

Buying Residential Property in England and Wales

This fact sheet has been produced specifically for foreign or non-domiciled clients wishing to acquire residential property in England and Wales but notably in London. It is not a substitute for detailed advice but seeks to inform those unfamiliar with the process of buying residential property about the procedures involved.

Finding a Property

Residential property is usually marketed via Estate Agents who act on behalf of the party selling the property concerned ("the Seller"). Properties are placed with Estate Agents who market these via Estate Agent's offices or as is becoming more common, via the Internet (some popular sites bring together properties offered by different agents by grouping them by reference to location, price and size). Particulars of the property will be produced indicating room sizes, location, area, the asking price and often with a plan and an Energy Performance Certificate ("EPC") (Any residential property must be marketed with an EPC).

The asking price is usually the maximum price required but if two or more buyers are interested in the same property, competing bids may raise the price above this. Offers are invited and referred by the Estate Agent to the Seller. If an offer is accepted the Estate Agent will produce Heads of Agreement including details of the Seller as well as the party interested in acquiring the property ("the Buyer"), details of their respective solicitors, local authority and other brief data. Such Heads of Agreement are usually produced "subject to contract" and any conditions upon which the Buyer's offer has been accepted noted for instance valuation and/or survey. It is strongly recommended that a property is fully surveyed prior to exchange of contracts.

For the Buyer who is not resident in England and Wales it is not always possible to be sure that the price offered is either correct or fair and it has become more common in recent years for buyers based abroad to use a sourcing agent retained by them for this purpose and to act as an intermediary liaising with the Seller, the Seller's agent and the Buyer's solicitor in order to ensure that the process proceeds smoothly.

Title

Property in England and Wales is usually held freehold or leasehold. Freehold title means exactly what it says. The Buyer will acquire title from the Seller free of encumbrances save for those noted against the title or revealed by searches and other enquiries made by the Buyer's solicitor. Investigation of title by the Buyer's solicitor seeks to establish the extent to which title is affected.

Leasehold title is limited in length. A new lease may be for any length of term.

In London terms vary between 99 years, 125 years and on occasions 999 years (in addition it should be noted that the remaining term of the lease can be substantially less). Most apartments, flats, or maisonettes (and some houses) are held on leases.

The term will have a commencement date and an expiry date and the lease contains the obligations of the Landlord and the Tenant.

In Central London there are a number of historic estates where properties have been owned for many years by the same Landlord. To “protect” the nature of the estate and the neighbourhood it is not unusual to find that the leases of these properties will include more detailed covenants, obligations and restrictions on the Tenant’s part in relation to alterations, selling or disposing of the lease, repairs and the use to which a property may or may not be put.

It is possible to extend the remaining term of a lease or (usually in conjunction with the other tenants in a building or “block”) to acquire the freehold title. There are statutory procedures to be complied with and these should not be undertaken without professional advice being obtained. However, on occasions the tenants in a block of apartments, flats or maisonettes have already bought their freehold title and each may have a share in a company owning this or in smaller blocks this may be held in the names of the leaseholders themselves.

Occasionally commonhold title arises but this is rare. Commonhold is effectively the mid-way point between freehold and leasehold. It is not limited in time but there are obligations between the owners of the individual units in the building similar to those which exist as between Landlord and Tenant in a leasehold title.

The Process

Once Heads of Agreement, (which are not contractually binding) are sent to the Seller’s and Buyer’s solicitors, the Buyer’s solicitor will call for the title information from the Seller’s solicitor, submit searches and raise appropriate enquiries. The Buyer’s solicitor will also deal with approval of the draft contract, advise the Buyer in relation to any ancillary details and, if required to do so, consider what vehicle (if any) should be used to hold the property being acquired and where appropriate the structure above it.

The Buyer’s solicitor, via searches and enquiries, will check to see if there are any adverse issues affecting the property and, for example, that no one is proposing to compulsorily acquire the property.

Once the investigation of title is completed and any funding arrangements made (and it is clear that any conditions of any funding are capable of being satisfied by the completion date), the Seller and the Buyer's solicitors will exchange contracts and fix a completion date. The typical time for an exchange to take place is between 2 – 6 weeks depending upon the surrounding circumstances, the availability of searches and the length of the "chain". On exchange of contracts a deposit of between 5% and 10% of the purchase price is usually paid by the Buyer's solicitors to the Seller's solicitors from funds provided to the Buyer's solicitor by the Buyer. This money will be held as stakeholder by the Seller's solicitors and on occasions this will be used to fund a selling parties' deposit in the event that the Seller is buying a property in a related transaction.

