



COVID-19 Briefing: Minimising Your Risk when Buying and Selling Property

Fortunately for those looking to buy or sell property, the 2021 lockdown did not include a freeze on property transactions, and despite challenging conditions, the property market has continued to thrive. Even though the market is open, measures introduced to combat the virus have increased the chances that a transaction may fail, especially in longer chains.

It is therefore important to carry out your property transaction in a way that minimises risk to yourself and the other parties involved, as well as to follow and remain compliant with the latest Government advice.

We understand that every transaction is different, but there will be some common factors and choices that you will be able to make about how to proceed. This guidance is intended to explain the options open to you.

If you find that you do not fully understand these options and the advantages and disadvantages of each one, please speak to a member of the conveyancing team at Fraser Dawbarns, and we will be happy to help.

BUYING AND SELLING PROPERTY TERMS DEFINED

There are several terms that describe the stages of a property transaction. The terms that describe the final two stages of the transaction are used in this briefing and are explained below.

Exchange of contracts

When a property transaction takes place, the buyer and seller will each sign identical contracts. The property lawyers acting for the parties involved will then exchange the two parts of the contract.

After the exchange of contracts, a completion date is fixed, and both parties are bound by the transaction.

Completion

After the contracts have been exchanged, the completion date is set. This is the date that is agreed between the parties for the

seller to move out of the property and for the buyer to move in.

Sometimes one or other of the parties involved is not able to complete the transaction on the completion date, and very rarely, when the transaction does not complete at all.

In these circumstances, the party who fails to complete will suffer a financial penalty if they pull out after the exchange. This penalty can potentially be quite substantial, especially if the transaction is part of a chain.

THE IMPACT OF CORONAVIRUS

The implementation and easing of lockdowns has the potential to affect people who have exchanged contracts, meaning that they may not be able to complete on the previously agreed date for a variety of reasons.

COVID-19 is likely to remain a problem for the immediate future, meaning that there are ongoing risks for anyone who is buying or selling a property at the current time.

New risks

Several new risks have arisen since the start of the pandemic. These include:

- One of the parties in the transaction or someone in their household may not be able to move out, either due to illness or the need to self-isolate
- One of the parties in the transaction could be in hospital
- There may be future lockdowns that prevent one of the parties in the transaction from moving
- Moving might be in breach of Government regulations or may be against Government guidance
- There could be difficulties that prevent one of the parties in the transaction from obtaining removal services
- The mortgage offer for one of the parties in the transaction may be withdrawn or the financial position of one of the parties might change, for example, if completion is delayed past the



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end date of a Government stamp duty land tax holiday

- The UK financial system fails to deliver the purchase or mortgage money

These problems could also prevent another party in the chain of transactions, on which your move is dependent, from completing.

Although the list above covers the most likely reasons why completion may be delayed, it is not intended to be exhaustive. There may be other risks arising from COVID-19 that are not described here.

GOVERNMENT ADVICE

The Government has published advice on property transactions during the outbreak. This can be found here:

www.gov.uk/guidance/government-advice-on-home-moving-during-the-coronavirus-covid-19-outbreak

The main points from this page are detailed below.

- You are free to move home. However, the process of searching for and moving into a new home may be different, as property agents, conveyancers and other professionals have modified procedures to reduce the risk from COVID-19.
- You can put your home on the market and look for properties to buy or rent. However, if you or a member of your household is showing symptoms of COVID-19 or is self-isolating, then nobody should visit your property.
- Where possible, you should use virtual viewings before visiting properties in person in order to minimise public health risks. If any member of either household is showing symptoms of COVID-19 or is self-isolating, then an in-person viewing should be delayed.
- You can make or accept an offer or reserve a property as normal. There is a greater risk that home moves may need to be delayed due to COVID-19. Speak to your solicitor about making sure that contracts or agreements are as flexible as possible to accommodate this risk.
- After exchanging contracts, you have entered into a legal agreement. All parties should be flexible and be prepared to delay moves if necessary. If someone involved in the transaction becomes ill with COVID-19 during the moving process or has to self-isolate you should not expect to move into their home.
- Ask your lawyer to ensure that any contract you enter into will allow the purchase to be delayed in the event that you or one of the other parties contracts COVID-19 or has to self-isolate.

Guidance for households with possible infection can be found here:

www.gov.uk/government/publications/covid-19-stay-at-home-guidance/stay-at-home-guidance-for-households-with-possible-coronavirus-covid-19-infection

OPTIONS FOR PROCEEDING WITH A PROPERTY TRANSACTION

COVID-19 will continue to exist for some time, but the number of cases will continue to fluctuate, making the risks from the disease more or less prevalent but will not be going away any time soon.

