

COMMERCIAL BUYING 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.

This is intended to advise a company buying a property.

The Contract Package

The legal process involved in buying or selling a property begins with the Contract package. The first step in any purchase transaction is to write to the Seller's Solicitors to ask for the Contract documentation, which includes the following:

Title Documents

These are either copies of 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.

Sale Contract

The Sale Contract is a formal written agreement between you and the Seller that they will sell and you will buy the property at an agreed price. It is the responsibility of 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 us either to 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 Seller 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. The CPSE1 enquiries raise questions in respect of the property title, including any rights affecting it including rights of access, physical condition, environmental matters, planning and VAT. Not every question will be relevant to any one transaction but a standard form is used and then completed as appropriate. Where the property is being sold subject to an existing

lease, a further CPSE form will be sent to the Seller's solicitors for completion by the Seller in order to obtain further information.

The Seller is under a duty to complete these forms as accurately as possible and you are entitled to rely on the information provided in them. If any reply to a question is inaccurate or misleading, the Seller 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).

Please note that the replies given by sellers are often vague. When we send you these, we would ask that you read them carefully and let us know if you have any particular concerns.

Planning Documents

If the property has been altered or extended in any way, you will want to ensure that the building works were completed in accordance with all relevant Planning Permissions and Building Regulations. Copies of these permissions, and any accompanying warranties and guarantees, are provided to prove that the modifications are both sound and not in contravention of planning laws.

You will also need to be satisfied that the property may be used for the purpose for which you intend. The local search will often reveal the current planning use and if this is not suitable for your requirements, you may need to apply for permission for change of use. We will discuss this with you once we receive the results of the local search.

Checking the Title

Once the Contract package has been received, the Title documents will be examined to ensure the accuracy and extent of property and land being sold, to ensure that the Seller is the owner of the property and has the legal right to sell it, and that there are no defects in the legal title. In law, we call this 'investigating title'.

We will also examine the information provided in the CPSE forms and check any supporting documents supplied. If, during the course of investigating title, there are any matters which are unclear or not satisfactory, these will be raised with the Seller's Solicitors.

The enquiries may be a combination of general questions appropriate to every property, and specific questions about the particular property being acquired. Usually, the enquiries are sent at the start of the transaction and the Seller replies to them through his or her Solicitor. Additional enquiries will often be raised after the making of the initial enquiries, right up to Exchange of Contracts, as further information relating to the property or the transaction comes to light, or further points need to be queried. Again, you are entitled to rely on the accuracy of the

Seller's replies so that you can make an informed decision about whether or not you wish to proceed with the purchase.

You should take cognisance of the fact that the Sale Contract will almost certainly contain a clause whereby you acknowledge that you are entering into the Contract to purchase the property based on your own knowledge and enquiries about the property and *not* in reliance of any statement made by the Seller (except those made in writing by the Seller's Solicitors and contained in the replies to enquiries). It is important, therefore, that if the Seller told you anything during initial negotiations which materially influenced your decision to buy the property, you inform us at the earliest opportunity so that we can confirm the statement in writing; otherwise it cannot be relied upon.

As we will not actually see or inspect the property, we will rely upon you to report to us any unusual features or discrepancies you uncover during the course of your own inspection of the property, so that appropriate enquiries can be raised. When doing so, please pay particular attention to the following:

- discrepancies regarding the boundary lines (by reference to the Title Plan);
- the existence of non-owning occupiers;
- whether the property abuts a river, village green or railway;
- whether the property abuts a road which appears to be a private road;
- evidence of rights of way or other rights enjoyed by neighbours or the public;
- alterations and extensions to the property

If a defect in the Title to the property becomes apparent, the Seller is under a duty to rectify it. 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, or the Seller's Solicitor, can arrange on your behalf.

If a defect in title is not rectified, your Lender (if you are purchasing with the aid of a mortgage) may refuse to lend money on the property unless, and until, the defect is corrected as it will undoubtedly affect both its value and marketability.

