

## **PROPERTY PURCHASES – THIS IS WHAT WE DO**

We anticipate that our SIPP client profile will become fairly heavy on commercial property, and that fills us with joy! This note briefly describes the processes we go through, and why.

Firstly the basics. In all we do we are seeking to achieve the certainty that:

- The investment is allowable from an HMRC point of view
- The property is insured by the Trustees, with the tenant reimbursing the premium
- Standing orders are set up to receive rent, and for any outgoings e.g. ground rents
- Similarly, standing orders are set up to make repayments, if any, to the lenders
- Arrangements are made to reclaim any VAT on the purchase price, and pay it on rents
- Both costs and income are shared by the purchasing members in the agreed proportions
- The title is properly transferred of to the Trustees i.e. the members concerned, and Liberty

## **FIRST STAGE – LOOKING AT THE INFORMATION**

(1) Let's start with **Property Questionnaire**, into which we've put quite a lot of thought.

What's happening – a full, partial, single or joint purchase, or an "in kind" contribution or transfer?

What type of property – industrial, commercial etc; is there any residential element?

**Is there VAT?** This needs treating like the best china.

If the price is subject to VAT, then our solicitor needs to know if the property is already registered. If not, VAT could be due on rents if there is a sitting tenant and it is in VAT-speak, a 'going concern'. We register each property individually, and in order to reclaim the VAT on the purchase price we also need to complete an "Option to Tax".

**Is there any connection between the tenant and the SIPP member(s)?**

Whilst 'own firm' tenants in some ways make life easier, we have to be certain that the terms of the purchase and future lease are totally commercial. The slightest whiff of a price or rent out of line with the survey raises the unlovely spectre of 'unauthorised payments' and ferocious tax penalties.

**Is there is to be any borrowing?** This won't necessarily involve all purchasing members

The Declaration on the Property Questionnaire covers some important areas, in particular:

- **Opening a joint account** if there is more than one SIPP purchaser
- **Authorising Liberty to appoint a solicitor.** Of all issues surrounding property this is our Number One. At present we have one solicitor in England and one in Scotland, with whom we work like clockwork. We have worked with other solicitors and some have been excellent, but often it has led to tears. For this reason, however draconian it may seem, we reserve the right to appoint our own solicitor in addition to the client's choice
- **Appointing a Manager.** The form briefly describes the main duties – collecting rent and ensuring the trustees are reimbursed for whatever insurance premiums they pay

- (2) **Funding:** We need to check whether the proposed purchase is viable. For this we use the **Total property cost Calculator** on our own website, to see whether existing funds plus the maximum that can be borrowed will cover the likely costs including fees, Stamp Duty and, needless to say, VAT.
- Quite often this points to a need for extra contributions. If the shortfall is, say, £10,000, this could be paid as an employer contribution or, if there isn't a screamingly urgent need to complete and we can wait 5-6 weeks for the tax relief to come in, a member's contribution of £8000 could be paid instead.

We also need:

**A survey:** This is often provided on behalf of the lender, though it mightn't be in our ideal format. It needs to cover Market Value, Replacement Value and Rental Value. We also check the age of the survey. Between 3 and 6 months we ask if there have been changes. Anything older is too old.

**An environmental report:** This is a desktop report we always obtain once the survey is received, which highlights any hazards, ancient and modern, likely to impinge on the property

