

Commercial Real Estate

Correct at time of publication,
March 2009

Obtain what you expect

The main advantage of the English system for the purchase or lease of real estate is the very thorough investigation of title and of many other important aspects relating to the property that is undertaken by your lawyer to protect your interests. This is to ensure that the purchaser or tenant obtains what it expects without any detrimental surprises.

Most freehold and many leasehold titles are guaranteed by the State under the centralised transparent Land Registry system.

Title insurance plays no part in the English system.

For these reasons the processes involved can be both detailed and fairly protracted but the upside is that a purchaser or tenant obtains a high degree of protection.

Estate agents and surveyors

Invariably a prospective purchaser or tenant will seek the services of a commercial real estate broker (known in England as an estate agent) or a qualified commercial surveyor to assist in the search for a suitable property whether for office, IT, retail, hospitality, hotel, factory, warehouse or investment use.

It is important to be aware that the agent or surveyor, unless you have retained him on a finder's fee basis at the start, will be acting for the seller or the landlord as the case may be and not for the prospective purchaser or tenant. Therefore any advice the agent/surveyor gives you, no matter how helpful, may not necessarily be in the interests of the prospective purchaser or tenant.

Freehold or leasehold

A property is either freehold in which case the owner holds the property outright or leasehold when the tenant takes a lease from the owner at a rent spread over a fixed or periodic term.

Legal processes and enquiries

Before or after you have located your preferred property whether for purchase or lease we can assist you through the negotiations including those for the contract or lease document to ensure that you obtain the best terms feasible. We would raise numerous enquiries on your behalf especially in relation to statutory compliance. For instance we would check that the property can be operated in accordance with the authorised use prescribed by the relevant local governmental authority and that there would be no unreasonable burdensome fire precautions obligations.

Leases

In England, other than for short term lettings, commercial leases are long documents containing numerous terms to be negotiated between the landlord and the prospective tenant. The tenant invariably has the burden of keeping the property in good repair and decoration so it is important that at the end of the lease term the tenant does not find itself saddled with heavy financial liabilities, called dilapidations, which it had not expected. This can be mitigated by a professional survey of the property and negotiation of appropriate provisions in the lease before the lease is signed. Service charges are another area that merits special attention.

Disclaimer:

This note does not contain a full statement of the law and it does not constitute legal advice. Please seek legal advice if you have any questions about the information set out above.