

## **BUYING OR LEASING A COMMERCIAL PROPERTY**

### **THE LEGAL PROCESS – INITIAL INSTRUCTIONS TO COMPLETION**

Buying or leasing commercial premises is often a large financial and long term commitment. It is always advisable to instruct a Solicitor specialising in commercial property transactions to deal with the complex process on your behalf. If you are buying a property with the assistance of a loan from a bank it is essential.

A Solicitor can guide you through the various procedural steps, investigations and the searches. These are carried out to ensure that you only make a commitment to proceed with your purchase/lease of the property once you are satisfied that there is nothing which could potentially interfere with your proposed use and interest in the property.

You should bear in mind from the outset that whilst a Solicitor will aim to progress transactions of this nature as quickly as possible, timescales are dependant upon how quickly the other party is able to produce relevant documentation and replies to enquiries raised on your behalf.

#### **NOTE FOR TENANTS – WHY INSTRUCT A SOLICITOR?**

If you wish to enter into a lease, be aware that if you try to deal with all the documentation yourself you could be stuck with a legally binding agreement that does not meet your needs but also causes potential problems for your business. By instructing a Solicitor to deal with the paperwork you will avoid pitfalls arising down the line. A solicitor will:

- Guide you through the technical rules and regulations (and various loopholes) affecting this area of the law and provide jargon-free advice
- Can negotiate the lease terms to safeguard your rights and identify any hazards

Please refer to our “Guide to Entering into a Commercial Lease” for more details.

#### **INITIAL INSTRUCTIONS TO YOUR SOLICITOR – WHAT NEXT?**

It is important that you feel comfortable talking through any concerns or queries you have with your solicitor and it is advisable to speak to them about these before you make a commitment to proceed. At Crombie Wilkinson we are happy to have an initial discussion without any obligation for you to instruct us to act on your behalf.

Once you have instructed a Solicitor to act on your behalf in buying or leasing a property there are certain procedures they will need to comply with to open their file and act on your behalf. These include:

- You supplying evidence of your identity (to comply with money laundering regulations) & confirming whether you are buying in your individual name or in a company name;
- Your confirmation as to where the funds for your purchase will be coming from (e.g. savings, from a family member or a loan from a bank)
- Providing monies on account to cover the cost of pre contract searches



The Solicitor will have to write to you outlining their terms and conditions of business including details as to their charges. In commercial property transactions an estimate of costs rather than a fixed quote is usually supplied and the Solicitor will normally charge for their time spent on a purchase/lease by reference to an hourly charging rate. However in certain circumstances the Solicitor may be willing to provide a fixed quote for their costs, so it is always worth discussing this with them first.

## **INVESTIGATION OF TITLE**

### **Checking Seller's rights of ownership**

It is of fundamental importance for the Solicitor to examine all the documentary evidence available in relation to the Seller's ownership ("legal title") of the property. This is to check that the Seller is able to sell the property/create a lease relating to it and that there are no defects in the legal title which could adversely affect your proposed rights and interest in the property whether as a Buyer/Tenant. For example, there could be something in the legal title which prohibits/restricts the use of the property which could prevent you from using the property for your business purposes.

If problems are established with the legal title during the course of these initial investigations, it is often possible to find solutions examples include:

- asking the Seller to arrange indemnity insurance to cover the risk of a claim being made against you for using the property for purposes which the legal title prohibits
- obtaining a formal right of way for the benefit of the legal title if only informal arrangements currently exist

Sometimes the information collated by the Solicitor during these investigations may lead you to conclude that the property is not suitable for your purposes and you will be able to withdraw from the transaction before you make a legally binding commitment to proceed.

### **Pre Contract Enquiries**

Your Solicitor will also at the start of the transaction raise various enquiries with the Seller's Solicitor to gather as much information about the Property.

Usually the Commercial Property Standard Enquiries ("CPSE's") are raised for purchases and leases. These are a suite of documents endorsed by the British Property Federation. These enquiries are extensive and cover a wide range of issues such as:

#### Planning Matters

The various enquiries relating to planning matters will help to establish the planning position relating to the property (in conjunction with certain searches – see below). You must check the planning position to ensure your proposed use of the property is lawful. The fact that a Seller currently uses the

property for a certain business use or a landlord will allow you to use the property for your intended business purpose, does not in itself mean that planning permission for that use is in place. You may need to consider an application for change of use.

In addition, most alterations and works done to the property should be approved by Building Control and Building Regulations Certificate should have been issued and the CPSEs are designed to obtain full information from the Seller on these matters.

#### Compliance with other laws

The CPSEs will reveal what steps have been taken by the Seller to comply with various statutory provisions and laws affecting the property.

The Solicitor can advise you on the implications for you if any non compliance by the Seller of the relevant laws is revealed.

#### Matters affecting ownership

- including any formal or informal rights with adjoining land
- disputes or issues arising with neighbouring land
- any rights of occupation for any other person under a lease or informal occupation agreement

Such matters may not be apparent from examination of the legal title.

