

MOVING HOUSE?

The Compleat Conveyancer

by IAN McD. WRIGHT, M.A.

— SOLICITOR —

Illustrations by Angela de Courcy Wright

WHAT YOUR SOLICITOR IS UP TO—
A FEW RAYS OF LIGHT ON THE MYSTERY



SWEET & MAXWELL

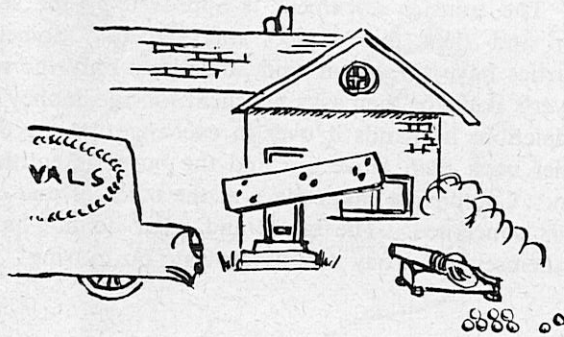
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1968

INTRODUCTION— OUR JOB IN A NUTSHELL

OUR function is partly administrative and partly legal. We try to get you into your new house on the expected date (not always, unfortunately, quite as soon as you would like) and to make sure that you then have a good title to it. If, when you arrive with your removal van at the front door on the date arranged, you find it firmly barred against you, we shall have failed. We shall have failed also,



“... firmly barred against you ...”

and more seriously, if, once you are nicely settled in, you are thrown out again because the seller had no right to sell the house to you, or you are prevented (if such was your intention) from using part of it for your professional practice, because of some restrictive covenant affecting it, or are ordered to demolish that charming south wing because planning permission had not been obtained for its erection.

THE STAGES OF A CONVEYANCING TRANSACTION

THE seller's Solicitor obtains the title deeds and draws a draft contract which he submits to the buyer's Solicitor. The main features of this are a description of the property, a statement of the price, and details of any known restrictions, rights of way, etc., affecting the property.

The buyer's Solicitor considers the draft contract and sends a number of enquiries to his opposite number, e.g., to whom do the fences belong; has any building taken place requiring planning permission; have all restrictive covenants been observed? He also sends “searches” to the Local Authorities, i.e., the District and County Councils. These are designed to find out such matters as whether any necessary planning permission has been obtained; whether road widening is proposed or compulsory purchase threatened; whether there are any outstanding road charges and matters of that kind.



“... considers the draft contract ...”

It takes usually between four and twenty-four days before the replies to these enquiries and searches come back, depending in the latter case on the efficiency of the Local Authority concerned. When they come back, the buyer's Solicitor may need further to investigate matters revealed by them.

When he has completed his enquiries, the buyer's Solicitor will, if he has not already done so, approve the draft contract and return it to his opposite number. He may amend it in certain respects and, in that case, his amendments have to be considered and approved by the seller's Solicitor. Occasionally, but not often, the draft contract may go backwards and forwards for some time until agreement on its terms is reached.

If you are buying a house which is still being built, your Solicitor will try to ensure that the terms of the Contract give you a remedy if the house develops faults after completion. The builder's Solicitor, on the other hand, will often insist upon restricting the period of any guarantee to six months or less.

When the form of contract has been agreed by both Solicitors, each of them sends one copy to his client to be signed and returned to him. When the two Solicitors have their contracts in their hands and are ready to go ahead (as to which, see below under the heading "Causes of Delay"), contracts are exchanged. The buyer's Solicitor delivers his part to the seller's Solicitor (with the 10% deposit if not already paid) and vice versa, and a completion date is then finally fixed.

Exchange of contracts is a crucial point in the transaction. Neither the actual signing of the contract nor the payment of the deposit is by itself of any significance whatsoever. Until *exchange* of contracts, either party is legally quite

free to withdraw, without any liability to the other party whatsoever and the buyer is entitled to recover his deposit in full. Once contracts have been exchanged, both sides are legally committed and the buyer's deposit is at risk.

After exchange of contracts, the seller's Solicitor proves his client's title to the property. This is not done before, in case it should be a waste of time and money to both sides. The buyer's Solicitor investigates the title and draws the transfer document. If, as sometimes happens, there is a flaw in the title, this has to be put right (often a lengthy process).

