



Buying property in England and Wales : A quick guide for overseas buyers

BRIEFING

Introduction

We act for foreign companies who are interested in setting up business in this country, such as overseas retailers wishing to expand their business into England and Wales.

There are many peculiarities to our legal system for the purchase of property (this may be referred to as conveyancing). This Briefing will attempt to explain the process.

This Briefing relates to England and Wales only as the system is different in both Scotland and Northern Ireland.

Identity of Client

The first step that any solicitor will take is to establish the identity of the client and to ensure that the person who is providing instructions has the client's authority to do so.

There are rules which a solicitor must comply with. These rules are designed to serve as a precaution against mortgage fraud and money laundering. So please do not be offended if your solicitor asks you for proof of identity. This may take the form of a passport and a utility bill, which must be no more than 3 months old. Sometimes a solicitor will require more detailed identification information.

The solicitor may also enquire as to the source of any funding involved.

Buyer to be a Foreign Company

It is possible for a foreign company to buy a property in England and Wales, but there may be good strategic reasons to set up a company to be the purchaser. You should take advice on this both in your own jurisdiction and here before proceeding with the purchase.

Freehold and Leasehold

The majority of retail shops and indeed office premises are likely to be acquired as a leasehold interest.

A lease is a contract between the landlord and the tenant and will set out the terms on which the tenant may occupy the premises.

A freehold is the best interest that one can acquire in that the buyer will become the owner of the premises outright and has no obligation to pay rent or answer to any other superior owner.

Heads of Terms

You will normally be represented by an agent who will negotiate the terms of your acquisition.

These terms will be set out in a document known as heads of terms and will include details such as the price, length of lease term, any requirements that the landlord may have with regard to a



guarantee or rent deposit, details of works to be carried out and by whom, responsibility for insurance, rent review, the permitted user of the premises, level of service charge (if any), the right to dispose of the premises (alienation), the right to carry out alterations and other basic terms.

Contract/Agreement for Lease

Once heads of terms have been agreed, the seller's solicitor will send your solicitor a draft contract/agreement. If the acquisition is of leasehold premises, this will be called an agreement for lease and will attach the draft form of lease to it. The contract will set out any conditions that the contract is subject to. For example, the contract may be subject to works being completed, the securing of planning permission or, if you wish to sell alcohol, a premises licence.

Survey

Your solicitor will advise you to conduct a professional survey of the property to establish its condition. It is important that you are satisfied with the condition of the property prior to exchange of contracts as you will have no right of action against your seller (or landlord) in respect of items of disrepair you discover later. There are various types of survey available and your solicitor or surveyor will be able to advise on the appropriate type of survey for the particular property.

Asbestos

The seller of the property should have available a report setting out whether there is any asbestos

within the property. Your solicitor will request a copy of this report and will send a copy to you or report on it prior to exchange of contracts.

Searches and Enquiries

Your solicitor will carry out certain searches against the property to establish whether there are any matters that appear on public registers that may impact on your decision to proceed with the purchase.

Your solicitor will also investigate the title to the property to establish whether there are any restrictions on how the property may be used or if there are any charges which may result in an expense should you acquire the property.

Report

Prior to exchange of contracts, you should be sent a report, setting out the main terms of the lease, and highlighting any matters of concern that have been revealed from the investigation of title searches and enquiries.

You must read this report carefully and if any of the matters raised in the report do cause concern, you must inform your solicitor before contracts are exchanged.

Deposit

Where you are paying a premium (usually in the case of a freehold purchase and sometimes where you are purchasing an existing lease) then on exchange of contracts you will normally be expected to pay a deposit of 10% of the purchase



price. Your solicitor will need cleared funds for this 10% prior to exchange of contracts. If you decide to withdraw from the transaction contrary to the terms of the contract, you will lose this deposit.

Insurance

You will normally be responsible for the property from the exchange of contracts. Your solicitor will advise you to take out a suitable buildings insurance policy. This must be effective from exchange of contracts as you will be obliged to complete the purchase even if the property is damaged. You may need to arrange other types of insurance for the date on which you take possession.

Signing the Contract

The contract is not normally a deed and can therefore be signed by the buyer (or a company officer in the case of a company) or by another person (perhaps your solicitor) provided that person is authorised to do so by the company.

Exchange of Contracts

This is the point at which you become legally obliged to proceed with the transaction.

Your solicitor will ask for your authority to exchange contracts. Once contracts have been exchanged (the act of exchange is carried out on the telephone by the solicitors for seller and buyer) you are committed to the purchase and can only withdraw from the transaction if there are specific conditions set out in the contract that allow you to do so, for example, if the landlord is obliged to

carry out works and fails to do so or where the consent of a third party is required such as a landlord.

Pre-completion

There may be a legal charge/mortgage created by the seller against the property. The seller's solicitor will provide an undertaking to remove this on completion. There is a standard procedure to deal with this.

You will receive a completion statement setting out the monies which will be required in order to complete the transaction. You must ensure that your solicitor holds cleared funds for the day of completion and preferably the day before.

The ownership of the property is transferred by way of a deed.

If you are acquiring in the name of a UK company, the deed must be signed by two directors or a director and the company secretary.

You may also appoint a person to act as your attorney so that that person may sign on your behalf. If you wish to appoint an attorney do inform your solicitor at an early stage so that the appropriate documents can be prepared and signed.

If you are acquiring the premises in the name of a foreign company, a certificate will be required from a lawyer in your own jurisdiction, confirming that the company has the power and authority to enter into the transaction. You may also be asked to provide an opinion letter from a lawyer in your own



jurisdiction confirming that the deed has been lawfully executed in accordance with the laws of your own jurisdiction.

Completion

There is not normally a formal completion meeting. You should arrange for someone (perhaps your agent or surveyor) to inspect the property on the morning of completion to ensure that it is in the condition that you expect (ie: any works have been completed in accordance with the contract). You then provide authority to your solicitor to complete the transaction and completion will take place over the telephone.

Post-completion

On completion of the transaction you may be liable for Stamp Duty Land Tax ("SDLT"). SDLT is payable on the purchase of a property where the amount paid is above a certain threshold.

On the purchase of a freehold, the SDLT is chargeable on the purchase price. The rate payable in respect of commercial property as follows:-

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|------------------------|----|
| • Up to £150,000 | 0% |
| • £150,000 to £250,000 | 1% |
| • £250,000 to £500,000 | 3% |
| • Over £500,000 | 4% |

Different rates apply in respect of residential property.

On completion of a new lease, SDLT is chargeable on the net present value. In essence,

the net present value of a transaction is the value of the total rent over the life of the lease. SDLT is payable at a rate of 1% of the value that exceeds £150,000.

For example, SDLT of £8,479 is payable on completion of a 10 year lease at a rent of £100,000 per annum (plus VAT).

For a 10 year lease at a rent of £200,000 per annum (plus VAT), SDLT of £18,459 is payable.

Finally if the property is a freehold or a lease for more than seven years, your solicitor will register your company as the new owner at the Land Registry. A fee will be payable based on the value of the purchase. The maximum fee is £920.

Conclusion

We hope that this note helps with some of the basic procedures involved in the purchase of a property in the UK. If you have any questions please do contact me.

Robert Botkai
Partner : Winckworth Sherwood Solicitors

DT: 020 7593 5004
E: rbotkai@wslaw.co.uk