

Standard Conditions of Sale

As well as having a list of special conditions which are particular to each case, every contract is governed by a set of standard conditions. Somewhere in the contract, either on its face or in the special conditions, there will be a statement along the lines of "The < Standard/National > Conditions of Sale x Edition are incorporated into this contract". There are three sets of conditions which are in use for residential property contracts. [The National Conditions of Sale 20th Edition](#), which are outdated and rarely used, [The Standard Conditions of Sale 3rd Edition](#) and [The Standard Conditions of Sale 4th Edition](#), which are very similar to the 3rd edition and which we will be concentrating on in this chapter

1.1 Definitions

This section just defines certain words and terms used in the standard conditions of sale, and is self-explanatory.

1.2 Joint Parties

This clause makes the point that where there is more than buyer or seller any obligations imposed under the contract can be enforced against them jointly or individually. For example therefore if buyers withdraw from the contract after exchange and become liable to the seller to forfeit the deposit, but the deposit was not paid in full on exchange, then the seller can sue just one of the buyers for the whole amount owing, rather than having to sue each buyer for the share he is responsible for.

1.3 Notices and Documents

From time to time it is necessary to serve a notice under the contract, and this section sets out the rules. The important points are that a notice can be served by either in person, by fax, DX post or Royal Mail. It can also be served by e-mail, but only if the recipient has given an e-mail address in the contract. If, in response to an e-mailed notice, a standard "out of office" reply is received, then the notice is deemed not to have been received. A notice must be given in writing (i.e. not on the telephone) and can be given either to the actual buyer or seller or their conveyancer. Any notice received on a non-working day, or after 4pm on a working day, is treated as having been received the next working day. Unless there is proof to the contrary, a notice is treated as being received as follows:

- If sent by DX, before 4pm on the 1st working day after it would normally be available for collection
- By 1st class post, before 4pm on the 2nd working day following posting
- By Second class post, before 4pm on the 3rd working day after posting
- By fax, one hour after despatch
- By e-mail, before four pm on the 1st working day after despatch

1.4 VAT

This section states that any obligation to pay money under the contract includes an obligation to pay any VAT due on that sum and that all sums quoted in the contract (such as the purchase price) are exclusive of VAT. This is not relevant in residential contracts since no VAT is payable on residential property transactions.

1.5 Assignment

This clause simply makes the point that the buyer is not entitled to transfer the benefit of this contract, i.e. after exchange of contracts the buyer cannot named in the contract cannot nominate another buyer to take his place.

2 Formation

2.1 Date

If contracts are exchanged in person, the date of the contract is date when the actual exchange takes place. If the exchange is done over the telephone then the date is date on which the last copy of the contract is posted, or, if the conveyancers agree (and in reality they always will) the date and time of the telephone call.

2.2 Deposit

On the day of exchange, and no later than the day of exchange, the seller (or his conveyancer) must send to the buyer (or his conveyancer) a cheque in the sum of 10% of the purchase price and chattels (fixtures and fittings) price combined. This is a change from the 3rd edition, under which the chattels are not taken into account when calculating the deposit.

It is obviously important that the cheque does clear. If it does not then the seller may, within 7 days of the cheque being dishonoured, withdraw from the contract without penalty. The deposit should only be paid either by direct credit into the seller's conveyancer's account or by a cheque drawn on a solicitor's/licensed conveyancer's client account.

If the seller is also buying a property then he may use some or all of the deposit received on his sale as the deposit on his onward purchase. If he does so then it should be passed on on terms that his seller's solicitors hold the deposit as stakeholder (unless they too use the deposit for an onward purchase), and his conveyancer must hold any balance which he does not use as stakeholder also. Stakeholder means that the deposit is held by the conveyancer and is not released to the seller until completion or until the buyer defaults on the contract and forfeits the deposit. The alternative way to hold the deposit is as agents for the seller. If it is held in this way then it may be released to the seller prior to completion. This is usually only done when the property is bought at auction (see below) or when the seller is a builder covered by the NHBC scheme (in which case the deposit is insured by NHBC).

