



The Law  
Society

# Your conveyancing questions answered

The Law Society exists to represent, support and promote the profession. Whether you're looking to stay up-to-date with the latest changes to property regulation, further your career or just need guidance, there are services available to help you achieve your goals.

To help answer your day-to-day conveyancing queries, our **Practice Advice Service** have put together some useful answers for frequently asked questions.

For more tailored property content take a look at our property centre.

[www.lawsociety.org.uk/property-centre](http://www.lawsociety.org.uk/property-centre)



1. I am acting for the buyer in a residential conveyancing matter and the contracts have not yet been exchanged. As the seller's solicitors are not based in the same locality as my firm, can I insist that they complete by post and adopt the Law Society Code for Completion by Post 2011?

2. I am acting on the purchase of a residential property and the seller has instructed a notary public. May I accept an undertaking to discharge the mortgage on the seller's property from a notary public?

3. I am acting for a buyer of residential property and the seller has responded to some of the TA6 questions by stating "Not as far as the seller is aware." If I rely on this response, what could the implications be?

4. I am acting for a buyer in a conveyancing transaction. Can I rely on the searches provided by the seller?

5. I am a newly qualified solicitor. My firm is acting for an unmarried couple who are purchasing a property in their joint names as tenants in common. Is it advisable to specifically agree each party's share in the property to avoid future disputes?

6. In light of the Dreamvar case what can I do to safeguard transactions?

## Need more information?

The Law Society's **Conveyancing Handbook** (25th edition) is a crucial resource that provides detailed answers for day-to-day transaction queries and is available to purchase from the Law Society's online bookshop at [www.lawsociety.org.uk/bookshop](http://www.lawsociety.org.uk/bookshop)

### Disclaimer

While every effort has been made to ensure the accuracy of this information, it does not constitute legal advice and cannot be relied upon as such. The Law Society does not accept any responsibility for liabilities arising as a result of reliance upon the information given.

This content is compiled by the Law Society's Practice Advice Service. Comments relating to the questions should be sent to Anjali Mouelhi, Practice Advice Service Manager, The Law Society, 113 Chancery Lane, London, WC2A 1PL.



I am acting for the buyer in a residential conveyancing matter. Contracts have not yet been exchanged.

The seller's solicitors are not based in the same locality as my firm and I am hoping that they will agree to complete by post and adopt the Law Society Code for Completion by Post 2011 ('the Code').



Can I insist that they complete by post and adopt the Code?



If both firms are members of the Conveyancing Quality Scheme they are obliged to use the Code.

If either firm is not a member of the Conveyancing Quality Scheme arrangements for completion may be set out in the draft contract.

In the absence of any specific contractual provision, the seller's solicitor is not obliged to adopt the Code although its use would be recommended in these circumstances.

### When should I make the proposal?

It is advisable to approach the seller's solicitors on this matter as early as possible in the transaction, perhaps raising this as a preliminary enquiry, but at the latest at requisitions on title stage.

It is also a courteous approach as the seller's solicitor may need to obtain the consent of their client's lender's solicitors to this arrangement.

Tip

Any variations of the Code should be agreed in writing between the solicitors well in advance of completion.

To download the Code for free, please visit [www.lawsociety.org.uk/code-for-completion-by-post](http://www.lawsociety.org.uk/code-for-completion-by-post)

## Everything you need in one place

Find essential property forms, practice notes, support for professional development and the latest news by visiting the property centre – [www.lawsociety.org.uk/property-centre](http://www.lawsociety.org.uk/property-centre)



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I am acting on the purchase of a residential property. The seller has instructed a notary public.



May I accept an undertaking to discharge the mortgage on the seller's property from a notary public?



The Law Society's *Conveyancing Handbook* states that an undertaking should not be accepted from unqualified persons because of the difficulties of enforcement of undertakings against them. The Handbook specifically envisages accepting undertakings from a solicitor or licensed conveyancer.

The Master of the Faculties regulates notaries public. Under schedule 4 pt.1 of the Legal Services Act 2007, the Master is an approved regulator of reserved instrument activities, which means a notary public may do conveyancing work for fee, gain or reward.

However, you should bear in mind, that while a notary public is a qualified person, they may not have professional indemnity insurance adequate to the financial risk of the particular transaction. If you agree to accept an undertaking to discharge a mortgage, to protect your client you will need to satisfy yourself first that the giver of the undertaking is adequately insured against the risk of default.



The UK Finance Mortgage Lenders Handbook Part 1 at 3.1.3 now envisages the seller being represented by a notary, as being a regulated legal representative on record with one of the other regulatory bodies approved by the Legal Services Act 2007 in relation to reserved legal activities. The solicitor may however need to check Part 2 for the lender's specific instructions.



## Need more information?

The Law Society's *Conveyancing Handbook* (25th edition) provides answers to all your day-to-day conveyancing questions.



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I am acting for a buyer of residential property and the seller has responded to some of the TA6 questions by stating “Not as far as the seller is aware.”



If I rely on this response, what could the implications be?



**The TA6 form makes clear that the buyer is entitled to rely on the replies given to enquiries by the seller.** Where questions have been answered in the terms “not so far as the seller is aware”, this will imply that the seller and their solicitor have made adequate investigations and have no actual knowledge of any defect (*William Sindall plc v. Cambridgeshire County Council* [1994] 3 All ER 932).

