PROPERTYINVESTOR NEWS™

Has Your Property Transaction Come to a Dead End?

Kieran Soobadoo comments

In an era where the UK economy remains fragile and the recent implementation of the Mortgage Market Review means that bank lending can be difficult to secure, many property investors are having to deal with the frustration of the other side failing to complete. At the point when contracts are exchanged for the sale and purchase of a property, both parties are legally bound to complete the transaction on the date specified in the contract. But what happens when the buyer cannot raise the funds to complete on time, or if the seller's related purchase falls through and it no longer wishes to sell? Most residential property contracts incorporate the Standard Conditions of Sale, which set out the steps that each party can take in the event of late completion.

Notice to Complete

If the sale has not completed by 2.00pm on the completion date as a result of one of the parties' default, the other party may instruct its solicitor to serve on the defaulting party a Notice to Complete. This has two consequences:

1. It makes time 'of the essence'. This means that the parties must complete within 10 working days following the date that the notice is served and if only one party is able to complete on that later date it will be able to rescind the contract.
2. The buyer must pay to the seller a deposit of 10% of the purchase price (if no deposit was paid on exchange) or make up the deposit paid on exchange to 10%.

Buyer's failure to comply with a Notice to Complete

Where the buyer fails to complete within the period specified in the Notice to Complete, the seller may:

1. Rescind the contract.
2. Keep the deposit.
3. Resell the property.
4. Bring a claim for damages against the buyer in respect of any losses suffered directly as a result of the buyer's breach of contract. The courts are often willing to compensate sellers where the market value of the property has fallen in the period between the seller's acceptance of the buyer's offer and the contractual completion date.

Seller's failure to comply with a Notice to Complete

Where the seller fails to complete within the period specified in the Notice to Complete, the buyer may:

1. Rescind the contract.
2. Require the seller to return the deposit.
3. Bring a claim for damages against the seller in respect of any losses suffered directly as a result of the seller's breach of contract.
4. Bring a claim for specific performance against the seller. The courts have been known to order the seller to complete the sale.

Interest will also be payable by the defaulting party at the rate specified in the contract on the amount of the purchase price (less any deposit already paid to the seller where the buyer is the defaulting party).

A failure by one party to complete by the date specified in the Notice to Complete gives the other party a right to rescind the contract, but the contract does not end automatically on that date. Sellers in particular often choose to vary the completion date in the contract in order to give the buyer more time.

What if the buyer is in occupation?

It is common for the seller to allow the buyer into occupation between exchange and completion. Buyers often want to begin moving their possessions into the property, or to use the pre-completion period to market the property to potential tenants.

The Standard Conditions provide that where the seller agrees to let the buyer into occupation, the buyer occupies the property as a licensee and not as a tenant. This means that it has a temporary right of access to the property and does not benefit from the statutory protections that are afforded to tenants. Unless the parties agree otherwise, the buyer must pay the seller a fee equivalent to the interest rate specified in the contract.

The buyer's licence ends on the earliest of the following:

1. The contractual completion date.
2. Rescission of the contract.
3. After five working days' notice has been served by one party on the other.

This means that if a buyer in occupation fails to complete on time, any continued occupation will be treated at law as a trespass.

Sellers should be wary of allowing buyers into occupation before completion. Whilst the buyer's legal right to remain in the property expires on the same day that they fail to complete, it can prove difficult to remove someone who does not want to leave. Indeed, a court order may have to be obtained.

Conclusions

A contract for the sale and purchase of a property is a legally binding agreement and both parties are afforded the protection of English contract law. Strictly speaking, this should mean that the 'innocent' party suffers no direct financial loss as a result of the other party's default. However, dealing with a late completion can be a stressful experience and care needs to be taken by the parties and their solicitors to ensure that the possibility of the other side defaulting is properly accounted for from the outset of the transaction. PIN

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