Although not part of the standard conditions, it is worth mentioning here that it is not unusual for a deposit of less than 10% to be available on exchange, for example if the buyer is getting a 95% mortgage. There is really no reason in this circumstance not to accept a lesser deposit and the seller is still entitled to a full 10% should the buyer default, but it should be explained to the seller that to recover the difference between 10% and the amount actually paid over on completion he will need to sue the buyer. If there is no deposit at all available then it is still possible to exchange on nil deposit, however it is common in this case to exchange and complete on the same day, thus removing the risk of default by the buyer.

If there is not enough time between exchange and completion for a cheque to be delivered to the seller's solicitors and to clear into their account then it will be "held to order", that is to say held by the buyer's solicitor on terms that it should be released to the seller's solicitor on demand. In reality it is usual to pay it on completion along with the balance of the completion funds. In my opinion it makes sense for the deposit to be held to order in any event, as it avoids the additional work involved in printing and signing cheques, chasing up late cheques etc. As I write this we have just come to the end (or possibly not) of another round of postal strikes, which has no doubt caused some large completion day headaches in this regard, particularly where a seller's conveyancer has not alerted the buyer's conveyancer that a cheque has not arrived, resulting the seller's conveyancer not receiving sufficient funds to complete. Nonetheless many conveyancers do still insist that the deposit is sent if there is time. I should also mention at this stage that it is not unusual for the deposit to be paid directly to the top of the chain.

Where there are several transactions in a chain there is rarely time for the deposit to be posted to each conveyancer in turn, and therefore it may be posted directly to its ultimate destination.

2.3 Auctions

If a property is sold at auction then a reserve price must be set, and the seller may himself bid, but only as far as the reserve price. Bids are accepted or refused at the auctioneer's discretion. The deposit is to be paid to the auctioneer as agent (see above). Please note that this section deals only with the standard conditions in relation to auctions. The subject of buying property at auction will be covered more fully in a separate chapter.

3 Matters affecting the property

3.1 Freedom from Incumbrances

Incumbrances are interests which others have in the property, such as mortgages, rights of way or occupation, adverse entries revealed on searches etc. Under the standard conditions the incumbrances to which the property is sold subject are :-

- Those specifically referred to in the contract
- Any which are discoverable from an inspection of the property before exchange (for example if there is a tenant in the property and it is not confirmed prior to exchange that he will vacate, or if there is a lake on the land at which people are fishing)
- Anything which the seller does not, and could reasonably, know about
- Entries made before the date of the contract in any public register (such as entries which would be revealed in searches) except those maintained by HM Land Registry, its Land Charges department (not to be confused with the local land charges register which is maintained by the local authority) and Companies House.

The contract will generally be (and should be) modified so that there is a section, usually on the front of the contract, defining Incumbrances as follows:- "All matters contained or referred to in the Property and Charges registers of title number ABC123456 with the exception of financial charges", or words to that effect. Sometimes "with the exception of financial charges" is omitted. The buyer should insist on this being added since otherwise he is agreeing that the property is sold subject to any mortgages registered against the property. Even if there are none at the time the contract is first issued, it should be remembered that something could be added before completion.

Another common but unacceptable variation is to add "created by the seller" after "financial charges". It is possible that a charge could be created without the seller's consent, for example an equitable charge granted by the court. Public requirements The property is sold free of any other incumbrances. The seller must inform the buyer in writing of any matter affecting the property which he learns about after exchange. The buyer is to be responsible for the cost of complying with any outstanding public requirement and is deemed to have indemnified the seller against any liability in this regard.

3.2 Physical State

The buyer accepts the property in the state it is in at the time of exchange, therefore it is sensible that the buyer should make a final inspection just before instructing his solicitor to exchange contracts in case there has been any damage following his initial viewing which has not been disclosed. This does not apply if the property is being newly built or converted. If the property is leasehold then the buyer accepts the property subject to any subsisting breach of a condition or obligation upon the tenant relating to the physical state of the property which renders the lease liable for forfeiture. If any such matters exist therefore they should be dealt with prior to exchange.

