



HilliersHRWSolicitors

INFORMATION SHEET
SALE & PURCHASE OF FREEHOLD COMMERCIAL LAND/PROPERTY
Please keep this form for future reference

The Conveyancing Procedure

(a) The offer

After the Landlord/Seller has accepted an offer, either party may withdraw from the transaction with no penalty unless it has been agreed that there will be a responsibility for abortive costs or a non-refundable deposit is being paid upon acceptance of the offer, save for Surveyors fees and Solicitors charges incurred, until exchange of contracts.

(b) Surveys and Schedules of Condition

It is recommended that the property should be surveyed particularly where a long leasehold interest is being purchased. Where a mortgage is applied for, the Buyers/Tenant's Lender (Mortgagees) will satisfy themselves as to the valuation of the property, which will include a bare survey. This is not comprehensive and Buyers/Tenants are strongly advised to consider having a more detailed survey. We will not be supplied with a copy of the survey as a matter of course. Should we be acting for you as a Buyer/Tenant we ask that you send a copy once it is to hand and as we have to check on behalf of the lender any assumptions that have been made by the valuer in respect of legal requirements.

(c) Schedules of Condition

In the case of a shorter leasehold interest, where you are entering into a full repairing and insuring lease, you may find that, at the reasonable conclusion of the lease you will be for putting the property into a better state and condition than it was when you took up occupation of the property. Therefore where you have doubts about the state repair of the property, you should either ensure that the Landlord carries out the necessary works before taking up occupation of the property, or instruct a surveyor to prepare a "Schedule of Condition" and negotiate with the Landlord that you will not be obliged to put the property into any better state or repair than evidenced by which will need to be referred to in the lease and attached to the lease.

(d) Finance

Where a long leasehold interest is being purchased as a premium is being paid for a lease. If you require us to exchange without the necessary funding being in place, we will advise you on the consequences and we will ask you to give us written authority to exchange and to sign to say that you fully understand the consequences. If appropriate, a written satisfactory mortgage offer must have been issued and any conditions or requirements of the Lender have been dealt with. We are approved Solicitors on all of the major Lending Institutes panels. Any additional moneys needed for the purchase and fees must be accounted for to us prior to completion.

In most cases we are also instructed to act for the lender, and it will be a condition of your Mortgage offer that you are responsible for our fees in connection with so doing. We are obliged to inform the lender of certain matters e.g. if it comes to our attention that the funds that you are providing for the purchase do not come from an unencumbered source. If this arises we will tell you. If you refuse permission for us to so

advise the lender a conflict of interest will arise and we will have to inform the lender that we can no longer act for them. In some cases the lenders instruct their own Solicitors, with whom we will be required to liaise, and you will normally also be responsible for those fees.

Please also note that your Mortgagee may make additional charges for e.g. sending the funds on completion by way of bank transfer, fees for approving your own buildings insurance etc.

(e) The Contract

The Buyer/Tenant must be satisfied that the property is suitable for them. It is sold as it stands and there may be no legal redress after purchase if the property is in any way not as they expected or required. We do not have the opportunity to view the property. If we are acting for you as a Buyer/Tenant we will send you a plan and you should check that it is a correct record of your understanding of the property. Please report to us any unusual matters e.g. driveways etc. used in common with neighbouring properties, evidence of rights of way etc. You should notify us of any particular items of fixtures and fittings not detailed on the list, which should be included in the sale/lease. Most contracts limit the Sellers liability in respect of statements made in conversation. It is therefore important that you report any material matter you have agreed to us in order that we may confirm it in writing.

In the case of shorter leasehold interests, there is not usually a contract, unless alternatives are going to be carried out by the Landlord on behalf of the Tenant. It is usual, in most cases, to proceed straight to completion of the lease. In most cases the Landlord will be responsible for insuring the property, and the cost a part of the cost (in cases of leases of part of building) is normally passed on to the Tenant. Where the Tenant is obliged to insure we will advise you in the Report on Title or when we see you to sign the Lease.

Some contracts pass the risk of the property to the buyer on exchange. If you are arranging your own building insurance this should be in place before exchange and a copy must be provided to us. In addition, the appropriate Life Company should have accepted any life policies required by your Mortgagees. A delay in either of these matters may hold up the transaction. Please ask the company arranging this to send us detail as soon as possible.

