



Surrey Law Society

Residential Conveyancing In Lockdown

4th May 2020

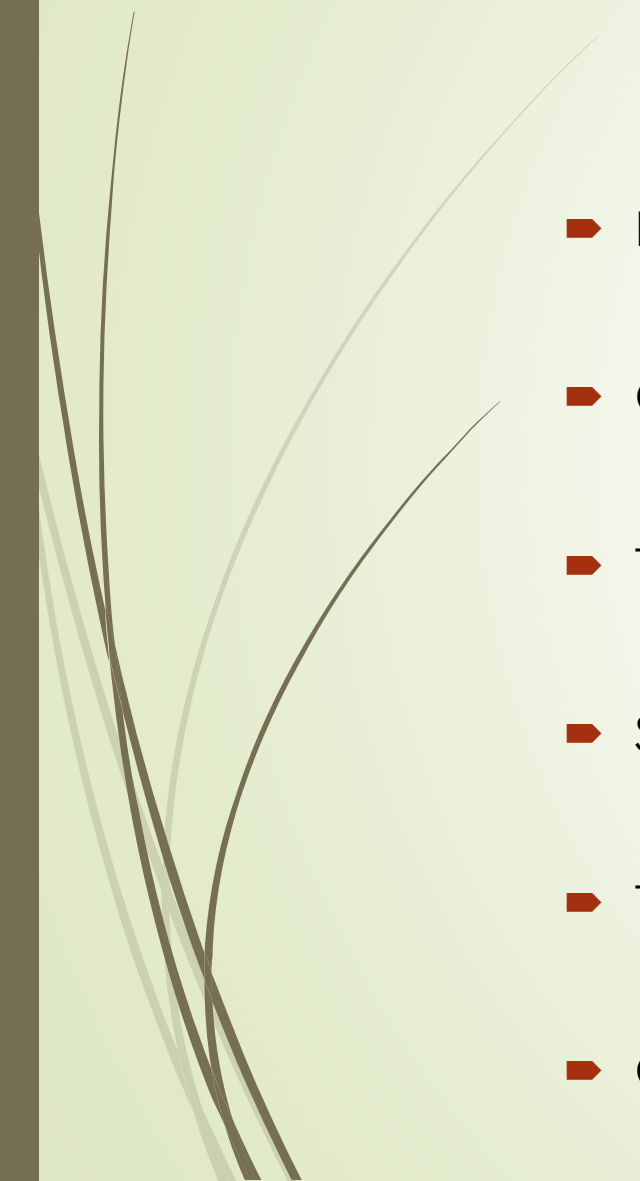


stewart title

Real partners. Real possibilities.™

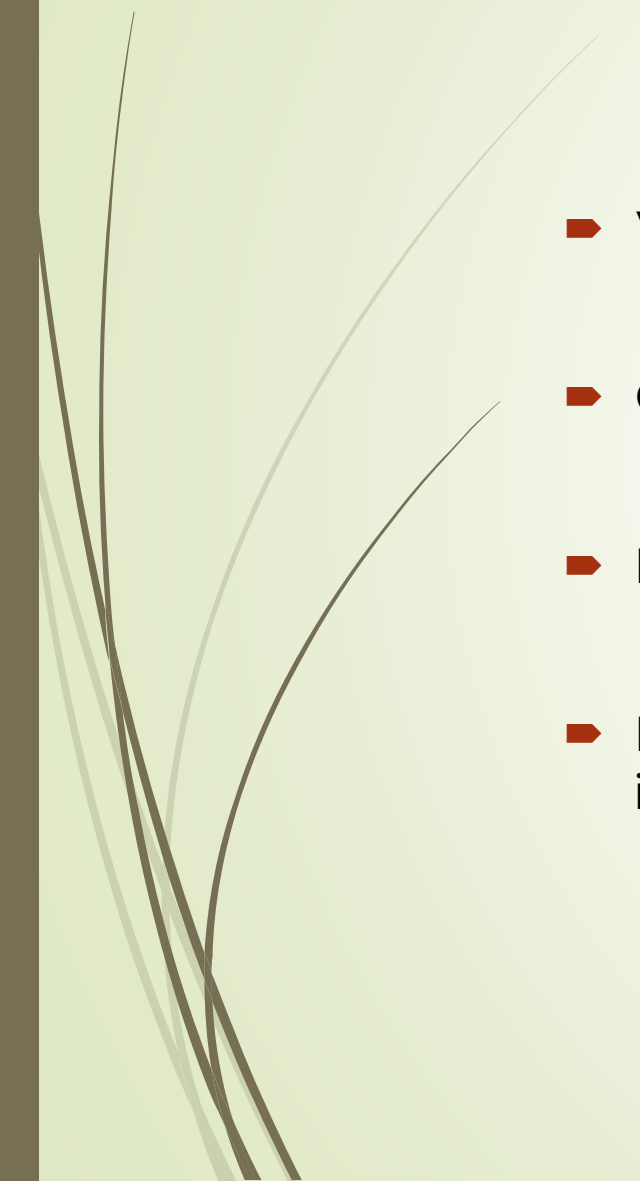


Introduction

- 
- ▶ Do not forget the basics
 - ▶ Client objective
 - ▶ The provision of informed consent
 - ▶ Set realistic expectations
 - ▶ Take instructions
 - ▶ Confirm instructions in writing



The Duty to Explain

- ▶ Vague or ambiguous provisions or drafting requires explanation
 - ▶ Clients need to be warned of litigation risk
 - ▶ Explanation of process and risk
 - ▶ No need to advise on commercial wisdom unless clients are commercially inexperienced.
- 



The Duty to Explain

- ▶ The duty may be to warn of risks and dangers
- ▶ Depends upon the extent to which the client appears to need advice
- ▶ Management of client's expectations
- ▶ Professional obligations remain
- ▶ Acting in client's best interests
- ▶ Sharing information




Government Advice

- 
- ▶ Advice to Clients
 - ▶ Occupied properties
 - ▶ Unavoidable moves
 - ▶ Unoccupied property
 - ▶ Co-operation



Government Advice

- ▶ Estate Agents - progress sales whilst following guidance, promote patience, contracts should have terms to manage timing risks
 - ▶ Conveyancers – support the sales process, promote client awareness, support sales of unoccupied properties, support clients
- 



Advice to Conveyancers

- ▶ **Priority given to the health of the public**
- ▶ **Occupied properties – exchanged, impossible to agree deferral, and critical**
- ▶ **Unoccupied properties – does the transaction comply with guidance ?**
- ▶ **Provide advice about deferral**

