



Mind the Gap!

In dealing with a large volume of care home transactions, increasingly the gap between exchange and completion is widening to many weeks or sometimes months.

This is due to a variety of pressures, but the two most common are that sellers are often demanding that buyers do not submit their application to the CQC until contracts have exchanged or, even if a seller has allowed the buyers to submit their application prior to exchange of contracts, due to the demands on its workforce it can take the CQC considerable time to process an application. Therefore, it is often some time before the CQC issue a buyer with the “permission letter” which gives the buyer the necessary comfort to proceed to completion.

With such a long gap, it is important that all parties are aware of the obligations, and indeed pitfalls of this situation.

A well drafted contract should contain clear obligations on the seller to maintain the business in the usual manner up to completion. A buyer will, however, want to ensure that it does not suddenly become liable for any significant new obligations so when acting for a buyer we would require the seller to obtain the buyer’s consent before any new contracts are entered into or any employees are taken on or dismissed.

However, a seller may be reluctant to enter into a contract if the obligations are perceived to be too onerous, so there is a balancing act to be struck here. A buyer will also want to have protection in the event that something materially detrimental occurs between exchange and completion which would mean that they no longer wish to continue with the purchase and we would seek to agree provisions to allow a buyer to pull out with no losses.

There are also positives from a long gap between exchange and completion. As well as the certainty it gives both parties, it can allow a smooth transition from the seller to the buyer and ensure that the residents and the employees are informed in a calm and timely manner.

However, all parties should be aware that the terms of the contract agreed at exchange are binding, notwithstanding any changes they may have to their individual circumstances within the period leading up to completion, so it is important that this time is not used as a chance to iron out any financial or tax issues, for example to look into capital allowances, because once contracts are exchanged there is no further provision for this unless there are specific clauses or conditions put in the contract on any such matter.

In summary, a long gap between exchange and completion does include risk for both parties and prudent sellers and buyers should be advised on these and take the necessary steps to mitigate them.

If you are interested in learning more about these issues, or any other aspect of buying, selling or running a care home, please do come to our free care home seminar on Friday 29 September where there will be experts covering the spectrum of care home advice from solicitors to accountants, CQC advisors to financial brokers. If you would like to attend please just [click on this link](#).

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