

Home Buyer's Guide

The expert hand, with the human touch



“ Excellent service from start to finish. We had to do the whole process from abroad and Irwin Mitchell made it very straightforward. ”

Rob

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Introduction

At Irwin Mitchell we understand that buying a new property is exciting, but that it can also be a confusing and stressful time. Whether you are buying a property for the first time, or you have moved several times before, you will want to know that you have experienced solicitors on your side.

Our Residential Property team has helped thousands of people to buy a new home. This guide explains every stage of the purchase and points out issues you need to consider.

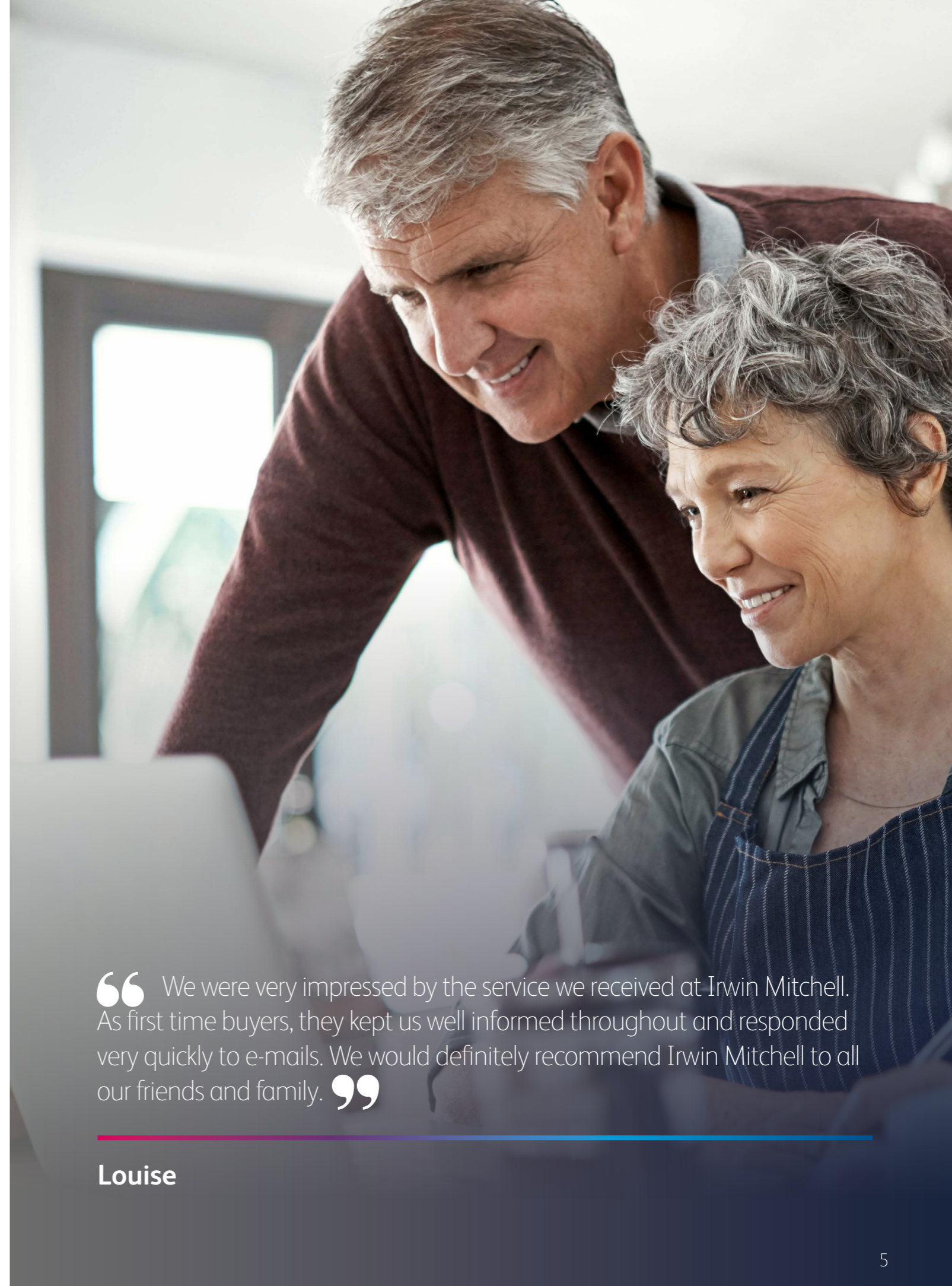
The conveyancing process usually falls into three stages:

Part A - Investigations & negotiations

Part B - Exchange of contracts

Part C - Completion & registration

Please keep this guide to hand as we'll refer to it as the transaction proceeds. If you misplace it, please ask for another.