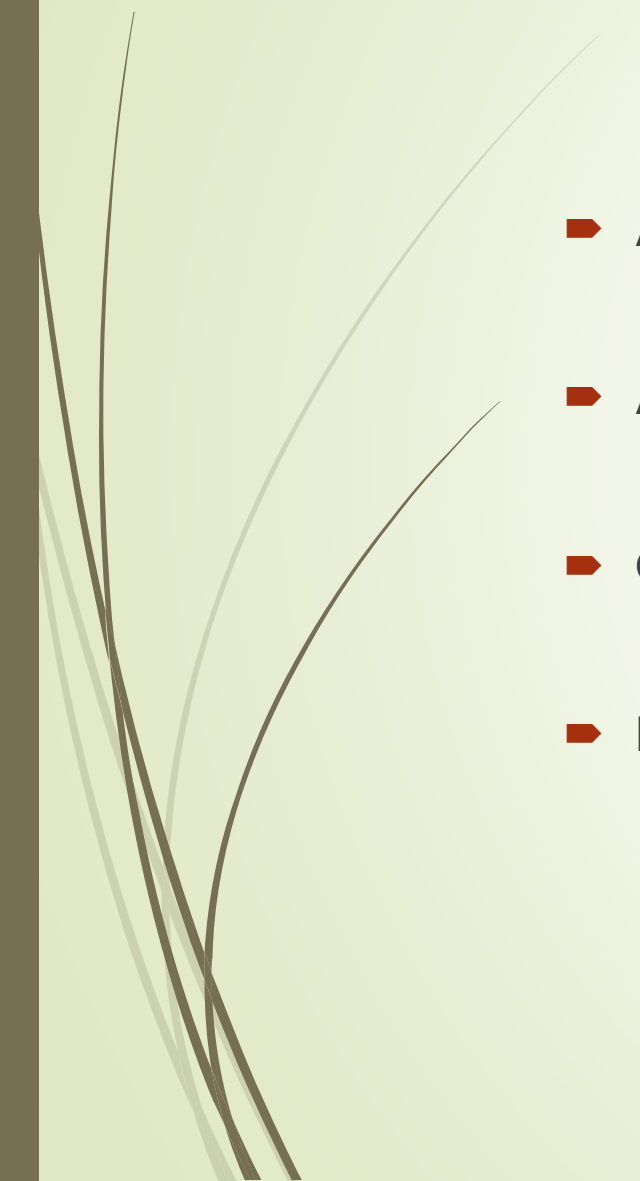


Amending Contracts

- ▶ No standard procedure.
- ▶ Identify client objective and advise on benefits and risks associated with deferral.
- ▶ Check position with lender
- ▶ Check position with search providers

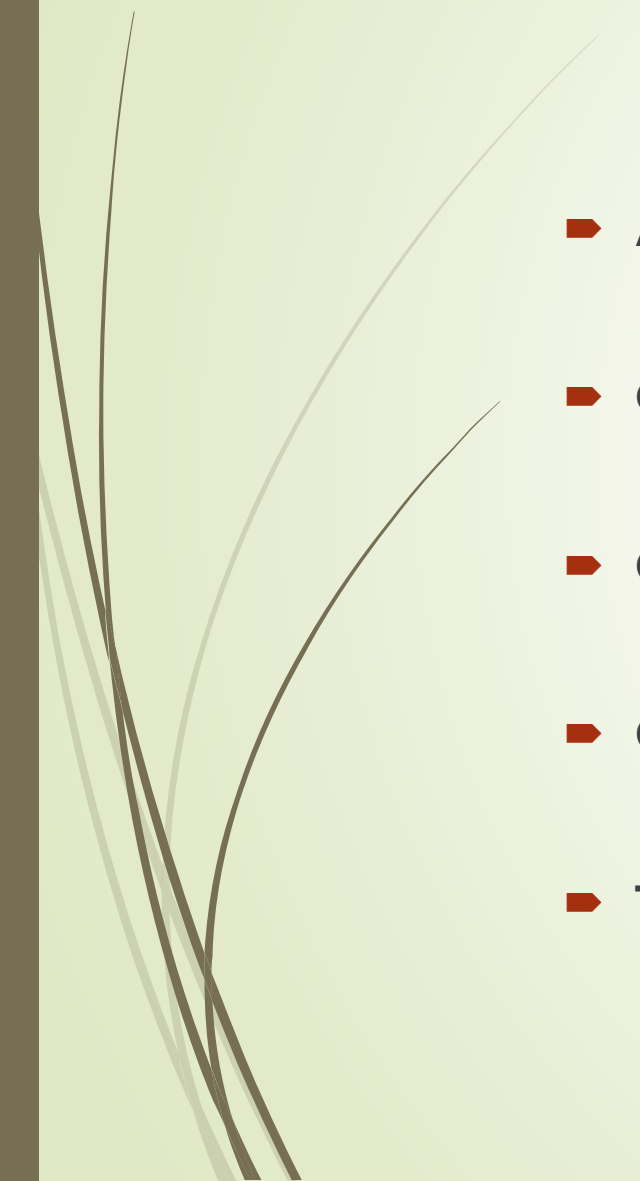


Amending Contracts

- Advise clients on costs
 - Advise client on risks
 - Completion delayed until lockdown ends
 - Flexibility for extending completion if government restrictions are extended
- 

