

Commercial Factsheet

Commercial Purchase

Scope of work

A broad outline of the work which we will carry out on your behalf is:-

- Obtaining the draft contract and copies of any relevant deeds for the purchase from the Seller's solicitors.
- Requisitioning all appropriate searches as agreed with you
- Advising you upon the contents of the documents supplied and dealing with any matters which they reveal.
- Obtaining any required information from the Seller's solicitors.
- Liaising with your Accountants and other professional advisors where necessary
- In leasehold matters, applying for references and seeking the Landlord's approval to the transfer of the lease.
- Negotiating amendments to the draft contract for the purchase.
- Agreeing the terms of the Contract for the purchase
- When your buyers are ready and a hand-over date has been agreed making matters legally binding. At this point you will be legally committed to the purchase
- Preparing the final transfer documents.
- In leasehold matters, obtaining the Licence document (giving formal consent to the transfer of the lease) from the Landlord's solicitors and dealing with its approval.
- Agreeing any apportionments with the Seller's solicitors and making all the pre-completion legal arrangements
- Finally completing the matter on your behalf and attending to any post-completion work including the making of a Stamp Duty Land Tax Return, registration of title, and serving all appropriate notices.

Environmental searches

The Problem

Buying property or a business is a big investment decision. In the circumstances you should ensure that before you make your purchase you have as much information as possible to enable you to make an informed decision.

We have all seen sensationalist headlines reporting large scale flooding, subsidence problems, properties affected by landfill gas, possible health risks associated with living near landfill sites, or electricity pylons and a host of other environmental concerns.

The Environmental Protection Act, 1990 and government regulations made under it have placed new risks on property owners and tenants who may be faced with clean up costs associated with contaminated land. Compliance could be costly. We would stress that most properties are unlikely to be subject to contamination but we recommend that appropriate enquiries should be made to attempt to ascertain whether your property might be affected.

All these matters could have significant consequences for the property owner including:

- A reduction in the value of the property
- In extreme cases, the property could be rendered unsaleable
- Health risks
- Structural problems
- Inconvenience
- Frustration and delay
- Additional cost

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Information

Various commercial companies provide environmental reports which give information about the environmental risks associated with a property. Presentation and format of the report structure will vary depending upon the supplier of the report. Normally the report answers a series of standard environmental questions revealing information in distance bands around a point located on the property.

If information is disclosed the report will usually give further details and a quality report will also give contact names and addresses to obtain further information.

It has to be said that you get what you pay for – the cheapest report is not necessarily the best. The overriding requirement should be for accurate quality information.

Insurance

Home environmental insurance liability policies are available. There are differences in the cover and in premiums payable. You should ensure that you select cover that:

- Is from a reputable company
- Covers current and future environmental legislation changes
- Covers liability for injury, sickness or damage caused to other people or other people's property
- Covers the cost of restoring property after clean up
- Is triggered as soon as contamination has been realised
- Covers loss of value

Our Recommendation

If you wish to ensure that you have adequate information and have any concerns about the environmental integrity of the property which you wish to purchase you should obtain an environmental report and you should consider the need for insurance. We must add that where a search is commissioned it may reveal technical data which we as lawyers are unable to interpret and that you may have to seek further advice from a surveyor or other expert.

Please contact us if you wish to discuss this matter further.

Mortgages

Most lenders require us to obtain information regarding the transaction from you and to confirm information that you have already given to the lender. A full mortgage questionnaire will be sent to you once we have received a copy of your mortgage offer. You must complete this, sign it and return it to us once you receive it.

We will not be able to continue to act for you and the lender unless you return the completed and signed form when requested.

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Practical tips on Break Clauses

1. Introduction

It is usual for break clauses to provide that the Tenant must be in compliance with all of the covenants in the Lease for the clause to be effective.

Any breach, however small, will prevent the Tenant from exercising the break and will leave the Tenant with no option but to continue with the lease for the remainder of the term.

It is therefore essential that the Tenant complies fully with the terms of the Lease in order to ensure that the break can be exercised. No assistance can be expected from the Landlord in this respect. The Landlord is not even under an obligation to answer the Tenant's enquiries prior to the break as to whether there are any particular matters which need to be addressed.

2. Practical Steps

- 2.1. Ensure that if the break is to be exercised the terms of the Lease are adhered to. The notice must be in the correct form and served at the correct time.
- 2.2. Plan well in advance of the notice and talk to the Landlord if he is co-operative.
- 2.3. Consider instructing a surveyor to prepare a full schedule of dilapidations and consider discussing with the Landlord to agree a schedule of works.
- 2.4. Negotiate monetary compensation in lieu of works.
- 2.5. Undertake the works if the Landlord will not cooperate and make regular checks thereafter until the break date.
- 2.6. Invite the Landlord to inspect when the works have been done.
- 2.7. If the Landlord will not cooperate on an inspection consider applying to the Court for a declaration that the breaches have been rectified or invoking the arbitration provisions of the Lease.

2.8. Remedy any other breaches and check that all licences given by the Landlord have been complied with.

2.9. Consider a negotiated surrender, particularly if there are breaches which cannot be rectified.

Take legal advice and consider your position carefully. Failure to do so could be costly.

Stamp Duty and Land Tax

1. **STAMP DUTY LAND TAX** replaced Stamp Duty on 1st December 2003. The rates of Tax are currently as follows:

Commercial (non-residential) property:

£0	-	£150,000	Nil
£150,001	-	£250,000	1%
£250,001	-	£500,000	3%
£500,000+	-		4%

The rules relating to Stamp Duty Land Tax on Commercial Leasehold property are different and the calculation is based on the rent payable and the term of the lease. The calculation is complex and varies in each individual case.

