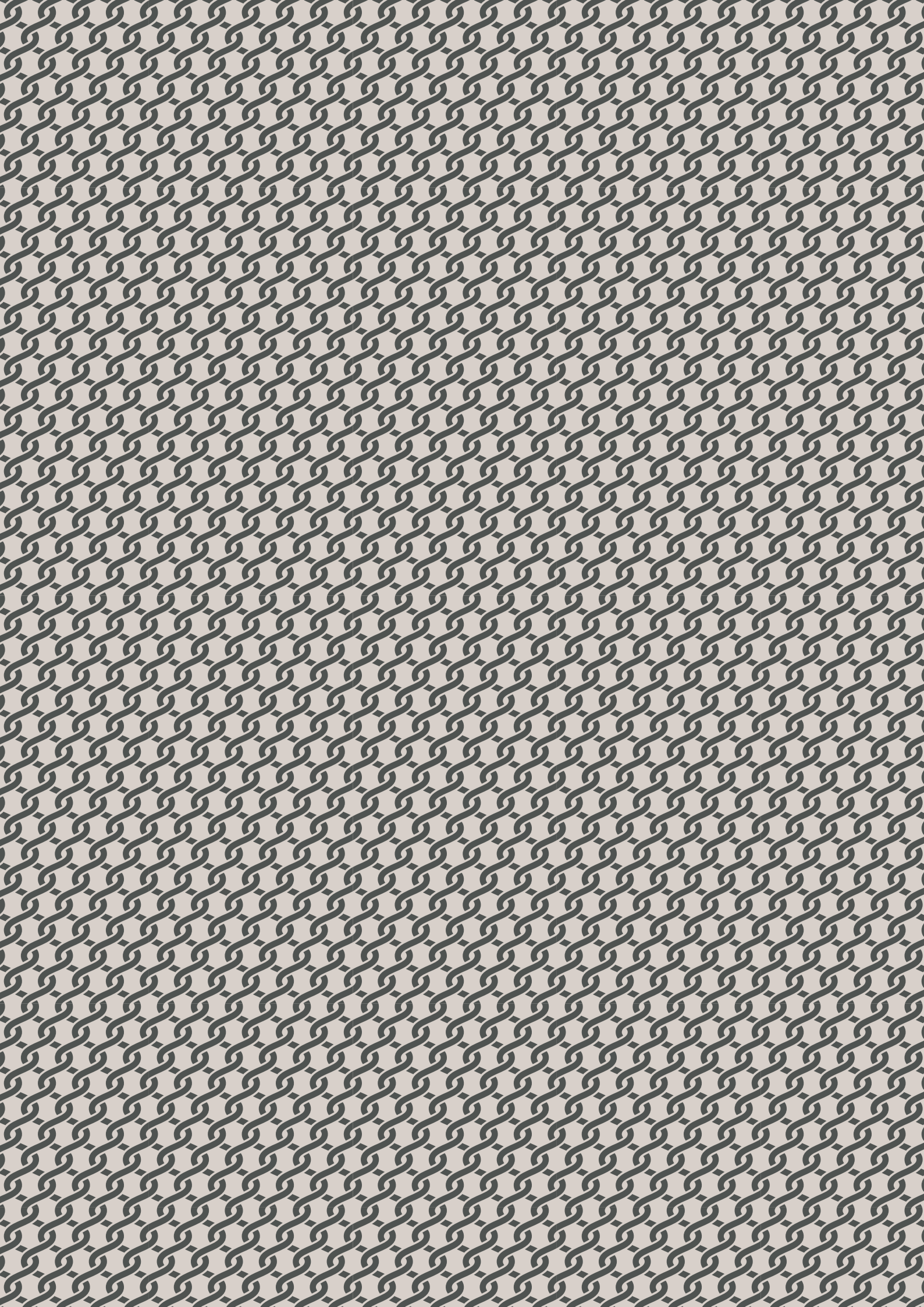




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A GUIDE TO MOVING HOME







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THE AIM OF THIS BOOK IS TO PROVIDE A BASIC GUIDE TO YOUR CONVEYANCING TRANSACTION. EACH OF THE FOLLOWING CHAPTERS FOCUSES ON A KEY MILESTONE IN THE CONVEYANCING PROCESS. TOGETHER, THEY WILL GIVE YOU AN UNDERSTANDING OF THE CONVEYANCING PROCESS, FROM THE VERY START TO POST-COMPLETION.