“ We were very impressed by the service we received at Irwin Mitchell. As first time buyers, they kept us well informed throughout and responded very quickly to e-mails. We would definitely recommend Irwin Mitchell to all our friends and family. ”

Louise

Part A - Investigations and negotiations to exchange of contracts

Once you have instructed us to act on your behalf, we'll contact the seller's solicitors and ask them to forward the draft contract for review. We'll also request local authority, environmental, and water and drainage searches for the property.

We then review the contract documents, searches, any mortgage offer, and information from the seller. We'll let you know how we recommend you proceed.

Please provide us with a copy of your mortgage valuation report/homebuyers report as soon as you receive it.

The process can take around 8-12 weeks as we may need to raise enquiries with the seller's solicitors, the mortgage lender and other third parties.

The following key points are explained in detail on the following pages:

Contract negotiations	Occupiers	Buying in joint names
Deposits	Searches and enquiries	Condition of the property and surveys
Stamp duty land tax	Sale and purchase and chain transactions	New properties
Costs	Fitting and contents	Wills

Contract negotiations

Neither buyer nor seller is legally committed to proceed with the transaction until contracts are exchanged.

A contract is an agreement which will be recognised in a Court of Law. The words "contract" and "agreement" are used interchangeably throughout the industry.

It is important that the contract includes everything you have agreed with the seller.

We will negotiate on your behalf to make sure that the contract contains all the arrangements you have told us.

Don't commit to going ahead with the purchase without speaking to us. You'll also need to make it clear that no negotiations are binding until formal written contracts are signed by both parties and exchanged between solicitors.

Occupiers

If you find that anyone other than the seller is living at or using any part of the property (including a garage or outhouse) you should let us know immediately.

Buying in joint names

There are two ways in which multiple people can own land and buildings together:

Tenants in common - each co-owner's share in the property forms part of his or her estate when they die and can be left by Will according to their own wishes. The owners can also specify how ownership of the property is divided between them.

Joint tenancy - when one co-owner dies, ownership of his or her share of the property passes automatically to the surviving co-owner. The surviving co-owner becomes the owner of the whole property.

The property will be equally divided between all joint owners unless you state otherwise.

If you are buying in joint names, please let us know how you would like to own the property and if you require a separate Declaration of Trust. This sets out how you intend to divide shares of the property and is particularly important if you aren't married to your co-owner. The cost of this will be billed separately.

You should think about how you want to own the property and discuss with your co-owner how you want ownership of the property to be dealt with on your death. Our experienced Tax, Trust & Estates team can help if you would like more legal advice on this issue. Our Family Law team can also advise on a cohabitation agreement if you feel this would be appropriate.

Remember that that if you are buying in joint names with a mortgage, the mortgage application should also be in joint names.

Deposits

We will ask you where your deposit is coming from. If this does not come from your own personal funds i.e. if it is from a loan or a gift - your mortgage offer may be affected and we may need to make some additional checks.

Preliminary deposits paid to Estate Agents

Estate agents sometimes request a “preliminary deposit” when your offer for a property is accepted. However, paying a preliminary deposit doesn’t secure the property and either side can still withdraw. Preliminary deposits are generally refundable but you should check with your estate agent and let us know if you have any concerns.

Deposit paid to seller’s solicitors on exchange

You’ll normally have to pay a deposit of 10 % of the purchase price (minus any preliminary deposit) when contracts are exchanged. Sometimes the seller will agree to a 5 % deposit. If you default on the agreement and the purchase does not proceed to completion, then the seller can keep the deposit. If you complete the contract, you only have to pay the purchase price minus the deposit.

You shouldn’t pay any deposit directly to the seller. This money could be difficult to recover if the purchase falls through. In some cases, it could be argued that you have entered a contract with your seller before such a contract is intended.

