

# BARKER GOTELEE

SOLICITORS

For life, land and business

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**IN THIS ISSUE: IS NOW A GOOD TIME FOR FIRST TIME-BUYERS?; CONTACT ARRANGEMENTS FOR CHILDREN - WELFARE; THE RENTERS' (REFORM) BILL; BUYING A PROPERTY OFF PLAN; CHOOSING AN ATTORNEY**

## IS NOW A GOOD TIME FOR FIRST-TIME BUYERS?

If you are looking to own your first home, you may wonder whether or not now is a good time to buy. On the one hand, the increase in property prices seems finally to have stalled. On the other, living costs and interest rates have risen sharply.

Whether you decide to buy now, or wait, here are some of the key considerations:

### Plan your finances well in advance

Building up savings can reduce the amount you need to borrow and a larger deposit can give you a wider choice of mortgage products, however, you must consider your personal circumstances, as well as the wider property market. The mortgage market is constantly changing, and today's mortgage deals may not be available in the future. Research and following market trends can help, and you should take independent financial advice before committing yourself.

### The Bank of Mum and Dad

Many first-time buyers now receive financial assistance from their parents. However, property ownership is a long-term commitment and over time circumstances can change. This type of assistance can have tax implications, so it is important to be clear about the terms of any contribution. We can help you document the arrangement,

to reduce the risk of any misunderstandings in the future.

### Obtain an agreement in principle

If you decide to buy, get an agreement in principle from your lender. This is confirmation, based on your income and basic credit checks, that you meet their criteria for a loan. Your lender is not legally bound to make the advance but is likely to do so subject to further checks. An agreement in principle can help when making an offer as it demonstrates you are positioned to proceed.

### Budget carefully and stress test

Your lender will assess whether you can afford the loan, by looking at your expenses and income. This can sometimes feel a little invasive, but they want to ensure you can cover the repayments comfortably. If you cannot pay your mortgage, your home is at risk. You should therefore be confident it will not overstretch your budget;

ideally carrying out your own assessment first. Online tools such as mortgage calculators can help you make an informed decision.

### Speak to our conveyancers

There is a lot to take in when buying your first home, not least the jargon, so it is important to take your time and ask questions and our conveyancers will explain each part of the process to you.

You may find yourself encouraged to use a conveyancer recommended by an estate agent or new build developer, however, you do not have to use them and it is important to choose a conveyancer whom you are comfortable with.

### Special help for first-time buyers

Schemes exist to help first-time buyers get on the property ladder. These change from time to time, so read the financial pages and keep up to date with developments.

### Think creatively

One option may be a shared ownership scheme, and these are usually run by a housing association. You buy a share in a property and pay a discounted rent on the portion the association retains. You then buy additional shares when you can afford to.



A flat or falling market may also offer more opportunities to buy a property through less conventional routes, for example, at auction or from a receiver or mortgagee in possession.

### Make the most of your position

Many sellers prefer first-time buyers because they want to avoid the complications that can arise with a chain of dependant transactions. This could give you a stronger negotiating position. To benefit from this, you must show you are committed and can move quickly. Having finance in place, or an agreement in principle, and an experienced conveyancer on board will help.



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# CONTACT ARRANGEMENTS FOR CHILDREN – WELFARE



**A relationship breakdown often means a dramatic change in life for all involved and when parents live apart, contact arrangements need to be agreed about how and when children will see each of their parents.**

If a couple can agree contact arrangements between themselves, it will be beneficial for all concerned and will have a positive impact on the child's wellbeing. That arrangement can be formalised by a solicitor to ensure there are fewer disagreements moving forward. However sometimes relations are not amicable and if one parent is being prevented from spending time with their child, they may need to apply for a child arrangements order so contact between parent and child is not unfairly blocked.

Where there is a dispute between parents over the arrangements for their children, it can be helpful to understand at an early stage how the Court will consider the child's welfare.

