



New house sale  
rules around the  
corner

***In the first of 2 articles David Jones MNAEA, Associate Partner and Head of Estate Agency with top Shropshire firm Nock Deighton, outlines the implications of the Government's forthcoming reforms to the UK's housing market legislation.***

1st June 2007: If you are thinking of moving home in the next year or two, this is a big date for you to circle on your calendar because that's the day the Government's much debated "Sellers Pack" (since renamed as the Home Information Pack) becomes a compulsory legal requirement for anyone wishing to place their property on the market for sale. And at a stroke, this legislation will change, completely and utterly, the whole process of buying and selling property in the UK, as you and I have always known it.

Up until now the legal principal relating to the sale of property has been "caveat emptor", meaning "buyer beware". In other words the seller and their agents have absolutely no responsibility to the purchaser for the quality, integrity or general state of repair of the property which they are selling. The onus is entirely on the purchaser to satisfy themselves as to what they are buying, which in practice they must do by relying on the advice of their solicitor and surveyor, who must of course make their own enquiries first in order to give that advice.

If the purchaser requires a mortgage as well, then the Lender must also be satisfied that the property is a suitable security for the loan, for which the lender in turn will rely on the opinion of their own valuer.

It is this basic framework which, the Government argues, causes far too many delays and uncertainties in the process of selling your property. The whole process of progressing from the acceptance of an offer to completion of the sale typically takes something in the region of four to six weeks. However this timescale can easily be doubled when one allows the time it takes for the seller to find a new property to buy, or when unexpected problems are encountered by solicitors upon examining the deeds to the property, or indeed by the purchasers themselves if their Mortgage Valuation Report calls for further additional reports to clarify any areas of concern to the lender's surveyor.

This puts the true average transaction time at something in the region of nine to ten weeks, during which time the house is said to be "sold subject to contract". This means that once all of the parties connected with the transaction have completed their enquiries and finances are in place, they will then be in a position to "exchange contracts" which is the legal terminology for the point at which the agreement is made contractually binding, completion normally falling a week or two after this, once funds have cleared.

The problem is that by definition therefore, during this nine to ten week period the property is not really "sold" at all (if you are the seller), nor is it actually "bought" if you are the prospective buyer. Either party is entirely at liberty to change their mind and walk away without any penalty, and as any estate agent will tell you, something in the region of 25% to 30% of all agreed sales ultimately fall through for a variety of reasons. Typically, problems relate to the purchasers or their lenders/solicitors remaining dissatisfied about the result of

their enquiries, and then deciding not to proceed any further. There are also the inevitable human factors, such as people changing their minds, finding another property which they prefer, losing their jobs, splitting up with partners or realising that they are simply over committing themselves financially.

In my view no amount of legislation can ever get rid of these personal issues however when one considers that in a chain of, say, five connected buyers and sellers, that all five transactions are likely to collapse if just one party changes their mind, then it is not difficult to understand the Governments desire to reform the far-from-satisfactory current system, for the greater general good.

The legal requirement will be for every seller to assemble an information pack containing a variety of documents intended to provide answers to all of the standard enquiries which every purchaser would be anticipated to make. By making this information fully available to any interested party before any agreement subject to contract is entered into, then the purchaser is far more unlikely to pull out at a later stage, as there can be no unexpected surprises relating to the property.

The government say that “caveat emptor” still applies, and that the Home Information Pack simply delivers all of the information to a buyer immediately, thus eliminating the frustrating delays that we are all familiar with. And because no time will need to be spent by the purchaser or their representatives on making the customary enquiries, the theory is also that transaction times will be cut to the bare minimum: show the HIP to your solicitor and to your mortgage lender, then if everyone is happy you can immediately exchange contracts.

So what does the pack include? Briefly, the contents will be Terms of Sale, Evidence of Title, Searches, Planning Consents, Warranties & Guarantees, Replies to Preliminary Enquiries, Copies of Lease and Details of Management Company (for Leasehold property) and most importantly a Home Condition Report (HCR) which is effectively an independent survey-style report on the condition of your home, including an energy efficiency rating.

The theory is fine and as I have said, relatively simple to understand. It however the “putting into practice” part of the equation which has caused the National Association of Estate Agents, the Law Society and the National Council of Mortgage Lenders to all vigorously oppose these proposals and call on the Government to amend or even abandon the idea completely. Next week I will explain why

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Last week I outlined the reasons behind the Government's decision to overhaul the UK's legal framework for buying and selling property, and their decision to implement the Housing Act 2004 (Home Information Pack Regulations 2006) as of 1st June 2007. This will make it a compulsory legal requirement for anyone wishing to place their property on the market for sale, to first of all assemble a Home Information Pack (sometimes referred to as a Sellers Pack) which will contain several key documents intended to provide answers to all of the usual questions which purchasers or their solicitors or surveyors will normally ask about a property before a legally binding contract is entered into.