Payment of a deposit can cause a problem if:

<p>(a) You are getting a mortgage loan of more than 90 % of the purchase price, because the mortgage money does not become available until completion of the transaction. You cannot use your mortgage advance to finance your deposit.</p>	<p>(b) You depend on the proceeds of sale of another property to finance your purchase. We will need to synchronise the two transactions if that is the case.</p>
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The deposit is normally paid to the seller’s solicitors to hold as “stakeholders”, which means that it cannot be released to the seller or used in any way until the purchase is completed.

In some cases (particularly with new properties), the seller’s solicitors will insist upon holding the deposit as “Agent for the Vendor”. This means that the deposit can immediately be released to the seller. We wouldn’t normally advise that you accept this because it can make it difficult to recover the deposit if the transaction does not proceed for any reason.

If you won’t be able to pay a 10 % deposit, please let us know how much money you do have available. We can ask the seller’s solicitors if this amount will be acceptable as a reduced deposit. If they don’t accept, you will need to arrange for the full amount of the deposit to be paid. You should note that if a reduced deposit is agreed for exchange, should you default on the purchase post exchange, a full 10 % deposit will need to be paid to the seller, who may be able to sue you for the remaining deposit.

Searches and enquiries

Conveyancing searches, also known as property searches, are enquiries with public authorities that give you more information about the property you plan to buy. For example, searches might tell you about flood risk, access rights, or whether the property is affected by any planned developments.

Sellers don’t have to give you this kind of information about the property before the sale and even if they do, it might be inaccurate or out-of-date. A conveyancing search is the only way to get all the correct information that might impact your decision to buy the property. If you are buying with a mortgage, your lender will almost certainly insist that you carry out searches before the transaction. The three most common conveyancing searches required by mortgage lenders are:

- **Local authority search** – covers a number of issues including planning and building regulations
- **Water and drainage search** – this will reveal the drainage and sewerage arrangements for the property
- **Environmental search** – this will inform you of any environmental risks such as flooding, ground stability or contamination.

There are lots of additional searches that might be necessary or advised based on the location of your property and the results of the initial searches above. We’ll advise you which searches we think are best for your property. Please let us know if you think any other searches are necessary or desirable.

Condition of the property and surveys

Remember that you accept the property in its condition at the date contracts are exchanged. Without a specific warranty (which is only normal for new properties - see page 12), you have no rights against the seller for defects that you could have discovered by diligent inspection.

For instance, the seller doesn’t have to tell you if there is woodworm, dry rot, or dampness. They are often unaware of these defects themselves. As your home is likely to be your most valuable asset, we recommend arranging a full survey from an independent surveyor with experience in the local area.

Woodworm, dry rot, and dampness-only surveys are often carried out free of charge by reputable specialist firms who will give you estimates for the cost of repairs. These inspections are a sensible precaution although you must bear in mind that any inspection can be limited in a fully fitted house. Electrical, drains and central heating inspections might also be a good idea.

The Royal Institution of Chartered surveyors offer a slightly less expensive alternative to a building survey called a “Homebuyers Report and Valuation”. If you are getting a buy to let mortgage, you should get an independent valuation. A 2011 Court Ruling concluded that a buy to let borrower can’t rely on the mortgage valuation prepared on behalf of the mortgage lender.

Please note that a lender’s valuation is not a structural survey. It is just a limited inspection by the lender’s valuer for mortgage valuation purposes only.

Stamp Duty Land Tax (SDLT)

Since 2003, a buyer must declare the circumstances of most land transactions to HM Revenue & Customs (HMRC). HMRC looks closely at transactions where the purchase price has been divided between land, and fixtures and fittings. It is therefore essential that any divisions truly reflect the value of those items.

Please bear this in mind and ensure that you tell us about any additional payments which may be considered liable to stamp duty land tax.

SDLT is payable on increasing portions of the property price above £125,000:

Property or lease premium or transfer value	SDLT rate
Up to £125,000	Zero
The next £125,000 (the portion from £125,001 to £250,000)	2%
The next £675,000 (the portion from £250,001 to £925,000)	5%
The next £575,000 (the portion from £925,001 to £1.5 million)	10%
The remaining amount (the portion above £1.5 million)	12%

You may also be liable to pay 3% on top of the normal SDLT rates if the purchase means you'll own more than one property. This includes properties in this country and abroad. You must notify us immediately if you believe this applies to you.

SDLT should be paid immediately following completion unless it will be paid out of a sale that we are also acting for you in. You may be charged a penalty and late payment interest by HMRC if SDLT is not paid on time. Although we will prepare the SDLT form for you, it is your responsibility to check that the details are correct and that you pay the correct tax. Should you require any additional advice in respect of SDLT, our tax team would be happy to assist for an additional fee.