The transfer document is approved by the seller's Solicitor and then fair copied and signed. Sometimes both parties have to sign it and sometimes only the seller. The buyer's Solicitor then asks his client for the money and, on completion, he hands it over in exchange for the deeds. The seller must then move out and the buyer is entitled to move in. Completion takes place at the office of one of the Solicitors concerned. The buyer and seller do not have to attend themselves. They can concentrate on moving!

WHY ARE THEY SO SLOW? — CAUSES OF DELAY

THE previous section describes a straightforward sale with no mortgage or other complications. If the seller is not simultaneously buying another house and the buyer has no mortgage to arrange and does not have to sell his house to find the purchase money, or part of it, a conveyancing transaction could usually be done in two to three weeks. Unfortunately, in ninety-nine cases out of a hundred this happy state of affairs does not obtain.

The following telephone conversation between seller and buyer must be a commonplace:

"When are you going to sign the contract to buy my house?"

"I signed it three weeks ago".

"Well, what's the hold up?"

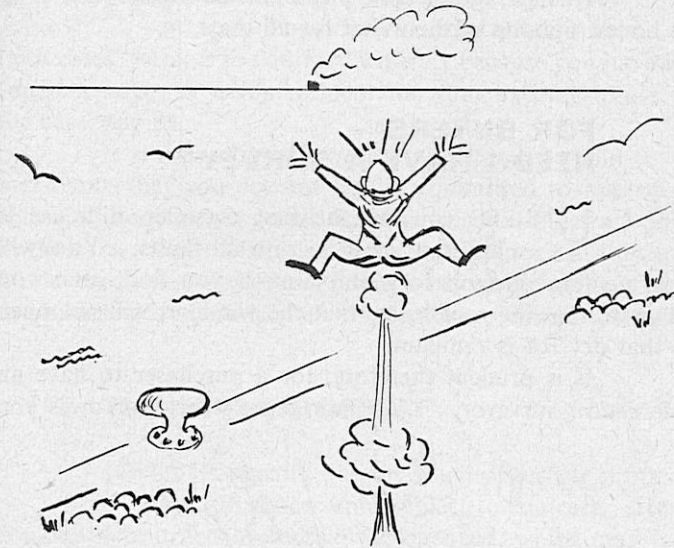
"It's not my fault. I am as anxious to get on with it as you. It's those Solicitors".



"... What's the hold-up?"

The usual length of time taken to arrange a mortgage is from ten days to three weeks but it can be longer. If you are involved in a chain of concurrent sales and purchases, all dependent on each other, every person in the chain may have both to arrange a mortgage and find a purchaser for his house. Since all the sales and purchases are interdependent, contracts are not exchanged in any one case until all are ready, and all have to be completed on the same day.

One of the mortgagees (i.e. lenders) in the chain may be inordinately slow; one of the titles in the chain may be defective; one of the sellers in the chain may have a tenant in his house who will not budge; one of the buyers may suddenly be sent off by his firm to Singapore to attend a business conference, or may go on his annual holiday touring the Continent for three weeks without leaving an address. The possible causes



"... may go on his annual Continental holiday without leaving an address . . ."

of delay in a chain are innumerable so that it is really a miracle when, as is usually the case, the tangle is ultimately resolved and all parties end up happily settled in their new houses!

FOR SELLERS—ESTATE AGENT OR PRIVATE SALE?

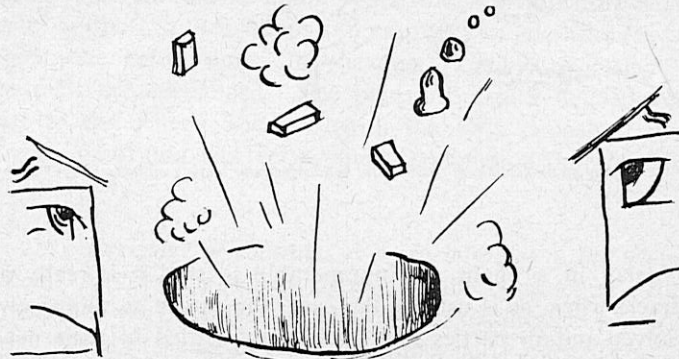
IN most cases, it pays you to employ an Estate Agent. As a general rule, he knows better than you what your house is worth and can reach a far greater number of prospective purchasers than you can through advertising. He will find you a purchaser more quickly at a price which, after deducting his commission, will usually put as much in your pocket as you would get from a private sale.

