

HOW TO BUY A REAL ESTATE PROPERTY IN ENGLAND AND WALES

The purpose of this guide is to provide an overview on the process to purchase a real estate property in England and Wales, whether for residential or commercial use.

FREEHOLD AND LEASEHOLD

A person or a company wishing to buy a real estate property in England and Wales should be aware that, for historical reasons, all land belongs to the Crown, such that only the monarch can enjoy absolute ownership. All that such person or company can own is a series of rights and duties in relation to a certain piece of land. Therefore, the most that they can enjoy is a legal estate in the land, which gives them the right to occupy the land either:

- for an indeterminate length of time, known as **freehold** estate; or
- for a fixed period of time (e.g. 125 years), known as **leasehold** estate.

Both freehold estates and leasehold estates are property rights.

The owner of a leasehold estate has the statutory right to call for the “superior” title, the freehold, or an extension to their lease terms upon payment of the appropriate price. Such right is known as **enfranchisement**. The law applies to long leases (i.e. those for a term exceeding 21 years).

A distinction should be drawn between leasehold houses and leasehold flats, as the law requires the owner to meet different requirements to qualify for enfranchisement rights. As regards leasehold houses, the lessee/claimant must have held the lease for at least two years.

The enfranchisement of leasehold flats concerns the collective enfranchisement of lessees of flats within a block and there is a requirement that those participating must occupy half of the flats in the block and must have held the lease for at least two years.

CO-OWNERSHIP

As far as co-ownership is concerned, English land law recognises two types of co-ownership, known as **joint tenancy** and **tenancy in common**.

Under the former, co-owners own the whole of the land together and all the joint tenants have the same interest in the land, regardless of their respective contributions to the purchase price. Accordingly, a share in the property cannot be left by will, because upon death the deceased’s “share” passes automatically to the surviving joint tenant(s). This is known as the right of survivorship. This type of co-ownership is most suitable for married couples or cohabitants in a stable relationship.

Under tenancy in common, each co-owner owns specific and separate shares in the land, either equally or unequally. Such shares may be left by will, or pass on intestacy rules or may even be disposed of between living individuals. This type of co-ownership is recommended

where the purchasers are neither married nor in a stable relationship, where they have contributed in unequal proportions to the purchase price, or where they are business partners.

REGISTERED LAND/UNREGISTERED LAND

In England and Wales there exist two parallel systems of conveyancing: one for **registered land** and one for **unregistered land**. The registration system (introduced in 1925) was to create and maintain a register of landowners (the Land Registry) whose title on the land would be guaranteed by the State. However, because the registration system was introduced gradually and land registration is required only upon occurrence of certain events (such as the sale of property) and only in certain areas of England and Wales, there still remains land that to date is not registered.

CONVEYANCING PROCESS

The term conveyance identifies the process of purchasing a real estate property in the United Kingdom. The process can be broken down into various phases, in each of which the advice and assistance of an English qualified solicitor or a conveyancer is necessary.

PRE-EXCHANGE PHASE: DUE DILIGENCE AND DRAFT CONTRACT

When an agreement is reached between seller and buyer, the buyer should have a survey of the property carried out before exchange of contracts because of the caveat emptor principle, according to which it is for the buyer to discover any physical defects in the property (these may not be apparent from the buyer's own inspection). Indeed, although the seller is obliged to disclose all latent encumbrances and defects in the title, this duty does not extend to physical defects in the property.

While a basic valuation and a home buyer's valuation and survey report are available, it is advisable for the buyer to opt for a full structural survey (especially if the property is old or of high value).

In this phase, the buyer's solicitor can provide general advice on the financing options to fund the real estate purchase as well as on the additional and "hidden" costs of such a purchase (see below).

It is customarily for the seller's solicitor to prepare the draft contract, which comprises the particulars and the conditions of sale. The former identify the property being sold as well as its tenure (i.e. whether freehold or leasehold). The latter are the general conditions of sale, that property lawyers have standardised. These are known as the Standard Conditions of Sale, and can be found at this link: <https://www.lawsociety.org.uk/support-services/advice/articles/standard-conditions-of-sale/> ("SC"). There is also a set of conditions for commercial property known as the Standard Commercial Property Conditions ("SCPC").

In addition to the SC, the contract sets out special conditions that are specific to the transaction in question.