3.3 Leases affecting the Property

This section applies when the property is subject to a lease or leases, i.e. where the seller is the landlord, rather than in the assignment of a lease. The buyer takes the property subject to all the

terms of the leases affecting the property of which he has had notice. If, after exchange, the lease ends or the tenant makes some application in respect of the lease, the seller is to inform the buyer immediately and take any action which the buyer reasonably directs, provided that the buyer agrees to indemnify the seller against any expense incurred in following the direction. Except with the buyer's consent, the seller is not to take steps to end the lease or agree to any proposed alteration to the terms. He must inform the buyer immediately should any alteration be agreed. Following completion the buyer agrees to indemnify the seller against any claim made by the tenant which cannot be enforced against the buyer because he is not yet the registered proprietor.

3.4 Retained Land

If after completion the seller will be retaining land near the property (for example he has sold off part of his garden for the buyer to build a new house) the buyer will have no right of light or air (right to a view) over the retained land but will have all other rights which he would have had if the two pieces of land had both been sold simultaneously to two separate buyers. That is to say rights of way and of services and access to the retained land to maintain his own (where reasonably required). These rights should be expressed in the transfer deed.

4 Title and Transfer

4.1 Proof of Title

This section is really only useful in respect of properties purchased at auction, since a conveyancer would never exchange contracts without having seen the title, however it is still applicable to all contracts which incorporate the standard conditions.

Without cost to the buyer the seller must provide proof that he owns the property or that he has the right to sell. If the property is registered then this proof must take the form of Official Copies of the title and other documents which are referred to within (except anything which will be removed on completion, such as mortgages). If the property is unregistered then an abstract or epitome of title with copies of all the documents required to form the chain of ownership from the root of title to the present, together with copies of any earlier documents referred to within the epitome as containing matters affecting the property (unless these matters are also set out in the documents forming the epitome). Where copies are produced the epitome should state that the originals or examined abstracts of all the documents will be handed over on completion.

In any case if the seller is selling under a probate then an office copy of the grant of probate is also required, or if selling a property which was held as joint tenants and the other tenant is deceased, a certified copy of the death certificate.

4.2 Requisitions

After exchange, the buyer may not raise requisitions (enquiries) on any matter revealed in the title if the seller has provided proof of title prior to exchange, nor may he raise requisitions on matter contained 3.1.2 of the standard conditions (which lists the incumbrances to which the transfer will be subject, see 3.1 above).

If a matter comes to light after exchange, for example an additional charge is registered which was not revealed on the official copies supplied by the seller before exchange, the buyer may within 6 days of the matter coming to his attention raise requisitions on that matter. If he does not do so within 6 days he then loses his right to raise any requisition.

4.3 Timetable

This section sets out the time limits for performing certain actions post-exchange. In reality this section rarely comes into effect since the title will be delivered to the buyer and enquiries will be raised and replied to prior to exchange. Nonetheless, there will be limited occasions where the time

limits are relevant, particularly when properties are bought at auction.

The seller must deliver proof of title to the buyer immediately following exchange. The buyer must then raise any enquiries he may have within 6 days of exchange or of receiving the proof of title (whichever is the later) and the seller must respond within 4 working days. The buyer then has a further 3 working days in which to make any observations he might have on the seller's replies.

There are also time limits in respect of drafting and approving the transfer, which can run concurrently with the above. The buyer must forward a draft transfer at least 12 working days prior to completion. The seller must either revise or approve the transfer within 4 working days of receipt. If the seller has revised the transfer then the buyer must supply the seller with a further, engrossment copy at least 5 working days prior to completion. If the period between exchange and completion is less than 15 working days the time limit for each action is reduced on a pro rata basis, i.e. if there are 10 working days from exchange to completion then the buyer has just 4 days (two thirds) to raise enquiries, and so on.

4.4 Defining the Property

The seller is not obliged to prove the exact boundaries of the property or the ownership of any boundary structures, nor is he obliged to identify separate parts of the property which come under different titles, save that he is obliged to disclose any information he has if requested to do so. These issues should therefore be resolved prior to exchange. The buyer, if it is reasonable, ask the seller to make and pay for a statutory declaration as to matters relating to the boundaries etc, in a form to be approved by the buyer. Approval must not be unreasonably withheld.