Searches

Upon receipt of a plan of the property, it will be necessary for us to put in hand various searches. The term 'property searches' covers a number of different searches offered by Local Councils, Government Agencies, utilities and commercial organisations, the aim of which is to provide you with information about any potential restriction, benefits and conditions which affect the property and, ultimately, your use and enjoyment of it. The main searches which are conducted on a purchase transaction are:

Local Authority Search (approximately £100.00 - £200.00)

Local Councils maintain a large amount of data relating to properties in their area and searches of these records will reveal whether the property is:

- affected by nearby road schemes or parking restrictions;
- the subject of a Compulsory Purchase Order;
- in a conservation area;
- abutting a road adopted by the Council and maintainable at public expense;
- subject to breaches of planning laws;
- in a smokeless zone;
- subject to a Tree Preservation Order; or
- a listed building.

It will also disclose any planning history and details of recent planning applications which may have been granted or refused. Please note that the Local Authority search only relates to the specific property searched and will not give any information relating to adjoining properties or undeveloped land in the area. If you have concerns as to the possibility of development going on nearby or as to the use of neighbouring land, we recommend you contact the Local Authority planning department directly who will be better able to advise you. Please also remember that you are not purchasing a view, and surrounding land can be altered or redeveloped at any time.

Drainage and Water Search (approximately £90.00)

The water utility companies offer a specialist search which will confirm whether:

- surface water and foul water at the property is connected to the public sewer;
- the property is connected to mains water; and
- there are any known sewers or mains drains running through the boundaries of the property.

Environmental Search (approximately £180.00)

Would you please note that you should consider your position as to environmental matters. 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 even though someone else has caused the contamination. This means that once you have purchased the property, responsibility may fall to you. You obviously will wish to avoid this and an Environmental Report assesses any potential environmental risks associated with the property. For this reason, we strongly recommend that you commission an Environmental Report at this stage.

Chancel Repair Liability Search (approximately £15.00)

This search will reveal whether the property is liable to pay a contribution towards the chancel repairs of a pre-reformation local parish church. Such obligations stem from mediaeval times where former rectorial land, previously owned by the church to fund the local rector, had been sold and the new owner took on the repairing obligation attached to that land. This means that any property located within the boundaries of a parish where such liability exists, could be required to pay for a proportion of the costs associated with the upkeep of the chancel.

The rights of the church tithes goes back to 1189 and they affect some 5,200 pre-reformation churches across England and Wales. In an effort to clarify these potentially onerous liabilities, the Government gave the churches until September 2013 to note their right at the Land Registry on the Registers of Title of all the properties concerned. Failure to register may mean that this liability will not be binding after September 2013 and may not be enforceable.

Until then, however, we strongly recommend that every purchaser puts in place a Chancel Repair Indemnity Insurance Policy which alleviates the need to obtain a full Chancel Repair Liability Search and will insure you against the risk of Chancel Repair Liability being enforced against you. The cost of the policy is dependent on various factors and we will give advise you of the amount the insurance policy will cost. Specialist insurance companies offer these policies and although we are not contractually bound to secure the best or cheapest policy for you, we believe that this product will provide you with the cover you need. Unless you advise us to the contrary, we will automatically put the policy on risk on completion and forward the policy document with any deeds or documents post-registration.

Mining Search (approximately £100.00)

The Coal Authority holds and maintains the national coal-mining database and its search report will confirm if the property has been subject to a mining related subsidence claim and/ or is situate on land suffering from ground instability.

Because we have to pay the relevant authorities for the cost of these searches, we cannot order them until such time as we have received a payment on account from you (we usually request around £700.00 at the commencement of a transaction). It can take the relevant authorities up to three weeks to process the information provided in the search results, so it is important, if you would like the transaction to proceed quickly, to let us have the money requested as soon as possible. If speed is not of the essence, you may want us to delay commissioning searches until you have received a satisfactory survey and mortgage offer, but, obviously, this will result in a delay in Completion.

Energy Performance Certificates

A seller of a commercial property is 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, we will need to obtain this from the seller's solicitors before the matter can complete. This will give

you information about the energy efficiency of the property and the accompanying recommendation report will inform you as to how the energy efficiency can be improved.

