitors that, while not legally binding, establish the fundamental lease agreement. They serve as the definitive basis for drafting the formal legal document. Typical contents include the parties' names, the term length, details regarding rent and rent-free periods, the existence of break rights, the permitted use of the premises, the conditions governing assignment or subletting, and the terms for service charges and repair. It is good practice for the solicitor to attach the agreed Heads of Terms to the lease.

2. Drafting and Negotiating the Lease

The landlord's solicitor is responsible for drafting the lease, which must incorporate key clauses to govern the tenancy. These essential clauses include a clear definition of the demised premises with compliant plan, terms for rent and rent review, detailed repair and insurance obligations, restrictions governing the property's use and alterations, specific alienation provisions, and forfeiture clauses. To standardize documentation, particularly in multi-let properties, Model Commercial Lease (MCL) templates are frequently used.

3. Contracting Out of the *Landlord and Tenant Act 1954*

To legally contract out of the *Landlord and Tenant Act 1954* and exclude a tenant's statutory security of tenure (renewal rights), the parties must follow a strict pre-grant procedure. The landlord must first serve a warning notice on the tenant, which must be given at least 14 days before the lease is signed, unless a statutory declaration is utilized. The tenant must then provide a simple or statutory declaration confirming their awareness of the exclusion. Finally, the lease itself must clearly state that the tenant has no renewal rights. Failure to adhere to this precise process renders the entire exclusion invalid.

8.3.2 Due Diligence and Investigations

1. Title Review

The landlord's solicitor provides an official copy entries and title plan, leasehold title (if the landlord is themselves a tenant), and evidence of ownership or superior lease.

In return the tenant's solicitor checks if the landlord has power to grant the lease, as well as the existence of any restrictions or charges preventing lease grant and any superior lease covenants affecting use, term, or alienation.

2. Planning and Use

The tenant's solicitor confirms that the tenant's intended use of the premises is legally compliant with both the existing planning permission and the user clause in the lease. They

must verify that any prior breaches of planning control have been regularised and that the property is not subject to planning enforcement action or listed building restrictions.

3. Energy and Building Standards

The property must satisfy the *Minimum Energy Efficiency Regulations Standards (MEES)*, meaning the Energy Performance Certificate (EPC) rating must be E or above to be lawfully let. The solicitor is responsible for checking the existence and validity of the EPC. For compliance and health and safety, the solicitor must also confirm the presence and review the contents of asbestos reports and all other relevant Health & Safety documents.

4. Service Charge and Insurance Information

For a commercial lease, the solicitor must diligently review past service charge accounts and forecasts, particularly in multi-let buildings, to confirm costs and liabilities. Simultaneously, they must ensure the landlord's insurance cover fully aligns with the lease terms, and provides for structural cover, protection against rent loss, and necessary public liability insurance.

8.3.3 Executing the Lease

1. Form

Leases over 3 years must be executed as deeds (*s.52 LPA 1925*). The deed requirements per *s.1 LP(MP)A 1989*, provides that it must be expressly stated to be a deed, signed and witnessed, and delivered as a deed.

2. Attestation

The signatures must be independently witnessed. Where parties are companies, it must be signed by two directors, or one director in the presence of a witness.

3. Lease Commencement

The lease usually starts on a specified completion date. Unless agreed otherwise, possession and liability for rent/service charge usually begin on that completion date.

8.3.4 SDLT or LTT Compliance

1. Stamp Duty Land Tax (SDLT)

Applicable in England and Northern Ireland, SDLT is payable on premium paid for the lease and the Net Present Value (NPV) of rent. It must be paid and return submitted within 14 days of lease commencement. Upon submission, a SDLT5 certificate is issued and used for registration.

2. Land Transaction Tax (LTT)

This features a similar structure to SDLT based on the lease premium and rent, though with its own distinct tax thresholds and bands. but is only applicable in Wales. A key difference is that the LTT return is due within 30 days of the lease commencement.

3. Solicitor Duties

The solicitor's duties regarding lease taxes are to accurately calculate the correct liability, including any applicable indexation of rent, to obtain the required funds in advance from the tenant, and to timeously file the tax return with the relevant authority and retain official confirmation.

8.3.5 Registration Requirements

1. Leases Over 7 Years

Such leases must be registered at the Land Registry, which involves the creation of a new title number. The registration requires the submission of Form AP1, the executed lease deed, the mandatory SDLT/LTT certificate confirming tax payment, and any other required consents or certificates relevant to the transaction.

2. Leases of 7 Years or Less

Such leases do not require mandatory registration. However, a tenant can still protect their interest against third parties by applying to have a notice entered on the landlord's title under s. 32 of the *LRA 2002*. This noting process provides visibility of the tenant's rights to any prospective purchaser of the landlord's freehold title.

3. Where the Land is Unregistered

Here, the grant of a lease, or certain dealings with it such as the assignment of a lease with more than seven years left to run, may trigger the requirement for first registration of the title. If first registration is triggered, the applicant must submit Form FR1, the lease deed, evidence of the freehold title, and the required identity forms.

8.3.6 Granting an Underlease

An underlease is a lease granted out of an existing leasehold interest, that is, tenant becomes landlord of the under-tenant. Such arrangements are only valid if permitted by the superior lease.

