

Commercial Selling Guide

This information guide is intended to provide you with a brief outline of the work involved in a commercial property transaction and to offer a brief insight into the mechanics and terminology behind it. It is by no means a comprehensive guide to the law, nor to all matters involved in conveyancing transactions. However, it contains useful information which we hope will assist you to understand the process more clearly. If you have any questions about the contents of this information guide, please do not hesitate to contact us and we will be happy to assist.

The Contract Package

The legal process involved in buying or selling a property begins with the contract package. The first step in any sale transaction is to prepare the contract package to send to the Buyer's Solicitors, which includes the following:

Title Documents

These are either the original Title Deeds or Official Copies of the Registered Title and Title Plan (depending upon whether the property is unregistered or registered) and, if the property is leasehold, a copy of the Lease.

Copies of these are sent to the Buyer's Solicitors to prove the extent of the property and land being sold. They are also used to prove that you are the owner of the property and have the legal right to sell it. In law, we call this 'deducing title'.

Sale Contract

The Sale Contract is a formal written agreement between you and the Buyer that you will sell and the Buyer will buy the property at an agreed price. It is our responsibility, as the Seller's Solicitor, to draft the Sale Contract and all of the clauses contained in it. Once drafted, the Sale Contract is sent to the Buyer's Solicitors to either approve, or to amend and return. Once the clauses in the Contract have been agreed, matters work in such a way that two parts of the Contract are printed, both identical. One part will be signed by the Buyer whilst the other part will be signed by you. The signed documents are then held on file until both parties are in a position to proceed.

Commercial Property Standard Enquiries (CPSE Enquiries)

There are a standard set of forms used in every commercial sale transaction which the Seller completes and provides to the Buyer. Where you are selling the property subject to a lease, there will be additional forms which you will be asked to complete.

We will send you these forms at the beginning of the transaction and it is important that you answer the questions as completely and accurately as possible as the Buyer

is entitled to rely on the information you provide. If any reply to a question is inaccurate or misleading, you may be liable in the civil offence of misrepresentation or even guilty of the criminal offence of fraud (fraud by false representation or fraudulently failing to disclose information). An inaccurate but honest reply is unlikely to give rise to a liability in either offence but nevertheless, care should be taken.

Planning Documents

If you have had your property altered or extended in any way, the Buyer will want to ensure that the building works were completed in accordance with all relevant Planning Permissions and Building Regulations. Copies of these will need to be obtained and provided to the Buyer's Solicitors, to prove that the modifications are both sound and not in contravention of planning laws. If the property is leasehold the Buyer will need to be satisfied that any consents required under the lease have been obtained from the Landlord.

The Buyer will want to ascertain whether the property can be used for the intended purpose and you will be asked to provide the relevant planning documents. These may not be available, but if you have them, or if they can be obtained from the local Council, you will need to provide them.

Energy Performance Certificates

A seller of a commercial property is usually required to provide an Energy Performance Certificate to the purchaser. This should be prepared before the seller markets the property, but where the certificate is not produced at the outset, you will need to provide this to us before the sale can complete. We can let you know of the contact details of energy assessors who can provide this service to you.

Please note if you do not provide an Energy Performance Certificate before completion you can be liable for a fine of up to £5,000.00.

Asbestos reports

As the owner of commercial premises you have a duty to manage asbestos at the property. This means that you are expected to take reasonable steps to ascertain whether any asbestos is present, and if so, decide how to manage it. A buyer of commercial property will ask to see any asbestos report and ask how the asbestos is being managed. Asbestos products vary and the suitable management of asbestos will vary accordingly. You should seek expert advice on the assessment of asbestos and we can give you details of suitable experts.

Contamination

A Local Authority can serve a Remediation Notice where land has been contaminated. The Remediation Notice requires the land or buildings to be 'cleaned up'. Where it can, a Local Authority will serve the Remediation Notice on the person who has caused the contamination. However, if that person cannot be found, the

Notice is served on the owner or occupier of the land. Your purchaser may be advised by his or her solicitor to commission an environmental report. If this identifies contamination it is likely that the purchaser will want the contamination 'cleaned up' before the sale can proceed. The cost of cleaning up contamination can be considerable.

Enquiries

When the Buyer's Solicitors have had a chance to read through all the contract documentation and to go through it with the Buyer, there may be a number of further enquiries which they will want to raise.

The nature of the enquiries can be wide-ranging, and may be a combination of general questions appropriate to every property, and specific questions about the particular property being sold.

If a defect of title is discovered by the Buyer, it is your responsibility, as the Seller, to correct it at your own expense. This is sometimes done by way of obtaining retrospective consent, as in the case of a breach of planning regulations, or by obtaining an insurance policy (called an 'Indemnity Policy'), which we can arrange on your behalf.

Exchange of Contracts

Once the Buyer's Solicitors have completed their enquiries, are in receipt of the Buyer's mortgage offer (if a mortgage is required) and are satisfied with the results of their searches, we will make an appointment for you to come in and sign the Contract. If this is not convenient, we can go over any outstanding points via the telephone or letter and post the Contract out to you for signature.