## **The welfare checklist**

The Children Act 1989 states that the welfare of the child must be the paramount consideration. When it comes to welfare, the Act stipulates a number of issues that should be taken into account. It is helpful to have these in mind, though some will undoubtedly play more prominence in your own family circumstances than others.

The checklist stipulates the following considerations:

**1. The child's ascertainable wishes and feelings, considered in the light of age and understanding;** the older your child is the more weight a court would place on their own wishes and feelings about when they want to see each of their parents. It is important to ensure any wishes your child expresses are their true feelings on the matter and are not reflective of what your child thinks you want to hear. Depending on the age of your child, you may decide that they should be spoken to by someone independently, and

they should be reassured that they will not be in trouble or offending either of their parents by saying what they feel.

**2. The child's physical, emotional, and educational needs;** both parents need to be mindful of any additional needs their child may have, and how these can be best met. For example, if one parent has typically taken charge of meeting additional medical needs, does the other parent now require some additional support or training to bring them up to speed in meeting those needs too.

**3. The likely effect of any change in circumstances;** this will depend on the character of your child and could also be influenced by any additional needs they may have. For example, an autistic child may struggle with a change in their routine. Both parents need to work together to try and minimise this disruption to their child and to think ahead as to how changes can be best managed.

**4. The child's age, sex, background, and any characteristics which the court considers relevant;** an older child will have a different level of independence and needs to a younger child. Arrangements for your children will likely have to change as they grow older in order to continue to meet their needs. Your child's background can also come into play in what is best to meet their welfare needs, this includes their cultural background. For example, if your child has family that are Indian, then it is important for them to be given the opportunity to explore and learn about Indian culture and traditions as they grow up. This can be an important factor when parents are from different cultural backgrounds.

**5. Any harm which your child has suffered or is at risk of suffering;** if issues of neglect or abuse have been a feature or concern, then a careful investigation into the potential safeguarding issues for your child will need to occur. In many of these situations it will be necessary to involve the local social services team. It is important to be aware that harm can occur to a child through them witnessing abuse of another, for example by seeing domestic abuse in the home.

**6. The capability of each parent to meet the child's needs;** if either parent has any disability or other issue which impairs their ability to look after the child, then consideration will need to be given as to how this can best be overcome in order that your child can grow up knowing each of their parents.

Once you have considered the welfare factors, you then need to look practically at how suitable contact arrangements can be achieved. This will usually mean trying to agree with your former partner how access will work.

There are a range of options for contact, which can be either direct, as in face-to-face contact, or indirect via letter or electronic communications, and our solicitors can help you to agree suitable contact arrangements.



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# THE RENTERS' (REFORM) BILL

On 17 May 2023 the government introduced to Parliament what is seen by many as a controversial bill known as **The Renters' (Reform) Bill**.

Landlords should be aware that the legislation will seek to abolish no fault Section 21 and for periodic tenancies to become the standard form of agreement.

The government tells us that in delivering its 2019 manifesto commitment to abolish Section 21 'no fault' evictions the legislation will empower the eleven million tenants across England to challenge poor landlords without fear of losing their home.

Whilst many landlords will be apprehensive about the consequences of not having Section 21 to use to evict a tenant when all other avenues have failed, we are told by Michael Gove, the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, that "Our new laws introduced to Parliament .... will support the vast majority of responsible landlords who provide quality homes to their tenants...".

**The highlights of the Renter's (Reform) Bill:**

**The end of Section 21 "no fault" evictions**  
The Renters' (Reform) Bill

(the Bill) will bring to an end the current Section 21 no fault process which allows private landlords to easily repossess their properties without needing to show cause. The new law will allow eviction of a tenant only under reasonable circumstances.

The government believes that "Removing Section 21 will level the playing field between landlord and tenant – empowering tenants to challenge poor practice and unjustified rent increases, as well as incentivising landlords to engage and resolve issues." Whilst laudable in theory, in practice the removal of Section 21 will be a major obstacle to genuine landlords who may have good cause to want to remove a tenant.