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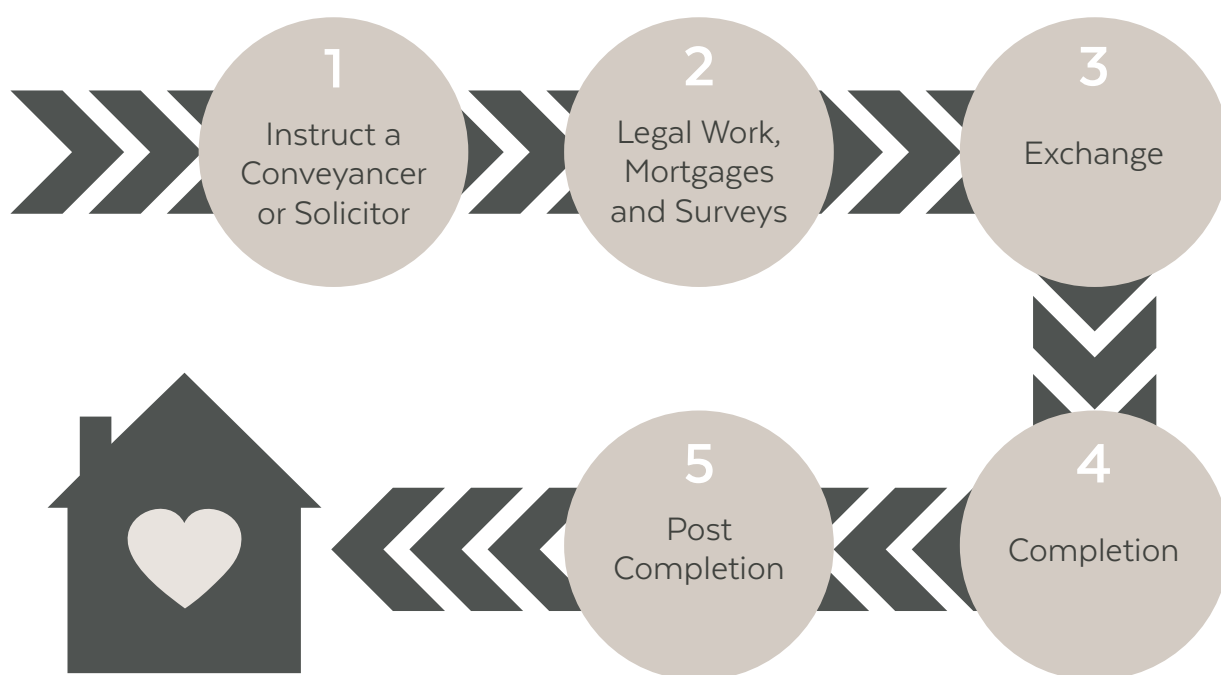
INTRODUCTION TO CONVEYANCING

CONVEYANCING REFERS TO ALL THE LEGAL AND ADMINISTRATIVE WORK ASSOCIATED WITH THE TRANSFERRING OF LAND OR BUILDINGS FROM ONE PARTY TO ANOTHER. THERE IS A MISCONCEPTION THAT CONVEYANCING IS A PAPER SHUFFLING EXERCISE, BUT, IN REALITY, THE RANGE OF TASKS INVOLVED IS OFTEN COMPLEX AND DIFFICULT.

Many sale and purchase agreements contain conditions that may need to be fulfilled before the transaction can proceed. It is important that these contractual conditions are expressed clearly.

FINDING YOUR PERFECT HOME AND HAVING YOUR OFFER ACCEPTED.

WHAT HAPPENS NEXT?



1 INSTRUCTING A CONVEYANCER OR SOLICITOR

The first step is to find a solicitor or conveyancer. Your choice of solicitor may depend on many factors, such as cost, location and whether they are known to you or have been recommended, etc. You need to instruct a solicitor who you have confidence in and who can explain the procedures to you to ensure that you fully understand what is involved.

It is always best to have a face-to-face or telephone discussion with your solicitor, in the first instance, as most people have a lot of questions they will need to ask. It will also enable you to get acquainted with your solicitor and help build a relationship. This should not be overlooked, as you will need to build a good working relationship to ensure the smoothness of your transaction.

When you have chosen your solicitor and have your first meeting, your solicitor will discuss the main steps of the conveyancing process shown below. Your solicitor will discuss with you what each step entails and what is required of you.