Legal Principles

The underlease must be contracted out of the security of tenure provisions of the *Landlord and Tenant Act 1954* if the superior lease is and its term must be shorter than the headlease. It must be consistent with headlease covenants (e.g. repair, use, alterations). The head tenant remains liable to their landlord under the main lease.

Solicitor's Duties

The solicitor's duties concerning an underlease include checking the superior lease to confirm that underletting is permitted, seeking the head landlord's formal consent if required, reviewing the compatibility of the headlease and underlease terms, and ensuring the head tenant understands their continuing liability to the superior landlord.

Granting a Lease or Underlease: Procedures and Documentation



8.4 Assignment, Licences to Assign, and Authorised Guarantee Agreements (AGAs)

8.4.1 Assignment: Meaning and Legal Framework

Assignment refers to the legal transfer of a tenant's entire interest in a lease to another person, known as the assignee. Once an assignment has occurred, the assignee becomes the new tenant and assumes all rights and obligations under the lease from the date of assignment. The assignor (original tenant) relinquishes their possessory interest, but their ongoing liability depends on the lease's age and contractual structure.

Assignments differ from underletting, which involves creating a subordinate lease while the original lease remains in effect. In an assignment, the tenant exits the lease altogether.

Legal Position Based on Lease Date

- **Pre-1996 leases:** In leases before 1 January 1996, the original tenant remains liable under privity of contract even after assignment unless expressly released by the landlord. The assignee becomes liable via privity of estate. The landlord can pursue either party.

- **Post-1996 leases:** Leases contracted after 1 January 1996 are governed by the *Landlord and Tenant (Covenants) Act 1995*. The tenant is automatically released from ongoing liability upon a lawful assignment unless required to enter into an Authorised Guarantee Agreement (AGA).

Statutory Modification

Section 19(1) of the *Landlord and Tenant Act 1927* provides that where a lease states that assignment is prohibited “without the landlord’s consent,” the law implies a term that such consent must not be unreasonably withheld or delayed, although the lease may specify lawful conditions for withholding consent.

8.4.2 Licence to Assign – Function and Formalities

A Licence to Assign is a formal deed by which the landlord gives written consent to a tenant’s proposed assignment. This document is vital where a lease contains a qualified covenant against assignment, which is the norm. Consent must be obtained before the assignment takes place, or the tenant risks breaching the lease and triggering forfeiture provisions.

A licence is necessary for because it grants the landlord control over who occupies the premises as the new tenant, it imposes necessary conditions on the outgoing tenant, such as requiring an Authorised Guarantee Agreement (AGA), which guarantees the assignee's performance, and prevents the landlord from granting automatic consent by estoppel, meaning the tenant cannot argue consent was implicitly given through the landlord's conduct.

Contents of the Licence

- Full details of the assignor, assignee, landlord, and property.
- Confirmation of landlord’s consent to the assignment.
- A clause obliging the outgoing tenant to execute an AGA.
- Tenant undertakings to pay the landlord’s legal and surveyor costs.
- Covenants by the assignee to comply with all lease covenants post-assignment.

- Warranties that no premium or inducement has been paid in breach of alienation clauses.

Some licences may also include post-completion obligations, such as providing copies of the executed deed of assignment or notifying the Land Registry.

Timing and Statutory Duties

Under s. 1 of the *Landlord and Tenant Act 1988*, if the lease mandates that the landlord's consent is required for alienation, the landlord must give consent or refuse it within a reasonable time (typically 21–28 days). The refusal must be provided in writing with clear reasons, and the landlord is prohibited from imposing unreasonable conditions to grant that consent.

Failure to comply could expose the landlord to a claim for damages for losses resulting from the delay.

In ***Ansa Logistics Ltd v Towerbeg Ltd*** [2012] EWHC 3651 (Ch), the tenant sought the landlord's consent to a proposed underletting, which the landlord refused on grounds including alleged parting with possession, a breach of covenant, doubts over the proposed assignee's financial standing, and concerns about interference with its redevelopment plans. The court held that the refusal was unreasonable under s.1 of the *Landlord and Tenant Act 1988*, as the landlord's true motive was to further its redevelopment interests rather than to protect the landlord-tenant relationship; the claimed financial concerns were unsubstantiated; and no covenant breach had been established.

In ***No. 1 West India Quay (Residential) Ltd v East Tower Apartments Ltd*** [2018] EWCA Civ 250, the landlord refused consent for assignment by imposing excessive conditions, including high administration and surveyor fees and a bank reference. The Court of Appeal held that one bad reason does not invalidate a refusal if the remaining reasons are sound and the landlord would have refused consent on those alone.

8.4.3 Authorised Guarantee Agreements (AGAs)

This is a statutory device under *s.16 LT(C)A 1995* used to enable a landlord to require the outgoing tenant (assignor) to guarantee the incoming tenant's obligations after an assignment, thus preserving the landlord's security in case of tenant default.

AGAs are only enforceable if they are "reasonable in the circumstances," and their duration and scope must be limited. The landlord cannot use the AGA mechanism to impose any additional obligations on the outgoing tenant beyond the terms already stipulated in the original lease. The AGA is often attached as a schedule to the Licence to Assign.