We need to see you personally before exchange to go over the documentation and have you sign the contract and any mortgage. We are obliged to verify your identity/if you have a mortgage, and will require you to bring your passport if possible or driving licence and a bank statement or services bill showing your current address. If you are a limited company, we are now required to check that the authorised signatures are directors/company secretaries of that company. You should bring with you proof that this is the case e.g. statutory book of the company or audited accounts signed by the directors.

(f) Searches and Enquiries

We, as Buyers/Tenants Solicitors, conduct searches and raise enquiries to ensure there are no legal matters that may adversely affect your use or ownership of the property. This includes a Local Authority search for which the fee is between £100 - £200 depending on the area, this reveals any matters from the Councils records, which may affect a purchase. Please note however that the search is confined to the actual property you are buying and will not necessarily reveal matters in the area which may affect you i.e. it will only reveal development proposals within 200 metres of the property you are buying. Further, Local Searches are usually made at the beginning of the transaction and last up to 3 months until exchange of contracts. If exchange of contracts does not take place by then, a fresh search will be required. Conversely, where no renewed search is required, if adverse matters occur after the date of the search, but before completion, such as the submission of a planning application for a development on adjoining property, this will not come to our attention.

A Water Search is also usually necessary at a cost of £30-£40.

There are other searches that may be necessary, i.e. Commons Land Search (£6), Coal Mining Search (£23.50), Company Search (£25 plus VAT). These are not included in our standard fees estimate but will be chargeable if they apply. These will be requirements in appropriate circumstances, if you are arranging a mortgage, we will assume we have your instructions to apply for these where the circumstances arise, unless you instruct us to the contrary

Where you are only taking a short lease, you may decide that you do not wish us to conduct these searches, if so, you must inform us in writing. We always recommend that searches are conducted, and it is at your risk, if you choose not to.

(g) Additional Expenses

Please note that our fees exclude the following that may be additional costs in the transaction, we are unable to give estimates for these as they depend on the individual circumstances, which we will presume we have your authority to pay, unless we hear from you to the contrary: -

- Fees set out in (e) above and any other fees charged by your Mortgagees (e.g. for transferring funds on completion)
- Fees to third parties payable when the Title Deeds are incomplete (e.g. missing planning documentation)
- Fees for perfecting a defective Title including Restrictive Covenant Indemnity Insurance.
- Where the property is Leasehold, fees for registering the Deed of Covenant/Notice of Assignment. These are payable to the Landlord and sometimes also the Management Company's solicitors and depend on the terms of the actual Lease.
- Our additional fees for work carried out where there is or are abortive transactions

(h) Contaminated Land/Environmental Search

Please note that under recent legislation Local Authorities have an obligation to identify contaminated land in their area and to enforce remedial action. Although the person primarily responsible for taking and paying for remedial action is the person who caused or knowingly permitted the contamination, if they cannot be found or cannot be made liable the owner or occupier i.e. Tenants may have to pay for the remedial work. Although it is not at present an automatic requirement for Buyers/Tenants and their Mortgagees to obtain information about this prior to purchase it is strongly recommended that they do. Your Mortgagee may require this. We will send to you a search, which can be obtained free of charge from the Internet, which indicates whether the property is situated in a high-risk area. If the property is situated in a high risk area or anything revealed by the replies to enquiries, local search or title documentation leads us to believe that the site may be contaminated, we will recommend either that you have an environmental search at a cost of £94.00 or possibly a full environmental survey for which an estimate would have to be obtained.

(i) Exchange of Contracts (if applicable)

Once all the above has been satisfactorily dealt with (and any dependant sale is ready), you will be ready to exchange contracts. On exchange, you enter into a *binding* contract to purchase or sell. This means that after this you cannot change your mind. A **deposit is normally required**. When we ask you for the deposit, please note that we will require cleared funds before we can exchange. It takes 5 working days for a personal or business cheque to clear; otherwise you may remit the funds to us by bankers draft, building society cheque or telegraphic transfer. This is paid on exchange of contracts to the Seller's solicitors and will be deducted from the purchase price on completion. This is usually 10% of the purchase price. The deposit is often used by the Sellers for their own deposit if they have a related Purchase. Please discuss this with us if this is likely to be problematic. If less than 10% is actually paid, the Seller is still entitled to the full 10% if there is any delay in completion. If you are buying and selling simultaneously, we will arrange to use the deposit from your sale on your purchase.