2

LEGAL WORK, MORTGAGES AND SURVEYS

If you need a mortgage to fund the purchase of your property, it is important that you know that: (a) your conveyancer will have the same obligations to your lender as they do to you, and (b) how much you are able to borrow. To help with the latter, it is always best to see a mortgage advisor before you start looking for properties so that you know your budget. Once you know how much you can borrow and have chosen which bank you will obtain a mortgage from, you will need to inform them of your solicitor's details for them to forward a copy of your mortgage offer to them. Your solicitor will then need to review the mortgage offer to ensure that all the details are correct and that the terms reflect your needs. In order to have a formal mortgage offer made to you, and not just a mortgage in principle, a survey will have to be carried out, the results of which will need to satisfy you and your lender.

The surveys will consist of:

- A HomeBuyer survey and valuation (if you choose to have one); and,
- A standard mortgage valuation.

SURVEY AND VALUATION

This survey is done in a standardised format set by the Royal Institute of Chartered Surveyors (RICS). It is a detailed report, which includes all major sections of the property that are clearly visible and to identify which areas are in need of further investigation. Wiring, drainage and gas are not included in the survey. Therefore, many people choose to have further reports done on these areas as well. This survey is most suitable for conventional properties that are in a reasonable condition, have been built within the last 150 years, and are under 2,000 square feet. It is cheaper than a building survey, but is not suitable for unusual properties, ones that are particularly old, or properties that you may plan on renovating.

The main details of the HSV will include:

- Looking at the general condition of the property and assessing its major and minor faults.
- Assessing whether any of the major faults will need repairing, and the cost implications of these.
- Assessing and reporting damp in the walls and woodwork, and any woodworm also.
- Assessing the condition of damp-proofing, insulation and drainage (although drainage will not be tested).
- Providing an estimated cost for rebuilding should the property be destroyed. This is usually for building insurance purposes.
- Recommendations for any further surveys and investigations that may need to be performed on specialist areas before the contracts should be exchanged.

HOMEBUYER REPORT (HBR)

These surveys are much more detailed and provide a comprehensive report about the current condition of the property. This type of survey is the most thorough one available, and each one can take several hours to complete. The survey will examine all accessible parts of the property. If you wish to have any specific areas looked at, this type of survey is the best choice.

We highly recommend that you have a HomeBuyer Report on the property that you wish to buy. We are able to put you in contact with expert surveyors to make the process more convenient for you. If you wish for us to do this for you, then please let us know.

The survey is suitable for all types of property, whether they are listed, unusual or old, whether you wish to perform renovation work on them or whether the property has already had extensions added to it. This means that this survey is preferred for all buildings which cannot be included in the standard survey and valuation. The price of the survey will fluctuate according to the size of the property and its condition, the approximate value of the house, its location and which surveyor or company is used to carry out the inspection. Sometimes these surveys can be used instead of the Basic Mortgage Valuation (see below), but only if the surveyor you use is approved by the mortgage lender. The actual survey does not provide a valuation, but the surveyor will include one if you request it.

The main details of the HBR will include:

- All major and minor faults found within the property, and the implications that these will have.
- How much the repairs for these defects will cost.
- Testing for dampness of the walls and results of these tests.
- Testing of all woodwork for damp and woodworm, and the results of these tests.
- Investigation into the condition of damp proofing, insulation and drainage, although the drains will not actually be tested.
- Technical information about how the property was constructed, and all materials which were used in the process.
- Information about the location of the property.
- Proposals for any further special inspections and subsequent work which may need.

There are other types of survey that you may wish to have carried out before you buy the house, and sometimes the type you need to have performed will be dictated by your mortgage supplier. If you cannot decide which type of survey is right for you, talk to a RICS member and they will be able to advise you as to which one is most suitable. The surveys are completely objective and independent, and their aim is to help you make an informed decision about your purchase.

BASIC MORTGAGE VALUATION

When you apply for a mortgage, the lender will require you to carry out a basic mortgage valuation on the property. This acts as a kind of collateral for the mortgage provider to make sure that the property is worth the value that you are proposing to buy it for—i.e. what the mortgage provider is lending you. The main aim of this type of survey is to assess whether the property represents a suitable security against the amount of the mortgage requested. Some providers will not charge for this to be done, as an incentive to try and persuade you to take out the mortgage with them. Otherwise, the cost of the survey will depend on the size and purchase price of the property.

This valuation is not an extensive survey and will not provide accurate details about the condition of the property; major structural problems, which will cost you a great deal of money to amend, are often not picked up in these types of surveys. The valuation also does not guarantee that the property is worth the asking price. UK Finance, the organisation that represents mortgage lenders, strongly advises that homebuyers get a more extensive survey than this one done when valuing the house. Again, we are able to put you in contact with an experienced surveyor if you wish.