This paragraph will please Estate Agents but it is the honest opinion of the writer for all that!

FOR BUYERS— NEED I HAVE A SURVEY?

UNLESS you are the first occupier, a house is usually sold as it is, with all faults. You will have no legal ground for complaint, if you find, after you move in, that the roof leaks, that the windows will not open or that dry rot is rampant.

It is prudent therefore, for a purchaser to have an *independent* surveyor. Your mortgagee's surveyor owes you

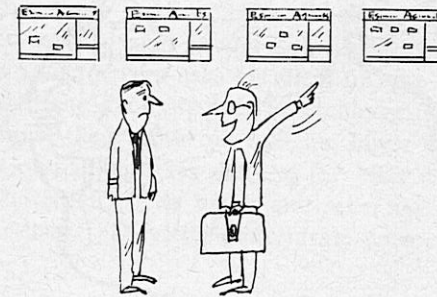


"... subsidence being a possible hazard..."

no duty and his only concern is to see that *his* client is adequately secured. Even a house comparatively recently built can be a trap, subsidence being a possible (but not the only) hazard. A survey will add £20 to £30 or even more to your expenses but may save you several hundred pounds.

CHOICE OF SURVEYOR OR ESTATE AGENT

YOUR Solicitor is well acquainted with the Estate Agents and Surveyors in his district and is, therefore, well placed to advise you on your choice.

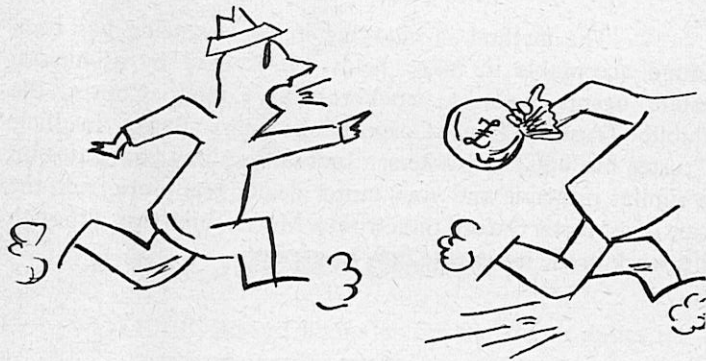


DEPOSIT

THE word "deposit" is often used to mean the proportion of the purchase money which the buyer provides from his own resources. In this booklet the word means the sum of money (usually 10% of the price) which the buyer has to pay, on or before exchange of contracts, as security for the performance of his bargain.

Until exchange of contracts, your deposit is not at risk. Therefore, it does no harm (apart from loss of interest) to pay the full 10% of the price right at the start.

On the other hand, since it is not in issue at that time, it does not benefit the seller. The best course is to pay a nominal deposit of, say, £50, at the start, as a token of sincerity, and to pay the balance on exchange of contracts. Although this advice will reach most people too late, you are advised not to pay anything to an Estate Agent without consulting your Solicitor first. Most Estate Agents—the vast majority—are honourable people, but as in any walk of life, the occasional black sheep has been known. If an Estate Agent welsches, any deposit paid may be irretrievably lost.



If an Estate Agent welsches . . ."

WHERE WILL I FIND MY 10% DEPOSIT?

MOST house owners are not in the happy position of having a "nest egg" of between £300 and £2,000 sitting in the bank. When they contemplate a move, how are they to find the 10% deposit? On the completion of the sale of their present house, they will have the money but they need the deposit on the new one before then.

The answer is simple. Your bank will lend it to you. You have no bank account? It is a simple matter to open one and you can close it at the end of the business if you want to do so.

THE CONCURRENT SALE AND PURCHASE—BREAKING THE VICIOUS CIRCLE

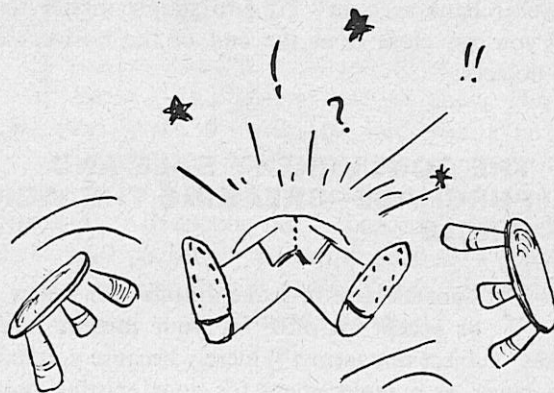
DO not hesitate to make an offer for a new house or accept an offer for your present house (in both cases "subject to contract") merely because you have not found a buyer or a replacement for your existing house, as the case may be.