While the seller's solicitor prepares the draft contract, it is the buyer's solicitor's task to carry out pre-contract searches, whether the purchase concerns a commercial or residential property. Given the caveat emptor principle – mentioned above – the buyer needs to find out as much as possible about the property. Furthermore, the buyer's solicitor will make the appropriate enquiries concerning the property.

The **searches** to be carried out depend on whether the real estate property to be purchased is registered or unregistered land. Suffice it to say that these searches include, but are not limited to, local authority search, water company search, coal mining search, index map search, land charges search (for unregistered land), company search, environmental searches, chancel repair liability search and other searches, depending on the location of the property.

The **enquiries** (known as pre-contract enquiries or preliminary enquiries) are aimed at finding out as much about the property as possible. Making the appropriate enquiries may be difficult, therefore most conveyancing practitioners adopt the Protocol Property Information Forms developed by the Law Society. These enquiries concern, for instance, disputes, notices, boundaries and fences, services and conducting media, occupiers, service charges, insurance arrangements and covenants pertaining to the property. A set of Commercial Property Standard Enquiries has also been developed which addressed issues that concern more specifically commercial properties.

After the draft contract has been prepared and the appropriate searches and enquiries have been carried out, the seller's and the buyer's solicitors will discuss and approve the draft contract. Once they are ready to proceed, the next phase will consist in the exchange of contracts (either in person, or by post or – most commonly - by telephone).

EXCHANGE OF CONTRACTS PHASE

Upon execution and exchange of identical copies of the contract, the contract comes fully into force, at which point seller and buyer are bound to complete the transaction. It is also at this point of the process that the buyer is required to pay the deposit (normally equal to 10% of the purchase price) to the seller's solicitor.

As soon as the contract comes into force, the beneficial ownership (but not the legal ownership) in the property passes to the buyer. This entails that the buyer bears the risk of any loss or damage to the property (the seller being liable to take care of the property), but at the same time he is entitled to any increase in value of the property between exchange and completion. In this context, the buyer should make sure that an adequate property insurance is in place from the moment of exchange.

Completion normally takes place 20 days after the exchange of contracts (time not being of the essence, unless a **notice to complete** has been served). During the period between the exchange of contract and completion, the buyer's solicitor carries out additional pre-completion searches and requisitions (see below), and drafts the purchase deed.

COMPLETION PHASE

Once the exchange of contracts has taken place, the buyer's solicitor drafts the purchase deed (copies of which must be submitted to the seller's solicitor for approval). The deed's contents are governed by, and must reflect, the contents of the contract.

As mentioned above, the buyer's solicitor also has the task to carry out pre-completion searches, the purpose of which is twofold. On the one side, they are made to ensure that the information with regard to the property supplied prior to the exchange has not changed. On the other, they trigger a protective period (also known as a priority period) during which the buyer will have priority over everyone else seeking to register an interest or right against the property.

The priority period in case of registered land is 30 working days from the search certificate date, while it is 15 working days for unregistered land.

In order to transfer the legal ownership (legal estate) the seller must always execute the purchase deed, while the buyer need only execute the deed in special circumstances (e.g. if he is making a declaration or entering into new obligations).

Completion is the moment in time when the buyer pays the balance of the purchase price to the seller in exchange for the signed purchase deed and the property's keys (as well as, if this is the case, its vacant possession). For unregistered land, this is the moment in which the legal estate is transferred to the buyer. For registered land, the legal ownership of the land is transferred upon registration of the buyer as the registered proprietor at the Land Registry (which should take place within the priority period).

The effect of completion is the receipt by the seller of the full purchase price monies. The only payment method permitted by the SC is by direct electronic bank transfer.

The main phases of the process outlined above apply also to commercial transactions. However, as specific standard conditions apply to this kind of property purchase, it is advisable to seek the advice of a practitioner specialised in commercial conveyance.

ADDITIONAL COSTS

When buying a real estate property, whether of residential or commercial nature, the purchase price is not the only cost borne by the buyer. Furthermore, also the seller will bear the costs of the conveyance. Below is a short summary of the most relevant expenses that the parties to the transaction should take into account.

ESTATE AGENT'S FEES

If the seller has used the services of an estate agent to market the property, they will have to pay the agent the relevant fees, normally quantified as a percentage of the selling price as commission. This cost generally becomes due upon exchange of contracts.