#### **Pre Contract Searches**

There are various searches which your Solicitor will recommend are carried out at an early stage the results of which could influence your decision to buy or lease the property. These include:

##### Local Land Charges Search

- Reveals any conditions which may be attached to planning permissions relating to the property
- Any planning enforcement orders which may exist

##### Local Authority Search

- Reveals important information in relation to the Property being searched and its immediate surroundings
- Whether the road on which the property fronts is “adopted” i.e. maintained at public expense or private

- Details of any planning consents applied for granted or refused including the permitted use of the property
- Whether the property is a listed building or in a conservation area
- Building regulations applied for and granted
- Proposed road schemes

#### Drainage & Water Search

- Confirms whether the property is connected to a mains water supply
- Indicates whether foul and surface water drains into a public sewer
- Will establish whether the property is served by a private sewerage system
- Reveals whether there is a consent to discharge trade effluent

#### Environmental Search

It is advisable to obtain a report assessing environmental factors which may affect the property i.e. contamination, flooding and subsidence on the land where the property is situated. A Lender if you are funding the purchase with a loan will insist on such a report. It is also important if you are thinking of changing the current use of the property or wish to redevelop the site.

An occupier or an owner of a legal interest in contaminated land can be asked to pay for the clean up of any contamination of that land or property even though they did not cause the pollution and this can be a very expensive liability depending on the type and level of contamination.

There are relevant searches which might apply to the property such as Coal Authority Search regarding mining activity in the area. Your Solicitor will recommend which other searches are relevant depending on the location of the property.

#### Chancel Repairs Check

A check can be initiated to establish whether the property lies within a parish which carries a risk of liability to contribute towards the cost of repairs to the chancel of the local church. Recent case law has highlighted the potential levels of financial risk associated with chancel repair liability. Any liability can have a serious impact on the property's title, value and marketability. More detailed searches can be carried out and it is possible to arrange insurance cover if a potential risk is identified.

### **NEGOTIATING THE CONTRACTUAL DOCUMENTS**

Having collated the information revealed in replies to enquiries, investigating the legal title and considered the search results your solicitor will be able to negotiate with the Seller's Solicitor in

respect of the wording of the documentation necessary to transfer the property to you/create a new lease or the transfer an existing lease to you.

Most purchases are dealt with by a Sale Agreement or Contract and a Transfer document and if you are entering into a mortgage there will be a Mortgage Deed to sign.

Your Solicitor will be able to negotiate the contract terms and incorporate conditions which the Seller must fulfil as appropriate. For example they may be able to limit your responsibility for certain defects in relation to the property or insist that the Seller obtains an indemnity insurance policy to cover a risk identified.

In relation to a new lease, there may be an Agreement for Lease placing an obligation upon the Owner/Landlord to carry out works to the property before you complete the Lease or stating that the completion of the lease is conditional upon you first obtaining planning consent for change of use for the property.

A lease document itself is a lengthy and complex document (often over 40 pages long!) and it can often take some time to negotiate the wording of the lease to suit your requirements.

#### **REPORT ON TITLE/LEASE & CERTIFICATE OF TITLE**

Your Solicitor will usually produce to you a report summarising the results of their investigations and enquiries to explain any problem areas identified and advising you of the contents of the proposed documentation (“Report on Title” for a purchase or a “Report on Lease” for a lease).

If they are also acting for your Lender and dealing with a mortgage to be taken over the property, the Solicitor will report to the Lender any problems or advise the Lender that all the documentation is in order and requesting the mortgage advance to proceed (often known as a “Certificate of Title”).

The Solicitor will either arrange to meet with you to go through all the documents that you need to sign, or will send these to you with instructions as to how the documents should be signed. Usually an independent person will be required to act as a witness to your signature and if you are having a mortgage on the property a Solicitor will be required to witness your signature.

When you and the Seller are ready to proceed and all the funding for the purchase is in place it is usual to have an “exchange of contracts” and to pay a deposit (usually 10% of the purchase price). This is the point where you are legally bound to proceed with your purchase. Sometimes there will be an exchange of contracts at the same time as completion, or there may be a short interval between exchange and completion and becoming the legal owner of the property.

In the case of new leases, a contract is often not required (although please refer to the above) and you will complete without an exchange of contracts.

The Solicitor will carry out certain final searches before completion of the purchase/lease.



## POST COMPLETION FORMALITIES

After completion has taken place there are two main procedural steps which the solicitor is likely to have to deal with on your behalf relating to tax and Land Registry requirements.

### Stamp Duty Land Tax (“SDLT”)

SDLT is payable on your purchase and not the physical document and the amount payable is calculated from the information provided on a completed Land Transaction Return (“LTR”). The Solicitor will prepare the LTR for your approval and will advise you of the amount payable which you will pay to them before completion. They will also ask to sign the LTR before exchange of contracts. The LTR must be submitted to HMRC within 30 days of completion otherwise penalties become payable.

SDLT can also be payable on a new lease, not just on a purchase and an LTR has to be submitted whether any SDLT is actually payable if the lease is for 7 years or more. SDLT on your lease is calculated with reference to any price paid for the lease (“premium”) and a formula which takes into account the annual rent payable and the length of the lease. Your Solicitor will carry out the calculation for you. The longer the lease and the higher the rent the more likely it is that SDLT will be payable.

### Registration at the Land Registry

Once you have bought the property it is necessary to register your ownership at the Land Registry and the Solicitor will deal with this registration process on your behalf.

Not all new leases or the purchase of an existing lease will trigger the need for registration at the Land Registry, but it is compulsory to register a lease which is for more than 7 years or has more than 7 years of the term left to run (if it is not already registered). If the lease is for less than 7 years, steps will be taken to apply to the Land Registry to note the rights in your lease against the Landlord’s title (if it is registered).

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This document does not constitute legal advice in its own right. Always seek personal advice direct from a Solicitor before you take any action.



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