At this point, a Completion date will be suggested. 'Completion' simply means the date on which monies are paid over and ownership of the property transfers to the Buyer. Please remember that the Buyer's Mortgage Lender (if any) will require, on average, 5 working days notice to transfer the mortgage monies to their Solicitor's account, which needs to be taken into consideration when deciding upon a Completion date. Completion can also only take place on a weekday. We have found that some clients assume that completion only takes place on a Friday, but this is not the case; Saturdays, Sundays and Bank Holidays are the only days on which completion could not take place.

Once a Completion date has been agreed, this date is inserted into the Contract. The signed and dated Contracts are then 'exchanged', literally, so that we hold the Contract signed by the Buyer and the Buyer's Solicitors hold the Contract signed by you. This has the effect of creating a legally binding contractual relationship between yourself and the Buyer to sell and buy the property respectively, to be concluded on the agreed Completion date. You do not need to be present at Exchange of Contracts. However, we will need to be able to contact you by telephone on the morning of Exchange to obtain authorisation.

It is only on Exchange of Contracts that the deal becomes legally binding and you are committed to the sale. Up to this point, either party can walk away without penalty. Therefore you should not finalise any plans which are dependent on a firm date of completion, until exchange of contracts has occurred.

It will not be possible to change the Completion date once Exchange has taken place so it is obviously extremely important that a realistic Completion date is set, which both you and your Purchaser can achieve.

As a financial act of good faith, the Buyer will pay a deposit of 10% of the purchase price on Exchange of Contracts, the remainder to be paid on the Completion date.

Exchanging Contracts does not actually transfer legal ownership (title) of the property into the Buyer's name, this is dealt with by way of a Transfer Deed (the Contract is merely a formal agreement that you will transfer ownership). The Transfer Deed is the document which will transfer the property out of your name into the Buyer's name and will be submitted to the Land Registry by the Buyer's Solicitors on Completion so that the Registers of Title can be changed.

It is the responsibility of the Buyer's Solicitors to draft the Transfer Deed, and to send it to us for approval. Once the form of deed has been approved, we will send a copy to you for signature.

Completion

On the morning of the appointed day of Completion, the Buyer's Solicitors will wire the purchase monies through the electronic banking system to our client account. This whole process can take up to five or six hours and there is a cut-off point of approximately 3pm when monies cannot be transferred electronically from one bank account to another.

It is important that you make arrangements to have the meters read, etc., up to the date of Completion and also notify us of what arrangements you are making to hand over the keys (if they are not being left with the Agent). The Buyer, having paid the purchase monies, is legally entitled to vacant possession of the property on the day of Completion (unless the property is being sold subject to existing leases or tenancies) so you must ensure that the property is empty by that date, including clearing rubbish and any unwanted articles from the property. If you are selling the property subject to an existing lease, the Purchaser will be entitled to the rent and other payments from the day of Completion, and it will therefore be necessary to draft a completion statement apportioning the rent which has been paid by the tenant.

Repayment of Mortgages

On Completion, it will be necessary for all mortgages and secured loans on the property to be repaid. Following Exchange of Contracts, we will obtain redemption figures in respect of all mortgages and will attend to repayment of these on your behalf on Completion. Please do not cancel direct debits or standing orders relating to mortgage payments until such time as Completion has taken place, as redemption

figures are based on the fact that payment is maintained up to the date of Completion. If there is a shortfall, the mortgage will not be discharged which may result in serious financial penalties.

It is also particularly important that you inform us if your mortgage is linked to any business or personal overdraft facility or any other borrowing relating to a business.

Agents

If you are selling your property through an Agent, they will be notified of Exchange of Contracts and will send their account to us prior to Completion. A copy of this, together with our own account, will be forwarded to you for your approval. It is usual practice for us to pay the Agent on your behalf from the proceeds of sale, and we will rely on you to inform us if this is not to be the case.

Sale Monies

As soon as we have received the purchase monies on the day of Completion, we will immediately transfer these to your bank account, less any sums required to pay our fees, the Agent's fees and mortgage redemption monies (having previously agreed these with you). If we are able to transmit funds before the 3pm deadline, you will receive funds the same day, failing which the monies will reach your account on the next working day.

Post Completion

Following Completion, we will send you a completion statement giving a complete breakdown of the financial side of the sale, together with our receipted account.

If we have repaid a mortgage on your behalf on Completion, the Mortgage Lender will send us signed Notice that your mortgage has been repaid in full, usually within one or two weeks. This Notice will be copied to the Buyer's Solicitor as proof that you have repaid all your financial obligations secured against the property. The legal formalities are then complete.

Timescales

Without doubt, the overriding requirement in virtually every conveyancing transaction is that the matter is completed quickly. However, as you have seen, the process of buying and selling properties is far from simple, nor is it quick.

The time varies from transaction to transaction depending on a number of factors, for example, how quickly the other Solicitors respond and how quickly the Buyer secures finance.

Where the property being sold is subject to a lease, this tends to take longer because of the additional time spent examining and advising on the Lease (often up to 80

pages long), and in obtaining information regarding payments due under the Lease.

For further information please contact our Commercial Property team on 01159 888 777 or email pwood@fraserbrown.com