4.5 Rents and Rentcharges

This section is self-explanatory, though it may prove useful to visit the page Official Copies and look at the Charges Register section for an explanation of rentcharges.

4.6 Transfer By drafting and supplying the transfer the buyer does not prejudice his right to raise enquiries. The seller is deemed to sell with full title guarantee, save that the transfer is subject to the matters referred to in standard condition 3.1.2 (see 3.1 above). This is the case unless the contract specifically states that the seller sells with limited, or no, title guarantee, in which case the contract prevails over the standard conditions. For an explanation on title guarantee see The Contract. If after completion the seller will still be bound by any obligation affecting the property which was disclosed to the buyer prior to exchange, such as a covenant, then the buyer is to covenant in the transfer to indemnify the seller against any future liability, unless the law implies such a covenant. The seller is entitled to require that the buyer supply a duplicate of the transfer duly executed by him, if a covenant has been entered into.

5 Pending Completion

5.1 Responsibility for the Property

According to this section the seller must transfer the property in the same state on completion as it was on exchange, except for normal wear and tear. This means that the seller retains responsibility for the property between exchange and completion and the buyer may withdraw from the contract without penalty if between exchange and completion the property is damaged to the point where it becomes unusable for its intended purpose, though he is not obliged to. The seller may withdraw only if the damage was caused by something against which he could not have reasonably insured, or if it is not legally possible for him to make good the damage. The seller is not obliged to the buyer to maintain insurance, though if the seller has a mortgage on the property he is still obliged to the lender.

The standard conditions also state that section 47 of the Law of Property Act does not apply. This section basically says that in the event that a claim is made on the buildings insurance policy

between exchange and completion the seller is obliged to pay the proceeds of any claim to the buyer. In many contracts the seller's conveyancer will attempt to delete this clause and replace with an alternative which effectively obliged the buyer to proceed even if the property is destroyed but gives the buyer the benefit of any insurance claim that is made, and this amendment is widely accepted, but never by me. My argument against this is that, assuming the buyer is buying with a mortgage, his conveyancer will be obliged to inform the lender should the property be damaged to the point that it is unsuitable for occupation. This will result either in the offer of mortgage being withdrawn altogether or a massive retention (probably 100% in fact) being placed on the advance pending repair works. Either way the buyer will not be able to proceed and will have no choice but to breach his contract, thus forfeiting his deposit. Furthermore, it is unlikely that a standard owner-occupier insurance policy taken out by the buyer on exchange would pay on a claim for damage that occurred while someone other than the buyer (i.e. the seller) still had possession of the property.

In the event that the buyer withdrew without penalty, and the seller was also contracted to buy a property, then he would of course suffer loss of his deposit as he would not be able to afford to buy that property, and this is unfortunate but the fact is that the risk has to lie with someone and in my view that must be the seller, since he has at least some control over events at the property whereas the buyer has none.

5.2 Occupation by the Buyer

If the seller agrees to allow the buyer to occupy the property between exchange and completion then the buyer occupies under licence (no tenancy is created as this might give the buyer additional rights which are not intended) from the seller on the following terms:-

- The licence cannot be transferred, that is to say the buyer cannot pass his right to occupy the property to someone else
- Members of the buyer's household only may occupy the property with him
- The buyer is to pay for or indemnify the seller against all outgoings and other expenses associated with the property
- The buyer is to pay a fee to the seller at the same rate as interest would be charged under the contract for late completion. The calculation for this is $((\text{purchase price} + \text{chattels price}) - \text{deposit actually paid as opposed to held to order}) / 100 * \text{contract rate} / 365$. This fee is payable daily for every day of occupation up to completion. The buyer must not alter the property and must maintain in the same state, except for fair wear and tear, as it was on exchange
- The buyer must insure the property for at least the full purchase price against all risks
- The buyer must immediately vacate the property when the licence ends

Once the buyer takes up occupation standard condition 5.1 ceases to apply, which means that the buyer is responsible for the property and may not withdraw from the contract on the grounds that it has been damaged to a point where it is unusable. The buyer is not considered to be in occupation, and therefore this section does not apply, where the buyer is merely granted access to carry out works but does not live in the property. The licence is deemed to have ended on the earliest of the date of completion, rescission of the contract or 5 working days following a notice given by one party to the other that the licence is to come to an end. If the buyer remains in the property after the licence has ended but before completion then he is to continue to pay the fee as calculated above for every day up to completion.

