

Points 1 & 2

The length of time a property transaction takes is a variable, there are many factors which the panel may wish to discuss.

Sold as seen

To some extent, all property has legal issues, although the risks connected to those issues are often accepted. Some of these points may be known to the prospective vendors; perhaps where they were reported during a purchase, or perhaps where the owner has done works without consent. Others may be unknown, for example, where a property has been inherited and the heirs have not lived there.

Property is sold as seen and the onus is upon the purchaser to check for the presence of any problems and lawyers are engaged to check the legal side.

In order to mirror the expectations of a retail purchaser, the layperson may consider that the balance of responsibility should be passed to the Vendor, imposing an obligation to check and disclose everything to all prospective purchasers in advance of the offer and acceptance process. Not only would this unjustly move the goalposts to the detriment of the current owners, it would also mean that issues are placed in the public domain, inviting claims and voiding existing indemnity insurance. We are very pleased to see that the panel is very well constituted of professionals with experience in this field who will understand that this is not a workable alternative which would be supported by lenders and financial institutions or by the property owning public and could be extremely detrimental to the local economy.

Property can also have hidden condition issues raised by surveyors during the purchase process. Lenders increasingly demand specialist reports and remedial works for which quotes need to be sought at short notice. – We assume that the panel will receive submissions from Surveyors and do not intend to make mention of this.

Property can also be misrepresented. We have seen non-habitable rooms advertised as bedrooms and on street public parking or communal visitor parking described as belonging with the property. We assume the panel will consider the conduct of estate agents we do not intend make mention of this beyond their role in setting completion dates.

Maxim - Nulle promesse à heritage ne vaut

Because the onus to conduct checks rests with the prospective purchaser, the Law provides (with good reason) that he or she cannot be bound to complete a property transaction even if there is agreement until all checks are completed.

This maxim also benefits the vendor, who is equally able to pull out from the transaction.

Associated transactions

With the exception of first time buyers or those downsizing to a smaller property it is uncommon for one domestic transaction to be completed in isolation. To put this another way the majority of transactions include people moving up the housing ladder, selling their old home to part fund the purchase of their new home. We refer to this as a chain of transactions because each property sale is “linked” to all of the others. Consequently a chain of transactions can only complete at the pace of the slowest transaction (or “link”) in that chain. Equally if one “link” is broken, the chain is stalled until it is reinstated.

In a static or falling market certain property owners chose to sell and move into rented accommodation before buying. This shortens the chain of transactions reducing the statistical likelihood of property chain related problems arising and there is an assumption that they will be more attractive prospective purchasers thereafter no longer having to await the outcome of an associated sale.

The overwhelming majority of people chose not to move house twice, so chains of transactions are considered unavoidable.

Save for the transaction which fails, the other parties in a chain of transactions generally only suffer a delay in completion rather than a financial loss.

Completion date

Presently it is customary that completion dates are proposed by the estate agents at the outset, as soon as they deem a chain of transactions to be complete. Estate agents are paid to sell property, their focus is earliest completion. By default estate agents set completion deadlines 3 weeks from the date that lawyers are first instructed. The legal profession generally view 3 weeks as a minimum time to complete a transaction where the prospective purchaser is to raise a mortgage. There are many elements to the legal work associated in a purchase which are outlined in our Homebuyers guide: <http://www.viberts.com/assets/viberts-property-brochure.pdf>.

A three week completion leaves no contingency to deal with problems should they arise. At Viberts we advise our clients to be strong with estate agents from the outset and insist upon extending this default 3 week minimum so that there is a contingency period should problems be identified during the purchase process, please refer again to our Homebuyers guide: <http://www.viberts.com/assets/viberts-property-brochure.pdf>.

If we are involved in a transaction (either for the seller or buyer) and we consider that a completion date proposed by an agent is unachievable we seek client consent to extend that deadline. Estate agents put a great deal of pressure on people to stick to the dates which they have set (whether or not there is a valid reason). This is largely because there is a great deal of work involved in rearranging a whole chain of transactions. This pressure is often passed back to us by our clients who simply ask that we do what we can to achieve completion on time.

In setting these dates, Estate agents are not in a position of knowledge to take account of the common factors which may necessitate an increase from the 3 week minimum. In no other line of work would one professional dictate to another professional the length of time a piece of work should take in this way.

Agreements of sale

Gazumping and Gazundering is a common concern amongst our clients. We have the facility at our disposal to follow the UK formula and execute agreements of sale subject to finance and conditional upon other counterpart agreements relating to the other transactions in the chain albeit that these are enforced under payment of a penalty rather than by specific performance. Whilst this arrangement is not infallible, (with the exception of changes in lending criteria and financial conditions) the theory is that any problems are dealt with well in advance of passing contract. The feed back from our clients is that there is presently no appetite to extend the time which property sales take and no desire to extend these to mirror the timescales of uk transactions. Mortgage offers also have a limited duration (just as they do in the UK) where mortgage offer expiry often causes problems and added expense.

Point 3.

Based on a very general estimate, approximately 40 contracts are passed before Court each week and approximately half that number relate to domestic purchases. Conservatively there is presently in the order of 850 domestic property transactions passed each year. In addition some domestic properties are conveyed by share transfer, but it is not possible to quantify the number of these.

There are instances of last minute delays, but in our experience these are in the minority of cases and usually delays are communicated within an acceptable timescale. We consider that setting more realistic completion dates at the outset will assist.

What are the causes of delays?

- i. How many transactions are in a chain – are all “links” genuinely complete?
- ii. Are the parties proposing to borrow, have the prospective purchasers already obtained “in principal” acceptance or have they yet to speak with any lenders. – Estate agents often use the term “cash buyers” when they mean a buyer who does not have a property which he needs to sell. This is often misinterpreted by the public as buyers who do not need to borrow and much animosity is caused when that “cash buyer” has to delay because his mortgage is not in place.
- iii. Will the parties satisfy the ever increasing lending criteria imposed by lenders once their formal mortgage application is made?
- iv. Are the parties prepared to commit to costs in advance of receiving a survey?
- v. What is the tenure of the property?
- vi. Is it a property with a complex structure like many of the recent Dandara developments?
- vii. Are there title or other problems in the associated paperwork?
- viii. Poor Survey – do the lenders require specialist reports or remedial work before they will lend? Examples could include; damp problems, presence of asbestos, collapsing pitch fibre drains, wood boring insect or other infestations.
- ix. Has the estate agent correctly described the property in the property particulars. Examples could include non-habitable rooms being described as additional bedrooms, on street parking or communal areas being described as private parking.