For those who are in the process of buying or selling property or who are planning to do so in the near future, a number of options are available.

Option 1 – Standard Exchange

With this option, you will enter into a standard contract in exactly the same way as you would have done prior to the COVID-19 pandemic.

The risks of option 1

- If you, your buyer/seller or someone in the same chain of transactions as you, is not able to complete on the pre-agreed completion date, there will be consequences.
- If you are the one who has caused the delay, you will suffer a significant financial penalty. The longer the chain of transactions, the greater this loss will be.
- Even if the delay is not your fault, you will still not be able to move, which will cause you significant inconvenience as well as possible financial loss.
- To minimise the risk, the period between exchange of contracts and completion should be as short as reasonably possible.

Option 2 – Simultaneous Exchange and Completion

If you are worried about any possible penalties or delays that could arise from option 1, opting for simultaneous exchange and completion may alleviate your concerns.

Under this option the exchange of contracts and completion take place on the same day, however it does come with its own set of risks and complications.

The risks of option 2

- You will have to make full arrangements so that you are ready to move on the date that has been agreed by all parties in the chain for completion, including booking removers. The biggest problem is that you will not know for certain whether completion will take place until the day.
- If, for whatever reason, the transaction does not complete, you may lose any deposit that you have had to pay to your removers.
- You will not be entitled to compensation from the party who is not able to move, but equally
- if you are the party causing the delay, you will not have any liability to the other parties in the chain.
- It is worth being aware that the more people involved in the chain, the greater your risk of the transaction failing to complete.

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Option 3 – Adding a Clause to the Contract

This option is designed to achieve the flexibility contained in the Government advice as far as is possible.

Here, you will ask your property lawyer to add a clause to the contract, specifying certain situations where completion can be delayed if one of the stated situations arises after exchange of contracts. This clause may reflect some or all of the new risks detailed above.

All contracts in the chain of transactions will need to contain similar provisions. If you are unable to proceed with the transaction because of one of the new risks, you will not have any financial liability to the other parties in the chain.

The risks of option 3

- Although contracts have been exchanged, it is still possible that completion may not take place on the agreed completion date if you, your buyer/seller or someone in the chain is affected by one of the new risks.
- It is also possible that the chain could collapse if one party is not able to proceed because of one of the new risks. If that occurs, you may not be entitled to any compensation from the defaulting party.
- Yours, or the other party in the transaction's mortgage offer could be withdrawn, or the financial position of one of the parties may change. An example of this could occur if completion is delayed past the end date of any Government imposed stamp duty land tax concession.

WHAT TO DO NEXT

The above information may be daunting to many, even those with experience of moving house are finding themselves in uncharted waters.

The property market has remained robust, despite challenging economic conditions and there is no reason to suspect that your transaction will fail as a result of the COVID-19 pandemic, but these are challenging times and it is sensible to be aware of the fact that there are potential risks that could present difficulties for even the best prepared of us.

If you have concerns about anything contained within this briefing,

please contact the residential property team at Fraser Dawbarns who will be able to offer you advice specific to your situation.

PEACE OF MIND THROUGH DIFFICULT TIMES

This document was prepared on **26th February 2021**, however in these uncertain times, the only thing we can say for certain is that nothing will stay the same for long.

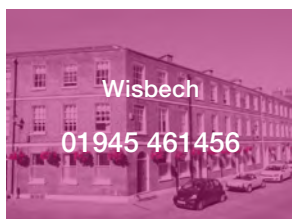
Because of this, we ask you to consider that, although correct at time of printing, information in this sheet may no longer be up to date and it is always best practice to consult with a lawyer about anything contained in this briefing.

Our lawyers are available to help answer any of your questions about this issue or to help with any other legal concern you have.

Please contact Fraser Dawbarns directly for up-to-date information on your specific circumstances.

LOOK OUT FOR OUR OTHER COVID-19 BRIEFINGS

- [Good News for Small Business Policy Holders](#)
- [The November 2020 Furlough Extension](#)
- [Clinical Negligence and the Coronavirus](#)
- [Extension to Stay on Residential Possessions](#)
- [Could an LPA Have Helped Me During the Lockdown?](#)
- [Dispute Resolution During the Coronavirus Pandemic](#)
- [Force Majeure and Frustration](#)
- [Coronavirus and Business Interruption Insurance](#)
- [Winding Down the Furlough Scheme](#)
- [Child Maintenance on a Reduced Income](#)
- [Reopening the Housing Market](#)
- [Life After Furlough](#)
- [The Changing Face of Litigation](#)
- [Holding Company Meetings During Lockdown](#)



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