

MACFARLANES

AN INTRODUCTION TO FREEHOLD/LONG LEASEHOLD RESIDENTIAL PROPERTY ACQUISITION IN ENGLAND

PRIVATE CLIENT

PRELIMINARIES

Loan finance: organise a mortgage offer in principle, if required.

Property search: either through local estate agents (many of whom display details on their website), or via a property finder company.

Offer: make an offer or, if requested by the sellers, submit a sealed bid for the property of your choice. If it is accepted, a binding contract is not created at this stage, although a lock-out or exclusivity agreement may be entered into.

Loan finance: once an offer has been accepted, make a formal mortgage application, if required.

Documenting the deal: the estate agents will prepare a sale memorandum to send to both parties' solicitors.

INSTRUCT SOLICITORS

Identify/inform your solicitor: your solicitor will need to know about the deal, that you wish to go ahead and your preferred timetable.

Papers needed: your solicitor will request:

- ◆ identification documentation from you, as required by the Law Society, if you are not already a client and details of source of funds; and
- ◆ papers from the seller's solicitors, including the draft contract.

DECIDE WHO WILL BUY THE PROPERTY

Identify buyer: unless the property is to be bought straightforwardly in your own name(s), determine early in the transaction which structure will purchase the property.

Trust or corporate entity: if a trust or other entity is to be used, then your solicitor will also need to verify its identity and source of funds.

If a structure is to be created for the purchase, time must be allowed to do this and to check the tax position. Following the changes introduced in 2012 and 2013, corporate ownership of UK residential property will rarely be appropriate. From 21 March 2012, a penal rate of 15 per cent stamp duty land tax will apply where "non-natural persons" (NNP) (other than in certain limited circumstances including where the NNP acts as a nominee) acquire residential property for more than £2m (as opposed to seven per cent if purchased by a non NNP).

Since 1 April 2013 NNPs also have to pay an Annual Tax on Enveloped Dwellings (ATED) which is payable each year. The charges increase annually and range from £15,400 (where the property is valued between £2,000,001 and £5,000,000) to £143,750 (where the property is worth over £20,000,000). CGT may also be payable if you dispose of property that was subject to ATED.

Individuals: if more than one individual is buying the property, you will need to decide whether to buy it by way of "joint ownership" or ownership "in common". This decision is particularly important in the context of estate planning and should be discussed with your solicitor.

PRE CONTRACT "SEARCHES"

Searches needed: your solicitor will carry out a range of enquiries, including with:

- ◆ the local government authority;
- ◆ the water company;
- ◆ the central government Land Registry; and
- ◆ an environmental search company.

Depending on the area, other searches such as Commons Registration or, with the Coal Authority may also be needed.

These searches may take some weeks, depending on the area, although a personal search can be done with some authorities for an increased fee if the timetable is very short.

Survey: you should instruct a member of the Royal Institution of Chartered Surveyors (www.rics.org.uk) to undertake a physical, structural survey of the property. You should discuss the various levels of survey with the surveyor, as some are more in depth than others. If necessary, you may want detailed investigations of, for example, the mechanical and electrical or heating systems: these are not normally part of the standard service. Ask your solicitor for the name of a surveyor, if you need help choosing one.

Planning law issues: your solicitor will need to investigate whether any alterations have been made to the property and, if so, whether these were carried out with planning permission (if required) and building regulations consent.

Historic properties: if the searches reveal that the property is “listed” (as being a building of historic significance) or situated in a “conservation area”, then a stricter regime will govern what you may do at the property. If this is the case, your solicitor will advise you further.

Miscellaneous: if a Tree Preservation Order (TPO) has been made at the property, you will need to gain consent from the local council before carrying out any work to the trees that are subject to the TPO.

PRE-CONTRACT ENQUIRIES/LEASEHOLD ENQUIRIES

Enquiries: your solicitor will also raise a series of enquiries with the seller’s solicitors (for example, have there been any problems with the neighbours and will send you the replies. If you have any particular concerns about the property you should ask your solicitor to raise these.

Among other things, this will reveal whether the property is covered by any guarantees (e.g. for a damp proof course) and which fixtures and fittings will be left at the property by the sellers.

Depending on the outcome of the searches and the survey, further enquiries may be raised. Tell your solicitor if you notice anything unusual, or of concern, in a visit to the property, for instance a possible right of way across the property which has not been disclosed in the papers or evidence of additional people living at the property.

Leasehold: additional enquiries will be raised with the landlord or managing agent of the property e.g. to determine the level of service charge and to check that the terms of the lease have been complied with (for example that no alterations have been carried out that have not been authorised by the landlord).

INVESTIGATION OF TITLE

Does the seller own the property? your solicitor will check that the seller is entitled to sell the property and that the property is as described in the sale particulars. Your solicitor will report on any issues which you should be aware of, such as a right of way across the property, future public development plans or a restriction on how you use the property.

Leasehold: your solicitor will also check that the lease that you will acquire does not contain any onerous terms and will give details of restrictions imposed by it (for example, not to make noise that can be heard in a communal hallway between 11pm and 8am or a prohibition on keeping pet animals). Landlord’s

consent to the sale may also be required and you may be asked to provide satisfactory personal and financial references or even put down a rent deposit or provide a guarantor.

Re-negotiate? if any issues or problems have been identified, it may be appropriate to agree a lower purchase price at this stage.

Insurance? restrictive covenant indemnity insurance may be required if there is a historic covenant attached to the property (for example, not to build an extension without the permission of a named individual, who cannot be traced).