DRAFT CONTRACT PAPERS

Once the surveys have been completed, the seller's solicitor will then send the draft contract pack to the buyer's solicitor, which will include title documents to the property, completed protocol forms (seller's Property Information Form; Fixtures, Fittings and Contents Form and Leasehold Information Form, if applicable). These forms include information regarding the property such as utility providers, rights and obligations and furniture that will remain at the property.

The purchaser's solicitor will review the documents and may have questions or concerns regarding the information provided and will therefore raise pre-contract enquiries with the seller's solicitor.

These enquiries would include whether there are any guarantees for works carried out at the property i.e. rights of way, shared access, service providers, cavity wall insulation, whether there have been any neighbour disputes, etc.

If a property is leasehold, there will be separate enquiries as the buyer's solicitor will need to know if there is a management company, whether there are ground rent and service charges to pay. A separate list of leasehold enquiries will be sent to the seller's solicitor who will forward to the freeholder or the management company.

SEARCHES

The purchaser's solicitor will also request searches. The standard searches to be carried out are:

- A Local Authority search;
- A water and drainage search;
- An environmental search; and,
- A Chancel repair liability search.

The approximate cost for these searches is £235.00.

LOCAL AUTHORITY SEARCH

This search will reveal specific information regarding a property and the surrounding area. This search takes an average of four to eight weeks to be conducted, but this varies substantially depending on the local authority area the property is in. The search will reveal important information, particularly about the following: listed buildings, conservation areas, Tree Preservation Orders, improvement or renovation grants, Smoke Control Orders, future developments, nearby road schemes and motorways, road proposals by private bodies, public paths or highways, advertisements, completion notices, Houses in Multiple Occupation, noise abatement, urban development areas, enterprise zones, simplified planning zones, land maintenance notices, mineral consultation areas, and hazardous substance consents.

WATER AND DRAINAGE SEARCH

The main information that this search reveals is whether a property is connected to a mains water and sewer supply, whether the property has a water meter and where the drains and sewers are located. The search can also reveal information about the quality of the water available at a property.

ENVIRONMENTAL SEARCH

This search will reveal whether there are any environmental issues that may affect a property. The search contains information on historical land use and is unique in considering the issue of contaminated land in relation to property value and use. The search will reveal if a property is located in an area where radon gas emissions are high, whether there are issues with ground stability, and the reasons why, and flood risks.

CHANCEL SEARCH

This search will reveal whether the property is located within an area where the owner of the property is at risk of potential chancel repair liability.

The four searches listed earlier are the usual searches that would need to be carried out. However, other searches may be required. Your solicitor will know if other searches are required based on the information in these searches, the contract papers and/or any surveys that you or your lender have carried out. These additional searches would include a coal and mining search, if the property is located in an area where coal mining used to take place, and will identify if there is an environmental or stability risk.

Once the search results have been received, your solicitor will check the contents of the same to ensure that nothing unusual has been revealed. If your solicitor has any concerns, they will raise further pre-contract enquiries with the seller's solicitor.

Once your solicitor has received replies to enquiries from the seller's solicitor and they are satisfied with them, they will arrange for you to attend their office. This is to report to you on the title documents, replies to enquiries and your mortgage offer. You will then be required to sign the legal documents in readiness for exchange of contracts. This will consist of the contract and mortgage deed (but in some cases there may be more documents to sign). Once everything has been satisfied, your solicitor will also provide you with a completion statement. This will provide a breakdown of all the fees and disbursements incurred and will enable you to understand what monies are required from you to be able to exchange contracts (usually a deposit of at least 10% of the purchase price) and complete (full balance of monies).

3 EXCHANGE

PREPARING FOR EXCHANGE OF CONTRACTS

Once you and your solicitor are satisfied with everything, you can start negotiating a completion date. The completion date will need to be agreed and deposit monies received by the purchaser's solicitor before exchange of contracts can take place. Your solicitor will also need to carry out a bankruptcy search on each purchaser, and, if they are receiving a loan or gift from any family members or friends, a bankruptcy search will also need to be carried out on each person. This is for a nominal fee payable to the Land Registry (HMLR) and the results usually come back immediately.

Exchanging contracts will make the transaction legally binding. Thus, after this time, neither party can pull out or change the completion date without legal consequences.

The usual method of exchanging contracts today is by telephone where the seller's and purchaser's solicitors will read out the details of the contract and then send their client's signed copy to the one another. A deposit amount will need to be agreed and sent to the seller's solicitor, and, depending on how soon the completion date is, the purchaser's solicitor will need to send the deposit monies to the seller's solicitor who will hold on to them until completion has taken place.

4

COMPLETION

Once contracts have been exchanged, and a legally binding completion date has been set, the purchaser's solicitor will send the request to the mortgage lender in order to request the funds in readiness for completion.