The new law will provide additional force to the alternative Section 8 process and will allow a landlord to end a tenancy agreement early if they have a legal reason to do so.

Section 8 will allow eviction where there is repeated serious arrears which is defined as where a tenant has been in at least two months' rent arrears three times within the previous three years, regardless of the arrears balance at hearing.

There will also be a new ground that means landlords can apply Section 8 to a tenancy if they wish to sell a

property, or if they wish to allow their family members to move into a rental property. This can only apply after a tenant has been in a property for at least six months.

So as long as there are genuine grounds as defined by the new Section 8, a landlord will still be able to use the law to evict a tenant and regain possession of their property.

**A single system of periodic tenancies**

The Bill will also simplify the current different types of tenancies by making them all into a unified single system of periodic tenancies.

Assured Shorthold Tenancies are generally the standard type of rental agreement in the private rented sector. The Bill if passed into legislation will force all rental properties to be under a periodic tenancy meaning that the rental agreement will be on a month-to-month basis without a set end date. In addition, the tenants are allowed to give two months' notice when leaving a tenancy.

**New notice periods for rent increases**

The new legislation will limit rent increases to one per year with the landlord having to provide the tenant a minimum of two months' notice of the increase.

**Tenants to have right to keep pets**

The Bill provides that tenants will have the right to request permission from their landlord to be able to keep a pet in their rented home and that the landlord cannot unreasonably withhold their consent to the request.

**New Property Portal for private landlords and tenants**

The Bill will create a new digital property portal to ensure that landlords understand, and demonstrate compliance with their legal requirements in respect of the tenancy agreement that they have with their tenants.

The Renters' (Reform) Bill is 89 page long preliminary draft document and will become legislation, in whatever form it ultimately takes, by early Spring 2024. Whilst we have sought to highlight the parts of the bill that have attracted the most attention the final legislation may look much different.

If you have any queries about the proposed changes or about any other landlord and tenancy matter, please contact us.



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# BUYING A PROPERTY OFF PLAN

## What are the key considerations you need to take into account when buying a property off plan?

Does the idea of a brand-new home appeal to you? If so, you are not alone as the last two years have seen a dramatic rise in the number of people buying off plan. Whether you are looking for your forever home, an investment property, or a holiday hideaway, buying off plan has its own challenges.

As with any property purchase, you should do your homework and consider all the pros and cons. Buying off plan also raises some specific legal issues, so it is important to get advice from the right professionals.

## What exactly is buying off plan?

Buying off plan involves committing to purchase a property you have not seen, usually because the developer has yet to build it. In some cases, the developer will already have completed much of the scheme, including a show home. At the other extreme, the development may exist only on paper, with the anticipated completion date years in the future.

You should always consider any proposal on its merits. In general, a more speculative scheme will be riskier than one nearing completion.

## What has made buying off plan so popular?

Government schemes, such as Home Buy which applied only to new build homes, may have fuelled the popularity of buying off plan. However, a sustained period of rising house prices has also helped.

Although a new home usually costs more than a similar older property, buying off plan effectively fixes the price. For example, if you agreed to buy an apartment off plan in 2019, scheduled for completion in 2022, the purchase price would reflect the 2019 value. On average, prices increased by about 15 per cent during this period so your savings could be significant.

However, the converse is also true. If house prices decrease during the period between exchange and completion, you could pay more than if you just waited and bought on the open market. As the property market cools, this becomes more of a risk. To counter this risk, developers often discount their units to attract buyers.

## What are the other advantages of buying off plan?

Buying off plan can give you a blank canvas from which to create your new home. You are likely to have a greater say in the décor and fittings. You may even be able to change the design or specification, albeit at extra cost.

Off plan properties often have a high build standard, incorporate modern technology and are energy efficient. Many are in landmark locations, or new developments, often designed with specific markets in mind, for example, second home owners or retirees.