Valuations & Surveys

It is important, when purchasing a property, that you satisfy yourself as to the state and condition of the property *before* Exchange of Contracts. Broadly speaking, in English law there is no duty on the part of the Seller to disclose defects in the physical condition of the property. Rather, the onus is on the Buyer to discover defects (for example, rising damp, subsidence, drainage defects, woodworm, etc.) by way of survey, inspection and any relevant specialist reports.

Accordingly, it is strongly recommended that you commission a full structural survey, together with any recommended specialist reports, to ensure you are fully versed in the scale and type of repair work which may be required and the likely cost. If in doubt about which type of survey to order, please do obtain expert advice.

You must also ensure that you inspect the property yourself and test as many items as possible (such as the central heating, electrical and water systems). Once Exchange of Contracts has taken place, should any defects then become apparent, it will be too late for you to try and renegotiate the purchase price or to require the Seller to put the defects right. Likewise, if your survey reveals that works will be necessary to the property, you should obtain estimates so that you are fully aware of what it will cost to put the property into a good state.

If you do wish to renegotiate the price with the Seller, you should do this through the Agent (if there is one). However, please remember to advise us of the revised price as we will need to alter the contract documentation and notify the Lender.

Many people mistakenly believe that the valuation carried out by their Mortgage Lender's Surveyor is sufficient. However, a mortgage valuation is just that, a valuation. Other than a brief, rudimentary inspection, it does not offer any useful information regarding the condition of the property and should not be relied upon. Moreover, the valuation will only act as confirmation that the property is worth the sum your Lender is lending, not what you are paying for it.

If the property is leasehold, please ask your Surveyor to advise you not only on the state of repair and condition of the property, but also on the building as a whole. This is because you may be required under the terms of the lease to contribute towards the cost of any major or structural repairs to other parts of the building (including the roof, foundations and walls, etc.) and to the common parts via the service charge provisions in the Lease.

Please note, as a general rule, issues as to the *physical* state and condition of the property are not matters of title and are the remit of your Surveyor, not your Solicitor. We do not generally raise enquiries regarding the structural condition of the property.

Asbestos

Owners of commercial property have a duty to manage asbestos. Asbestos is a highly dangerous substance which used to be used commonly in building works. Owners are expected to assess the asbestos risk at the property and to manage any asbestos found. As part of our standard enquiries we ask for the seller's risk assessment, any report and details of how any asbestos is managed.

Alterations and Development

If it is your intention to make any alterations to the property, either after Completion or in the future, please tell us, as there may be further considerations which need exploring or additional enquiries to raise of the Seller and the Local Authority.

There is also a wealth of legislation now in place with regard to building works of which you should be aware. Most importantly:

Replacement Windows

As from 2002, the installation of replacement windows, roof lights or glazed doors must either have Building Regulating approval or have been carried out by a person registered under the Fenestration Self Assessment Scheme by the Glass and Glazing federation (who will issue a FENSA Certificate confirming compliance with the regulations).

Installation of Central Heating Boilers

As from 2004, the installation of new boilers or water tanks must either have Building Regulating approval or have been installed by a person registered under the OFTEC, HETAS or CORGI Scheme (who will issue a Compliance Certificate confirming observance of the regulations).

Electrical Works

As from 2005, any electrical repair work or alterations will need to comply with the Part P requirements of the Building Regulations and be carried out by NICEIC registered person (who will issue an ELECSA Certificate confirming compliance with the regulations).

Failure to comply with parts of the latest Building Regulations and some Planning regulations is a criminal offence and Local Authorities have the power to require the removal or alteration of work which does not comply. This legislation is also constantly changing and we would strongly advise that, before undertaking any building works (structural or non-structural, internal or external), that you contact the Local Authority to enquire what consents may be necessary; even if your building Contractor says consent is not required. In this way, you remove the risk of subsequent intervention by the Council and it will make it far easier to sell the

property in the future. Wherever possible, ask the Council to confirm their advice in writing.

Also remember that if the property is leasehold, you may only make alterations if you have the prior written consent of the Landlord, who is likely to charge a fee for granting consent. The Landlord may also reserve the right to have the property reinstated at your expense at the end of the lease.

