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COVID-19: To Move, or Not to Move... That is the Question!

CONFUSION?

The government advice published on 26 March has caused some confusion leading some to believe “residential conveyancing has been cancelled”, but this is not the case.

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

The guidance is aimed at maintaining the lockdown principals of physical distancing to keep the public safe.

Conveyancing transactions where the property is already vacant, and where the buyer does not need to move in, are fine to go ahead and can carry on as normal.

BUT WHAT IS A PROPERTY IS OCCUPIED AND/OR VACANT POSSESSION NEEDS TO BE GIVEN ON COMPLETION?

The confusion is where the property is occupied and/or vacant possession is to be given upon Completion. For example, unless removals have been pre booked and confirmed, it is likely that vacant possession will be very difficult to arrange preventing Completion from taking place.

The guidance gives two options here, on an either /or basis:

1. all parties can continue to the point of exchange, at which point they then hold fire on exchange and wait until the lockdown is over; or
2. the parties can proceed to exchange but must include provision in the Contract to take account of the lockdown and Covid-19 issues. The Law Society has issued an approved form of contractual variation to take account of this as a starting point.

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CONDITIONAL CONTRACT?

Option 2 is a conditional contract. A completion date is still set, but if on the day the lockdown or Covid-19 issues prevent completion from being possible, then completion is delayed (without penalty to any party) to a later date when lockdown is lifted. The conditional contract would also have a long stop date, so if completion could not occur by that long stop date the parties can withdraw without penalty and take back their deposit. Where one is buying with the benefit of a mortgage, that long stop date would be agreed with consideration of the expiration date of the mortgage offer.

The question could be asked, why enter into a conditional contract? The answer is that without any kind of exchange, the buyer and seller remain uncommitted and quite free to change their mind and pull out. Or they could seek to reduce the price. By locking in a conditional exchange of contracts, the ability of the buyer and seller to withdraw on a change of heart is no longer possible, and it prevents last minute haggling on the price.

Proceeding by way of a conditional exchange of contracts will not be suitable for everyone, careful consideration must be given to each transaction on a case by case basis.

NEED ASSISTANCE?

At JPC we have a team of highly experienced property lawyers who are able to guide you through these options and help you choose what is best for you. Whether you are looking to start a residential conveyancing transaction, or are thinking of switching lawyers, please contact Derek Payne, Partner and Head of Residential Conveyancing by email dpayne@jpclaw.co.uk or telephone: 020 7581 7525 or on LinkedIn