The Chain

The chain is largely unique to England and Wales and has developed over many years allowing Sellers and Buyers to exchange and complete contracts for the sale and purchase of properties on the same date without the necessity for bridging finance or having to move into temporary, rented or hotel accommodation pending completion of a related purchase. Chains vary in length but it is not unusual for half-a-dozen or more transactions to be completed on the same date.

Completion

This is where the balance of the purchase money (or rather the bulk of it) is paid to the Seller's solicitor. Completion will not take place until that money is received by the Seller's solicitors into its client account. The nature of the purchase process means that solicitors will have to provide each other with undertakings which are enforceable as between solicitors in the event they are breached.

What Liabilities may arise in relation to the Property

On a freehold property annual charges will be made for Council Tax (the local rates payable to the local authority which contributes to education, fire services, police etc. maintenance of road and street lighting as well as more general amenities within each local community e.g. sports centres, parks and other public facilities.) Council Tax can be paid in one amount or by ten equal monthly payments commencing in April and finishing in January of each financial year. The financial year for each local authority commences on 1st April each year. The owner of the property will also pay water rates covering the cost of water/sewage. Water rates can be paid in one amount or by eight equal monthly payments commencing in May and finishing in December of each financial year. Dependent upon the age and nature of the property and whether or not it contains a meter, charges will be based either on the rateable value of the property or in the case of a water meter according to the level of consumption.

Whether a property has a water meter or not will be identified by searches made with the appropriate water company prior to exchange of contracts. In addition the owner will be responsible for the cost of gas, electricity and telecommunications as well as any additional charges which may arise by reference to the property's location (e.g. an estate rent charge, contribution to private amenities e.g. a park which is familiar within the London area (or via any other utilities which the Buyer requires as a result of the purchase or which it wishes to make use of itself after completion).

In the case of a leasehold property similar charges will be made to those set out above and in addition it is common for a lease to also require payment to the Landlord of annual ground rent (payable monthly, quarterly, half-yearly or annually) which will vary from property to property (depending on the size, nature and location of the property) as well as a service charge. If the property is to be rented out as an investment the tenant will usually be responsible for those charges apart from any service charge levied if the property is held leasehold.

Service Charge

A service charge is a sum levied by the freeholder of apartments, flats, or maisonettes (or occasionally in the case of freehold on a private estate) towards the upkeep maintenance and running costs of the block in which the apartment, flat or maisonette is situated. Service charges will cover managing agent's fees, the cost of external redecoration and repair to the structure, maintenance and cleaning of common parts e.g. shared staircases or lifts, buildings and public liability insurance, the maintenance of grounds and gardens, fences, driveways, parking areas or parking bays and other facilities used or capable of being used by the occupiers. As part of the pre-exchange investigation of title the Buyer's solicitor should ask for the last three years service charge accounts and enquire of the managing agents whether or not any substantial expenditure is anticipated over the course of the next few years, as well as asking for the budget for the current service charge year to anticipate what the cost of the service charge will be for the Buyer.

Service charges can vary substantially from block to block dependent upon the nature and extent of the service charge costs within the lease. It should be noted that a cheap service charge is not necessarily good as this may indicate a lack of maintenance and repair whereas an expensive service charge may be exactly that – expensive without good reason. An analysis of the costs and reference to a valuer will indicate what is or is not appropriate.

Sinking Fund

Many blocks have sinking funds which seek to build up funds to cover the cost of more expensive items of maintenance, such as roof repairs or repainting the exterior of the block. An indication of the extent or nature of any sinking fund will be established (if any) by review of the service charge accounts.

Management Companies

Often the freehold is owned by a company and the various flat owners each have a share in this or alternatively a management company in which the flat owners have a share takes on the responsibility for maintaining and repairing the building and shared facilities.

Insurance

In the case of a freehold property the Buyer will need to insure the property. A valuation of the property is important in order to establish the level of insurance required and the extent of the insured risks should be carefully checked and reviewed. It is not uncommon for Buyers to obtain separate cover against terrorism insurance as such cover may not be available on a general buildings insurance policy. It is recommended that the Buyer insure the property from exchange of contracts as risk usually passes to the Buyer at the point of exchange.

In the case of a leasehold property the Landlord will usually insure and a proportion of the insurance charged to each owner of each apartment, flat or maisonette dependent upon the size which that unit bears in relation to the overall size of the block of in which it forms part. This may take the form of a separate charge or be included in the service charge depending upon the terms of the lease and the particular practice employed by the managing agents or established by the Landlord itself.

Where the freehold title is held by the owners of the apartments, flats or maisonettes then the leaseholders themselves will need to ensure that sufficient insurance is in place and that the premium is paid.

