

'Gifted Deposits' - Client Guide

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Anti-Money Laundering

Your conveyancer will also have to consider the 'anti-money laundering' issues connected with gifted deposits.

They will have to be certain that the person who is giving the deposit or reducing the price is not potentially using money that could be from the proceeds of crime.

They will need to see bank statements to show how the 'gifter' came to have the money they are giving the buyers. This might require statements going back over a period of time, and also statements for any related accounts that the money passed through.

This might mean showing evidence of regular savings by the 'gifter' into the account that the money is coming from.

It will not be acceptable for the gifters to produce a bank statement simply showing the money coming straight into the 'gifter's' bank account from some other account, and then straight out to the buyers.

In such cases the bank statements from the account the money originally came from will have to be produced too, and perhaps any related accounts.

Proof of identity

Your conveyancers have to see proof of the identity of the 'gifter' in the same way as you have to prove your identity.

In some cases they may have to attend your conveyancers' offices or produce passports, driving licences and utility bills (in the same way as you will have had to do) so as to prove their identity to your conveyancers.

There are serious criminal sanctions against conveyancers who fail to do these investigations, so please do not think that this is unfair or unnecessary questioning by your conveyancers.

Overseas funds

Any money coming from any off-shore or overseas accounts owned by the 'gifter' is also subject to the same need to prove where the money came from, and the need to prove that the 'gifter' came by the money legitimately.



What is a 'Gifted Deposit'?

The first type of 'gifted deposit' (which we will call a '**Seller's gifted deposit**') is where the seller gives part of the purchase price to the buyers as a discount or deposit. This could be by the seller, such as a housebuilder, reducing or waiving the actual deposit paid by the buyers on exchange of contracts. Or it could be by the seller contributing or refunding part of the purchase price paid on completion, or both.

The other type of gifted deposit (which we will call a '**Family gifted deposit**') is where the buyers of a property are given some of the purchase price by someone else (usually a member of their family). For example one or both of the buyers' parents might give the buyers either all or part of the deposit on exchange of contracts, or give the buyers some or all of the money needed to top up the mortgage loan to buy the property, or both.

We will refer to the person or persons giving the gifted deposit as the '**gifter**'.

Seller's gifted deposit

A Seller's gifted deposit is really just a price reduction. If this is a sale 'within the family' then you must tell us the full details of the situation. This is because the lender expects us to tell them about such circumstances. It might also affect the amount the lender will lend you, as the lender may have a policy of only lending up to a set percentage (e.g. 75%) of the reduced price or value of the property not 75% of the original price. Lenders will be worried the price has been inflated.

Also, be aware that some lenders will not lend at all in cases where a seller that is completely unrelated to the buyers suggests giving the buyers a 'gifted deposit' so as to reduce the amount of money payable to the seller on completion.

You must tell your conveyancer (and any mortgage broker) right at the outset about any proposed gifted deposit arrangement. This is because if the lender reduces the mortgage offer proportionately (and you can't find the difference) you might not be able to afford to buy the property at all.





Don't pay it to us!

The 'gifter' cannot pay the gifted deposit to us under any circumstances. They must pay it to you so that you can pay us the deposit on exchange of contracts or the balance needed before completion of the purchase. We are not allowed to, in effect, act as a banking service for anyone.

Inheritances and bequests

If the buyers or 'gifter' have inherited money, or being given a 'gifted deposit' by a family trust, then the same rules will apply. We will need confirmation that it is a no-strings gift or bequest from the representatives or lawyers for the trust or who are dealing with the estate of the deceased.

Land registration

In the case of a 'Seller's gifted deposit' the Land Registry say they will require the legal transfer deed to state the reduced price after the discount (since this is the true price being paid for the property).

Where there is a 'Family gifted deposit' then the full price paid will be shown in the transfer as normal.

SDLT (England) &

LTT (Wales)

Conversely, where there is a 'Seller's gifted deposit' then HMRC have stated they regard this as part of the 'chargeable consideration' and therefore SDLT/LTT will be paid on the gross amount. There is clearly conflict between the Land Registry and HMRC views on what price should be stated in the transfer, so one solution is to expressly set out each aspect of the 'consideration' in the transfer.

Where there is a 'Family gifted deposit' then SDLT/LTT will be payable on the full price since the gifted deposit will not be relevant to the 'consideration' paid by the buyers for the property to the seller.

Family gifted deposits

A common situation will be that one or both sets of parents will help the buyers to buy a property (from someone unconnected with any of them) by giving them some money. This might be given before the purchase, on exchange of contracts, or on completion. All of these situations might be called 'gifted deposits'.

The buyers and the 'gifter' need to think about the following points. The 'gifter' might also need to get their own independent legal advice in some cases.

Is it a true gift - or is it really just a loan?

If the money is repayable ever, (or there is any interest or notional interest payable on it) then it isn't a gifted deposit but it is really just a loan. Lenders will generally want the 'gifter' to confirm in writing that it is a no-strings, non-repayable gift, not repayable on sale of the property, or ever, in fact. Lenders generally will not be prepared to accept the 'gifter' having a second mortgage or charge on the property to protect any entitlement of the 'gifter' to any part of the purchase price.

Does the 'gifter' expect some rights in the property?

If the 'gifter' expects to get the money back (or a percentage of the sale price) when the property is sold (or if the buyers' relationship breaks down) then this isn't really a 'gifted deposit' situation either. It might instead be a 'trust' situation.

The issue is that the 'gifter' might argue later that the buyers hold the property on trust for themselves and the 'gifter'. Lenders generally will not be prepared to accept the 'gifter' having a mortgage or charge to protect the 'gifter's' alleged share of the property, or there being a trust deed saying the buyers hold the property on trust for them and the 'gifter'.

'Gifters' will have no control over the property

Also the 'gifters' have to accept that they have no right to say who visits or resides at the property, when it is sold, how much it is sold for, or who it is sold for or to, or what works are carried out on the property, and that they have no right to visit, stay, or reside there themselves, or use the property or address for any purpose.

There have been occasions where the buyers' relationship breaks down, and the 'gifters' have then tried to use their 'gifted deposit' to argue that (for example) the gifter's ex-partner or their child's ex-partner cannot visit the property, and if they do, the gifted deposit will become repayable. In any case, such arrangements will never be acceptable to a lender, and the buyers need to make it clear to the 'gifters' that such control is not acceptable as a condition of the gift.

What would happen if the 'gifter' dies within 7 years?

If the 'gifter' dies within 7 years of the gift then some or all of it may be subject to Inheritance Tax, that the buyers may be liable for. If you are worried about this you might be able to get life insurance on the life of the 'gifter' to cover the tax.

What would happen if the 'gifter' goes bankrupt later?

If the 'gifter' was insolvent at the time of the gift, or goes bankrupt within 5 years, then there is a small possibility that the 'gifter's' trustee-in-bankruptcy might try and reclaim the gift. This doesn't happen often in practice but, depending on various risk factors including the amount of the gift, your conveyancer or mortgage lender may require you to get an Insolvency Act Indemnity Policy to cover this risk. In any case, your conveyancer will always carry out a bankruptcy search against the 'gifter' before completion.

Standard confirmation letter for completion by 'gifter'

Your conveyancers can supply you with a sample of a letter that will need to be signed by the 'gifters' as a minimum. It will usually be a condition of your lender that the 'gifters' sign this letter to confirm that the gifted deposit is a pure gift and not repayable under any circumstances. If the 'gifters' have any questions about this letter or need advice on it then they will have to obtain advice from an independent lawyer, as the buyer's conveyancers are unable to advise them on its terms.