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The basic procedural steps of land acquisition

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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 that 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 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’: a ‘signed’ document takes effect as a contract, whilst an ‘executed’ document takes effect as a deed. Some documents just get signed, whilst others get executed. Execution requires certain formalities to be followed. Where an individual is executing a document in his own name, then his signature needs to be witnessed. The witness watches him sign and then signs herself. Where a company is a party to a document, how that document is executed will depend on the relevant statute and the company’s constitution. Commonly, companies execute documents by having a director sign in the presence of a witness or by having two directors or one director and the company secretary sign.

‘Witness’: one party to a deed cannot also be a witness for another party’s signature. There is no statutory requirement for a witness to be independent or disinterested, though it is best practice for an unbiased, independent person to sign as a witness.

‘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 signed.

The law requires certain documents to be deeds, for example, transfers of land or leases which are for more than 7 years must be entered into as deeds. If such documents are not executed as deeds then they won’t be legally binding.

Other documents, such as contracts, can still be executed as deeds, or they can just be signed. It’s up to the parties to agree how they wish to proceed. If a document is executed as a deed it normally means that a party has 12 years to enforce its terms, whereas if it 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. Following exchange (detailed below), the parties will swap their signed/executed contracts so that each party ends up with a copy signed/executed by the other.

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

Alternatively there may be several ‘duplicate’ engrossments produced, meaning each engrossment will be signed by all of the parties to that document. Examples could 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 and walk away.

‘Exchange of contracts’ means that a legally binding commitment has been made by each party to go through with the deal. Therefore, on 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 'exchange of contracts' to take place, both solicitors have to hold the part of the contract signed by their client. In certain circumstances, a PDF of that signed part will be sufficient. 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'.

Deposit

Usually, although not always, a deposit is paid by a buyer at exchange of contracts. There are two ways a deposit can be held by the seller's solicitors – as stakeholder or as agent. Stakeholder means that the seller's solicitor will hold onto the deposit in her firm's account until completion occurs (or until the contract is terminated because of the buyer's default). Agent means that the seller's solicitor is allowed to pay the money out to the seller before completion. If all goes well, it generally 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, held as stakeholder.

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 in addition to any deposit paid at exchange);
- engrossments of any relevant documents (for example a lease or a transfer) are dated and handed over; and
- The buyer or tenant is entitled to move in.

Completion monies tend to be paid by bank transfer immediately before completion, from the buyer's solicitors to the seller's solicitors, on the basis that they will be returned if completion doesn't occur. This gives the seller comfort that they will definitely be paid. It is rare in commercial transactions nowadays that a seller will accept a cheque on completion, as there is the risk it may not clear.

Registration

For most land transactions to be legally binding they must be registered at the Land Registry. We, as your solicitors, will do this for you and will let you know once it's done. Before we can register the transaction we need to deal with Stamp Duty Land Tax ('SDLT'), which usually involves the submission of an SDLT Return and the payment of monies to HMRC online.

Vaguely relevant fact

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

...little bits of law

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