The Mortgage Offer

If you are purchasing the property with the assistance of bank funding, you should not exchange contracts until we have satisfied ourselves that the bank's security requirements have been met. This may mean that certain criteria in the offer of funding have to be met before you are able to exchange.

You are under a duty to inform your Lender of any incentives offered by the Seller, for example, a discount in the sale price if you Exchange Contracts by a certain date, or a contribution towards legal costs or the Stamp Duty.

Please remember, we will be acting not only for you but also for your Lender and will owe a separate and distinct duty to them. If, for instance, the purchase price is renegotiated or the Seller makes a reduction in the purchase price equal to the cost of repairs (called an 'allowance'), we are under a duty to report this information to your Lender. The reason behind this is because the value of their security has altered since the original assessment and they may need to revise their offer. If you instruct us not to reveal such information we will not do so as we are also under a duty not to breach confidentiality. However, it will not be possible for us to continue to act for you in this instance.

We are not qualified to comment on the suitability of any mortgage you arrange, or to give financial advice (although we will be happy to recommend an independent financial adviser should it be required), and you should continue to refer to your Mortgage Lender or Broker in this regard.

Please be aware that if you intend to have tenants at the property after you have bought it, you may be required to obtain the consent of the lender before any lease can be granted.

Deposits Paid Directly

If the property you are buying is being sold through an Agent, they may ask you to pay a deposit to them. You are under no legal obligation to pay this sum, but, if you do, please remember to inform us so that this sum can be taken into account when sending the purchase monies on Completion. Any deposit paid will be returned to you if the purchase does not proceed to Exchange of Contracts.

Under no circumstances should you make a payment direct to the Seller, even if there are no Agents involved. All payments should be made through ourselves to

ensure that you do not unwittingly commit yourself to the purchase or lose your money to an unscrupulous Seller. Likewise, you should not sign any document without first referring to us.

Exchange of Contracts

Once we have completed our enquiries, are in receipt of your mortgage offer (if any) and are satisfied with the results of your 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, you will need to decide on a Completion date. 'Completion' simply means the date on which monies are paid over and ownership of the property transfers to you. Establish notice period for mortgage lender. Completion can also only take place on a weekday.

Once a Completion date has been agreed with the Seller, 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 Seller and the Seller's Solicitors hold the Contract signed by you. This has the effect of creating a legally binding Contractual relationship between yourself and the Seller to buy and sell 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 purchase. Up to this point, either party can walk away without penalty. It is not advisable, therefore, to make any arrangements such as booking contractors to make alterations to the property until contracts have exchanged and a firm completion date is in place.

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. This is for you to agree with your seller, and can be any length of time to suit the parties.

As a financial act of good faith, you will be required to pay a deposit of 10% of the purchase price on Exchange of Contracts, the remainder to be paid on the Completion date. Cleared funds will need to be lodged with us the day before. Please inform us how you intend to provide the funds so that we can advise you of how long clearance will take.

Buildings Insurance

One very important point which you must fully appreciate is that immediately Contracts have been exchanged, all risks in respect of the property will pass to you. This means that in the event of the property suffering any damage after that time, however severe, you will nevertheless be contractually bound to continue with the transaction and proceed to Completion. It is essential, therefore, that you fully insure the property from Exchange of Contracts (unless it is a leasehold property where the

landlord is responsible for buildings insurance), and do not leave it until Completion. Any insurance you arrange must also comply with any Lender's insurance requirements.

Life Policies

It is also your responsibility to ensure that any life policy, endowment policy or other such investment or security is on risk before Exchange of Contracts, and certainly before Completion.

We may require you to send us a copy of the confirmation or cover schedule so that we can report to your Lender that this condition of the mortgage offer has been satisfied, failing which, there may be delay in the release of funds for Completion.