It is our job—and we are very careful about it—to make sure that you are not legally committed to one transaction without securing that the other reaches the same point at the same time. There is usually time to achieve this and, if one transaction should fall through before the point of legal commitment is reached, you will be able to cancel the other.

THE HIGHER OFFER

ESTATE Agents do not usually push a property once it has been sold subject to contract. However, until contracts are actually exchanged, which may take from three weeks to two months or even longer, there is no legal commitment. The seller may, in the meantime, receive a higher offer. He is legally free to accept it. Whether he does so or not is a matter for him and his conscience.

However, quite apart from the moral issue, it is often unwise to accept a later and higher offer, because an offer is not a contract and may be withdrawn later, leaving the seller uncomfortably sprawled on the floor between two stools!



"... leaving the seller uncomfortably sprawled ..."

The possibility that a seller may receive and accept a higher offer is one of the risks a buyer must inevitably run between the date of acceptance of offer and the date when contracts are exchanged. Fortunately, it does not often happen in practice.

WHAT WILL IT ALL COST ME?

PRACTICALLY all conveyancing costs are calculated on a sliding scale dependent on the amount of the purchase money or, in the case of a mortgage, the amount of the advance. Therefore, it is possible for your Solicitor to estimate fairly accurately what your costs will be right at the start. If he omits to give you an estimate, he will gladly do so at your request. You do not usually save money, although you may save time, by employing the same Solicitor as the other party.

This method of charging is rather rough and ready and has its critics but to charge according to the amount of work done (although fairer in theory) would have serious drawbacks; for example (a) a tendency for charges to be out of proportion in small transactions; (b) an overall increase in conveyancing charges because of the extra time involved in costing; and (c) the greatest drawback of all—uncertainty. Most people buying a house have to budget carefully and would rather be told in advance that their costs will be, say, £100 than "... difficult to say—could be £20. On the other hand might be £250. It all depends, you see".

The method of charging in conveyancing has been found acceptable in many fields. It is used by architects, estate agents, valuers, stockbrokers, County Courts, the Public Trustee, Trust Corporations (e.g., Banks in their Trustee business) and others. Indeed, you pay your rates on a similar principle and your motor dealer gets more from the sale of a Morris Oxford than from a Morris mini-van, although his work in the latter case may be greater.

WHEN DO I PAY?

IN the case of a purchase, when there is no concurrent sale, legal costs will normally appear on the statement of cash needed to complete your purchase and we send this to you shortly before completion. In the case of a sale, whether or not there is a concurrent purchase, legal costs and estate agents' commission are normally retained out of the proceeds of sale and



"... a bill you cannot meet ..."

the balance you receive is a net sum after all expenses have been met. Unless some unexpected expense occurs, which is very rare, you can safely spend it without fear of receiving a bill which you cannot meet.

BLAME THE GOVERNMENT

PLEASE do not blame us for the stamp duties on conveyancing documents, or fees payable to the Land Registry, or other out-of-pocket expenses which we have to pay on your behalf.

These items will be shown separately on our bill—often under the antique heading "Disbursements".

YOUR MORTGAGE

WE leave it to you to arrange your mortgage but can often help (if consulted in time) to find the most suitable source.