Sales & purchases and chain transactions

If your purchase has to be financed from the sale of your present home, take care that you are not left with two houses or none. We'll ensure that contracts are exchanged simultaneously with the same completion date unless instructed otherwise in writing.

It is entirely normal to find yourself in a chain of transactions with multiple people trying to synchronise sales and purchases. There is often a frustrating period of delay caused by one party in the chain not being ready to proceed.

Always bear in mind that your transaction will only proceed as quickly as the slowest link in the chain and the longer the chain, the slower it is likely to move.



“ I used Irwin Mitchell to do the conveyancing on my recent purchase and sale. The team were fantastic. Always contactable, very responsive and dealt with everything very efficiently. Irwin Mitchell made the whole process a lot less stressful knowing they were on it and not holding things up. Highly recommend Irwin Mitchell for conveyancing. ”

Natalie

New properties

You should bear the following points in mind if you are buying a new property:

- Developers want to exchange contracts as early as possible - sometimes before a single brick has been laid. You will often be told that you must exchange contracts by a particular date. If not, the price may be increased or the property placed back on the open market
 - The Developer's Building Agreement rarely specifies all the dimensions or other details of the property to be built but refers to "building plans" which may be held at the site for inspection. Unless otherwise instructed, we won't inspect any such plans and it is up to you to do so
 - The developer often builds to a set specification and asks for an additional payment for "extras". You should not pay any money for extras before contracts are exchanged. However, please make us aware of any such payments so we can check these on the final completion statement
 - The developer will usually exchange contracts before they can tell you exactly when the house or apartment will actually be finished. If so, the sale agreement nearly always specifies that completion will take place within 7-10 working days of written notice that the property is ready for occupation. This can make it hard to synchronise transactions if you are also selling a property yourself. Often you will have to pass on this notice provision to your own buyers
 - A new house is nearly always sold with the benefit of a new home warranty such as a National House-Building Council (NHBC) Ten Year Guarantee. You may not be able to get a mortgage unless the new property has this or similar cover and you should make sure that it does. The scheme offers two types of cover:
 - i. For the first two years, the developer is required to fix any defects in the property which are due to non-compliance with the new build warranty requirements and the technical requirements of the scheme
 - ii. The property is covered for "major structural defects" between 2-10 years after construction.
- The standard guarantee schemes often cover much less than you would expect – for example, issues such as cracks or shrinkage are often specifically excluded. You will have to rely on the good will of your developer to resolve these and many other "snagging" issues or take responsibility for them yourself
- Developers often provide incentives in connection with a purchase. Their solicitors will provide us with a disclosure of incentive form and we must ensure that your lender is made aware of all incentives. Please ensure that all incentives are mentioned in your mortgage application – your offer could be affected if not.

Please note that we'll need one week between exchange of contracts and completion. This helps us to make sure the transaction runs smoothly and to safeguard your interests. If completion is arranged for less than one week after exchange of contracts, then we'll charge an additional £150 plus VAT.

Costs

Searches will be charged at cost plus VAT and we'll handle any shortfalls/surpluses immediately before completion. If the transaction doesn't proceed to completion, we'll only refund the money held on account which has not been used to cover search fees.

If the transaction doesn't proceed to completion, the fees incurred will be charged pro rata based on the amount of work carried out plus VAT. Disbursements which we have already paid out on your behalf are non-refundable and will also be payable by you.

We'll always tell you if any unforeseen work becomes necessary or if we need to revise our cost estimate.

If you are buying with a mortgage, we'll ask your lender to send us the mortgage advance money so that it arrives in our account on the working day before completion. This means your lender may charge you an extra day's interest, but it will help you avoid any unnecessary delay or stress on the morning of completion.

If we need to send money by electronic transfer on completion, we'll charge an additional fee plus VAT for each transfer to cover our administration costs and the bank's fee.

As per our Terms of Business, you need to pay our costs and any disbursements before completion or your purchase may be delayed.

Fittings and contents

The seller is normally entitled, and even bound, to remove everything that isn't permanently attached to the property (house and garden).

The permanent items are known as fittings and everything else is known as contents. For instance, carpets and curtains are fittings and removable; fitted cupboards, fireplaces and pelmets are fixtures and should remain.