CAPITAL GAINS TAX

Save when the “principal private dwellinghouse exemption” (see below) applies, upon disposal of land the seller should pay capital gains tax (“**CGT**”), a tax on disposal of capital assets which becomes payable on exchange of contracts.

Having said this, in case of residential property, CGT is rarely payable because of the application of the principal private dwellinghouse (i.e. private residential property) exemption. The sale of a principal private dwellinghouse, including grounds up to 0.5 hectares, is exempt from CGT.

In order for the exemption to apply the property must be the only or main residence of the seller, who must have lived there throughout the period of ownership (with certain exceptions). No part of the property must have been used exclusively for business purpose.

Appropriate advice in respect of CGT must be sought.

STAMP DUTY LAND TAX

Depending on the purchase price of the property, the buyer may be required to pay a government tax known as Stamp Duty Land Tax (“**SDLT**”), which is charged at increasing rates, as shown in the tables below.

Please note that since April 2016 a 3% SDLT surcharge has been introduced, which applies when an additional residential property in England, Wales and Northern Ireland is bought by someone who already owns a home.

Residential property

Sole residential property		Additional residential property	
Band	Rate	Band	Rate
£0-£125,000	0%	£0-£125,000	3%
£125,001-£250,000	2%	£125,001-£250,000	5%
£250,001-£925,000	5%	£250,001-£925,000	8%
£950,001-£1.5mln	10%	£950,001-£1.5mln	13%
more than £1.5mln	12%	more than £1.5mln	15%

If the buyer purchases an additional residential property before selling their main existing one, they will have 36 months after buying the new property in which to dispose of their previous main residence and claim a repayment of the 3% SDLT surcharge.

As far as commercial properties are concerned, freehold and leasehold transactions are caught by SDLT as to consideration paid and the rent in the lease, respectively. The starting threshold for the payment is £150,000.

For freehold sales and transfers the value of the property is taxed according to the following tax bands.

Freehold transaction on commercial property

Band	Rate
£0-£150,000	0%
£150,001-£250,000	2%
more than £250,000	5%

A different SDLT regime applies to the rental of commercial leases, where the following rates on the so-called **net present value** of the total rent payable over the term of the lease is charged.

Rental of commercial leases

Band	Rate
£0-£150,000	0%
£150,001-£5mln	1%
more than £5mln	2%

HMRC has set up a tool to help buyers calculate the correct amount of SDLT payable: <https://www.tax.service.gov.uk/calculate-stamp-duty-land-tax/#/intro>.

VALUE ADDED TAX

In the context of commercial properties, the general rule is that property transactions such as transfers, conveyances, assignments or granting of leases can be exempt from Value Added Tax (“**VAT**”), which is a tax on turnover currently payable at 20% on chargeable supplies. This is to say that they do not attract VAT. However, this can be reversed by written election of the parties.

If the commercial property to be sold or purchased is not new (i.e. not less than 3 years old), there is an exempt supply of the property on sale. In case of election to subject the property disposal to VAT, attention should be paid on whether VAT is included in the purchase price. SCPC 1.4 provides for all sums payable under the contract to be exclusive of VAT (this is to say that VAT is added to the purchase price). If the parties wish to provide otherwise, they have to do so in writing, requiring a special condition to that effect.

If the commercial property to be sold is a new building (i.e. less than 3 years old), it is subject to VAT at the standard rate (20%). Please note that, unless there is evidence or documentation to the contrary, there will be a presumption that the stated purchase price is inclusive of VAT.

SOLICITORS' FEES

Each party is required to pay the fees of the respective solicitors or other conveyancing practitioners.

Please bear in mind that, in addition to the above costs, the buyer will also be required to pay the surveyor's fees, the Land Registry's fees, the costs for the pre-exchange and pre-completion searches and – if the case may be – costs in relation to planning permission/change of use.

As you may appreciate, the purchase of real estate in England and Wales is a complex process, where many factors come into play and that cannot be completed without the advice and assistance of a solicitor or conveyancing practitioner. If you are considering investing in real estate properties in England, please contact Mr Vincenzo Lanni on +44 (0)20 3862 2900 or at v.lanni@grandestevensint.co.uk.

This note is intended for general guidance only and should not be taken as advice in relation to any specific circumstances. As such, we recommend that you seek professional advice before taking any action. No liability can be accepted by Grande Stevens International LLP for any action taken or not taken as a result of the information contained in this note. The law is as stated at September 2017.

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