Key Features

- AGAs apply only to post-1996 leases.
- They must be entered into at the time of assignment.
- They are limited to the immediate assignee only.
- The guarantee ends when the assignee assigns the lease lawfully again.
- The outgoing tenant may be required to pay rent or compensate for breaches or take a new lease if the assignee defaults and the lease is forfeited.

The case of **K/S Victoria Street v House of Fraser** [2011] EWCA Civ 904 confirmed that it was reasonable for a landlord to demand an AGA when the lease terms included such a requirement and the assignee was of lesser financial strength.

8.4.4 Solicitor's Role – Assignor, Assignee, and Landlord

For the Assignor (Outgoing Tenant)

The solicitor must review the lease for alienation restrictions and any conditions precedent to assignment and advise the client on the need for landlord consent and the risks of proceeding without it. A formal written request for consent must be served under the lease and the *Landlord and Tenant Act 1988 (LTA 1988)*, and the solicitor will assist in negotiating the terms of the Authorised Guarantee Agreement (AGA). Finally, they must ensure the assignor complies with all conditions, such as providing references.

For the Assignee (Incoming Tenant)

The solicitor must review the existing lease and title to understand all covenants and future liabilities and ensure compliance with planning law, user clauses, and insurance requirements. Their due diligence includes checking for any rent arrears or existing covenant breaches (e.g., disrepair) and examining the terms of the service charge regime. They are responsible for arranging the execution of the deed of assignment and entering into a direct covenant with the landlord, if required.

For the Landlord

The solicitor must perform a covenant strength review on the proposed assignee to assess their financial stability and may instruct surveyors to review the impact of the change on the asset's value. The solicitor then drafts and executes the Licence to Assign, incorporating any required conditions such as a Rent Deposit Deed, Personal Guarantees, or an AGA. Throughout the process, the solicitor must ensure compliance with the *Landlord and Tenant Acts 1927 and 1988* to avoid any unreasonable delay or arbitrary refusal of consent.

8.5 Remedies for Breach of Lease

A breach of lease occurs when the tenant fails to perform any of their contractual obligations under the lease. This may include non-payment of rent, unauthorised alterations, breach of repair covenants, or unlawful use of the premises. Landlords have several remedies available, ranging from peaceable re-entry (forfeiture) to court action for damages, or using statutory enforcement powers such as Commercial Rent Arrears Recovery (CRAR).

Remedies must be used appropriately and in accordance with legal procedure. Mishandling a remedy, especially forfeiture, can expose the landlord to claims for wrongful eviction or unlawful re-entry. Each remedy must be assessed based on the type of breach, the lease terms, the commercial relationship, and the risks of escalation.

8.5.1 Forfeiture

Forfeiture is the landlord's right to terminate the lease early due to tenant default. It can be exercised by peaceable re-entry (changing the locks when the premises are unoccupied) or court proceedings (usually by possession claim).

This right must be expressly included in the lease, commonly within a forfeiture clause or "proviso for re-entry."

The grounds for forfeiture include non-payment of rent, breach of tenant covenants (e.g. repair, user, assignment without consent), or insolvency events (e.g. administration, liquidation).

Legal Requirements

Section 146 of the *LPA 1925* requires the landlord to serve a section 146 notice before forfeiting for most breaches, except rent. The notice must specify the breach, require the tenant to remedy the breach, and require the tenant to pay compensation (if applicable). The tenant must be given a reasonable opportunity to remedy the breach.

Relief from Forfeiture

The tenant possesses a statutory right to apply for relief from forfeiture when a landlord attempts to terminate the lease due to a breach. For cases involving non-payment of rent, under *s. 138 LPA 1925*, the lease continues if the tenant pays the outstanding rent (plus costs) before a court judgment is made. For all other breaches, the court has the discretion to reinstate the lease provided the tenant successfully remedies the breach and pays appropriate compensation to the landlord, under *s. 146(2) LPA 1925*.

In ***Shiloh Spinners Ltd v Harding*** [1973] 2 W.L.R. 28, the court confirmed that relief may be granted even where the lease has technically ended, especially if the breach is minor or reparable.

Risks and Limitations

Peaceable re-entry may be unlawful if the tenant is in occupation or the breach is disputed or trivial. Upon such unlawful re-entry, the tenant may claim unlawful eviction and seek damages.

Solicitor's Role

The solicitor's role advice the landlord on whether the forfeiture is both lawful and proportionate to the breach. This includes drafting a compliant s. 146 notice and advising on its proper service, as well as filing a possession claim if necessary. For the tenant, the solicitor must advise on the available options for relief and defend the client throughout forfeiture proceedings.

8.5.2 Damages for Breach of Covenant

Landlords may sue for damages if the tenant causes physical damage (e.g. failure to repair), breaches restrictions (e.g. unlawful use, assignment, or alterations), or vacates the premises early in breach of a contractual obligation.

Damages are designed to put the landlord in the position they would have been in had the breach not occurred.

Damages are quantified based on loss of rent, cost of repairs, loss of reversionary value, or professional fees incurred. They must be reasonable and mitigated.