Contents Insurance

Whether a property is held freehold or on a lease it will be for each individual owner of the relevant interest in the property to insure its contents. It is not uncommon in the case of a freehold for the owner to insure its buildings insurance and contents insurance on the same policy. However, this is unlikely in the case of a lease, as the Landlord will separately insure the building and the tenant of the lease will need to insure its contents itself.

What other costs might be involved in acquiring the Property

Once completion has taken place aside from the regular items identified above the Buyer will need to pay Stamp Duty Land Tax ("SDLT") a duty based upon the value of the interest acquired.

Where a new lease is granted an additional charge may also be made depending upon the amount of ground rent to be paid and the length of the term.

SDLT must be paid within 30 days of completion and the SDLT Transaction Return filed with Her Majesty's Revenue and Customs ("HMRC"). If this is not done then a penalty will be payable.

Land Registration

Subsequent to SDLT being paid the property should be registered at the Land Registry. If it is not registered then the Buyer will not obtain good title to the property acquired. In the case of property acquired with the assistance of finance from a Bank or Building Society the Buyer's solicitors will give an undertaking to the Bank or Building Society to pay the required SDLT and to register title at the Land Registry. Sometimes the Bank or Building Society will instruct separate solicitors in which case additional fees will arise.

What happens when Land Registration is concluded

Once land registration is concluded title is held electronically at the Land Registry and copies provided to the Buyer by the Buyer's solicitors. Any documents which are important to the title of the property e.g. a mortgage or the lease in the case of a leasehold or any supplemental documents to the lease will be placed with a copy of the title and returned to the Bank or Building Society as its security or held by the Buyer's solicitors in its vault or sent to whoever else the Buyer may wish to hold these documents.

SDLT Arrangements

It has become more common with the increase in SDLT in recent years for Buyers to consider various schemes to acquire property to mitigate the cost of SDLT. Over the course of the last few years HMRC has narrowed the availability of such schemes and with effect from the 5th April 2010 any scheme purporting to mitigate or reduce SDLT is reportable to HMRC and liable to challenge. Although such schemes are at first sight attractive they should be carefully understood and the risks associated with them appreciated. If a scheme is not successful then HMRC may call for the full amount of the unpaid SDLT to be paid and the Buyer may find itself with a structure that makes the property difficult to dispose of.

If a mortgage is required to acquire the property then in certain circumstances the Bank or Building Society providing the mortgage is often reluctant to provide finance if the Buyer wishes to mitigate or reduce SDLT. The risks associated with this should be fully appreciated before entering into a contract to acquire a property.

Structures

Anyone not usually resident in the United Kingdom or not domiciled but resident in the United Kingdom should give consideration to the holding structure and this should be sought at an early stage in the purchase process and preferably prior to an offer being made.

Trust Structures

We regularly advise the Buyers of residential property on the available holding structures and in particular trust structures.

Renting a Property

Where a property is acquired for the intention of renting it is recommended that this be undertaken via a reputable managing agent. This can be arranged via the Buyer's solicitor who can keep track of this process on behalf of the Buyer. The liabilities associated with the property such as Council Tax, water rates etc will usually be paid by the tenant.

Non Resident Landlord Scheme

Property rental income is subject to tax in the United Kingdom even if the vehicle which holds it is not resident in the UK. A tenant who pays rent to a non UK resident Landlord is under a duty to deduct Basic Rate Income Tax (currently 20%) from the rents paid.

If the property is held through an offshore company or other vehicle or trust and is let to a tenant the vehicle should be registered under the Non Resident Landlord regime to ensure that no part of the rental income is withheld as a payment towards any potential tax liability. The advantage of this is that the offshore company will receive the rent gross and can use the whole of the rent (and not the rent less withholding tax) to pay interest on any borrowings to assist with its cash flow.

Taxes

Please refer to our briefing note entitled "UK Taxes on UK Residential Property" from February 2015, which can be found in the Resources section of our website, for an outline of these.

For further information or to discuss any of the issues raised in this briefing note, please contact a member of the Rooks Rider Solicitors' team:



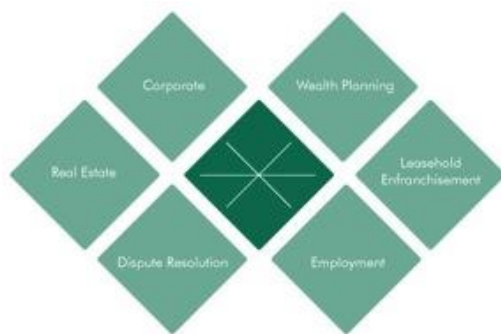
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