

Residential conveyancing update - the challenge of change

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Residential conveyancers are used to responding to change, this year more than ever. A number of existing and proposed changes continue to challenge conveyancers and highlight the importance of careful risk management for firms.

Conveyancing Standards Bill

The Conveyancing Standards Bill is proceeding through Parliament. It aims to establish minimum standards for conveyancers acting on behalf of purchasers of residential properties. Although commentators say it is unlikely to become law, the Bill reflects the difficulties experienced by some purchasers of new properties who have later discovered they are exposed to unexpected liabilities, such as escalating ground rent. Practitioners may already feel that there is sufficient guidance, but the Bill provides a reminder of the duty on conveyancers to advise on the downsides of a transaction.

EWS1 Form

Many leaseholders are facing difficulties selling their flats without an EWS (External Wall Survey) certificate. Following the Grenfell Tower tragedy, lenders have become worried about the safety of that they have no means to verify that a block of flats is safe. In December 2019, the RICS and lenders, in cooperation with the Government, created the EWS1 system. This includes the EWS1 Form, a survey setting out the safety of the building including any necessary remedial works. Although not a statutory requirement, many leaseholders are finding it impossible to sell their flat or change mortgage lender without an EWS, which can be extremely costly and difficult to obtain. Conveyancers acting for purchasers and lenders should ask for a copy of the survey, and they should remember to do so when acting for cash buyers, who may not be aware of the effect the lack of an EWS might have on the value, saleability and mortgageability of a property.

Electronic Signatures

Since July 2020, and in direct response to the practical difficulties caused by the pandemic, the Land Registry has been accepting e-signed deeds and documents. The onus is on conveyancers to ensure the valid signing and witnessing of documents and solicitors should maintain an audit trail in case the validity of the document is later challenged. Unsurprisingly, practitioners have adopted a cautious approach to these changes. A recent survey found that 96% of practitioners were yet to use the witness electronic signing method.

Stamp Duty Land Tax (SDLT) Holiday

In July, the Government suspended SDLT on the first £500,000 in England and £250,000 in Wales on any residential purchase. The SDLT holiday, combined with pent up demand following the easing of COVID 19 restrictions, has seen a surge in sales. Average transaction times have increased, due to increased workloads, operational constraints caused by the pandemic, lenders taking longer to make offers and searches taking longer. With the SDLT holiday deadline on 31 March 2021, stakeholders including the Law Society have called on the Government to make changes to enable people to extend the holiday, to reduce the burden faced by solicitors and others working in the conveyancing process. In the meantime, firms should be careful to manage clients' expectations. Inevitably, we predict that in some cases the 31 March 2021 deadline will be missed and claims and complaints may follow.

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