6 Completion

6.1 Date

According to the standard conditions the completion date is 20 working days from exchange, but in fact this clause is never relied upon. Instead, a completion date is agreed prior to exchange and is

inserted on the face of the contract. As long as enough time is allowed for the conveyancers to complete the pre-completion formalities then the date can be any working day which is convenient to all buyers and sellers in the chain. There is no minimum or maximum time between exchange and completion.

If the money is received by the seller's solicitor after 2pm on the day of completion then completion is treated, for the purposes of 6.3 and 7.3 only (which deal with apportionments and compensation), as having taken place on the next working day. This does not mean that the seller is entitled to withhold possession from the purchaser provided his solicitors do receive the funds before close of business. They may of course be left in a situation whereby his solicitors receive the funds too late to transfer on to his onward purchase thus leaving him unable to take possession of his new property and whilst under the contract he should still vacate, there is little the buyer can do if he chooses to remain. There are various remedies available in the event of late completion and for a fuller discussion go to the chapter on Completion.

The latest time for completion is often amended by the seller where he also has an onward purchase. If the time is 2pm in both his sale and his purchase contract then he runs the risk of receiving funds on his sale at, say, 13.59, meaning the buyer is not in breach, but being unable of course of getting funds to his seller by 14.00, thus placing him in breach of his purchase contract. He should therefore ask for an earlier time in his sale contract, say 13.00, which gives him the time to complete his purchase.

6.2 Arrangements and Time

The standard conditions state that completion takes place at the offices of the seller's conveyancer or some other place, in England and Wales, that the seller's conveyancer reasonably directs. There was a time when the two conveyancers used to actually meet on the day of completion and physically exchange the deeds and money. That is rare nowadays and this clause is fairly redundant, though for technical reasons completion is usually said to take place at the office of the seller's conveyancer.

6.3 Apportionments

Any income or expenditure affecting the property which has either been received or paid in advance is to be apportioned on completion. This does not affect such things as utilities, council tax etc which should be apportioned by the companies which collect it. If the property is tenanted and the tenant is to remain following completion then he will have paid rent for that particular month in advance. Unless completion takes place on the day the rent is due therefore the buyer will be entitled to the rent for the period from completion to the date it is next due, and this is generally dealt with via an allowance on completion, that is to say that the buyer pays over to the seller the purchase price less the amount of rent the buyer is due.

There may be an annual rent and/or service charge payable on the property, particularly if the property is leasehold, in which case the seller will usually have paid this advance beyond the date of completion and will therefore be entitled to receive back from the seller the amount of overpayment. This should be paid in addition to the purchase price on completion.

When calculating an apportionment it is assumed then the amount in question accrues at an equal daily rate every day of the month/quarter/year. For example if there is an annual ground rent of £720 per year, then the daily rate will be £2 per day, so if the rent year runs from 1st January to 31st December, completion takes place on 30th November and the seller has already paid the rent for the year then he will be due back £62 (31 (being the days left in the year) x 2 (being the daily rate)). For the purposes of apportionments the seller is deemed to own the property on the day of completion. If the apportionment cannot be ascertained on completion, for example if it is in respect of service charge and this is demanded in arrears, then an apportionment is to be made according to the best estimate available and once the actual figure is known any balance is to be paid within 10 working days.

6.4 Amount Payable

The amount payable on completion is to be the purchase price plus the price of any chattels, less any deposit already paid. The amount should be adjusted to take account of any apportionments made under condition 6.3 or compensation payable under condition 7.3.

6.5 Title Deeds

As soon as the buyer has complied with his obligations on completion (i.e. paid the total money due) the seller is to hand over all the title deeds.

6.6 Rent Receipts

Where a receipt for payment of rent or service charge has been given to the buyer he is to assume that the person giving the receipt is either the person entitled to payment or his agent.