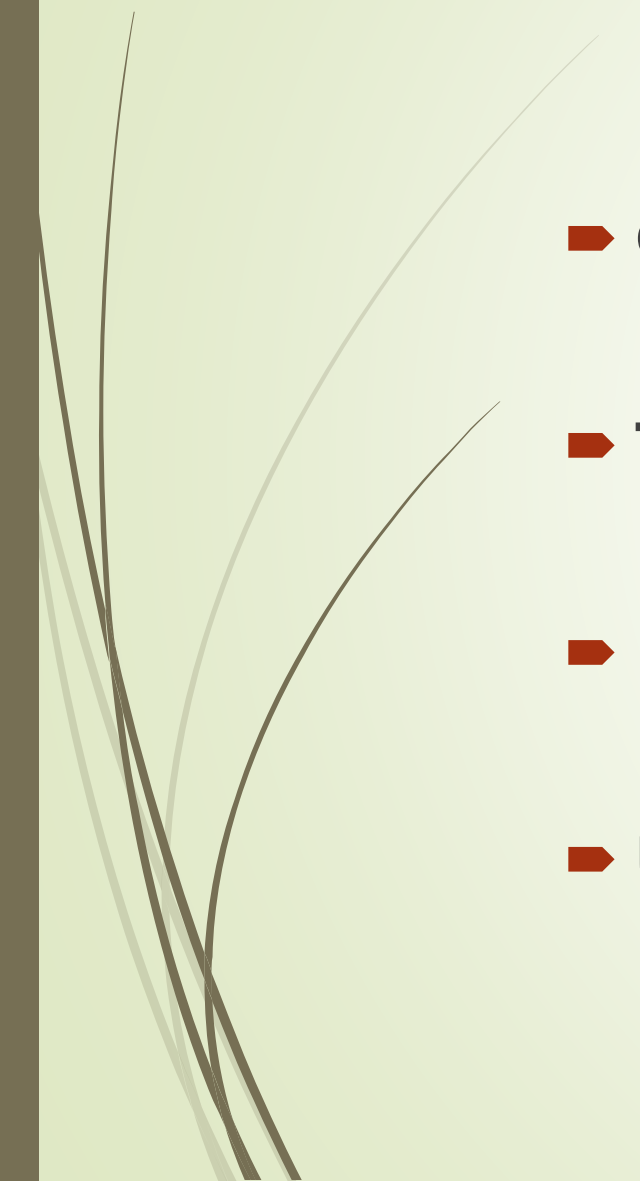


Procedure for Amendment

- Advise the client
 - Obtain express authority from client
 - Check position of lender
 - Check position with searches
 - Think about – what if and warn clients
- 



The Variation Agreement

- ▶ **Compliance with Section 2 LP(MP) A 1989**
 - ▶ **The Variation Agreement**
 - ▶ **Formal exchange**
 - ▶ **Undertakings**
- 



The Variation Agreement

- Good faith
- Consistency with original agreement
- Do the delay provisions fit ?
- Date specification
- Chain transactions
- Client authority



Delayed Completion

- The normal contractual position
- Advise clients as to options available.
- Is rescission available
- What happens to the deposit ?
- Can Section 49 LPA 1925 be excluded ?