Please advise us of any extras you will be buying so a list and a price can be agreed and inserted in the contract. This list will be definitive and overrides any separate agreement you may have made direct with the seller. We advise that you obtain a valuation for any separate payment for fittings and contents in case of an HMRC investigation.

Wills

We strongly advise that you make a new Will or revise your existing Will each time your main home changes. Please let us know if this is something you'd be interested in and we'll put you in touch with a member of our experienced Tax, Trust and Estates team.

Part B - Signing the contract and exchange

Once we have completed our searches and enquiries and investigated the title, we'll write to you with a formal report and our advice. We'll also send you the contract to sign plus any other related documents.

Signing the contract and paying the deposit

You may want to delay paying the deposit until you are sure your seller (and the buyer of any property you may be selling) is also ready to exchange contracts. Please ensure that you have made arrangements for the deposit to be paid once required to avoid any delays.

It's advisable to have a look over the property just before exchange of contracts to check that it's still as you expect. Let us know at once if you find anything unexpected.

If you do intend to inspect the property, you must give us clear written instructions not to exchange contracts until you confirm to us that you're happy to go ahead. Remember you accept the property in its state at the time of exchange of contracts.

If you are getting a mortgage to assist in the purchase, we'll need to check the mortgage offer to ensure all the terms are acceptable before we exchange contracts.

Make sure you are completely happy with your offer and any special conditions. You are legally obliged to complete the purchase once contracts have been exchanged, **even if you can't get a mortgage.**

Please note we'll need cleared funds from you before we can exchange contracts.

Completion date

- This is normally the date you move in. If you have a related sale you would also normally move out on this date
- It is often advisable to try and agree a completion date direct with your seller when we send you the contract to sign
- Only make definite arrangements for your move once contracts are exchanged and a completion date has been fixed
- There is a lot to do between exchange of contracts and completion, so we generally advise a completion date between seven and 14 days after exchange
- If you need to complete in less than seven days from exchange, we'll do our best to comply with your request but there will be an additional charge in accordance with our Terms of Business. We may also need to check with your lender (if any) that your timeframe meets their requirements
- Completion cannot be on a Saturday, Sunday, Bank Holiday or any other day when the banks, or we, or any other solicitors in the chain are closed
- If completion of your purchase is delayed beyond the completion date and it isn't the seller's fault, you may be required to pay interest at the rate prescribed in the agreement. If you moved into the property before completion, interest would be payable from the date of occupation to the date of completion

You may also have to pay the seller further compensation as a result of a failure to complete the contract on time, for example for storage or hotel costs. The seller's solicitor can also serve a notice to complete under the contract requiring completion within a period of ten working days

If you fail to complete within this time the seller can withdraw from the sale and keep your deposit. **It is very important therefore that we receive all funds the day before completion, to avoid such delays**

- If you are leaving rented accommodation we strongly advise that you do not give notice to terminate your tenancy until we tell you contracts have been exchanged and your completion date has been fixed
- Contracts are usually exchanged by solicitors by telephone, using a binding formula of words. Once exchanged, the contracts are dated, completion dates inserted, and the transaction becomes legally binding on both sides. It is therefore vital that you make sure that you are happy with the condition of the property, the fairness of the price, and whether your finances are in order before exchange.

Part C - Exchange of contracts to completion

This is the time to make the final preparations for moving into your new home, such as arranging energy and water services and finalising the mortgage. We'll send you the Mortgage Deed and Transfer Deed to sign and let you know if any additional payments are required.

The mortgage

The Mortgage Deed is a document that gives your lender an interest in the property that you are buying. This acts as security for the money you are borrowing from them. You will have to pay off the whole of the loan plus any interest accrued to discharge the mortgage.

We'll arrange for you to sign the Mortgage Deed before completion. Please read through the documents carefully before signing and ask us if you have any queries.

We'll then request the mortgage funds from the lender once we have exchanged contracts.

Services

It is normal for a seller to pay all outstanding Council Tax and water charges on the property up to the date of completion. These are a personal liability rather than a charge on the property and you cannot be required to pay tax or rates from before the purchase.

We recommend that you tell the Local and Water authorities your moving-in date in advance. You then need to make sure that you are only levied for Council Tax and water charges from that date.

You should also check the gas, electricity and telephone situation. You should check that the supplies won't be disconnected, confirm your move-in date with the relevant authorities, arrange meter readings, and arrange to take over the services. We recommend checking meters yourself and advise the authorities accordingly.