6.7 Means of Payment

The buyer is to pay the money over on completion by direct credit to the seller's solicitor's bank (i.e. by CHAPS transfer), and if the seller's solicitor is holding a deposit as stakeholder, by unconditional release of that deposit (the release in reality happens automatically). This is a change from the 3rd edition conditions which included other means of payment such as banker's drafts and solicitor client account cheques. These other methods were rarely if ever used by the time the 4th edition conditions were introduced.

6.8 Notice to Complete

If completion has not taken place by the completion time stated in the contract then any party who is ready, willing and able to complete may then, or at any time after (but prior to actual completion) serve a Notice to Complete on the other party. Such a situation might occur when for example the buyer or his solicitor does not have all the funds needed on completion, or seller is for some reason unable to vacate.

When a notice is served then completion must take place no later than 10 working days, excluding the day on which it was served. See 1.3 above with regard to the various methods of delivery of a notice and the assumed timescales involved. If the notice is served on the buyer and a deposit was not paid on completion then the full 10% deposit must immediately be paid, or if a reduced deposit was paid then the balance required to make it up to 10% must be handed over.

A seller is considered to be ready, willing and able to complete if he has vacated the property or is able to do so immediately (except where the property is sold subject to a tenancy), his solicitor is in possession of all the title deeds necessary to prove title together with an original signed transfer deed and he has complied with, or would but for want of the completion funds be able to comply with, all his other obligations under the contract. This includes being in a position to redeem any charges registered against the property and remove any restrictions, notices etc that he has agreed to remove.

A buyer is considered to be ready willing and able to complete if he has either paid over the completion funds or is in a position to do so but has not because the seller has not complied with his obligations such as vacating the property, undertaking to redeem and charges etc.

Most firms will include a special condition in their standard form of contract obliging the buyer to pay their fees in connection with the service of a Notice to Complete. If this clause appears the buyer should ensure that it is reciprocal in the event that a notice is served on the seller and that the fee is a fixed sum. The average seems to be around £75 - £150 plus VAT. Whatever the figure is, if the buyer is relying on a sale to fund his purchase he should ensure that the figure is the same in both contracts.

Although technically a notice can be served as soon as the contract time has passed (i.e. 2pm or earlier) it is generally only done where the delay in completion is sufficient to cause loss to the non-defaulting party, so for example if they have had a notice served on them, or if it is the buyer that is in default then the seller does not receive the funds in time to redeem his mortgage on the day of completion (thus incurring an extra day's interest) or is unable to complete an onward purchase. See sections 7.5 and 7.6 (below) for the remedies in the event that a Notice to Complete is not complied with.

7 Remedies

7.1 Errors or Omissions

If any plan or statement either in the contract or given in reply to any enquiry on which under the contract the buyer is entitled to rely is misleading due to an error or omission by the seller then where there is a material difference between the description of the property or any chattels as it is and as represented by the seller then the buyer is entitled to damages, for example if the seller states that the central heating is in working order but it is not then the buyer is entitled to damages. If however the seller has said that it is working "to the best of his knowledge" and he had no reason to believe it was not working prior to exchange, then the seller has not made a misrepresentation and is not liable to the buyer.

The buyer is only entitled to rescind the contract (withdraw from it) due to an error or omission if it results from fraud or recklessness on the part of the seller or where in completing the buyer would be obliged (to his detriment) to accept a property differing substantially in quantity, quality or tenure from which the error or omission led him to expect.

7.2 Rescission

If either party rescinds (cancels) the contract then, unless this is as a result of a breach by the buyer, then the deposit is to be returned to the buyer with accrued interest, the buyer is to return any documents received from the seller and any registration of the contract (i.e. a C(IV) land charge for unregistered land or a Notice for registered land) is to be cancelled.

