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What is an Exchange of Contracts?

This is when the contract becomes legally binding on both buyer and seller (note that merely signing it does not bind either party). It is so called because both buyer and seller sign identical copies of the contract and the two copies are literally swapped, or exchanged.

Pre-Exchange Checklist

Once **exchange of contracts** has taken place both parties are bound in to the contract, therefore it is vital that all outstanding matters are resolved prior to exchange taking place.

- **Methods of Exchange of Contracts**

There are various methods of exchanging contracts, which are detailed below:-

In Person

Traditionally, in a time when both firms of solicitors would have been on the same high street, the two solicitors would meet and exchange contracts, and the buyer's solicitor would hand over the deposit, in person. Nowadays this will rarely happen. Even if the two firms are local to each other (and often they are not) it is easier to use one of the exchange formulae described below.

- **Formula A - Exchange of Contracts**

When it became apparent that it was no longer practical for solicitors to exchange contracts in person, the Law Society came up with three formulae to deal with the problems this raised. When using formula A, which is quite rarely used, the buyer's solicitor will post his client's part of the contract, together with the deposit, to the seller's solicitor, who will then telephone (though he could instead write to) the buyer's solicitor to confirm exchange of contracts has taken place.

- **Formula B - Exchange of Contracts**

This is the most commonly used method. Each solicitor holds his own client's part of the contract and one telephones the other. They go through the contracts to check they are identical and if they are they agree that the contracts are exchanged. The buyer's solicitor must then immediately send the deposit, usually by client account cheque, to the seller's solicitor. The exception to this is where the seller's solicitor has agreed that the deposit may be "held to order", that is to say held by the buyer's solicitor on the condition that it will be immediately released to the seller's solicitor on demand. This might happen where there is insufficient time between exchange of contracts and completion for the deposit cheque to clear in the seller's solicitor's bank account.

- **Formula C - Exchange of Contracts**

Linked Transactions

This is similar to formula B, and indeed when completed it will be recorded as a formula B exchange, however it facilitates exchanges where there is a chain of transactions. The problem that arises with a chain is that there is a risk that a solicitor will exchange contracts on his client's sale property, then attempt to exchange on his client's onward purchase only to find that the seller's solicitor is not ready or that the seller does not want to proceed. This can happen even when the seller and his solicitor have previously intimated they were ready. This would of course leave the client bound to sell his property but with no property to buy.

This problem is overcome with the release system. A chain will necessarily have a buyer who has nothing to sell at the bottom, and a seller with nothing to buy at the top. The exchange process starts with the solicitor for the buyer at the bottom (we will call this position 1) releasing the contract to the next solicitor on in the chain (position 2). This means that position 1 agrees he will exchange with position 2 provided that position 2 calls him back by an agreed time to complete the exchange. Position 2 can now contact the solicitor at position 3 and attempt to exchange contracts, safe in the knowledge that if successful then position 1 is obliged to exchange with him and if he is not then he is not obliged to exchange with position 1. Position 1 does not have to worry about the possibility that exchange might not take place since his client does not have a dependent transaction. If position 3 is not the top of the chain then position 2, rather than simply exchanging with position 3, may release the contract to him. If position 3 then cannot exchange with position 4, he does not confirm the exchange with position 2 who does not therefore confirm it with position 1, and so nobody is bound into a contract.

It was stated earlier that there is always a time limit on a release. This is necessary so that the person giving the release is not bound indefinitely. The release should always expire on the same day it is given, since it is possible that something may happen overnight to make the person whose solicitor has given the release decide that he does not want to proceed. If the release has not expired that he is obliged to proceed. If a solicitor is taking the benefit of a release and then giving a release to the next link in the chain, he should make sure that the release he gives expires at least 15 minutes, but preferably half an hour, before the release he has the benefit of.

If the two expired at the same time, or within a few minutes of each other, there is the risk that the solicitor he has released to will get back to him at the last minute to confirm exchange, thus meaning that by the time that exchange is completed the release he has taken will have expired and he may no longer be able to complete the exchange. Although the method of taking and giving releases is known as formula C, once the exchange is completed it becomes a formula B, and this how it is recorded on the contract (the rationale being that you take/give a formula C release so that you can then complete a formula B exchange).

- **Undertakings on Exchange of Contracts**

Whatever exchange formula is used, there is an undertaking implied into all exchanges that each solicitor will forward the copy of the contract signed by his client to the other on the day of exchange, and that the buyer's solicitor will immediately forward the deposit cheque (save that for formula A the seller's solicitor will already have the buyer's part contract and deposit). Where there is a chain of transactions, the deposit cheque will sometimes be passed straight to the top of the chain. This is because there may not be time for it to be posted to each solicitor in turn, who would then have to wait for it clear before posting it on.

- **Simultaneous Exchange of Contracts and Completion**

This is where exchange of contracts and completion take place on the same day. This might be done where the parties decide they want to complete at short notice, or where buyer does not have a deposit to offer (for example if he is obtaining a 100% mortgage). It does have its risks, since there is no guarantee, until the day itself, that completion will take place, and so there is the risk that deposits paid to removal companies will be lost, telephones and possibly other services will be disconnected prematurely etc etc. In addition, the funds may not begin to be transferred until after the exchange has been done. Since this means the funds will begin their journey later, it in turn means that there is a greater risk that

they will not reach their destination in time. Therefore, simultaneous exchange and completion should only be considered where there is no chain, or no more than 2 properties in a chain.



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