There are a number of considerable concerns held by estate agents, solicitors and mortgage lenders which have caused the professional bodies for all three industries to strongly oppose the new legislation. The key areas of concern are:

- 1) Extra cost – it will cost an estimated £600 to £1,000 for a HIP to be prepared and without one your property can not legally be placed on the market for sale.
- 2) The HIP will have to be paid for, directly or indirectly by the seller. It is likely that this will be upon completion of the sale or upon withdrawal of the property from the market. A major implication of this is the likelihood that you will no longer be able to ask an estate agent to market your property on a no sale – no charge basis. It is extremely unlikely that agents will be able to afford to offer a genuinely free HIP on this basis, at least not unless fees rise to something like 3% plus.
- 3) In practice it will be your estate agent that usually orders the HIP on your behalf. Until you have paid for it the HIP will remain the property of your agent, and he will be most unlikely to want to provide a free copy of any of this to his competitors for their use. In my view therefore the concept of marketing your property through more than one competing estate agent is unlikely to continue.
- 4) Unfortunately you may not particularly like the contents of your Home Condition Report! The fact is that the Home Inspector is not preparing the HCR on your behalf; he is providing an independent assessment of the property using his professional judgement. This independence is of course critical to the credibility of the report which should therefore be relied upon by sellers, buyers and lenders alike, as an unbiased report. Be warned however that you may not agree with everything the Inspector says about your property, and you will not be able to have it “edited” in any way.
- 5) Not one single mortgage lender has so far agreed to accept the HIP in lieu of the existing Mortgage Valuation Report. The HIP will not contain any kind of Valuation element and the lending institutions indicate that they will still require an inspection to be carried out on their own behalf prior to agreeing a mortgage offer.
- 6) Approximately 5,000 qualified Home Inspectors will be required to cope with demand. Even Chartered Surveyors with several years of experience will have to

retrain to gain what is essentially a lesser qualification than the one they already hold. It is likely come June 2007 that there will be a shortage of trained Home Inspectors which will have an impact both on cost and also the speed with which a report can be produced.

7) Human nature being what it is, many purchasers will still want to commission an independent survey on their own behalf rather than relying solely on the report that has already been provided to them by the seller.

8) Although the introduction of the scheme is designed to speed up the selling process, in many ways the introduction of the HIP will hinder the process. For example after you instruct an agent to put your property on the market it is expected to take a minimum of four to five working days for the pack to be produced before which no marketing of any kind will be allowed to take place. This means no board, no adverts, and no viewings!

9) Furthermore the spontaneous seller who suddenly finds their dream home and puts their own property on the market in an attempt to get it sold quickly, can presently take their property off the market again at no cost whatsoever, should they lose out on the property which they are chasing. With the new arrangements it will be impossible to avoid incurring the cost of the HIP, which is expected to dissuade many such speculative sellers from entering the marketplace at all.

It is these sorts of concerns that have led virtually all of the relevant professional bodies to oppose the legislation whilst such genuine concerns and questions are being met with some rather vague answers from the Housing Minister and the Office of the Deputy Prime Minister.

I think that everyone agrees that the current system is flawed and that any improvement to this would be a good thing. The primary criticism of the new regulations by most property professionals is that they simply fail to solve the real problems that cause delays and aborted sales, at the same time adding considerable cost and bureaucracy to the system which will be to the consumers ultimate expense without sufficient advantage.

So what of the imminent future? Well, on the 7th February a letter signed by 500 heads of firms of estate agents, surveyors and solicitors wrote to the Housing Minister, Yvette Cooper, calling on the Government to shelve the plans and warning the Government that the introduction of HIPs will cost sellers and buyers over £600,000,000. per annum in extra costs, whilst failing to deal with the real issues. Clearly therefore there is some depth of feeling in the country that despite the announcement of an introduction date, a glimmer of possibility exists that the Government could be persuaded to think again.

In the real world of business and commerce however, estate agents and solicitors up and down the country are having to devote considerable time and resources to devising business plans for next year, with the law quite literally saying that agents will not be legally entitled to put properties on the market after 1st June 2007 without a pack in place.

The Government are encouraging a "dry run" later on this year when sellers, agents, solicitors and lenders will all be invited to test out HIPs on a voluntary basis which will

allow all parties to examine and refine the new procedures in plenty of time to facilitate a seamless transition once the process becomes mandatory next year.

The trouble with any major impactful legislative deadline announced by the Government is that this tends to create entirely artificial affects upon market forces. The prospect of some people rushing to “beat the deadline” and potentially flooding the market with a huge oversupply of property is likely to be followed, in the opinions of some experts, by falls of up to 30% of the usual number of properties coming on the market, with some sellers expected to be deterred by the extra costs involved. Either of these scenarios would have a major effect on the stability of the housing market and on house prices.

I would say that no one shares the government’s frustrations with the current system more than estate agents, and although there are many elements of the new rules that need clarifying or revising, the firms that will prosper are the ones who decide to embrace the new legislation wholeheartedly and, who can deliver a fast moving, cost effective and user friendly solution to their clients. It will be interesting to see public response to this new legislation, but we must all hope that change will be for the better.