7.3 Late Completion

Where either or both of the parties are in default and completion is delayed as a result then the party whose period of default is greater must pay compensation to the other party. That compensation is payable at the contract rate - that is to say the purchase price + the chattels price - (where the buyer is the payer) any deposit paid / 100 * the contract rate (usually 4% or 5% above the base lending rate of the seller's solicitor's bank account but the figure will be stated on the face of the contract) / 365, so if for example the base rate was 5.75%, the contract rate was 4% above the base rate, the purchase price was £100,000, the chattels price £1000 and the deposit £10,100 then the daily rate of compensation would be $((£100,000 + £1,000) - £10,100) / 100 * 9.75 / 365 = £24.28$. Any claim for damages resulting from late completion is to be reduced by any compensation payable under the contract.

7.4 After Completion

Any liability under the contract on either party which is not satisfied by completion shall not be cancelled by completion and shall continue until satisfied.

7.5 Buyer's Failure to Comply with a Notice to Complete

If, following a notice to complete, the buyer fails to complete within 10 working days then the seller may rescind the contract and if he does so he may retain the deposit together with any accrued interest and may resell the property, and claim damages from the buyer. The buyer must return any documents to the seller and cancel registration of the contract. The seller is not obliged to rescind

the contract and if he chooses not to immediately that the notice expires then he may do so at any time in future prior to the buyer being complete. In the meantime interest continues to accrue at the contract rate.

7.6 Seller's Failure to Comply with a Notice to Complete

If the seller fails to comply with a notice to complete then the buyer, on expiry of the notice or at any time thereafter prior to the seller being ready to complete, may rescind the contract and if he does so the seller must return the deposit with accrued interest and the buyer must return any documents to the seller and, at the expense of the seller, cancel any registration of the contract. The buyer may claim damages. If the buyer chooses not to rescind then interest continues to accrue to him at the contract rate.

8 Leasehold Property

8.1 Existing Leases

Provided that the full terms of the lease have been disclosed to the buyer prior to exchange (by the seller or his conveyancer providing the buyer or his conveyancer with a copy of the lease) the buyer takes the property subject to them. If the lease obliges the tenant to insure the property then the seller must do so until completion.

8.2 New Leases

A draft of the lease must be attached (annexed) to the contract and the actual lease must be in the same form. Provided the lease is for a term exceeding 7 years then it must be registered at land registry, in which case the seller must deduce the freehold title to the buyer and the title must be sufficient for the buyer to be able to register the lease with absolute title. If the freehold is registered this simply means producing Official Copies and if it is unregistered it means producing deeds evidencing a chain of ownership going back at least 15 years. In fact, the title will (except for a property bought at auction) be deduced to the buyer prior to exchange. The seller is to produce two copies of the lease - an original and a counterpart. The original is to be signed by the seller and handed to the buyer on completion and the counterpart is to be sent to the buyer no later than 5 working days prior to completion. The buyer must then sign this counterpart and return it to the seller in time for completion.

8.3 Consent

If the landlord's consent is required to assign, let or sub-let then the seller must apply for consent at his own expense and use all reasonable endeavours to obtain it. The buyer is obliged to provide all information and references which are reasonably required. If, 3 working days prior to completion (or on some later date mutually agreed by both buyer and seller) the consent has either not been obtained or has been granted subject to a condition to which either party reasonably objects then either party may (unless in the seller's case he has not used his reasonable endeavours to obtain consent or in the buyer's case he has not provided information and references) rescind the contract. If they do so then neither party is considered to be in breach of contract and neither may claim damages from the other.

9 Commonhold Land

Provided that the seller has supplied the buyer with copies of the memorandum and articles of association of the commonhold association and the commonhold community statement the buyer purchases the property subject to them. If the contract is for the sale of part only of a commonhold unit then the seller is to use all reasonable endeavours to obtain the consent of the commonhold association. If the consent has not been obtained 3 working days prior to completion (or later if mutually agreed) then either party (except in the seller's case if he has not used his reasonable endeavours to obtain consent) may rescind the contract and neither party is treated as being in

default and consequently neither party is liable to the other for damages.

10 Chattels

Whether or not a separate price is being paid for any chattels (fixtures, fittings and contents) included in the sale, the following conditions apply:-

- The contract is to take effect as a contract for the sale of goods
- The buyer takes the chattels in the physical state they were in at the date of exchange
- The buyer takes possession of the chattels on the date of actual completion (if this is later than the completion date in the contract)