

Nelson McLean, coronavirus and conveyancing transactions

Ourselfs

So far as our own work is concerned, we will continue to do the best we can to provide an efficient service and to keep clients informed. There may be problems caused by staff illness or self-isolation, but we cannot effectively counter this: we can only promise to do the best we can and to keep clients informed. We do, of course, have business resilience plans in place in case (for instance) our office needs to be closed – even then, you will be able to contact us by phone, email or letter, as normal – just not by calling in, please.

At present, we are still happy to hold meetings with clients but, if clients prefer, we can speak by telephone or using video conferencing.

Clients' transactions

Regarding clients' transactions, there are numerous potential issues, such as –

- requests for properties to be decontaminated before completion
- refusal of the seller to vacate on completion (or refusal of the buyer to complete) because a member of a party's family is in self-isolation
- failure or disruption to parts of the banking system (such as CHAPS, which we rely on to receive and send mortgage and completion money)
- inability to obtain search results if people are not available to carry out the searches
- reluctance on the part of removal company employees to enter properties
- issues in getting surveys and valuations carried out

It is tempting to try to add contract clauses to protect against the consequences of such issues, but it is impossible to protect one party to the transaction without adversely affecting the other party: the whole point of exchanging contracts to buy or sell a property is so that both

parties commit to specific contract terms, including the timetable for completion; if the contract terms are varied to protect one party, this will inevitably have an adverse impact on the other. The fact is that there are always uncertainties in life – though now more than normally – and there will be consequences (such as delays, liability for compensation, and potential loss of a property purchase) if a party is unable to fulfil their obligations under the contract, even for reasons outside their control.

We are therefore strongly inclined not to allow or add to the contract any clauses that provide special protection for one party against the other. This tallies with advice from the Law Society and our own regulator, the Council for Licensed Conveyancers. We recognise there may be circumstances making such clauses appropriate, but we will only allow or add clauses on the specific instructions of clients in appropriate circumstances – if you want to discuss this further, please do so.

Clients need to review their plans in the light of the current heightened uncertainties. For instance, while having a long period between exchange of contracts and completion usually means there is plenty of time to make arrangements for completion, currently it may be better to have a short period between the two, to minimise the chances of either party being affected by the virus after committing to the contract: a week between exchange and completion may be more sensible than four weeks, for instance. We do not like simultaneous exchange and completion transactions, as that increases the chances of other things going wrong, but a week may be a sensible compromise.

Before we exchange contracts, we always ask for your instructions as to a completion date, and you should bear the above comments in mind when giving those instructions.

As ever, we are available to talk through any questions or problems you have.

Nelson McLean Limited - 18 March 2020