

# DEAN CONVEYANCING

## GUIDE TO NEW BUILD PURCHASES

These notes are designed to explain the usual contractual conditions contained in the standard contracts of sale used by builders. They are also designed to inform you of the most important things that you need to be aware of when purchasing a newly built property and to give you advance warning of various matters relating to the overall transaction that you might not have thought about.

In virtually all cases, the builder's lawyers will not agree to any change to the contract documentation and if you want to buy the property you are stuck with their conditions however one-sided in favour of the builders they may be. Provided you are aware of the possible pitfalls and make appropriate allowances in certain cases everything should proceed at the least risk of inconvenience or risk to you.

### THE CONTRACT

- In nearly all cases the builder will require an exchange of contracts, i.e. a commitment to purchase within a certain period of time, after which they reserve the right to remarket the property and or change the price. The quicker you can get a mortgage offer (if you have having a mortgage) the better, as this will nearly always determine whether or not we will be in a position to exchange contracts.
- The contract will frequently state that you have had the opportunity of inspecting the overall site plan at the site office and also the 'spec' of the property and the materials used. Nearly all contracts give the builder the option of switching materials in the event of unavailability of a product, provided of course that this does not significantly alter the property to be purchased.
- The contract will refer to a plan identifying the property but this is for identification purposes only and whilst it is unlikely that the actual boundary position will change, the builder reserves the right if they consider it necessary to change the plan and if necessary the physical boundary be it a fence or whatever, provided that such variation does not largely lessen what you were expecting to get in the first place. You have no right to be compensated if they do alter the boundary either before or after exchange of contracts.
- You will not be entitled to delay completion, i.e., refuse to pay the final balance of the purchase price, on the basis only that there are minor defects, or things to be attended to. For instance, if skirting boards need to be finished or the path gravelled etc. You must complete and rely on the developer's word that such work will be attended to after you have taken possession of the house. You should be aware that you will normally be required to agree a "snag list" with the site office about ten days prior to completion, of things to be attended to by the builder. There is no contractual obligation on the part of the builder to put right anything that is not on the list and your act of taking possession denies you any legal recourse in requiring other items to be attended to by the builder. So be sure to include everything that requires attention on the list to be agreed prior to completion with the builders through their lawyers.
- You will not generally be required to rely on anything that has been said to you by the staff at the site office unless it is either included in the contract or referred to in written information prepared by the builder's lawyers. It is vital therefore that if anything of any great importance has only been confirmed to you by sales staff by word of mouth, that you notify us about it in order that we can be sure that the agreement is recorded with the builder's lawyers.
- You will be expected to pay a deposit at the point where contracts are exchanged. Usually the deposit is 10% of the purchase price, although, these days it is generally the amount you pay from your own funds taking into account your mortgage advance. This deposit in the sum of 10% will be forfeit if you break the contract and fail to complete, although in practice, it is extremely unlikely that you would want to pull out.

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## GUIDE TO NEW BUILD PURCHASES THE TRANSFER TO YOU

This is the document that finally transfers the ownership of the house into your name(s). It will contain various statements referring to rights in your favour and “covenants” being things that you must either do or not do as the case may be such as:-

- **Boundaries** – Nearly always the joint responsibility of you and your neighbours. Alternatively, you may be responsible for one boundary and your neighbours for the other.
- **Easements (ie Rights)** – For sewers and other services. Generally the sewers, pipes and wires run through the backs (sometimes fronts) of all gardens of the houses on the development with individual connections for each property. In order that access can be obtained for repair (if necessary) the Transfer will grant rights to you to enter your neighbours’ property to repair if they are away etc and likewise, your neighbours will have the right to come on to your property to put things right. Any expense of repair to a jointly used service will be shared by you and the other houses which it serves. This is quite normal.
- **Wayleave Agreements** – It may well be that the Electricity Board will need to put up posts or wires over or under your property and the necessary rights to enable them to do this are recorded in what are called “Wayleave” agreements. Your property could be subject to these although builders try to ensure from the outset that you are notified of any intended agreements affecting your plot. However, if they come to light afterwards, contractually, there is very little you will be able to do about it.
- **Covenants** – Generally you will not be allowed to use the property for business/trade. You must not do anything which could be considered to be a nuisance to your neighbours. You will not generally be allowed to build any structure in the front garden without the written consent of the builder. Likewise, any structural alterations will sometimes need written consent. You must not destroy/remove any shrubs or trees that have been planted and sometimes you are required to replace ones that die. Sometimes you will not be allowed to keep a caravan or any commercial vehicle on the forecourt.

## COMPLETION OF YOUR PURCHASE

THIS IS IMPORTANT. You will have to complete when the builders’ Solicitors inform us in writing. Usually only 10-14 days notice is given. The difficulty arises when you are relying upon the proceeds of sale of an existing property to purchase. Clearly, you will want to tie in the sale with your purchase so that they happen on the same day. Usually, when you exchange contracts on your sale you will agree a contractual date upon which you will receive the money and hand over the keys. You cannot do this if you don’t know the date when the Developer will require you to complete. It is therefore important to tell your purchasers that they will have to wait until the Developer gives you a definite date before you in turn can give them one and this will be after contracts have become binding on your sale and purchase. We will sort this one out with the other lawyers but it is as well that you warn your purchasers of the situation in advance. This problem will not arise if you are not relying on sale proceeds or can sell and move out on a temporary basis until your new house is complete.

This information is designed to assist you in your understanding of the legal work surrounding your purchase and is to be read in conjunction with other advice given to you and/or at your attendance at our offices. If you have any queries in respect of any aspect of your transaction please contact us to discuss.

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