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The basic procedural steps of land acquisition

What is an engrossment?

When are you contractually bound?

What is completion?

Not execution in the way Marie Antoinette understood it

There are certain basic steps that apply to almost all transactions involving the acquisition of land. There may be a tweak here or a bolt-on there but the basic underlying steps are often the same.

First things first; there are a few terms which lawyers frequently use in connection with procedural matters but which may not mean much to clients, so here is a quick explanation of some of them:-

'Engrossments': an engrossment is the final printed version of a particular document that is then going to be signed by the parties. This final version is usually printed on good quality paper and may be bound. The engrossment of the Magna Carta was written on sheepskin – but even the legal profession has moved on since then.

'Executed': some documents just get signed, others get executed. Executed means that the document has been executed as a deed. Execution requires certain formalities to be followed. Where an individual is executing a document in their own name then their signature needs to be witnessed. The witness watches them sign and then signs themselves. Where a company or Industrial & Provident Society is a party to a document, how it is executed will depend on the relevant statute and their constitution. Commonly, companies execute documents by having two directors or one director and the company secretary sign. I&Ps commonly affix their common seal and then have two authorised signatories sign next to it. But it depends.

'Counterpart Lease': in a transaction where a lease is being granted, the counterpart lease is the engrossment of the lease which is executed by the tenant. The 'lease' itself is an identical engrossment – except that it is executed by the landlord.

Should a document be a deed?

A deed is simply a document which is executed rather than just signed.

The law requires some documents to be by deed – for example, transfers of land or leases which are for more than 7 years. If they aren't executed as a deed then they won't be fully legally binding.

Other documents, such as contracts, can be executed as a deed or can just be signed. It's up to the parties to agree which. If a contract is executed as a deed it normally means that a person has 12 years to enforce its terms. If a contract is just signed, that period is 6 years.

How many copies of a document should be executed/signed?

If the document is a contract between two parties then there will usually be two identical engrossments – one to be executed or signed by each party, so that, at the end of the day, each party will end up with a copy signed by the other.

With a lease transaction there will usually be an engrossment of the lease and an engrossment of the counterpart lease. The tenant ends up with the lease executed by the landlord and the landlord ends up with the counterpart executed by the tenant.

For some types of documents there may be several 'duplicate' engrossments produced. Each engrossment will then be signed by all of the parties to that document. Examples of the latter would be a transfer document (transferring the freehold of a property) or a Section 106 (Planning) Agreement.

Exchange of Contracts

In a property transaction, there is usually a stage called 'exchange of contracts'. Before contracts are exchanged no one is legally bound to proceed. Either party can get cold feet.

An exchange of contracts means that a legally binding commitment has been made by each party to go through with the deal. Therefore, on an exchange of a sale and purchase contract, the buyer has committed to buy and the seller has committed to sell (subject to any matters upon which the contract is conditional).

For an exchange to take place both solicitors have to hold the part of the contract signed by their client. A fax or .pdf isn't good enough – they need to hold the actual piece of paper that the client has physically signed. The two solicitors then speak on the 'phone, agree to date the part of the contract they hold and agree to send the part they hold to

the other – effectively they swap or ‘exchange’.

Usually, although not always, a deposit is paid at exchange of contracts. There are two ways a deposit can be held - as stakeholder or as agent. Stakeholder means that the seller’s solicitor will hold onto the deposit in their own firm’s account until completion occurs (or until the contract is terminated because of the buyer’s default). Agent means that they are allowed to pay the money out to the seller before completion. If all goes well, it doesn’t make much difference. But if something goes wrong - and the buyer is entitled to its deposit back – it’s much easier to get it back if it is sitting safely in the solicitor’s account. .

Vaguely relevant fact

Alaska was purchased by the United States of America from Russia in 1867 for \$7,200,000. America paid by cheque!

Completion

When a property transaction is completed, it means that the relevant property, right or interest is actually transferred or granted.

In practical terms, completion usually means:-

- the payment of any monies that are to be paid by the buyer to the seller (for example, the balance of a purchase price);
- engrossments of any relevant documents (for example a lease or a transfer) are dated and handed over; and
- the buyer gets to move in.

Registration

For most land transactions to be fully valid they must be registered at the Land Registry. We, as your solicitors, do that and then let you know once it’s done. Before we can register the transaction we need to deal with Stamp Duty Land Tax – and either make the payment of SDLT or claim the relevant SDLT exemption.

...little bits of law

This is one in a series of leaflets published by Lewis Silkin LLP, providing information on a range of legal issues that face our developer clients. Other topics discussed range from boundaries to wildlife.

Professional advice should be obtained before applying the information in this client guide to particular circumstances.

For a full list of available leaflets please visit our website or contact patrick.brown@lewisilkin.com.

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