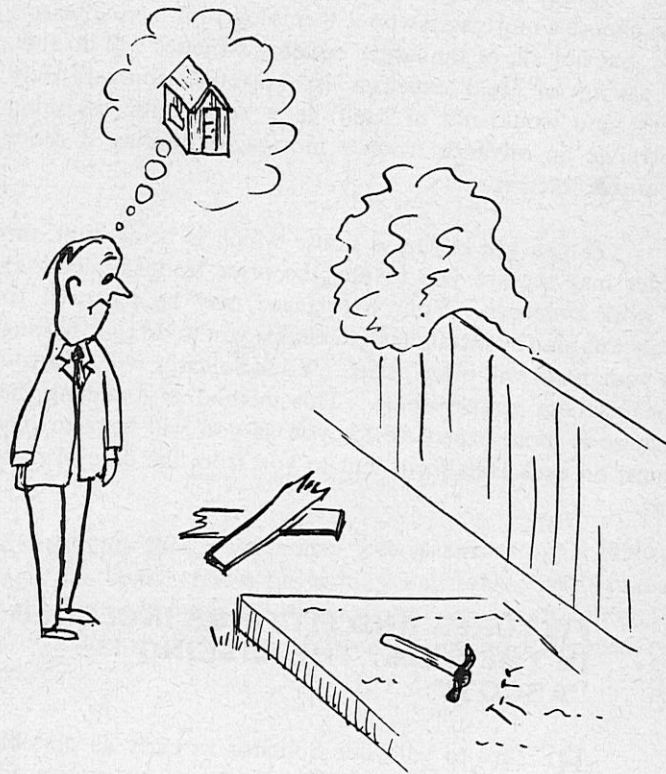
It will save legal expenses, and will also save time, if you choose a mortgagee who will employ your own Solicitor. Most, but not all, of the larger building societies will do this. The saving of legal expenses is, however, comparatively modest and would not of itself be a reason for declining to arrange an advance from a mortgagee offering a more favourable interest rate.

If you are buying a house which is being built, the builder may require you to pay the price by instalments as the work proceeds. Your Mortgagee may be prepared to advance its loan by instalments to enable you to do this. Failing this your bank will often assist. Your Solicitor will help you to make these arrangements. This method of financing the purchase is more expensive for you as you will have to pay interest on each instalment lent to you from the date of payment.

FIXTURES AND FITTINGS INCLUDED IN THE SALE: THE MISSING "ASCOT"

BE sure to tell your Solicitor as early as possible (and in any case before contracts are exchanged) if any movable fixtures or fittings are included in the price; otherwise you may find, for example, that the neat little Ascot water heater over the sink, or that smart timber workshop, is not there when you move in. Unless the contract or correspondence between the Solicitors has covered this point, you may have no remedy.

It is also wise for you to tell your Solicitor if you are buying or selling any articles for an additional price so that this, also, can be properly dealt with in the same way.



... that smart timber workshop is not there ...

FREEHOLDS AND LEASEHOLDS— WHEN IS AN OWNER NOT AN OWNER?

IF you own the freehold, the property is yours and will remain yours until you dispose of it. You may have obligations to your neighbours: for example, not

to build so as to obstruct the light to their windows. Apart from these, you are beholden to nobody.

If you own a leasehold, you are only a tenant: but your tenancy will usually be for a long time and your rent relatively modest. Your Lease (a long document and very dull to read) will contain clauses imposing numerous obligations upon you. However, most of these will be of a kind which you would observe in any case (e.g., to keep the property in repair, not to carry on any business, not to keep explosives on the premises, and so on).

The Lease will contain a provision giving the landlord the right to take the property from you if you fail to fulfil any of your obligations. In practice, this happens very rarely indeed, because the law protects lessees from arbitrary action by landlords.

In former times, the landlord became entitled to take possession of the property when the period of the lease expired and the lessee had to give it up. Nowadays, a lessee is usually protected against this. He may be entitled to compel the landlord to sell the freehold to him, or to grant him a new lease or tenancy. Subject to certain conditions, the right to buy the freehold from the landlord can, where it applies, be exercised at any time during the currency of the lease. It is not available to lessees of flats.

REGISTERED AND UNREGISTERED PROPERTY

IF you are the owner of Registered land, it means that your ownership is recorded and guaranteed by a department of Government known as the Land Registry. The Land Registry issues you with a Certificate, certifying that you are the owner of the property which is shown on the plan bound up in the Certificate.

If your property is not Registered, your ownership is proved by a bundle of documents, or copies or abstracts of documents, recording every dealing with the property over a long period of years—usually 30 or more.

The proof and investigation of title is normally more difficult in the case of unregistered property and, for that reason, the Solicitor's charge is higher. The seller, therefore, has substantially less to pay when his land is registered. The buyer, on the other hand (especially if he is getting a mortgage), has to pay fees to the Land Registry as well as his Solicitor's charges and therefore his legal expenses are not very much less than in the case of unregistered land.

It is the policy of the Government to extend registration of title and they do this by making it compulsory in certain areas to register unregistered titles on a sale.

The purchaser who buys unregistered land in an area where registration of title is compulsory gets the worst of both worlds. He has to pay his Solicitor the charge appropriate to unregistered land and will also have a fee to pay to the Land Registry for the first registration of the title.