The seller's solicitor will request a final redemption figure from their mortgage provider, if there is a charge registered against the property. If the property is leasehold, the seller's solicitor will apportion the service charges and ground rent and send a completion statement to the purchaser's solicitor.

The seller's solicitor will also need to ensure that their client has signed a transfer in readiness to send to the purchaser's solicitors on completion. The purchaser's solicitor will send to the purchaser a completion statement illustrating all outstanding monies to be transferred to the solicitor prior to completion. The statement will include a complete breakdown to include disbursements, solicitor's fees, third party fees.

Once in receipt of the purchase monies, the seller's solicitor will redeem all charges registered against the property. They will also deal with restriction holders and pay third-party fees (such as those payable to any estate agents).

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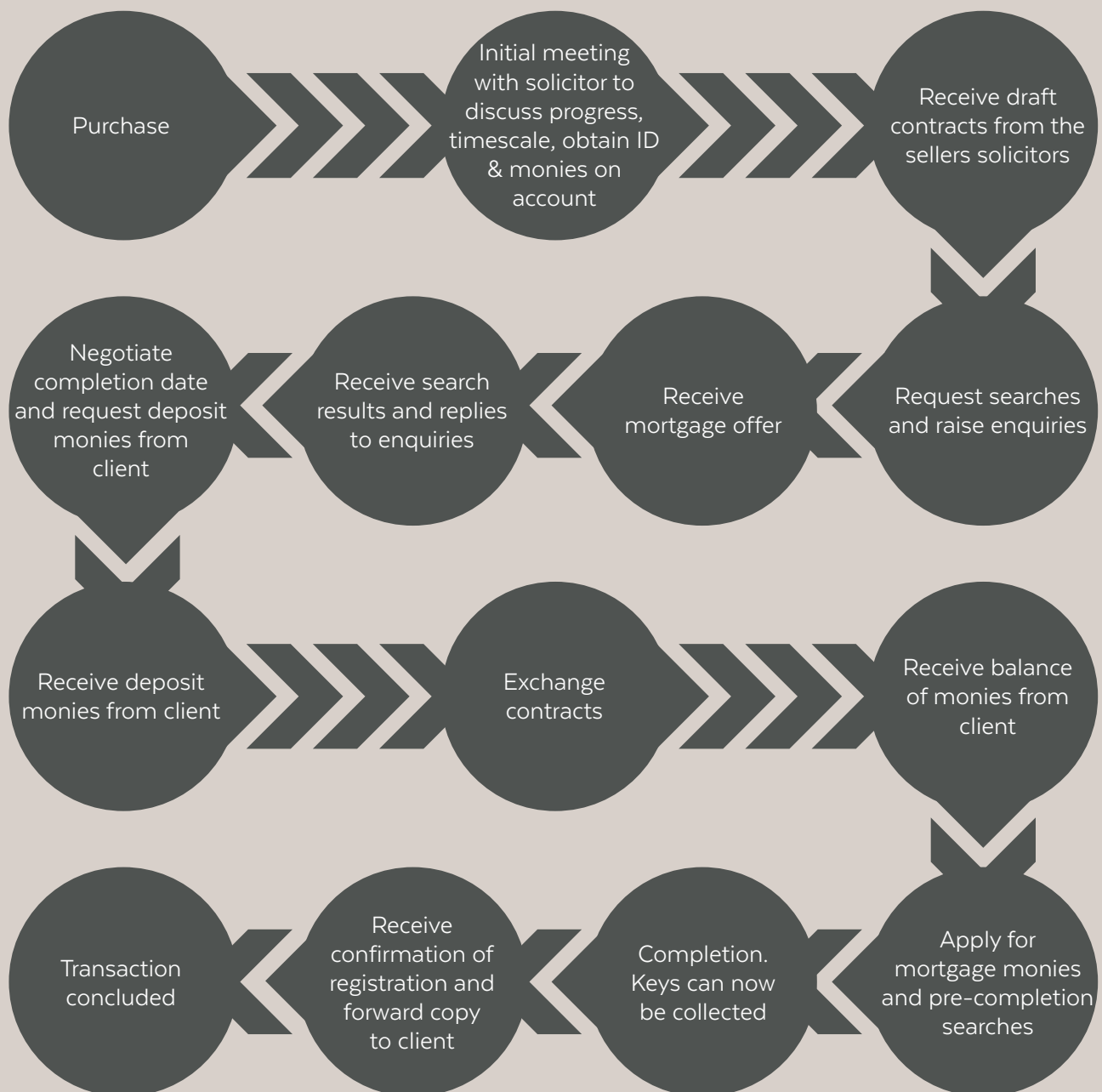
POST-COMPLETION

Although the purchasers will have already moved into the new property, their solicitor will still have important formalities to deal with. After completion has taken place, the seller's solicitor will send to the purchaser's solicitor the signed transfer, any original deeds and any guarantees they may hold.