On exchange, a mutually convenient date is fixed for completion. Please discuss this with the other party or Agent close to the time of exchange. **It is inadvisable to try to fix moving dates early on in the transaction as many matters** might hold things up.

(j) Post Exchange

After exchange, the Buyers Solicitors draw down the mortgage moneys required to complete, make the final searches and enquiries and arrange for the balance of the legal documentation to be signed. , We also send out to you a Completion Statement showing the amount required from you on completion. Please note that we always require the full sum due on the completion statement. Most commercial mortgages work on the basis that the full sum will be drawn down from your bank account by us on completion. You should NOT therefore send us the funds but ensure they are credited to your business bank account in good time for them to clear before completion. Please ensure that any life policy, is put on risk on exchange of contracts and your broker faxes us confirmation.

The Sellers Solicitors arrange any a statement from any Mortgagee of the amount to repay on completion and make final arrangements to prove title and obtain the Sellers signature to the transfer document.

In the case of completion of leases, there is no commitment by either party until after the lease is formally completed by the solicitors as in (k) below. In the case of completion of shorter leases, the Landlords usually require the first quarters rent together with any rent deposit on completion (unless there is a rent-free period). We will require to collect this from you so that we can pass it on to the Landlord's solicitors.

Please note that if the Buyer is unable or refuses to complete to purchase the Seller may: -

- (a) Keep the deposit (having sent a notice in accordance with the contract) and sue for the balance of 10% of the purchase price if less than 10% was paid on exchange and /or
- (b) Sue for damages and /or
- (c) Try to enforce completion of the contract and/or
- (d) Charge interest at between 4% or 5% above bank base rate on the balance of the price.

(k) Completion and Post Completion

The Buyers should inspect the property before Completion. The keys are usually left with the agents and released to you on completion. Please check that they have these the day before. The Seller must move out on or before the day of completion. It is safest for a Buyer to arrange removals for the afternoon if moving on the actual day, as the Seller will not hand over keys until their Solicitors receive the money. The completion itself takes place by post and bank transfer. The fee for this is £25.00. **You will not need to attend the office.**

The Seller should have notified all of the service authorities that they are moving and arranged to have all meters read. The Buyer should also have contacted these authorities to take over the accounts and ensure they are not cut off.

On completion the Sellers Solicitor repays any existing mortgages and the Estate Agent (if any) and pays the Seller the balance. The Buyers Solicitors then, stamp the purchase deed and apply for title to be registered at the Land Registry (currently only leases over 21 years need to be registered) which is a regional centre for the registration of title to land. The fee for this depends on the purchase price. The deeds once registered are sent to the Buyers Mortgagees. If there is no mortgage we either send the deeds to the Buyer direct or we have a storage facility at this firm.

(l) Joint Purchase (Long Leasehold Interests only)

If you are purchasing property jointly e.g. if there are 2 or more partners in the business, the property may be held in two ways.

(i) Joint Tenants

There is a presumption that the shares are equal. On the death of one party, the property automatically belongs to the survivor. This may be altered in the future by "severing" the joint tenancy, which will convert it to a Tenancy in Common. You should seek legal advice about this if you wish to do this in the future.

(ii) Tenants in Common

This is the usual method where businesses are concerned.

In this case, the shares are not necessarily equal and on the death of one party the property goes to any person named in the deceased's will or to the next of kin if intestate. It is important that any agreement relating to the shares or use and occupation of the property is set out in writing in a Trust Deed or in the deed of transfer. Please let me have your instructions on this if choosing this method.

(m) Stamp Duty

All leases, where the rent is over £5, 000 are subject to stamp duty on the average rent plus VAT on the rent. Counterpart (Landlords) Lease are subject to duty at the fixed rate of £5.00

If a new lease is being granted then stamp duty will be payable on the length of the lease and the average rent including VAT

This is paid by the Buyer/ of Long leasehold interests on the whole of the price (inclusive of VAT where applicable) and is levied as follows:

Under £60,000.00 : Nil. £60,000.00 - £250,000.00 : 1%. £250,000.00 - £500,000.00 : 3%

Over £500,000.00 :4%

If you are also purchasing a business please note that stamp duty is payable on the goodwill of the business as well. If the two transactions are related, stamp duty is payable at the rate applicable to the combined amount.

The Team

We have a highly efficient comprehensive commercial conveyancing service to offer our Clients.

Tel: 01234 858000