COMPLETION DATE

THIS is finally agreed on exchange of contracts and, unless we advise you otherwise, it is reasonably safe to make your removal arrangements for the date fixed. It is usually about a month after the date of the exchange of contracts.

However, the date cannot be guaranteed and does occasionally have to be changed, especially if there is a long chain of concurrent sales. For example, there may be trouble in one link of the chain—i.e., a defect in title or an exceptionally pernickety Solicitor, and this will throw all the others out.

Unless the contract otherwise expressly provides (and this is rare because such a provision is usually unwise), the date of completion is not sacrosanct. Neither party can withdraw if the other is unable to complete on the date fixed, nor is there any way of compelling the other to complete on that date (although a purchaser may sometimes have to pay interest on the purchase money). Your Solicitor will exert himself to the utmost to avoid a change in the completion date, because he knows very well how inconvenient this is for all concerned. If it should be necessary, it will not usually be his fault. If there is a change, as much notice as possible will be given but it does sometimes happen at the last moment, e.g., if a building society delays in sending its cheque, or if it is held up in the post. Fortunately, a last-minute change is very rare.

A PIECE OF CAKE?— SOME TYPICAL PROBLEMS

IT has been said that it is a simple matter, requiring no special qualifications, to conduct the business of buying and selling houses. The Author, at least, has always been thankful for his legal training in answering questions like the following:—

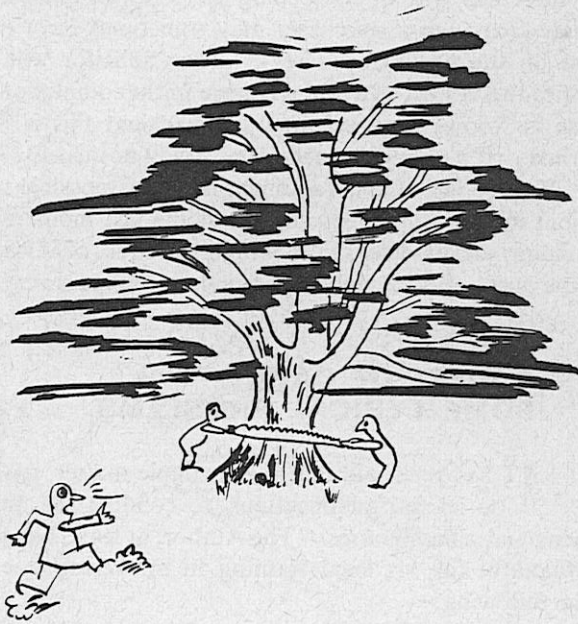
Can a husband sell his house over the head of his deserted wife?

Can a mere Trustee sell without the consent of his beneficiaries?

Can one joint owner sell without the consent of the other? In his Will, a testator leaves his house to his widow for life and to his son after her death. Can she sell during her lifetime?

Mr. Black has a nice house but he prefers water skiing to gardening. He sells part of his garden to Mr. White next door but he wants to stop him cutting down that fine old cedar tree. Can he do this? What happens

if Mr. White later sells to Mr. Green? Does it make any difference if Mr. Green was not told and did not discover, before he bought, the arrangement about the cedar tree?



"... stop him cutting down that fine old cedar tree ..."

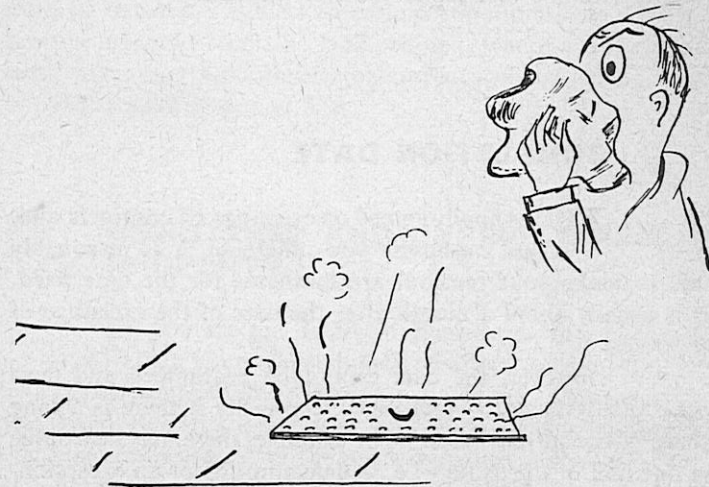
The house you want to buy has a tenant occupying two rooms on the first floor. If you buy, will you be able to evict the tenant or increase the rent?