Once the purchaser's solicitor receives the seller's signed transfer, they will submit their application to HMLR in order to register the title in the purchaser's name. The purchaser's solicitor will also need to submit a property tax return form (for SDLT, in England, or LTT, in Wales). The purchaser's solicitor will then have 30 days to submit the return, otherwise they will incur a penalty.

SUMMARY

CONVEYANCING IN A NUTSHELL



GLOSSARY OF TERMS

Absolute title

Guaranteed title to the ownership of a property or lease.

Adverse possession

Transfer of ownership by adverse possession is when someone takes over the ownership of the property without buying or paying for it.

Amenity Green Space

Open land that makes a positive contribution to the appearance of an area or improves the quality of lives of people living or working locally.

Asbestos

Naturally-occurring mineral that has been used predominantly for fire protection. This product was banned in 1999.

Bankruptcy search

Search to find out whether an individual has ever been made bankrupt.

Beneficial Owner

When a person has some sort of right to a property even though the legal title belongs to someone else. E.g. when a property is held in trust.

Boundary

These are the lines marked that limit the extent of the property.

Building Regulations

These are a set of rules which are in place to ensure that any newbuild property or alterations to an existing property are done to a certain standard.

Caveat Emptor (or: "Buyer beware")

A Latin phrase meaning that the onus is on the buyer to find out every potential issue with their prospective property.

Certificate of Title

This is the document which confirms who the current owner of a property is. These are held by the Land Registry once a property is registered.

Chancel Liability

This is a very old law which grants a Parish Church powers to charge some of the owners of land within their parish for the upkeep and maintenance of the church.

Chattels

Items that are not fixed to a property, such as furniture.

Coal search

This is a search that determines whether or not the property may be affected by any coal mining, which used to take place in the area.

Common Land

This is land owned by a person which others have access over.

Completion

This is where the buyer's money is transferred to the seller's solicitor and ownership of the property changes hands.

Completion Statement

This is the document which confirms a breakdown of the solicitor's fees and expenses/disbursements.

Conservation area

This is an area of special architectural or historic interest.

Contaminated Land

This is any land which appears to the local authority is situated to be in such a condition by reason or substance in, on or under the land that is either a significant harm being caused or there is a possibility of significant harm being caused or pollution of controlled waters is being or is likely to be caused.

Contract

This is the document that confirms and is proof of the agreement between the seller and the buyer which must be signed before contracts can be exchanged.

Covenants

These are legally binding restrictions, duties or conditions imposed on a property and its owners.

Deposit

This is the amount of money which is required on exchange of contracts. The standard amount is 10% of the purchase price.

Disbursements

These are costs which a solicitor must pay on behalf of their client, i.e. searches.

Discharge of Charge

This is when a mortgage is paid off and the charge over the property is removed.

Easement

An easement is a right given to the owner of a property over land or a property owned by someone else.

Energy Performance Certificate

A report which details the energy efficiency of a property.

Environmental Search

This is a search to find out if anything has a negative effect on the environment around the property.

Exchange of Contracts

This is when the contracts for the sale of the property are exchanged and the buyer and seller officially agree that the sale will go ahead. Once this has taken place neither side can back out without legal consequences.

Filed plan

This is the plan which details the boundary of the property.

Fixtures and fittings

These are all items contained within a property, i.e. curtains, light fittings etc.

GLOSSARY OF TERMS

Fittings and Contents Form (TA10)

This is completed by the seller to confirm what items will remain at the property.

Flying Freehold

This exists where part of the property you own overhangs of another person's freehold.

Ground rent

This is a regular payment of rent by a leaseholder made to the landlord or person who owns the freehold.

HomeBuyer Report

This is a detailed report on the condition of the property carried out by a qualified surveyor.

Investigation of title

This is carried out by a solicitor to establish whether or not the seller of a property actually has a right to do so.

Joint tenancy

This is when two people own a property in its entirety but do not have a specific share each. Therefore, if one person dies, the property automatically passes to the other owner.

Leasehold

This is where ownership of the property is fixed for a number of years controlled by a lease.

Leasehold Information Form (TA7)

This is completed by the seller which provides information of the landlord and the terms of the lease.

Lender

This is the company that provides the mortgage.