Pre-Completion

There are a number of pre-Completion formalities which need to be observed between Exchange and Completion, the main ones being:

Funds

Between Exchange and Completion, we will write to you with a draft bill and completion statement showing the financial side of your purchase and the amount required from you in order to complete. It is vital we receive the full amount required in cleared funds, to avoid delays in effecting Completion. The Sale Contract will contain a clause whereby you will be liable to pay interest on the balance of purchase monies outstanding if you delay completing the transaction beyond the contracted Completion date. The interest rate specified is usually 4% above the bank base rate. If delay is your fault, you may also be liable to pay damages for reasonably foreseeable additional loss suffered by the Seller. If you fail to complete at all, you stand to lose your 10% deposit. If you have paid less than 10%, then you are immediately liable for the balance.

It is wise to ensure that the amount required for completion is sent to us in advance of the completion date by way of a CHAPS transfer (same day electronic bank transfer). Your Bank may charge a fee for this service. We will inform you of our account details nearer the time. If you are taking a mortgage, we will also request the mortgage monies from your Lender at this time.

Transfer Deed

Exchanging Contracts does not actually transfer legal ownership (title) of the property into your 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 the Seller's name into your name and will be submitted to the Land Registry on Completion, so that the Registers of Title can be changed.

It is our responsibility to draft the Transfer Deed, and to send it to the Seller's solicitors for approval. Once the form of deed has been approved, we will send a copy to you for signature. The Seller signs a copy of the same document.

Final Searches

Immediately before Completion, some last-minute searches are made, which include:

- A Land Registry Search – this will reveal whether any further undisclosed mortgages or charges have been registered against the property since the date of the Office Copy Entries which were provided in the Contract package.
- A Land Charges Search - this search is only required for an individual who is buying with a mortgage and reveals whether there are any entries against the individual's name on the Bankruptcy Register.
- A Company Search – this will ascertain whether the selling company is being wound up, which could affect its ability to sell the property in question. A search of the company's memorandum and articles states whether the company may sell the property in question under its constitution.

Completion

On the day of Completion, we will wire the balance purchase monies (including any additional payment for chattels) to the Seller's solicitors through the electronic banking system.

The Seller's solicitor's bank will notify them as soon as funds hit their account and it is at this point that Completion takes place.

Upon receipt, they will immediately telephone us to inform us that they have the monies. They will then call the Agent (or the Seller) to release the keys, and we will call you.

Post Completion

Immediately following Completion, we will prepare and submit your Stamp Duty Land Tax return and submit it to HM Revenue and Customs on your behalf, together with any payment due. We will need to obtain your approval before the return is submitted and you will be asked to review the form and sign it to confirm that the details of the transaction are correct. If you have purchased the property with the aid of a mortgage, your Lender will write to you at this point to inform you of the amount of your first repayment and when it is due.

Once we are in receipt of the SDLT submission receipt from HM Revenue and Customs, and evidence of discharge of any mortgages on the property (which were in the Seller's name) from the Seller's solicitors, we will proceed to register your ownership of the property at HM Land Registry.

HMRC requires that you pay the stamp duty land tax within 30 days of the completion date. If you do not pay within this deadline, there will be an automatic £100.00 penalty levied. A charge of £200.00 is charged if HMRC does not receive the payment within three months of completion, and charges escalate for late payment subsequent to that. We will usually ensure that we have the full amount required for SDLT from you prior to completion to avoid so that we can handle this on your behalf, thereby avoiding any difficulties. However if you decide not to provide us with the funds required before the completion date please be aware of increased costs to you if you do not comply with HMRC's deadlines.

Once this process has been completed, which can take up to 4 or 5 weeks, we will forward you the up-to-date Office Copy Entries showing your Registered Title, together with any deeds or documents in our possession. If there are any guarantees in existence for works carried out to the property, or indemnity policies put in place on your behalf, these will also be sent to you once registration of your Title at HM Land Registry is complete. Wherever possible, you should contact any relevant companies to make arrangements to have the benefit of guarantees transferred to you.

If you prefer, we can keep your original Title Deeds and documents in our strong room, free of charge, until such time as they are required by you.

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 whether the purchaser requires a mortgage.

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 and advice regarding any of the legal aspects mentioned above please do not hesitate to contact us on 0115 9888 777 or email info@fraserbrown.com