The cottage you fancy is a little small but would be all right if you could build an extension at the rear. The next door neighbour has a right of way round the cottage passing immediately behind the back door. Can you build and compel the neighbour to accept a diversion of his right of way?

The Vicar's wife is on the verge of a nervous breakdown because she cannot look after the Vicarage. It is much too big. The Vicar would like to sell it. Is it his to sell? Or does the Bishop have some say in it, or the Church Commissioners, the Diocesan Board of Finance, the Patron, the Parochial Church Council, the Charity Commissioners, or even Her Majesty the Queen in her capacity as Defender of the Faith?

Dear Mrs. Brown is getting on now; her memory is not what it was. She is not really capable of looking after her affairs. Her nephew Tom says he has her authority to sell her house for her. Can he do this?

"Mon Repos" drains jointly with its neighbour "Dunromin" into a septic tank lying in the garden of the latter. You would like to buy "Dunromin" but are daunted by the possibility that excessive use of these drainage facilities by "Mon Repos" might have uncomfortable consequences. Would you be able to insist that each property constructs its own septic tank?

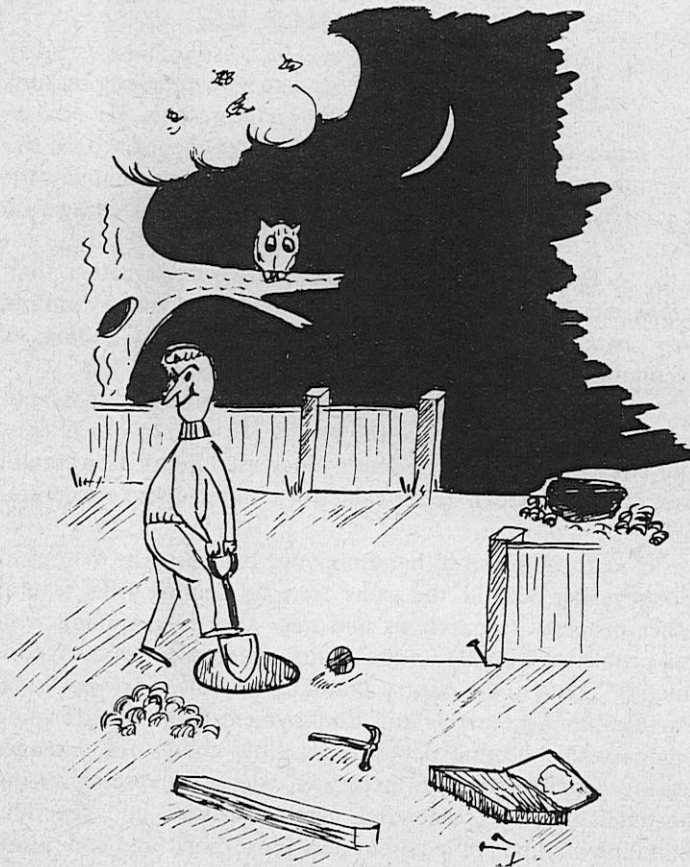


"... excessive use of the drainage facilities ..."

"FOR EXAMPLE"— SOME COMMON DEFECTS IN TITLE

A document not properly stamped with the right stamp duty.

A discrepancy between the property as it is and the property as it appears on the deeds. Has someone surreptitiously moved the fence?



“... surreptitiously moved the fence ...”

An obvious breach of a restrictive covenant (e.g., not to build on the land) which is not released at all or is not effectively released (e.g., it *has* been released but only by one out of two people having the benefit of it).

A privilege enjoyed over neighbouring property which has not been properly granted by the neighbour (e.g., passage over a pathway, the laying of a drain):—

“Mind if I run a drain under your flower bed, Joe?”

“Not at all Jack—go right ahead! Only too pleased!”

But Bill, who buys from Joe, not knowing of the drain, is not “too pleased” at all, as he wants to sink a swimming pool there!

MISCELLANEOUS MATTERS WE ATTEND TO

For Sellers

Cancellation of fire insurance on the building (if you have a mortgage).

The payment of any outstanding general and water rates, or claiming a refund when appropriate. It will save a muddle if you make no further payment after you have instructed us. Please, however, let us know if you should get a Final Demand!