Listed Building

A building of special architectural or historic interest.

Local Authority search

This is a search where the Local Authority provide information about the property and the surrounding area. This would include building regulations, planning permissions, whether the property is located within a conservation area.

Land Registry

A non-ministerial government department. The Land Registry deals with registering the ownership of land and property in England and Wales.

Management Company

If a building has some common areas, the landlord will employ a management company to maintain them.

Memorandum of Sale

This is the document which confirms the fact that the seller and buyer have agreed to the property transaction.

Mining search

This is a search which checks whether may have been or could be affected by any form of mining.

Mortgage

This is the money lent to a buyer to purchase or remortgage a property.

Mortgage valuation

A mortgage lender will usually insist that a property is inspected by a qualified surveyor to ensure the property is worth the value the purchaser has declared it to be.

NHBC

The National House-Building Council states its primary purpose as raising the construction standards of new homes in the UK to protect homeowners. New properties issued with a NHBC will have a 10-year warranty. This means that any defects structural or weather proofing parts will be rectified within this period.

Office Copies

These are the documents help with the Land Registry which confirms ownership of the property.

Party Wall

This is the wall dividing two separate properties or households. The property owners benefitting from them are responsible for their maintenance and, if necessary, replacement.

Peppercorn rent

A very small or nominal consideration given upon the creation of a legal contract.

Permitted development

Allows people to undertake minor developments to their properties under a blanket grant of planning permission.

Possessory Title

This is when the owner is in legal possession of a property but does not have absolute title.

Post-completion

This is the time after the property transaction has finished and the sale has gone through. The conveyancers will submit their application to register the property at HMLR during this time.

Pre-completion searches

These are searches carried out before completion to ensure nothing has changed since exchange of contracts, i.e. purchaser being declared bankrupt.

Pre-contract enquiries

These are the list of questions which the purchaser's solicitor will ask the seller's solicitor before exchange of contracts can take place.

Property chain

This is when there are a number of property transactions being dependant on the others.

Radon

This is a radioactive gas, which is colourless, odourless. It can be found everywhere in the UK and the Local Authority search will reveal whether the quantity requires some sort of action.

Registered Land

This is land that is registered at the Land Registry.

Rent charge

This is an annual sum payable to a third party even though the property is freehold.

Report on Title

A detailed report on the Title documents written for the Buyer by their Conveyancer.

GLOSSARY OF TERMS

Requisitions on Title (TA13)

This is a standard form prepared by The Law Society. It is completed by the Seller's Conveyancer and delivered to the Buyer's Solicitor.

Right of Way

This entitles the holder of the right to pass over another person's land.

Stamp Duty Land Tax (SDLT) / Land Transaction Tax (LTT)

A property tax that is calculated based on the value of property. SDLT applies in England; LTT applies in Wales. We pay this on the client's behalf on completion.

Section 24 sewers

Sewers shared by two or more properties. These were built before 1/10/1937 and were therefore automatically adopted.

Section 38 Agreement

A legally-binding agreement under Section 38 of the Highways Act 1980. This signifies that a road is adopted.

Section 104 Agreement

A legally-binding agreement under Section 104 of the Water Industries Act 1991. It is made between a developer and a water company and signifies that the latter adopted the sewers.

Section 106 Agreement

A legally-binding agreement under Section 106 of the Town and Country Planning Act 1990. It is made between a developer and the Local Authority to grant planning permission for development purposes.

Property Information Form (TA6)

A standardised form that is generated by The Law Society. It is completed by the Seller's Conveyancer to inform the Seller about the condition of a property and its immediate surroundings.

Septic tank

A tank that collects sewerage from a property but is not connected to the public sewerage system.

Smoke Control Order

This is set by the Local Authority and prohibits the burning of certain substances in an effort to reduce levels of air pollution.

Soakaways

A buried chamber that evenly distributes surface water into the ground.

Stock Transfer Form

This documents the transfers of a share in a management company to the Buyer.

Subsidence

This is the motion of the Earth's surface as it shifts downwards. This usually happens when problems occur with houses built upon clay soils or when water leaks into the soil.

Tenants in Common

When two Buyers purchase a property with fixed shares.

Term of a Lease

This the duration of a lease.

Title

This document shows legal ownership of a property.

Title Deeds

These documents outline information about the Title of a property.

Transfer

A Land Registry document that evidences the transfer of ownership of a property from the Seller to the Buyer.

Tree Preservation Order

This is issued by the Local Authority and makes it an offence to cut, top, loop, uproot or damage a tree under its protection.

