



# HilliersHRWSolicitors

## INFORMATION SHEET SALE & PURCHASE OF COMMERCIAL LAND/PROPERTY – LEASEHOLD Please keep leasehold 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 until exchange of Contracts with no penalty (save for Surveyors and Solicitors fees incurred) unless it had been agreed that there will be responsibility for abortive costs, or a non-refundable deposit is being paid upon acceptance of the offer.

### **(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/Tenants Lender (Mortgagees) will satisfy themselves as to the valuation of the property, which will include a bare 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 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 conclusion of the lease you will be responsible 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 of 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 of repair than is evidenced by the schedule of condition, 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, or 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 a 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 must have been dealt with. We are approved Solicitors on all of the major Lending Institutes panels. Any additional monies 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 inform the lender of such matters, we must refuse to continue to act for you. 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 the purchase if the property is in any way not as 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 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 alterations 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 costs or part of the cost (in cases of leases of part of a building) is usually 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 buildings 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 details as soon as possible.

We need to see you personally before you exchange to go over the documentation and have you sign the contract and/or Lease 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 a driving licence and a bank statement or services / utilities bill showing your current address. If you are a limited company, we are now required to check that the authorised signatories are directors/company secretaries of that company. You should bring with you proof that this is the case e.g. statutory books 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 - £300 depending on the area, this reveals any matters from the Council's 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. A Water Search is also usually necessary, at a cost of up to £150.

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 should you choose not to.

#### **(g) Additional Expenses**

Please note that our fees exclude the following which 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 (f) 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 remedial work. Although it is not at present an automatic requirement for Buyers/Tenants and their Mortgagee to obtain information about this prior to purchase, it is strongly recommended that they do. Your mortgagee may require this. We will send 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 enquires, 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) Asbestos**

It is now illegal to use any form of asbestos in the construction or refurbishment of any buildings, but much of what was used in the past is still in place.

Regulation 4 of the Control of Asbestos at Work Regulations 2002 creates a new legal duty to manage asbestos in non-domestic premises.

Dutyholders (i.e. anyone responsible for maintaining and repairing all or part of a property, or anyone who has control of the building, for example, the occupier or owner) have a duty to:

- determine whether asbestos is present in a building or is likely to be present; and
- manage any asbestos that is or is likely to be present.

The duty is first to carry out an assessment of the property to identify the presence or possible presence of asbestos. The assessment must be recorded and kept under review. If the result of the assessment is that asbestos is or is likely to be in the property, the dutyholder must determine the risk posed by the asbestos, prepare a written plan to identify those parts of the property affected and to specify what measures should be taken for managing the risk. It may be appropriate in the circumstances for the asbestos to be removed, but it may be sufficient for the asbestos to be encapsulated and effectively made safe.

### **(j) Exchange of Contracts (if applicable)**

Once all the above has been satisfactorily dealt with (and any dependent 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 personal or business cheques to clear, otherwise you may remit the funds to us by bankers draft, building society cheque or telegraphic transfer. This is paid on the 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 from 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.**

### **(k) 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 as shown 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 Seller's Solicitors arrange a statement from any Mortgagee of the amount to repay on completion and make final arrangements to prove title and obtain the Seller's 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 (l) 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 when contracts have been exchanged, if the Buyer is unable or refuses to complete the 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% and 5% above bank base rate on the balance of the price.

## **(l) Completion and Post Completion**

The lease is normally completed by agreement between the Landlord's and Tenant's solicitors by telephone. The Landlord or their agents will let the Tenant in to occupation of the property. 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 the bank transfer for this is £30.00 plus VAT, totalling £35.25.

**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 Seller's solicitor repays any existing mortgages and the Estate Agent (if any) and pays the Seller the balance. The Buyer's Solicitors then send a completed Stamp Duty Land Transaction Return to the Inland Revenue and apply for the title to be registered at the Land Registry. (Currently leases over 7 years need to be registered). 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.

## **(m) Joint Purchase**

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 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 a Deed of Transfer. Please let us have your instructions on this if choosing this method.

## (n) Stamp Duty Land Tax

The new stamp duty land tax regime came into force on 1 December 2003. Stamp duty land tax (SDLT) is paid by the buyer of the leasehold interest (the tenant) on the whole of the price and the net present value (NPV) of the rent over the term of the lease (inclusive of VAT where applicable). SDLT is charged (for commercial or mixed use premises) on the NPV at the following rates:

<b>NPV</b>	<b>Rate</b>
£0 - £150,000	0%
Over £150,000	1%

A 'slice' charging system is used so that the first £150,000 is charged at 0% and the excess is charged at 1%.

In addition, SDLT is charged as follows on the premium (or price) at the following rates:

<b>Price</b>	<b>Rate</b>
Not more than £150,000	0%
More than £150,000, but not more than £250,000	1%
More than £250,000, but not more than £500,000	3%
More than £500,000	4%

Where there is a mix of premium and rent, the rent is chargeable as above but the SDLT treatment of the premium depends upon whether or not the annual rent exceeds £600. Where the annual rent does not exceed £600, tax on the premium is charged at the rates and in the manner set out in the table above. However, where the annual rent exceeds £600, the bands for the premium (for commercial or mixed use property) are as follows:

<b>Price</b>	<b>Rate</b>
Not more than £250,000	1%
More than £250,000, but not more than £500,000	3%
More than £500,000	4%

An Inland Revenue Land Transaction Return must be made if the lease is:

- Granted for a term of seven years or more and is granted for chargeable consideration – whether or not any SDLT is payable, or
- Granted for a term of less than seven years and is granted for chargeable consideration (whether of rent and/or premium) of such an amount that means that SDLT is payable.

If you are the purchaser/tenant we will complete the Land Transaction Return on your behalf, however you must provide us with your National Insurance Number. It is the responsibility of the purchaser/tenant to make sure that the information contained in the return is complete and correct. The purchaser/tenant must sign the declaration at the end of the return.

There are various reliefs from SDLT, for instance, for designated disadvantaged areas. Some of the reliefs are complete, others offer partial relief.

### **Team**

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

**Tel: 01234 858000**