

Late Completion & Licences - Client Guide

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Late completion FAQs

What is the latest time in the day that the completion can happen?

In general 5:30-6:00pm is the latest time the buyer can insist on completing the transaction. Much will also depend on what is the cut-off time for money transfers between the banks involved in the transaction. This can vary from 3:30 to 5pm.

Compensation for late completion?

If the balance of the completion money needed does not arrive with the seller's conveyancer's bank account by the contract's stated time cut-off (usually 1pm) then **for the purposes of calculating compensation only** completion will be taken as happening the next working day.

So, if the money arrives at 3pm on the Friday 11th then that will be the date of legal completion, but interest and compensation will be payable by the buyer to the seller on the balance owed until the next working day - usually the Monday after.

This compensation will usually be at the rate of at 4% per annum above bank base lending rate, calculated on a daily basis.

But if the reason the sale didn't complete on the agreed date was because the seller was still in the property and had not emptied it of all their possessions by 1pm that day then usually the Standard Conditions of Sale will state that the seller can't claim this compensation from the buyer.

Extra legal costs?

If there are delays in completion that create more work for us (such as drafting or approving the terms of a licence for a buyer to occupy) then we reserve the right to charge you extra fees for that work.

You may have to obtain your own specialist litigation advice if you want to make a claim against the other party for compensation for losses and expenses arising as a result of late completion over and above the interest mentioned above.



Why might there be 'late or delayed completion' ?

There can be many reasons why a sale might not complete on the 'Completion Date' set in the contract. It could be that there is a delay in the balance of the completion money being transferred from the buyer's conveyancer to the seller's conveyancer, possibly as a result of delays in the national banking system, or it could be that the seller hasn't been able to move out in time, or it could be that the buyer's conveyancer cannot get the buyer's mortgage money in time. If there is a chain of transactions involved then a delay on one sale can cascade down the chain. This is rare, but does happen from time to time.

Occupation by the buyer before completion

In such cases, the seller might agree to let the buyer move in even though the sale has not legally completed rather than the buyer having to find last-minute hotel accommodation and arrange furniture storage. It may also be that the buyer cannot change the date agreed with the removals company.

The seller has no obligation to allow the buyer to move in before legal completion, but in some circumstances it might also suit the seller to let the buyer move in before legal completion. For example, this might be where the seller has already arranged with their removals company to move out that day, and cannot get them to agree a delay, or where the property is already empty, and so on.

Can a seller back out if completion is delayed?

No, the contract will continue to run on almost indefinitely until either it completes, or one party serves a Notice to Complete on the other making 'time of the essence'

If served, this gives the other party 10 working days to complete the transaction. If the buyer party doesn't move out or alternatively the buyer doesn't come up with the balance of the completion money needed to complete the purchase by the end of that period then either the buyer or the seller can revoke ('rescind') the contract and claim compensation from the other party for breach of contract.

However, it is rare that either party wants to revoke the contract, often they just want the transaction to eventually go through. Service of a Notice to Complete is unlikely to be appropriate unless one party wants to back out for some genuine reason. For example the seller serving one where the buyer is now bankrupt, or has died, or the buyer serving one where the property has suffered substantial damage. If completion is delayed we will discuss your options with you.

Buyer's SDLT points

If the buyer moves into the property before completion the buyer has to accept that their occupation of the property under any form of licence is treated by HMRC as 'substantial performance' of a Land Transaction for the purposes of Stamp Duty Land Tax (SDLT) or Land Transaction Tax (in Wales). This means that the date of the buyer's moving into the property becomes the 'effective date' of the Land Transaction triggering the need for submission of the Tax Return and payment of any tax due within 14 days **even though the formal legal transfer of the property to the buyer is not yet completed at that point**. Late payment will incur interest at the rate 3% per annum calculated on a daily basis. Delays in submission of the SDLT/LTT Tax Return of over 3 months will also incur a £100 penalty (£200 if there is more than 3 months delay in filing).

Access for works only?

If the buyer is only entering the seller's property before completion to carry out works or improvements on the property then this should not trigger 'substantial performance'.

However, HMRC's guidance says that there may still be 'substantial performance' if the buyer has 'the keys to the door' and unrestricted access.

If you are the buyer, discuss the situation with us before getting access to the property so we can see whether we can prevent this tax liability falling on you.

Also, you must tell us if you get access before completion as we must complete your tax return truthfully.



What are the standard occupation licence conditions?

Assuming the buyer is buying the property with 'vacant possession' (meaning empty of the seller's furniture and possessions) then **condition 5.2 of the Standard Conditions of Sale already covers this situation**. The terms of the occupation licence under the Standard Conditions of Sale are set out below.

Your conveyancer may suggest they negotiate further terms and prepare a formal licence that modifies these standard licence conditions. There is likely to be an additional charge for this work.

5.2 Occupation by buyer

5.2.1 *If the buyer is not already lawfully in the property, and the seller agrees to let him into occupation, the buyer occupies on the following terms.*

5.2.2 *The buyer is a licensee and not a tenant. The terms of the licence are that the buyer:*

- (a) *cannot transfer it*
- (b) *may permit members of his household to occupy the property*
- (c) *is to pay or indemnify the seller against all outgoings and other expenses in respect of the property*
- (d) *is to pay the seller a fee calculated at the contract rate on a sum equal to the purchase price (less any deposit paid) for the period of the licence*
- (e) *is entitled to any rents and profits from any part of the property which he does not occupy*
- (f) *is to keep the property in as good a state of repair as it was in when he went into occupation (except for fair wear and tear) and is not to alter it*
- (g) *if the property is leasehold, is not to do anything which puts the seller in breach of his obligations in the lease, and*
- (h) *is to quit the property when the licence ends.*

5.2.3 *The buyer is not in occupation for the purposes of this condition if he merely exercises rights of access given solely to do work agreed by the seller.*

5.2.4 *The buyer's licence ends on the earliest of: completion date, rescission of the contract or when five working days' notice given by one party to the other takes effect.*

5.2.5 *If the buyer is in occupation of the property after his licence has come to an end and the contract is subsequently completed he is to pay the seller compensation for his continued occupation calculated at the same rate as the fee mentioned in condition 5.2.2(d).*

5.2.6 *The buyer's right to raise requisitions is unaffected*

Naturally the conditions set out above are general conditions and may not cover every aspect of the circumstances of your sale or purchase. If you know in advance that there is going to be a delay in completion it is better to negotiate a formal licence setting out in detail what the buyer's and seller's responsibilities will be during the occupation period. We will be happy to advise you further on this.