For repair claims, s. 18(1) of the *Landlord and Tenant Act 1927* caps damages at the diminution in the value of the reversion caused by the breach.

In ***Crestfort v Tesco Stores Ltd*** [2005] EWHC 805 (Ch), the court allowed damages for delay in reinstatement where lease required full repair and reinstatement before expiry.

Solicitor's Role

The solicitor's role is to evaluate the evidence of the breach and determine the extent of the landlord's loss. They must advise the client on alternative remedies to litigation, such self-help principle established in *Jervis v Harris*. Finally, the solicitor assists in obtaining necessary expert reports, such as those from surveyors to assess dilapidations.

8.5.3 Commercial Rent Arrears Recovery (CRAR)

CRAR is a statutory remedy that allows landlords to recover pure rent arrears by taking control of tenant goods. It was introduced by the *Tribunals, Courts and Enforcement Act*

2007, replacing common law distress. CRAR is often a quick, pressure-based remedy to prompt payment, but may damage tenant relationships or force insolvency. However, this remedy cannot be used if premises are mixed-use (i.e., part-residential) and the landlord may not enter without lawful authority.

Key Requirements

- CRAR applies only to written leases of commercial property.
- Only rent (not service charge or insurance) can be recovered.
- At least 7 days' rent must be outstanding.
- The landlord must give the tenant 7 clear days' notice before action.
- Enforcement agents must be certified and authorized.

Solicitor's Role

The solicitor is to confirm the lease legally qualifies for CRAR and must advise the landlord on procedural compliance, including ensuring all notice periods and service methods are strictly valid, and then instruct enforcement agents to act. The solicitor must also advise the client to carefully consider the potential risks of tenant retaliation or reputational harm from using the method.

8.5.4 Injunctions and Specific Performance

Injunctions are a court-ordered remedy used to prevent ongoing or threatened breaches of lease covenants, such as an unauthorized change of use or an act of nuisance. An injunction may be interim (granted in emergency) or final (granted after a full trial).

Specific Performance is a court order compelling a tenant to comply with a positive obligation under the lease, such as requiring them to reinstate unauthorized alterations to the property. This remedy is available only in situations where award for damages would be considered inadequate, and the obligation itself is sufficiently clear.

Courts are generally reluctant to enforce continuous or subjective obligations using specific performance.

8.5.5 Self-Help Right (*Jervis v Harris* Clause)

This is a contractual clause that allows the landlord to enter the premises to carry out repair works and recover the cost from the tenant as debt (not damages).

The benefit is that no s.146 notice is needed, and costs are often easier to recover.

In ***Jervis v Harris*** [1996] Ch.195, court upheld the landlord's right to recover the cost of repairs carried out under this clause.

8.6 Business Lease Renewals and Terminations under the Landlord and Tenant Act 1954

Part II of the *Landlord and Tenant Act 1954* governs the renewal and termination of business tenancies in England and Wales. It provides security of tenure, a statutory right for tenants to remain in occupation and seek a new lease on expiry, unless the landlord successfully opposes renewal under prescribed statutory grounds.

This framework is intended to protect commercial tenants from arbitrary eviction and enable long-term business stability. However, landlords retain limited rights to oppose renewal, subject to strict legal procedures and judicial discretion. Solicitors play a central role in managing the timing, strategy, and compliance for both parties.

8.6.1 Application and Scope of the Act

Part II Landlord and Tenant Act 1954 applies to a tenancy if it meets three essential criteria designed to protect commercial occupiers. The premises must be occupied for the purpose of a business, as defined by s.23. Also, the tenancy must be subsisting at the relevant time, meaning it has not already been lawfully terminated or naturally come to an end. Finally, the tenant must also hold exclusive possession of the premises.

The Act covers numerous tenancy structures, regardless of their formality or duration. The protection extends written or oral leases, periodic tenancies, in certain circumstances, tenancies at will, and leases that contain break clauses until it is validly and lawfully ended.

Example: A café tenant whose five-year lease ends is entitled to a new lease unless validly excluded or opposed.

8.6.2 Contracting Out of the Act (Exclusion of Security of Tenure)

Landlords may wish to exclude the tenant's right to renew to preserve flexibility over the property, e.g., for redevelopment or re-letting on market terms.

The strict pre-grant procedure of contracting out the statutory security of tenure is stipulated in s.38A. It necessitates a landlord serving a warning notice explaining the consequences of the exclusion. Then, the tenant must sign a declaration, a simple one if given at least 14 days before the lease grant or a statutory declaration if granted sooner, which is more typical, to confirm understanding.

The lease must also expressly state that the Act has been excluded.

Failure to comply renders the exclusion invalid, giving the tenant full protection.

8.6.3 Lease Renewal – Protected Tenancies

Where a tenancy is protected, the tenant has a statutory right to renew unless the landlord can establish a valid ground for refusal.

The tenant can initiate renewal by serving a s.26 notice, which must be done 6–12 months before the lease ends. The notice must propose a new term, rent and other terms of the new lease. The landlord must respond within 2 months if opposing the renewal, stating the grounds relied upon.