### What may be considered ‘adequate investigation’?

It may cover the seller’s personal knowledge as well as the contents of such files, deeds and other documents that are in the firm’s personal possession and any other reasonable investigations.



### Need more information?

The Law Society provides vital property forms and guidance all in one place at [www.lawsociety.org.uk/property-vital-forms](http://www.lawsociety.org.uk/property-vital-forms)

## Remember

You should ensure that your buyer’s client is aware of the limitation of replies to enquiries and where warranties should properly be sought.

While you may raise additional enquiries on behalf of your client, the Law Society’s Conveyancing Protocol says that you should only do so where relevant and necessary to the particular transaction. You should resist raising any additional enquiries including those about the state and condition of the building which is capable of being ascertained by the buyer’s own enquiries or survey or personal inspection.



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I am acting for a buyer in a conveyancing transaction.



Can I rely on the searches provided by the seller?



While the **responsibility of carrying out searches rests with the buyer**, local authority search results on forms CON 29 and CON 290 for example are not personal to the searcher and their benefit may be transferred to a third party.

Where the seller makes pre-contract searches and offers these to the buyer, the buyer and their lender may take the benefit of the results. The buyer must check that the seller has undertaken all the searches and enquiries which the buyer deems necessary for the transaction and, if not, they must undertake the additional searches themselves.

If the buyer is not satisfied with the results of the searches made by the seller because, for example, they consider that they are out of date, or that insufficient questions have been raised, they should repeat the search themselves.

## Everything you need in one place

Find the latest process advice, guidance, consultation responses, services and solutions to grow your business and much more by visiting the property centre – [www.lawsociety.org.uk/property-centre](http://www.lawsociety.org.uk/property-centre)

## Remember

The UK Finance Mortgage Lenders Handbook should be consulted on any lender requirements on the age of the searches.



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I am a newly qualified solicitor. My firm is acting for an unmarried couple who are purchasing a property in their joint names as tenants in common.



Is it advisable to specifically agree each party's share in the property to avoid future disputes?



We recommend that you carefully explain and document the advice given on your file that holding the property as tenants in common will mean that the property will not automatically go to the surviving owner and that the parties can own different shares in the property. This may depend on their contributions towards the purchase price or as agreed.

### What to do

To avoid future disputes the share of each owner should be expressly agreed and recorded in a deed of trust which is signed by each owner. Where the land is registered, a declaration of trust can be made in Panel 10 or Panel 11 of Form TR1 or in Form JO.

In certain circumstances it would be advisable for the joint owners to receive separate independent legal advice, for example when they are making unequal contributions to the purchase price or if there is a suspicion of undue influence by one over the other.

Joint owners may need to be advised separately because of an actual or potential conflict of interest between them or a disagreement on the amount of their respective share. If the proportions of the beneficial interest are not clearly stated it may be difficult to determine the ownership of the proceeds of sale when the property is sold.

### Remember

It should be explained to each owner that they can pass their respective share in the property to whomever they want in their will.



### Need more information?

To find out more about joint property ownership see the HM Land Registry at [www.gov.uk/joint-property-ownership](http://www.gov.uk/joint-property-ownership) or to download the Law Society and HM Land Registry's Joint Practice Note, please visit [www.lawsociety.org.uk/support-services/advice/practice-notes/joint-ownership](http://www.lawsociety.org.uk/support-services/advice/practice-notes/joint-ownership)



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In light of the Dreamvar case what can I do to safeguard transactions?

## Steps you can take now

To protect yourself and your firm against fraudulent sellers, we recommend you review or establish policies:

- for risk assessing transactions, identifying the facts that make a matter high-risk and ensuring you have procedures in place to deal with those risks
- around when you might ask the seller's solicitors or conveyancers questions
- in relation to how you will answer questions from the buyer's solicitors when acting for a seller
- to establish when you should decline to act if you are not confident that the 'seller' is the registered proprietor.

## Consider

Raising questions where there are indicators of potential fraud such as the type highlighted in the HM Land Registry and Law Society joint note on [Property and Title Fraud](#).

Remember, if you raise questions but fail to pursue the responses properly, you may be exposed to additional risk.

## Useful guidance and notes

Click on the titles to find guidance and notes we recommend you become aware of and put into practice.

### [Anti-money laundering guidance](#)

In view of the 2017 Money Laundering Regulations, this guidance provides information about the enhanced due diligence required if you don't meet the client face-to-face.

### [HM Land Registry: Practice guide 67 – evidence of identity; conveyancers](#)

Find out when confirmation of identity or Rule 17 identity evidence is required and how it should be given.

### [Property and registration fraud practice note](#)

A formal practice note produced jointly by HM Land Registry and the Law Society.

### [Joint property and title fraud advice note](#)

See examples of risk factors for a range of circumstances set out in this note.



## What is the Dreamvar case?

**Download** our interim case summary following the Court of Appeal decision.

## Please note

The Dreamvar case gives rise to a number of difficult practical and legal issues which require careful and detailed consideration. We continue to consider the complex implications of the judgment and are also reviewing the interpretation placed on the [Law Society Code for Completion](#) (the Code) and assessing whether and how the Code and other Law Society documents might be amended.