In relation to freehold property, the rate of Tax is determined by the value of the property and the Tax is payable at the relevant rate on the whole of the purchase price e.g. purchase price £200,000, tax payable at 1% = £2000.00. In the case of mixed use property e.g. residential and commercial the different rates will be applied to the purchase price relevant to each part of the property used for each purpose.

2. There are various exemptions and reliefs from the Tax payable.
3. We will advise you in each individual case as to whether Tax is payable and the amount but please refer to our terms and conditions for the scope of our work and your obligations in relation to the liability and payment of this Tax.

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Surveys

1 Reasons for a Survey

- 1.1** It is the Buyer's responsibility to check that there are no physical faults in the property being sold. The Buyer will buy subject to any faults that there are. It is therefore advisable to commission a survey before the purchase is made legally binding in order to check that there are no physical faults in the property. Once matters have become legally binding it will be the responsibility of the Buyer to repair any defects in relation to freehold property and the extent of the Buyer's liability in relation to leasehold property will depend upon the Tenant's covenants in the Lease.
- 1.2** A survey should confirm that the value of the property equates to the asking price; point out any physical faults; give the Buyer early warning of any structural problems; bring to the attention of the Buyer and ourselves any possible rights of third parties over the property e.g. rights of way which require further investigation; and indicate any possible boundary problems. Buyers of leasehold property should ensure that the condition of the property does not breach any of the terms and covenants in the lease and may also require their surveyor to draw up a Schedule of Dilapidations which can be attached to the lease, evidencing that the Tenant is not liable to keep the property in any better state of repair than set out in that schedule.
- 1.3** A survey should be arranged by the Buyer as soon as a firm offer has been accepted by the Seller and the survey report obtained and any problems revealed acted upon before the transaction becomes legally binding.

- 1.4** The results of the survey may reveal matters which require further investigation by ourselves; and may contain information which leads the Buyer to negotiate for a reduction in the purchase price.
- 1.5** Any matters revealed in the survey report and requiring further clarification should be discussed with the surveyor who carried out the survey. Whilst we are able to discuss the contents of the survey report with the Buyer it should be borne in mind that as lawyers we do not have the technical skill to interpret any potential physical faults which the report may have revealed.
- 1.6** A valuation alone may be considered to be adequate where a Buyer is purchasing a new property in the course of construction which is covered by the NHBC or similar scheme.

2 The Mortgage Valuation Report

This is undertaken by the Buyer's lender in order to check that the property being purchased provides adequate security for the amount of the loan which has been applied for. The Buyer usually pays for the cost of this report and will normally be provided with a copy of it. However, this report is very limited and will not necessarily reveal sufficient information about the state of the property to allow the Buyer to make a reasoned judgment as to whether or not to proceed with the purchase.

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3 Full Structural Survey

3.1 This type of report can be very expensive – although it should be borne in mind that the expense may well prove to be worthwhile if the report reveals structural defects requiring considerable expenditure to rectify them! It is important in commissioning this type of report to ensure that the surveyor has been fully instructed upon what investigations are required.

3.2 Factors which may determine whether a structural survey is required include:

- The age of the property
- Whether the buyer intends to alter or extend the property
- If the property is not of a conventional construction
- The proximity of the property to features which may cause subsidence or other structural problems e.g. filled ground
- The property is not detached

4 Conclusion

The risk lies with the Buyer who must therefore seriously consider at an early stage whether a survey should be obtained. The Buyer should obtain advice from his surveyor in relation to the type of survey to be carried out and the cost. The Buyer should also tell his surveyor if he is buying leasehold property.

Asbestos

The Control of Asbestos at Work Regulations 2002 came into effect on 21st November 2002 and are enforceable from 21st May 2004. Regulation 4 requires the owners and occupiers of non-domestic buildings to manage the risks from asbestos by:

- Taking reasonable steps to identify asbestos within their premises, the amount and its condition
- Presuming that materials do contain asbestos (e.g. in areas that are not easily accessible) unless there is strong evidence to the contrary
- Making and keeping an up to date record of the location and condition of the asbestos/presumed asbestos
- Undertaking a risk assessment and preparing a plan to manage those risks
- Preparing a policy and procedures plan to manage the risk of materials within the building stating which are to be removed, remain in place, or be repaired
- Undertaking on-going monitoring

Further information can be obtained from the Health and Safety Executive's Asbestos Web Page at www.hse.gov.uk/asbestos

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Disability Discrimination Act 1995

The Disability Discrimination Act 1995 will come into force in October 2004. The act provides that "... where a physical feature makes it impossible or unreasonably difficult for disabled persons to make use of the service provided, then it is the duty of the service provider to take such steps as it is reasonable in all the circumstances of the case for him to have to take in order to:

- Remove the feature
- Alter it so that it no longer takes effect
- Provide a reasonable means of avoiding the feature or
- Provide a reasonable alternative method of making the service in question available to disabled persons"

The duty lies with the service provider, not the property owner. Therefore in the case of leasehold property tenants may be liable.

In practice it could mean removing physical features such as steps and replacing them with a ramp or installing an alternative form of access to the premises and if this were not possible then providing the service in an alternative way e.g. home visits.

Court action can be brought to enforce the obligation. The question of liability will depend upon reasonableness taking into account the steps taken by the service provider to resolve the problem, the cost involved and the extent of disruption to the service.

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