If the landlord does not oppose, the parties can negotiate the new lease or apply to court to determine terms.

8.6.4 Termination by the Landlord – Non-Renewal Procedure

The termination procedure is stipulated under s.25. The landlord must serve a s.25 notice on the tenant between 6 and 12 months before the proposed termination date. The notice must state whether the landlord consents to or opposes renewal of the tenancy. If the landlord opposes, the notice must clearly specify the statutory grounds for opposition detailed under s.30(1).

If the landlord does not oppose renewal, the notice must contain terms that the landlord proposes for a new lease. But if the landlord opposes, the tenant retains the right to apply to the court for a renewal, placing the burden on the landlord to successfully prove grounds for opposition.

If the s.25 notice is found to be either invalid in its contents or served late, the landlord automatically loses the right to oppose renewal, effectively granting the tenant continued security of tenure.

8.6.5 Statutory Grounds for Opposing Renewal (s.30(1))

Landlords can only oppose renewal on one or more of the seven statutory grounds, which fall into two broad categories:

Category A: Tenant Default (Discretionary Grounds)

These allow the court to weigh the landlord's case and exercise discretion:

- (a) Breach of repair covenants e.g., substantial disrepair affecting the premises.
- (b) Persistent delay in paying rent: Occasional late payment won't suffice.
- (c) Other substantial breaches e.g., unauthorised use, assignment, or alteration.

The court may grant renewal despite breaches, particularly if they're minor, historic, or remedied.

Category B: Landlord's Use or Redevelopment (Mandatory Grounds)

If proved, these automatically defeat renewal:

- (e) Possession required for landlord's own occupation: The landlord must genuinely intend to occupy for their own business or residence.
- (f) Intention to demolish or reconstruct: The landlord must show genuine intention and practical ability (e.g. planning permission, funding).
- (g) Availability of alternative accommodation: Though rarely used; but the landlord must offer a suitable replacement.

In ***Cunliffe v Goodman*** [1950] 2 K.B. 237, “intention” under ground (f) was interpreted to be a firm and settled purpose, not mere aspiration.

8.6.6 Court Proceedings and Lease Terms

If renewal is not opposed or opposition fails, either party may apply to court to determine the terms of the new lease, including length of term, rent (market rate, excluding goodwill and tenant improvements), rent review clauses, and repair and service charge clauses.

The court aims to set reasonable and fair commercial terms. Parties may agree a new lease voluntarily at any point before judgment.

8.6.7 Compensation for Refused Renewals

If the landlord successfully refuses renewal based on non-fault grounds (e.g. own use or redevelopment), the tenant is entitled to statutory compensation provided the opposition is based on non-fault grounds. Compensation is not payable where the landlord successfully opposes based on tenant fault, such as disrepair or breach.

This compensation is calculated based on the property's rateable value. The tenant is entitled to one year's rateable value; however, this sum is doubled to two years' rateable value if the tenant has been in continuous occupation of the premises for 14 years or more.

8.6.8 Holding Over After Lease Expiry

If neither party serves a notice under s.25 or s.26, the lease continues by operation of law on the same terms. This continuance is called a tenancy at will or a statutory continuation tenancy. The rent must still be paid, and either party can end the tenancy with proper notice.

Solicitors must ensure clients are aware that inaction can lead to uncertainty, and negotiation should be formalised early.

8.6.9 Solicitor's Duties and Strategic Considerations

For Landlords

The solicitor must decide early whether to oppose or consent to the lease renewal. If opposing, they must serve a compliant s. 25 notice within the correct statutory timeframe and collate evidence to support their grounds of opposition (e.g., surveyor's reports for disrepair or redevelopment plans). The solicitor should also advise the landlord on the desirability of contracting out future leases.

For Tenants

The solicitor needs to advise the client on their statutory right to renewal and the deadlines for serving a s. 26 notice. They must assess the risk of landlord opposition and the validity of any grounds cited, helping the tenant gather evidence to rebut those grounds. The solicitor should also explore the tenant's rights to compensation and settlement options to avoid protracted litigation.

For Both Parties

Solicitor's duty is to record all negotiations in writing to prevent future disputes and to maintain a system to track all critical dates and filing deadlines. To minimize the time and cost of litigation, the solicitor should encourage and explore the use of Alternative Dispute Resolution (ADR) methods.

8.7 Conclusion

A well-drafted commercial lease balances flexibility and protection, ensuring the landlord's investment is preserved while enabling the tenant's business continuity. Proper form, registration, and clear covenants underpin enforceability, while compliance with statutory frameworks like the *Landlord and Tenant Act 1954* ensures legal certainty in renewal and termination. Ultimately, the solicitor's role, through diligent drafting, negotiation, and

procedural compliance, is central to preventing disputes and maintaining the integrity of commercial leasing practice.