UK Finance (formerly the Council of Mortgage Lenders)

The collective voice for the banking and finance industry. UK Finance represent more than 250 firms across the industry, and act to enhance competitiveness, support customers and facilitate innovation. Conveyancers consult their Lenders' Handbook to find out information about lenders' policies and requirements.

Undertaking

This is a legally-binding promise to do something.

Unregistered land

This is land that is not registered at the Land Registry. As of 1990, all land must be registered at HMLR when it is next sold thereafter.

Vacant Possession

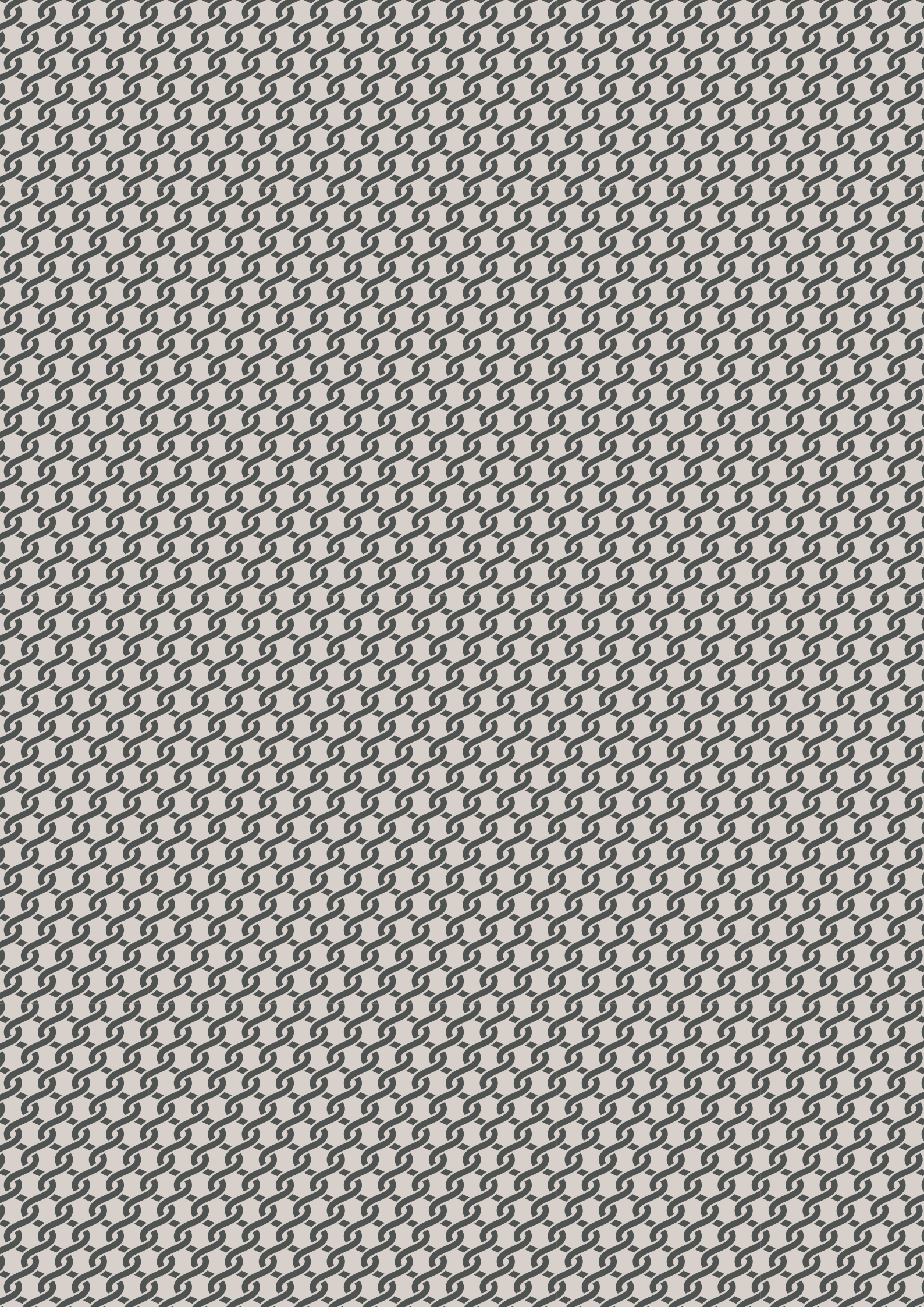
This means that a property will be free of all previously residing persons on completion.

Valuation

This is a process of estimating the financial value of a property.

Water and Drainage search

This is a search carried out by the water company. It tells one about the connection of the property to water and drainage services.





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