“EXCHANGE” OF CONTRACTS

Becoming obliged to buy: pre-exchange, you will need to:

- ◆ sign the contract in advance or authorise your solicitor to do so;
- ◆ sign the mortgage offer, if a mortgage is required; and
- ◆ give your solicitor cleared funds to pay the deposit (typically 10 per cent of the purchase price).

You should check with your bank when you will need to instruct the transfer of funds in order to put cleared funds into your solicitor’s client bank account by the required date, as the process may take some days.

Once you are satisfied that you wish to become legally bound to purchase the property, the two solicitors will exchange contracts.

Timings: the shortest possible time from the date that the seller’s solicitors provide the paperwork to Exchange is normally two weeks for a simple purchase. Often the process will, unavoidably, take far longer.

Insurance: post-Exchange, you are bound to purchase the property and will, in most circumstances, forfeit the deposit if you do not complete the purchase. The sellers now technically hold the property in trust for you or the entity which is purchasing the property. You may therefore be required to insure the property from the date of Exchange.

Deposit: until completion, the seller’s solicitors will hold the deposit as a “stakeholder” unless the contract says otherwise. This means they cannot release the deposit to their client until the transaction completes unless the seller is going to use this to buy another home in England.

WORKING TOWARDS "COMPLETION"

Sign property transfer document: your solicitor will prepare this. You will need to sign the transfer in advance or authorise your solicitor to do so.

Sign SDLT tax return: your solicitor will prepare this but you are responsible for checking its accuracy. You will also need to sign this.

LAST-MINUTE CHECKS

Raise standard requisitions: your solicitor will check a number of further points, for example, the administrative arrangements for completion with the seller's solicitors.

Pre-completion searches: your solicitor will make some last minute searches to check that the position has not altered since Exchange (for example, that the seller's title has not been changed).

COMPLETION

Funds: pre-Completion, your solicitor will request funds (the remaining 90 per cent of the purchase price) from you or your mortgage bank/finance provider. Again, check with your bank when you will need to instruct the transfer of funds in order to put cleared funds into your solicitor's client bank account in advance of the required date.

The funds will need to cover:

1. the solicitor's fees;
2. disbursements (costs), such as search fees and the Land Registry fee; plus
3. the stamp duty land tax (SDLT) payable.

Completion: this happens between solicitors, over the telephone. Once the funds have been transferred from your solicitor to the seller's solicitors, the property will be yours. The estate agents will be notified. You will be entitled to receive the keys (normally from the estate agents).

Insurance: you will need to have buildings and contents insurance in place from this date, if buildings insurance was not put in place at Exchange.

Leasehold: as a tenant, you will become liable for your share of the building insurance from the completion date.

Local taxes: you will need to notify the local council that you now own the property, so that they can bill you for Council Tax.

Electricity etc: you will also need to take a note of the meter readings at the time of completion and notify service providers (telephone, water, gas, electricity) of the change in ownership.

POST-COMPLETION

Pay the taxes: your solicitor will send the SDLT Tax Return to Her Majesty's Revenue and Customs, together with the tax payment.

Register change of ownership: your solicitor will register you as the owner at the Land Registry and send you copies of the register entries, showing your name entered on the Register.

Leasehold: your solicitor will inform the landlord that the change of ownership has occurred.

CONTACT DETAILS

If you would like further information or specific advice please contact:

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THE DIFFERENCES BETWEEN FREEHOLD AND LEASEHOLD PROPERTY

	FREEHOLD	LEASEHOLD
Extent of your ownership	You own the entire structure of the property, the ground beneath it and a reasonable area of sky above it (subject to any agreements to the contrary affecting the property).	Typically (depending on the terms of the lease) you own the interior plasterwork and floor surfaces. The landlord will own the structure of the building and the "common parts" (e.g. the communal hallway).
Maintenance	You are solely responsible for maintenance (save perhaps for "party" walls, i.e. walls which you share with neighbours).	Typically you will be required to contribute towards a "service charge" to pay for maintenance and possibly a "sinking fund", to cover large items of capital expenditure. The lease is likely to specify when maintenance is carried out and it is common to require the exterior to be repainted every 3 years. However, the lease will also frequently specify maintenance requirements for inside the flat (e.g. that windows must be cleaned monthly).
Buildings insurance	You are solely responsible for arranging buildings insurance. If you have a mortgage, it may be a condition of the mortgage that you have insurance and that you note the finance provider's interest on the policy.	The landlord will arrange the policy, but the buildings insurance costs will be shared between all the leaseholders in the building, in the proportions set out in the lease.
Rent	N/A	"Ground rent" is payable to the landlord, but this is usually minimal. Typically the longer the lease the lower the amount of ground rent. It is common for the ground rent to increase over the period of the lease.
Service charge	N/A	The landlord or their Managing Agent will request a service charge from all lessees, in the proportions laid out in the lease.
Alterations to the property	Subject to building regulations, planning permission (and, in some cases, listed building consent and conservation area consent) you may alter the property as you wish.	In addition to these, the landlord's permission is almost always required and an administrative fee will almost certainly be charged to cover the landlord's expenses of dealing with the consent.
Forfeiture	N/A	If the terms of the lease are breached, the landlord may seek to end the lease early. You would, however, have the right to apply to the Court for relief from forfeiture. In the case of a long lease at a "ground" (or nominal) rent, relief is likely to be granted, in return for the leaseholder remedying the breach and paying all costs.
Length of lease	N/A	A long lease will typically be for a period of 99 or 999 years at the date of grant. As the unexpired period of the lease becomes shorter, the value of the lease falls. The value falls particularly sharply once there are less than 50 years left to run on the lease. It is sometimes possible to extend the length of the lease, for a cost.
Assignment	N/A	Depending on the terms of the lease, you may need the landlord's consent before you can sell the property.

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This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

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