9

TAXATION IN PROPERTY TRANSACTIONS

Tax considerations are a critical part of every property transaction. While solicitors are not usually tax advisers, they must have a working knowledge of the key taxes that apply to acquisitions, disposals, and development of land and property, so they can identify red flags, meet filing obligations, and alert clients to risks. This section deals with the four primary taxes that solicitors must handle or advise on in conveyancing:

- Stamp Duty Land Tax (SDLT) – England and Northern Ireland
- Land Transaction Tax (LTT) – Wales
- Value Added Tax (VAT) – Commercial and some residential sales
- Capital Gains Tax (CGT) – Property disposals by individuals and entities

9.1 Stamp Duty Land Tax (SDLT)

SDLT is a self-assessed, progressive tax payable on most purchases of land or property in England and Northern Ireland. It is governed by the *Finance Act 2003* and subsequent amendments. Anyone buying or leasing land or buildings must submit a SDLT return (Form SDLT1) to HMRC within 14 days of completion, regardless of whether any SDLT is actually owed.

9.1.1 When SDLT Applies

SDLT applies upon the acquisition of a chargeable interest in land, and is triggered at completion, not the earlier date of exchange of contracts. This tax is levied across various types of transactions, including freehold purchases, leasehold premiums and rents, certain transfers of equity with consideration, and specific lease assignments.

9.1.2 Key Features

The core rules of SDLT require that the tax is payable within 14 calendar days of the effective date of the transaction, usually the date of completion. The amount of the tax payable is based on the consideration exchanged for the property. A filing of an SDLT return (Form SDLT1) is mandatory for nearly all chargeable interests in land, even if no tax is actually due, unless the transaction falls under a specific exemption, such as gifts without consideration, transfers under a will, or transfers resulting from divorce or relationship breakdown settlements.

9.1.3 Rates

Residential Rates (As of 2024)

Price Band	Rate
Up to £250,000	0%
£250,001 – £925,000	5%
£925,001 – £1.5 million	10%
Above £1.5 million	12%

Note: First-time buyers pay 0% up to £425,000 (if total price is under £625,000).

Surcharges and Complications

- 3% surcharge on additional properties (buy-to-let, second homes).
- 2% surcharge on non-UK residents (individuals or companies).

- Special rules apply to linked transactions, mixed-use properties (residential and commercial) and Multiple Dwellings Relief (MDR) which lowers tax where multiple properties are bought together.

Commercial Rates

Price Band	Rate
Up to £150,000	Zero
The next £100,000 (from £150,001 to £250,000)	2%
The remaining amount (above £250,000)	5%

Examples

1. Standard Residential Purchase

Sarah buys her first home in London for £300,000. First-time buyers pay 0% up to £425,000, so she owes no SDLT. However, she must still file Form SDLT1 with HMRC within 14 days of completion.

2. Higher-Value Residential Property

John buys a family home in Manchester for £800,000.

For the first £250,000, the rate is 0%.

For the next £550,000, the rate is 5%; 5% of £550,000 equals £27,500.

The total SDLT payable is **£27,500**.

3. Additional Property Surcharge

Sophia already owns a flat but buys a second property in Birmingham for £400,000 to rent out.

The rate for the first £250,000 is 0%, while it is 5% for the next £150,000.

The normal SDLT on £400,000 (5% of £150,000) is £7,500.

Since, it is a second property, it is subject to the 3% surcharge; 3% of £400,000 which equals £12,000.

Therefore, the total SDLT payable is £7,500 + £12,000 which totals to **£19,500**.

4. Commercial Property Purchase

Alpha Ltd buys a warehouse in Birmingham for £600,000. The rate on the first £150,000 is 0%.

The rate the next £100,000 (£150,001–£250,000) is 2%, which equals £2,000.

The rate on the remaining £350,000 (£250,001–£600,000) is 5% which equals £17,500. Therefore, the SDLT payable is £2,000 + £17,500 which totals to **£19,500**.

If the same company bought a second warehouse for £200,000 from the same seller as part of the same deal, this would be treated as a linked transaction. SDLT would then be calculated on the combined £800,000, not each property separately, which could increase the tax liability.

The rate on the first £150,000 is 0%.

The rate the next £100,000 (£150,001–£250,000) is 2%, which equals £2,000.

The rate on the remaining £550,000 (£250,001–£800,000) is 5% which equals £27,500.

The total tax payable in this scenario is £2,000 + £27,500 which totals **£29,500**.

Solicitor Duties

A solicitor's duties for SDLT are multifaceted and include submission of the return (SDLT1) online; ensuring client funds are available before completion; explaining the calculation and warning client about surcharges (for non-residents and additional dwellings); keeping compliance evidence (source of funds/confirmations); and notifying the lender of payment to secure the release of mortgage funds.

9.2 Land Transaction Tax (LTT) – Wales

Since April 2018, property transactions in Wales are subject to Land Transaction Tax (LTT), which replaced SDLT there. It is administered by the Welsh Revenue Authority (WRA) under the *Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017*.

9.2.1 Key Features

The LTT, which applies to transactions involving land in Wales, operates similarly to SDLT but utilizes its own distinct bands and thresholds. A key procedural difference is that LTT must be paid within 30 days of the effective date of the transaction, which provides a longer deadline compared to the 14-day requirement for SDLT. LTT is levied on both residential and commercial transactions that involve Welsh land. It offers no relief for first time property buyers.