Repayment of your mortgage debt on completion.

For Buyers

Arranging fire insurance of the building at the time when the risk passes to you.

Collection of the mortgage advance from your mortgagee on completion of the purchase.

For both Sellers and Buyers

Fixing the completion date (after consultation with you). Much confusion and ill-feeling results if you try to arrange this direct with your opposite number.

MISCELLANEOUS MATTERS WE LEAVE TO YOU

To Sellers

Arranging for your responsibility for gas, electricity and telephone services to be terminated, meters read and final accounts prepared.

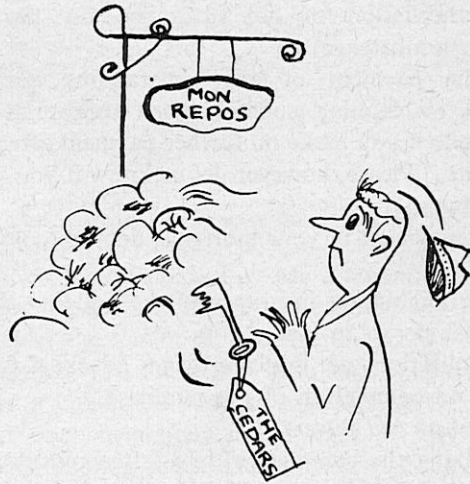
Cancelling your insurance of the contents and also of the buildings, if you have no mortgage.

To Buyers

Arranging for the supply of gas, electricity and telephone services.

On receipt of the Contract to sign, to tell us:—

- (a) if the description of the property is incorrect in any way—e.g., the wrong house, the wrong measurements of the boundaries, the wrong compass points.



“... the wrong house ...”

- (b) if there is any other obvious mistake—e.g., in the spelling of your name.

To both Sellers and Buyers

Making your removal arrangements (as opposed to fixing the date of removal).

HOW YOU CAN HELP US

BY not pressing (without a most compelling reason) for a completion date earlier than we advise.

This tends to lead to the type of disaster mentioned at the beginning of this booklet, i.e., arriving with your removal van at your new house and finding the front door barred against you.

Emergencies excepted, by *writing* to us rather than *calling* either personally or on the telephone; and by calling *after making an appointment* rather than just calling or telephoning.

This is said not from arrogance or unfriendliness, but out of a desire to improve the service we give to our clients. Our efficiency is very considerably increased if at least a certain part of each day can be set aside for uninterrupted concentration.

In addition to handling your business, the Compleat Conveyancer will at the same time be dealing with several other property transactions and may also be grappling with tax problems, winding up the affairs of deceased persons, conducting Town and Country Planning appeals, drawing Wills, Partnership Agreements and Employment Contracts, forming companies, collecting debts, negotiating claims for damages arising from motor or factory accidents, divorcing erring husbands or wives, defending careless drivers, and generally handling all kinds of legal business for all sorts and conditions of men and women.

AFTER COMPLETION

IF you have a mortgage, your deeds will be kept by your Mortgagee until the debt has been cleared. This does not, of course, prevent you from selling the property at any time in the meanwhile. If you do so, your Solicitor will have to arrange to pay off the balance of the mortgage debt out of the proceeds of sale on completion.

A mortgage loan cannot be "transferred" from one property to another. If you move, you pay off your existing loan and negotiate a fresh advance on your new house.

If you have no mortgage, your deeds are at your disposal. A great deal of trouble is caused if they are lost. Indeed, if your property is unregistered their loss can be quite disastrous. Your Solicitor will usually have facilities for storing them safely for you without charge.

If your property is registered, it takes two or three months before the Land Registry has completed its records and issued you with your Land Certificate.

If you are the first occupier of your house, you should

be careful to notify your Solicitor of any faults in the building within the time laid down in your Contract so that he can take the necessary steps to protect you.

CONCLUSION

MOST conveyancers enjoy and take a pride in their work and do their best to give a good service. Very rarely, if at all, do you hear of anyone suffering from want of title to a house (as you do hear of people being swindled through want of title to a motor car); or of a person being legally committed to buy a house, and then losing his deposit because on completion he cannot find the money to pay for it, or being legally committed to sell and move out of a house, without being able to gain possession of the house he is concurrently buying.

That this should be so is perhaps some evidence that our work and the system which we have inherited and help to maintain are not wholly without value.

MAIDENHEAD, BERKS.
1968