## **SECOND STAGE – INITIAL CONTACTS WITH SOLICITOR AND OTHERS**

- (1) **If we are happy with all the information we instruct our solicitor**, sending a copy of the Questionnaire, our letter to the lenders if any, and copies of all our information.
- Of special importance is ensuring that both the liability of both Liberty and the member(s) is limited to the assets of the SIPP(s) in all documents including the lease. We also ask the solicitor to thoroughly check the VAT situation and advise what action we should take.
  - The solicitor, with the help of the survey and environmental report, will also check for potential hazards, whether external such as possible flooding, or hazardous materials internally like asbestos. If necessary he will check whether there is an Asbestos Management Plan in place. This won't be a problem with properties built after 1999.
  - He will also check whether anything could adversely affect the title or usage, such as obscure restrictions or, for instance, the need to obtain consents from a superior landlord
  - In time there may be additional work in connection with the Energy Performance of Buildings Directive, but the requirements have yet to be spelt out
- (2) **We instruct the lenders** if appropriate, with similar proviso's about limiting the liability. We will also give an indication of the current fund value, to show that the proposed loan is within the 50% of funds maximum
- (3) **We write to the main member** contact giving a full explanation of what's being done. This will act as a checklist for both members and Liberty
- (4) At the same time we issue a **Property Management Agreement** for the member(s) to sign. Another important duty of the Manager is to look for another tenant if the current one defaults or leaves. The Manager must also make it clear to the tenant that the trustees' insurance only covers buildings, loss of rent and liability, and not contents etc
- (5) **We arrange insurance** for the items above, normally effective from the Completion Date. The premium needs to be reimbursed by the tenant as otherwise we have a thoroughly unwelcome Unauthorised Payment situation (a missing payment can, rather oddly, be deemed an Unauthorised Payment) on our hands

- (6) For a joint purchase we will send the main member a **Declaration of Trust and Option Agreement** to complete. The D of T sets up a joint arrangement, separate from the individual SIPP's. This is necessary for VAT in particular but also to enable the setting up of a joint account. The Option Agreement spells out what will happen if a member for any reason ceases to participate, and gives the other members "First refusal" to buy his share
- (7) **We set up a joint bank account** if appropriate and arrange for the members to transfer their respective shares from their individual SIPPs in anticipation of completion
- (8) on completion several **Standing Orders** will need to start, particularly for a joint purchase:
  - From the joint account to the individual SIPPs for each share of rent net of VAT, if any
  - From the joint account to HMRC for VAT on rents, if applicable
  - From the individual SIPPs to the lenders for loan repayments
- (9) **We complete a VAT registration** form and an Option to Tax form and pass to the member(s) for signature and return, **if and when the solicitor confirms that it's necessary.**

### **THIRD STAGE - WHEN DOCUMENTS COME IN**

- (1) In due course we'll receive the **Lease** from the solicitor and a **Standard Security** and loan agreement from the lender. Our solicitor will have checked the wordings particularly with regard to limited liability but we will read through them as well. Once satisfied we will pass them to the member(s) for signature and return: **we always sign things last**
- (2) Similarly we will add our signatures to the Property Management Agreement and, for a joint purchase, the Declaration of Trust and Option Agreement and issue certified copies
- (3) Once we receive the **Completion Statement** from the solicitor we will arrange payment from the individual SIPP or joint account, whichever
- (4) The solicitor will probably send some further documents to do with **Stamp Duty Land Tax** and **Property Registration**. These may follow shortly after completion but the costs will have been allowed for in the Completion Statement

### **FINAL STAGE**

- (1) **We reclaim whatever VAT has been paid** on the purchase price and on receipt, which might be several weeks later, we distribute the payments to the SIPPs in the agreed shares
- (2) Ultimately we will receive a Land certificate or equivalent, confirming the transfer of title

Putting things in a list makes everything look so harmless that it's worth noting the importance of certain items and stressing that without them the handover can not take place and the tenant can't move into the property.

Whilst the purchasing process may glide smoothly to towards completion, The Ceremony of the Keys can only take place when we have the Property Management Agreement, the Declaration of Trust and Option Agreement (if it's a joint purchase), the insurance premium reimbursed by the tenant and the necessary Standing Orders in place.

This outlines what we do for a basic property purchase of transfer of title. There may be further processes, both at the purchase stage and ongoing, if for instance the property is being developed or repaired. The emphasis is also on UK properties, but the world is a SIPP owner's oyster and property investments in other countries are increasingly popular. Liberty are especially well versed in French property!