9.2.2 Rates

Residential Rates (As of 2024)

Price Band	Rate
Up to £225,000	0%
£225,001 to £400,000	6%
£400,001 to £750,000	7.5%
£750,001 to £1.5 million	10%
Over £1.5 million	12%

Note: Higher rates apply for second homes and buy-to-let properties (4% surcharge).

Commercial Rates

Price Band	Rate
Up to £225,000	0%
£225,000 up to £250,000	1%
£250,000 up to £1,000,000	5%
over £1,000,000	6%

Examples.

1. Standard Residential Property

Mike purchases a detached house in Swansea for £800,000. The rate for the first £225,000 is 0%.

The rate for £225,001 to £400,000 is 6%, which equals £10,500.

The rate for £400,001 to £750,000 is 7.5% which equals £26,250.

And the rate for £750,001 to £800,000 is 10% which equals £5,000.

Therefore, the LTT payable is the sum of £10,500 + £26,250 + £5,000 which equals to **£41,750**.

2. Buy-to-Let Property

Micah buys second property in North Wales for £250,000 to use as a holiday let. The normal LTT payable is £1,500.

However, being a property to be let to others, it is subject to 4% surcharge, which equals £10,000. Therefore, the total LTT payable is £1,500 + £10,000 which equals to **£11,500**.

3. Commercial Property

A business purchases a shop unit in Wrexham for £600,000.

The rate on the first £225,000 is 0%.

The rate on the next £25,000 is 1%, which equals £2,500.

The rate on the remaining £350,000 is 5% which equals £17,500.

The total LTT payable is £2,500 + £17,500 which amounts to **£20,000**.

Solicitor Duties

A solicitor's duties concerning the LTT for properties in Wales require them to first identify whether the property is in Wales or England. Once confirmed as Welsh, the solicitor must file the LTT return and pay the tax via the Welsh Revenue Authority (WRA) portal and then obtain proof of payment as this is essential for the Land Registry application to register the title. Finally, the solicitor must explicitly warn clients about non-resident charges and the higher rate provisions that apply to the acquisition of additional properties.

9.3 Value Added Tax (VAT) in Property Transactions

The sale of a new build house by a developer is zero-rated for VAT, meaning the buyer pays no VAT on the purchase price. Similarly, the subsequent sale of that residential property by a private individual is not considered a transaction made in the course of a business, so the seller will not charge any VAT to the buyer in addition to the agreed-upon price. Supplies concerning interests in, rights to, or licences to occupy commercial land or buildings are generally exempt. While most residential sales and leases are exempt from VAT, commercial property may be subject to VAT, either mandatorily or through option to tax.

9.3.1 Key Categories

Property Type	VAT Status
Residential (used homes)	Exempt

New residential (less than 3 yrs)	Zero-rated (0%)
Commercial property	Exempt by default
Opted commercial property	Standard-rated (20%)

9.3.2 Option to Tax

This mechanism allows landlords or vendors to voluntarily choose to charge VAT on the sale or rental of an otherwise VAT-exempt property, which is typically commercial real estate. The main motivation for this election is that it permits the business to recover the input tax (VAT paid) incurred on substantial costs such as construction or renovation. Once correctly elected with HMRC, the decision to tax the property usually remains in effect for 20 years.

Examples

1. New Residential Property

A developer sells a newly built house in Cardiff for £350,000. As the property is new (less than 3 years old), it is zero-rated. Thus, the buyer pays no VAT, but the developer can recover input VAT from construction costs.

2. Resale of Residential Property

Mr. Evans sells his home built in 2007 in Swansea for £280,000. The sale of an existing residential property is exempt from VAT. The buyer pays only the agreed purchase price with no VAT added.

3. Commercial Property with Option to Tax

An office building in Newport bought for £1 million is sold, but the seller has exercised the Option to Tax. The standard rate is 20%; 20% of £1 million equals £200,000, bringing the total amount payable to **£1.2 million**. The buyer may recover the £200,000 VAT if they are VAT-registered and using the property for taxable business purposes.

Solicitor's Tasks

The solicitor's tasks regarding the Option to Tax are to determine and verify if the seller has opted to tax with HMRC; confirm if the purchase price is VAT-inclusive or exclusive, as this affects the SDLT calculation; draft VAT clauses in the contract; and assess if Transfer of a Going Concern (TOGC) relief applies, which can make the sale zero-rated if the property is a VAT-registered business.

Example: A business buys a warehouse for £600,000 plus VAT. SDLT will be calculated on £720,000 unless TOGC applies.

9.4 Capital Gains Tax (CGT)

CGT is a tax levied on the disposal of chargeable assets, including property. It applies when a property is sold, gifted, or transferred and a gain is made, meaning the disposal proceeds exceed the original base cost. The Capital Gain realized on the sale of a property is calculated by taking the property's current sale price and deducting its original purchase price (or its base value in 1982, if the property was acquired before that date).

9.4.1 Who Pays CGT?

Individuals, trusts, and companies are generally subject to tax on gains. But it is important to note that companies pay Corporation Tax, not CGT, on these gains.

In the context of property law, CGT is relevant for the sale of buy-to-let properties, second homes, or investment properties, as well as when gifting a property to someone (unless specific reliefs apply), and upon the disposal of development plots.