Deferred Completion

- **Bridging Finance**
 - **Incentives for the seller**
- 

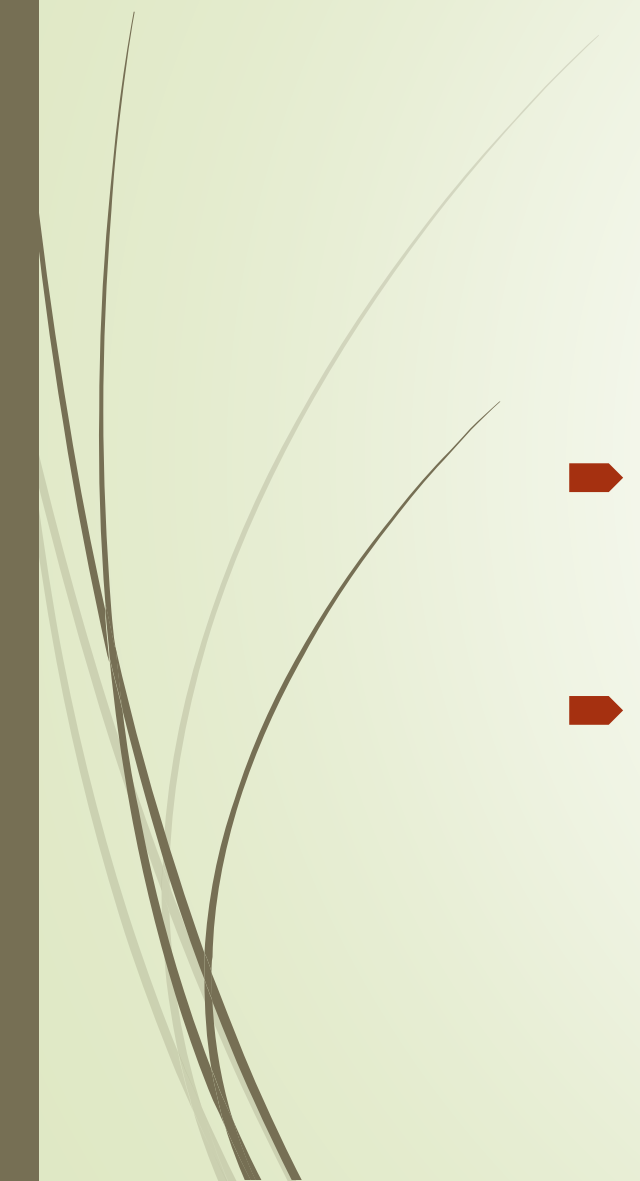


Notices to Complete

- Purpose
- Potential for estoppel
- Advising the innocent party – is the innocent party able to complete ?
Williams v Glyn Owen & Co. [2003] EWCA Civ 750
- Formalities for the Notice

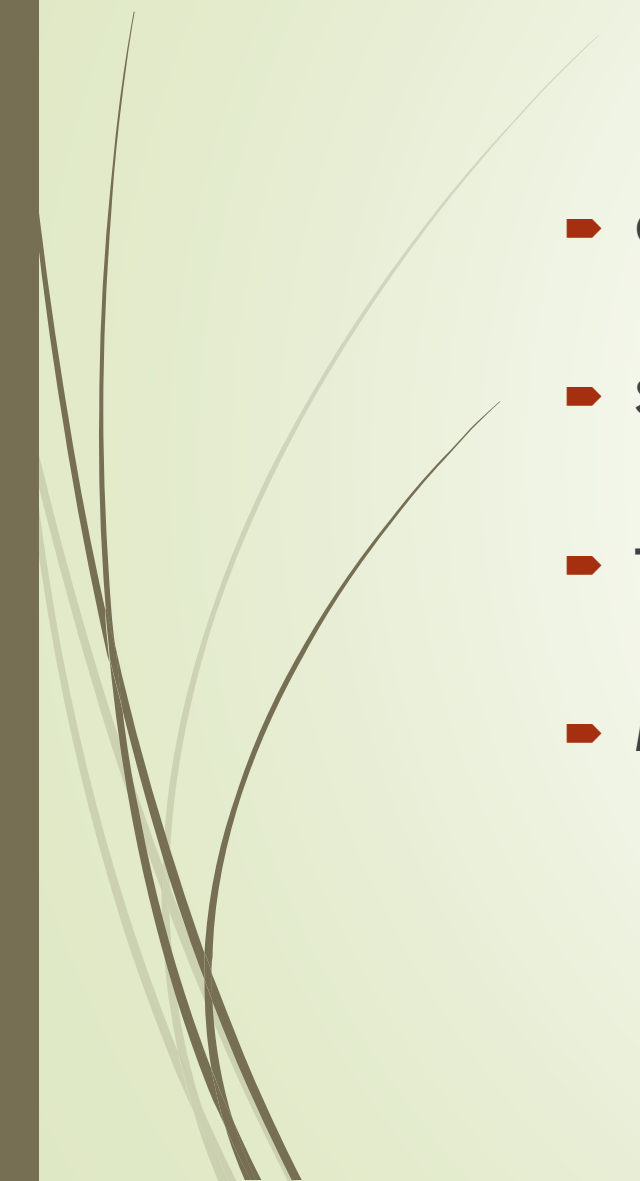


Remedies

- For the seller
 - For the buyer
- 



Property Litigation

- ▶ **Courts and Tribunals are open for business**
 - ▶ **Suspension of possession proceedings**
 - ▶ **Terminating Tenancies**
 - ▶ **Most barristers chambers are open for business**
- 



Conclusions

- ▶ Stewart Title - www.stewarttitle.co.uk
- ▶ Robert Kelly Robert.Kelly@stewart.com
- ▶ Ian Quayle - iqlegaltraining@gmail.com



stewart
title®