Global Corporate Real Estate Guide - England and Wales

Acquisition of Real Property

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# What are the usual documents involved in such transactions?

The first document in any real estate transaction is normally a sale and purchase agreement between the buyer and the seller.

Such agreements are in a broadly standard format and will contain all commercial terms agreed between the parties. In addition, the agreement will incorporate certain standard conditions that have been developed over many decades and are nationally recognized.

The sale and purchase agreement will contain any appropriate additional conditions and will also include appropriate indemnities and warranties.

However, it should be noted that the general principle in UK real estate transactions is that of caveat emptor (buyer beware) so that, broadly speaking, it is for the purchaser to investigate the seller’s title to the property and raise appropriate enquiries of the seller. In replying to such enquiries, the seller must be careful not to make any misrepresentations since this could lead to a claim for damages should any statement made by the seller be either deliberately or negligently untrue.

Accordingly, a purchaser is always recommended to undertake its own full due diligence exercise including a structural survey, an environmental survey and all appropriate searches of governmental and public authorities.

In relation to sale and purchase agreements relating to leasehold land, in addition to the above matters, such agreements will often be expressed to be conditional upon obtaining an appropriate license from the landlord for the assignment of the lease and, possibly, a license for any alterations that the purchaser may wish to undertake.

# What are the warranties given by a seller to a buyer?

The general principle in UK real estate transactions is a caveat emptor so that in a traditional asset sale, warranties and representations are relatively limited.

However, if the sale is structured as a sale of the shares in the property-owning vehicle, then more extensive warranties and representations are given to reflect the fact that it is a sale of a company rather than the underlying real estate asset. In share sales in particular, the UK has seen a trend towards the use of Warranty & Indemnity (W&I) insurance. W&I policies are designed to enable a seller to limit its contingent liability whilst providing a buyer with additional comfort in the event of a claim being made after completion.

# When is the sale legally binding?

The parties are legally bound as soon as the sale and purchase agreement is dated and exchanged. Until that point, either party is entitled to withdraw from the transaction without penalty.

# When is title transferred?

Usually, the sale and purchase agreement will stipulate a completion or closing date when legal title is to be transferred. However, from the point of exchange of contracts, the seller holds the legal estate in trust for the purchaser who, from that point, is the beneficial owner.

However, it should be noted that when dealing with registered land, it is only once formal registration of the transfer has been completed that the purchaser’s title is legally complete.

Consequently, there is often a “registration gap”, being the time lapse between the date of completion of the transfer of the legal title to the purchaser and the date of registration at the Land Registry. In the vast majority of cases, this is not problematic but in certain circumstances (such as the service of a notice on the registered proprietor by a third party who is unaware of the pending or completed sale), it can cause issues.

# What are the costs usually shouldered by the parties?

The seller usually meets its own legal costs and the costs of the selling agent.

The buyer usually pays for the following:

Buyer’s agent’s or adviser’s fees

Buyer’s legal costs

Due diligence costs for surveys, assessments, reports, etc.

Search costs of statutory and government authorities

Land registration fees (rate ranges from GBP 20 to GBP 1,105)

VAT

Generally, the sale of a property will be subject to VAT at the standard rate (20%) if the land is subject to an option to tax made by the vendor or the property comprises “a civil engineering work” or is the freehold of a new commercial building

A transaction that satisfies the rules that apply to the transfer of a going concern is not subject to VAT. On the other hand, the first sale of a newly constructed residential building will be zero-rated for VAT purposes

If a mortgage is involved, a buyer will also pay the mortgagee’s legal fees and, if the buyer is a UK incorporated entity, registration fees at Companies House

Stamp Duty Land Tax (SDLT)

SDLT ranges from 0–15%, as follows:

Residential Property

Acquisition of freehold or existing lease

**Freehold Purchase Price or Lease Premium and their SDLT rate**

Up to GBP 250,000 -- Zero
The next GBP 675,000 (the portion from GBP 250,001 to GBP 925,000) -- 5%
The next GBP 575,000 (the portion from GBP 925,001 to GBP 1.5 million) -- 10%
The remaining amount (the portion above GBP 1.5 million) -- 12%

An SDLT discount (relief) is available for first-time buyers of properties costing GBP 625,000 or less, such that no SDLT is payable up to GBP 425,000, and 5% SDLT payable on the portion from GBP 425,001 to GBP 625,000.

Where a purchase results in the purchaser (including the purchaser’s spouse) owning two or more residential properties worldwide, an additional 3% surcharge is applied on top of the SDLT rates set out above (unless the property being purchased is replacing the purchaser’s main residence which is being sold). -- +3%.

Where the purchaser has not been a UK resident for at least 183 days in the 12 months preceding purchase, an additional 2% SDLT surcharge will usually be payable - +2%.

Where the purchaser is a “non-natural person” (e.g., a company, a partnership with at least one corporate partner or a unit trust (though trustees and bona fide property development businesses may be excluded from the 15% rate if certain conditions are met)) and the chargeable consideration is over GBP 500,000, a flat SDLT rate of 15% is calculated on the entire purchase cost.

Acquisition of new lease

Where a new residential lease is granted, a purchaser must pay SDLT on both:

 the lease premium applying the rates above; and

the “net present value” (NPV), being the value of the rents payable over the first five years of the lease. Where the NPV exceeds the GBP 250,000 threshold, SDLT at a flat rate of 1% is payable on the excess amount - 1%

Non-Residential and Mixed Use Property

Acquisition of freehold or existing lease

**Purchase Price and its SDLT rate**

Up to GBP 150,000 -- Zero
The next GBP 100,000 (the portion from GBP 150,001 to GBP 250,000) -- 2%
The remaining balance over GBP 250,000 -- 5%

Acquisition of new lease

Where a new non-residential or mixed use leasehold is granted, a purchaser must pay SDLT on both:

the lease premium applying the rates above; and

the “net present value,” being the value of the rents payable over the first five years of the lease, applying the rates below.

**Net Present Value of Rent and its SDLT rate**

Up to GBP 150,000 -- Zero
The next GBP 4.5 million (the portion from GBP 150,001 to GBP 5 million) -- 1%
Over GBP 5 million -- 2%

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