

GUIDANCE TO CONVEYANCERS ADVISING CLIENTS ON HOUSE MOVES

This guidance should be read with the Government advice on home moving:

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

This includes specific advice to conveyancers (page 3). You should note that, 'Prioritising the health of individuals and the public must be the priority.'

Nothing in this guidance should be read as contradicting that advice.

The Government has made clear an overall direction of travel; home moves into occupied properties should only take place where contracts have already been exchanged and it has proved impossible for the parties involved to agree a deferral. You should encourage your client to agree an appropriate deferral and only advise them to proceed if that has proved impossible. Note that the police emergency powers are disapplied only for **critical** home moves.

Moves into unoccupied properties may continue, subject to the points below.

When moves occur, they must do so in a way which takes account of the guidance currently in force from Public Health England and Public Health Wales. You should advise and help your clients to make themselves aware of the requirements applicable at the time they are looking to move.

It is important to try and avoid allegations, however unjustified, that the conveyancing profession is encouraging its clients to carry out transactions against the spirit as well as the letter of Government requirements. However, once you have provided advice about deferring the transaction and the client or clients instruct you in writing to continue to complete the contract then, if it is legally possible to do so, you must follow your client's instructions.

The response to the Coronavirus epidemic is - and will continue to be - fast changing.

Conveyancers need to keep up to date with guidance as it evolves and changes with health advice.

It is not possible for this guidance to cover every eventuality, despite our best endeavours. We hope that you will use your common sense in applying it and will always bear in mind the overall objectives of Government policy in this public health emergency.

AMENDING EXISTING CONTRACTS

The sector trade and representative bodies including, the Law Society, Society of Licensed Conveyancers, Conveyancing Association, Chartered Institute of Legal Executives and Bold Legal Group, have worked together to agree the outline of a process for deferring a completion date. As always, every case should be treated on an individual basis and any clauses or processes suggested should be amended and tailored to those individual needs.

Once all parties have agreed to defer the completion date, in order to comply with s.2 of the Law of Property (Miscellaneous Provisions) Act 1989, conveyancers should exchange a written agreement to vary the contract.

To avoid contamination through a physical document, the parties will need to either e-sign the agreement to vary the existing contract or authorise their conveyancer to sign as agent on their behalf.

This will require a formal exchange process. You should make it clear that there is not an intention to create a new contract; only an intention to vary the existing contract.

Conveyancing Quality Scheme members should effect exchange under one of the Law Society's formulae for exchange - <https://www.lawsociety.org.uk/support-services/advice/articles/formulae-for-exchanging-contracts-by-telephone/> - others may do so too, or may effect exchange in another way. In chains of transactions it may be easier to use the formulae. The undertakings will need to be altered to confirm that the original document will be sent when the Coronavirus COVID-19 restrictions are lifted.

Before exchange of the agreement effecting the deferred completion date, conveyancers should ensure their clients understand the benefits and risks and are advised in accordance with their own circumstances.

The following advice may be relevant - this is not intended to provide an exhaustive list of the potential circumstances which might arise.

Mortgages

While generally lenders have agreed to extend the mortgage instructions for three months you should establish whether any formal confirmation is necessary and if the lender to provide it.

Searches and costs

Remember that your normal obligations apply to your client and lender client and you should consider prior to the eventual completion whether you will need to refresh searches.

As always, you have a duty to advise clients of the potential for additional costs involved in managing their transaction whether those are your own costs or additional disbursements.

ADVICE FOR CLIENTS WHO HAVE ALREADY EXCHANGED CONTRACTS

1. Agree either directly or through your estate agent that your transaction can be deferred.
2. It is a good idea to have a two-step process so that you delay the move until the end of the current stay-at-home period and the requirements about physical distancing, but with the ability to extend that timescale if the Government restrictions are extended.
3. The clause should state that once the restrictions end there will be a period of time agreed before you move to enable everyone to get ready for the move. This might be one or two weeks. Make sure the timescale will give you enough time to find removals and arrange your move especially in circumstances where there is likely to be an increased demand for these services.
4. There is a formal process required to effect a deferral of a completion date which will involve your conveyancer exchanging agreements on your behalf with the other party to confirm the new arrangements.
5. If you are buying a property with a mortgage you should check whether you will need written confirmation from your lender to this extension. (Lenders generally have agreed to extend mortgage offers by three months).

6. Consider what would happen if your circumstances change during this period, for example, would you still be able to afford the mortgage if you lost your job and had to find new employment?
7. You should also consider that property values will fluctuate during the period of deferral and this might impact your lender's ability to lend. This will be particularly important if your mortgage makes up a large proportion of the house price, perhaps 60% or over.
8. If you are both buying and selling, bear in mind that if your own buyer or seller's circumstances change, and they need a mortgage, they may not be financially able to proceed with your transaction at the end of the restrictions.
9. You should also bear in mind that even when the restrictions are removed there may be other unavoidable delays in your move, perhaps if someone in the chain has died and their estate needs to be settled before the move can be completed. In that case you could agree a further delay or seek to end the contract.

ADVICE FOR CLIENTS WHO HAVE NOT YET EXCHANGED CONTRACTS

1. You can still continue with your transaction and should take this time to work with your conveyancer to progress the transaction and to read through the reams of documents involved in moving house.
2. You should think very carefully before instructing your conveyancer to exchange contracts, even where completion is a long way off, as the contract will be binding, and you would have to complete even if your financial position had changed.
3. You should make sure that if you do instruct your conveyancer to exchange, that they have incorporated a suitable clause in the contract to deal with any ongoing risks caused by the virus.

ADVICE FOR CLIENTS WHO HAVE TO MOVE DURING THE STAY-AT-HOME PERIOD AND THE REQUIREMENTS ABOUT PHYSICAL DISTANCING

1. You should only move during the restrictions if your move is critical and it is safe to do so, for example, where the property is empty. If the empty property is in a chain, it may not be possible to complete without breaking the chain.
2. You must follow advice from Public Health England and Public Health Wales on social distancing and must not endanger yourself or others during your move.
3. You should complete a deep clean if you are moving to a new home and must follow the advice given for decontamination of your new home if you know, or have reason to believe, that the previous occupants - or someone which they had been in contact with - has Coronavirus.

<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings/covid-19-decontamination-in-non-healthcare-settings>