## What are the main disadvantages of buying off plan?

Firstly, you cannot see what you are buying. The developer should provide detailed illustrations and information, but there is still some risk. It can be easy to fall for the dream property you see in the glossy brochure, but you need to be confident the developer will finish it to the standard advertised. Unfortunately, insolvency, shortfalls in funding and other contingencies, mean some schemes never complete. Others fall short of expectations.

Fortunately, there are several things you can do to reduce this risk, such as checking out the developer's record. Having the right solicitor on board is also key. They will ensure the contract makes it clear what the developer must deliver, and that the appropriate warranties or insurance are in place.

Even so, there may still be some aspects you had not anticipated. For example, if

your property is in an area of wider development, the construction of neighbouring properties may alter the street scene. Unless you are buying the final unit in a scheme, there is also likely to be some disruption while the builder completes the rest of the site.

Secondly, the gap between exchange and completion is longer than on a conventional purchase. Completion can be months or sometimes even years ahead. In addition, you may not be certain of the actual date of completion when you commit to buy, as this may depend upon factors beyond the developer's control.

## How do you finance an off-plan purchase?

The longer gap between exchange and completion also impacts on funding. Many mortgage offers only last six months. If the property takes longer to build, then you will usually need to reapply to your lender. If property prices are decreasing, there is an additional risk as the advance will be based on the latest valuation. You may therefore need alternative funds to complete.

There are some specialist mortgages on the market aimed at off plan purchasers. So, discuss your plans with a financial adviser or mortgage broker early on.

**CONTINUED ON PAGE 5**

If you do not need a mortgage then you should have more flexibility, but you should still pay careful attention to your finances. The longer gap introduces an additional element of risk. For example, if the developer is not able to complete because they are insolvent. In that case, you will want to ensure you can get your deposit back. So, it is important your solicitor ensures its protection, for example, through a trust or insurance. Treat any request for a deposit of more than 10 per cent cautiously as most insurance policies will only cover this amount.

### Is there anything else I need to consider?

Buying off plan is quite different from a conventional purchase. Some aspects are more straightforward. For example, there is usually no chain of linked transactions to worry about. On the other hand, there are additional considerations, and it is important to choose an experienced solicitor who fully understands these.

Buying off plan inevitably involves an element of uncertainty. However, good due diligence and a tightly worded contract can ensure

there are no nasty surprises. For example, as your solicitor, we would carefully check the planning permission. This is not only to ensure your property complies with the approved plans, but to consider any conditions and the wider development. As well as being satisfied with the state of your property, you will need to be confident it has adequate access and services without you having to incur additional cost.

Another potential issue is delay. Some overrun is not unusual; however most people do not want to wait

indefinitely for completion, especially if the development runs into serious issues. It is prudent, to incorporate a longstop date in the agreement. Then, if your property is not ready by that date, you may terminate the agreement and get your deposit back.



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## CHOOSING AN ATTORNEY

A Lasting Power of Attorney is an important document authorising one or more chosen people (your attorneys) to make decisions on your behalf. You should consider carefully who you would like to appoint as your attorneys to act for you.

Your attorneys will have a great deal of responsibility and important decisions to make on your behalf. You must therefore appoint trustworthy attorneys. This may be family members, friends or even professional people such as your solicitor. Your attorneys must be over 18, and

for a property and financial Lasting Power of Attorney, your attorneys must not be bankrupt!

Whoever you appoint, you must be confident that they will make the right decisions for you. Your attorneys must be reliable and you should ensure they have the time and skills to make decisions and carry out your wishes.

When choosing an attorney you should also consider:

- As your Lasting Power of Attorney may not be needed for many years, it is sensible

to appoint attorneys who are younger than you.

- It is not essential for your attorneys to live locally or even in the country. However, it may be practical if at least one of your attorneys is close by.

- You should check that your attorneys are happy to act in this role.

- Does your proposed attorney manage their own finances efficiently?

If you are considering appointing a professional, you need to be aware that

a professional attorney will charge for their services. You should speak to the professional to discuss the costs involved.

To discuss making a Lasting Power of Attorney and your choice of attorney please speak to one of our specialist lawyers in the Private Client team.



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