9.4.2 Individual Rates

The rate of Capital Gains Tax (CGT) payable by an individual depends both on the type of asset sold and the individual's taxable income level for that year.

Gains realised from the sale of residential property are taxed at either 18% (basic-rate income tax band) or 24% (higher-rate income tax band).

On other chargeable assets such as shares, land, business assets not residential property, 10% rate applies to gains within the unused portion of the basic rate band and **20% rate** applies to gains within higher rate band.

9.4.3 Reliefs

There are several reliefs available to reduce or eliminate a CGT liability.

- **The Annual Exempt Amount (AEA):** This is tax-free allowance, which every individual receives each tax year. For the 2025/2026 tax year, the AEA is set at £3,000. Any portion of the allowance not utilized within the tax year cannot be carried forward to reduce capital gains tax liability in subsequent years.
- **Principal Private Residence (PPR) Relief:** This is a CGT exemption available to individuals selling a property that served as their main home. If you meet the residency criteria for the entire period of ownership, you may be exempt from paying any CGT. PRR covers the time the property was your principal private residence; however, even if you lived elsewhere for a period, you might still qualify for partial relief based on your duration of occupancy and the reasons for your absence.
- **Lettings Relief:** This relief provides a limited reduction to CGT where the property being sold was previously a main residence but was later rented out. Following changes from April 2020, the relief now only applies if the owner was in shared occupancy with the tenant during the letting period. If you rented out the entire property after moving out, the relief is severely restricted. The available amount of relief depends on the duration of the shared occupancy and meeting specific HMRC conditions.
- **Business Asset Disposal Relief:** This relief can apply to commercial property when it is connected to the disposal of a trading business, allowing for a reduced rate of CGT on qualifying gains. formerly called Entrepreneurs' Relief, it a tax relief for business owners selling a substantial portion of their personal company's shares or assets. The current BADR rate is 14%, which is lower when compared to standard rates of 18% or 24%.

- **Business Asset Rollover Relief:** This allows an individual to postpone payment of CGT when they sell a qualifying business asset and then reinvest the proceeds into a new qualifying business asset. The capital gain from the first sale is effectively deferred until the new asset is sold. To qualify, the new business assets must be purchased within three years of the sale of the old assets and must be genuinely used in the business.

Deadlines

CGT must be reported and paid within 60 days of completion for UK residential property sales (by UK and non-UK residents).

Examples

1. Sale of a Second Home

Daniel owns a holiday cottage in Cornwall which he sells for £400,000. The original purchase price was £250,000 and the gain is £150,000.

The annual CGT allowance is £3,000 (for 2025-26 tax year), thus, taxable gain (£150,000 - £3,000) is £147,000.

Daniel is a higher rate taxpayer; thus, his CGT rate is 24% on residential property. The CGT due is 24% of £147,000 which equals **£35,280**.

2. Sale of Buy-to-Let Property

Peace sells her rental flat in Manchester for £300,000. The original purchase price was £200,000; thus, the gain is £100,000.

After deducting the annual CGT allowance £3,000 (for 2025-26 tax year), the taxable gain (£100,000 - £3,000) is £97,000.

Peace is a basic rate taxpayer; thus, her CGT rate is 18% on residential property. The CGT payable is 18% of £97,000 which equals **£17,460**.

3. Partial Main Residence Relief

Fiona buys a flat in Cardiff in 2015 for £200,000 and lives there until 2020. She then rents it out until she sells in 2025 for £300,000. The gain made is £100,000.

She qualifies for 50% of PPR relief, seeing she lived there for 5 years before letting it out for 5 before selling. 50% of £100,000 is the PPR relief.

Therefore, £50,000 is exempt and £50,000 is taxable. The annual CGT allowance is £3,000 (for 2025-26 tax year); thus, taxable gain (£50,000 - £3,000) is £47,000.

The rate is 24% because Stella is a higher-rate taxpayer. Therefore, the CGT payable is 24% of £47,000 which equals **£11,280**.

4. Business Asset Disposal Relief

Maria sells her workshop used in her sole-trader carpentry business. She bought it for £100,000 and sells for £400,000. The gain is £300,000.

The BADR applies and it is subject to relief rate of 14%. Thus, the CGT payable is 14% of £300,000 which equals **£42,000**.

Solicitor Duties

A solicitor's duties concerning CGT are to: first determine if CGT may arise; immediately alert clients to seek independent tax advice; avoid inadvertently triggering CGT via poorly advised transfers (like gifts); check for available reliefs for buy-to-let sellers; and avoid delay in reporting, as late filing attracts penalties and interest.

9.5 Conclusion

In conclusion, taxation plays a central role in property transactions, with SDLT, LTT, VAT, and CGT each imposing distinct obligations and risks that buyers, sellers, and their solicitors must carefully manage. While solicitors are not tax advisers, they must understand the scope and application of these taxes, ensure timely filings, advise clients on potential liabilities and reliefs, and highlight risks such as surcharges, exemptions, and deadlines. Effective tax

awareness in conveyancing not only secures compliance with HMRC or WRA requirements but also safeguards clients from unforeseen financial exposure, supporting smoother transactions and reducing the risk of negligence claims.

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