Collecting the keys

Please contact the seller yourself to arrange collecting the keys on completion. This is usually done via the estate agents. If you have any problems, please do not hesitate to let us know.

You are not entitled to get the keys until we have actually paid the money due to the seller's solicitors and completed the transaction. We'll try to complete as early as possible but we can't guarantee what time this will happen on the day.

Insurance

You are still legally obliged to complete the purchase if the property is damaged or destroyed before the completion date. It is therefore essential that you put an insurance policy in place from exchange to protect you should damage occur in this period. You should also tell the insurance company that the risk is initially between exchange and completion so that they are fully informed.

Chancel search insurance

We may also get a chancel search insurance which insures you against any potential liability for contributions towards local parish church repairs.

Providing us with the money to complete

Please note:

- i. We try to let you know the amount required to complete the purchase as soon as possible after exchange of contracts. However it isn't always possible to give you the figure as early as we would like.

In some cases we depend on receiving a completion statement from the seller's solicitors first. You should therefore be prepared to send the money at short notice once contracts are exchanged. **Please note that where there is a rent or service charge payable, you may have to make additional payments to reimburse the sellers for amounts they have paid in advance.**

- ii. All solicitors are obliged to comply with the current Solicitors Regulation Authority (SRA) Accounts Rules. We must ensure that any cheque we receive is cleared before we use the money. You must also let us know well in advance if someone else will be sending us money to be used for the transaction because we have to carry out certain identification and financial checks before accepting the money. Please be aware that delays and further costs can occur if these checks need to be carried out at the last minute.

c. When we ask you for the money to complete, would you please provide it in one of the following ways:

- **A cheque** made out to **Irwin Mitchell** to reach us at least five working days before completion
- **Banker's Draft** (obtainable only from your bank) in favour of IRWIN MITCHELL. You should take your cheque book with you when you call at the bank for the draft. Banks make a charge for this. There is a danger in sending a banker's draft by post and it is advisable to deliver it to us by hand
- **Telegraphic Transfer (TT)** from your bank account to our client account. Please telephone us prior to arranging this and ask for our bank details and reference. Your bank will make a charge for this
- **Credit/Debit Card.** Please see our standard terms of business in this regard.

Law firms and people buying homes are frequently targeted by criminals. Please double-check with us if you notice anything suspicious about any money transfer requests that you receive.

For example, fraudsters sometimes send out fake emails which 'advise' that the solicitors' bank details have changed and ask you to send money to a new account. They then steal this money and close the account.

Completing new properties

A completion date for new properties is set when we receive written notice from the developer's solicitors stating that the property is complete and ready for occupation. Once we inform you of this you should:

- Make sure the money for completion and extra payments such as SDLT is ready in good time for the completion date
- Ask to inspect the property immediately and confirm to us you are satisfied. If there are problems or outstanding works required, prepare a "snagging list" and send a copy both to us and the developer
- Arrange for you or your lender's surveyors or valuer to re-inspect the property immediately if allowed by the contract.

Deeds

After completion, a Land Transaction Return must be sent to HMRC with a cheque for any SDLT payable. Afterwards, the deeds are sent to the Land Registry and you are registered as the new proprietor. This can take anywhere from two weeks, depending upon the type of application and how busy the Land Registry is.

Once registration is complete, the Land Registry will issue a Title Information Document. This is a copy of the Register entries which sets out:

- Who owns the property
- Details of any mortgages
- Details of any rights or easements which affect the property
- Any other relevant details.

Your lender will not normally require any other documents to be lodged with them and we'll forward any pre-registration title deeds and documents to you for you to keep. These should be kept in a safe place as they may need to be produced on any future sale or re-mortgage.

As we have explained, buying a home is a complex process with several stages to work through and many people and organisations involved. We are here to help guide you through it from start to finish so please get in touch if you ever have any questions or want any advice.

Your own experts when you need them

As our clients experience the life events that create their personal story, they value an expert hand delivered with a human touch.

They come from many different walks of life; they might be in business or globally connected or simply dealing with the challenges of later life.

Whether it is tax, trusts, estates, family, relationships or property, or even when life becomes confrontational, our clients all have something in common – they look to Irwin Mitchell.

To talk to a specialist adviser today simply contact us on
0370 1500 100 [irwinmitchell.com/private](https://www.irwinmitchell.com/private)



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