

Residential Property in the UK

An Overview for Buyers



Mishcon de Reya

It's business. But it's personal.

There are numerous opportunities in the United Kingdom (UK) property market. Investors, of course, need trusted professional advisers who understand the complexities of the UK residential property market and can help to create and extract value.

This brochure is intended as an overview of the purchase process for residential property in England including legal procedures.

Our Residential Real Estate Group is a team of legal experts specialising in prime UK residential property transactions — high value purchases and sales, letting, bank financing and restructuring.



Step One: Finding the right property

Types of ownership

Property in England and Wales is either freehold or leasehold.

Freehold: Both the building and the land, including the soil below and air space above, are included in the title. Houses are usually freehold (but, in London, not exclusively). Freehold title lasts forever and is a form of outright ownership.

Leasehold: Only the building is included in the title, and not the land. A leasehold title is granted by the owner of the land (usually the freeholder) for a specific period of time, usually between 99 and 999 years. Flats/apartments are always leasehold. Houses on the Central London estates (such as the Grosvenor or Cadogan Estates) may also be leasehold.

Share of freehold: You may find apartments advertised "with share of freehold". This means that, in addition to owning the leasehold of their apartments, the tenants collectively own the freehold of the building in which the apartments are located. Each tenant will have a vote in the management of the building and may have the ability to extend their lease. You cannot own a freehold flat/apartment.

Considerations for Leasehold Properties

The length of the lease of the property is reflected in the price; longer leases are usually more valuable. The lease will set out any restrictions affecting the use of the property and include provisions for contributions towards communal expenditure (a service charge), such as the maintenance of the common parts and structure of the building and the provision of any services such as a lift and a caretaker.

An owner of a long lease is entitled to extend the length of the lease for a further 90 years upon payment of a premium calculated in accordance with a statutory formula. In addition, a group of tenants may have the right collectively to take over the management of their building or to buy the freehold of the building so that they manage and run it themselves. Where this happens, the building is usually purchased by a company set up by the tenants in which each participating tenant has a share.

In addition to a service charge, an annual ground rent may be payable. This is usually a relatively nominal sum but can be substantial on some of the larger London estates. This sum may be subject to review.

Planning and Development

In the UK, property development is subject to strict control. Rights enjoyed by neighbouring owners may also impact upon the ability to develop or extend existing buildings. Most development work, including erecting or altering an existing building or changing the use of the property, will need planning permission. An application for permission must be made to the local planning authority. Each authority has its own policies on granting consents for works.

In addition, certain buildings of historic or architectural importance may be "listed". These are subject to additional controls imposed by legislation. Permission is required for any works (even very minor ones), both external and internal, that might alter the character of the building.

Further, some areas are designated conservation areas, which are areas that display particular character. The demolition of buildings and the removal of any trees in a conservation area require specific consent, even if they would not in other areas.

As well as obtaining planning permission for building works, you may also need to ensure that any alterations comply with building regulations. These regulations set standards for design and construction of buildings and address safety issues such as means of escape in case of fire. Building regulation consent is also required to move bathrooms and kitchens which require new drainage in other areas of a building.

Step Two: Buying the property

Ownership Structure

You will need to decide the best way to own the property in your particular circumstances. It can be purchased:

- in your sole name;
- in joint names (for example with a spouse or other members of your family); or
- by using a company or trust.

Prior to the budget in 2012, purchasers who did not live in the UK and who intended to buy property as an investment often found it advantageous for tax reasons to acquire the property through an offshore company.

However, since 2013, higher value residential properties owned by companies have been subject to the Annual Tax on Enveloped Dwellings (ATED). Company-owned properties are also subject to punitive rates of Stamp Duty Land Tax (see below). Although there are some reliefs available, this means that holding a residential property in company ownership is often no longer attractive. We can advise on the best structure for you.

Up to four individual owners can be named as legal owners of the property, although the legal owners may hold on trust for additional owners and/or for themselves. Minors (those under 18) are not entitled to be legal owners of the property but may be beneficial owners under a form of trust.

Exchange of contracts

The transaction falls into two parts — before and after exchange of contracts. In English law, neither party is bound to proceed with the sale and purchase until contracts have been exchanged, even if the terms of the transaction have been agreed between buyer and seller. Before exchanging contracts on a purchase you must satisfy yourself as to:

- the soundness of the building (by having a building survey carried out)
- the title to the property (which your solicitor will investigate)
- your financing arrangements (by way of a mortgage offer if this is not a cash purchase).

Your solicitor will report to you on the legal title to the property and the results of various searches which are carried out. This includes checking that the property benefits from all necessary rights and is not subject to any restrictions or other matters which might affect your decision to purchase the property. This could include matters such as legal issues, restrictions on development or environmental concerns which could affect the property. Once you are satisfied and ready to proceed, contracts are exchanged and a 10% deposit is usually paid by the buyer as a sign of good faith, although this sum can be negotiated.

At the time of exchange of contracts, a date is agreed for completion which is when you pay over the balance of the purchase price and receive the keys to the property.

When negotiating for a property in the UK, remember that the estate agents are acting for the seller. Many buyers in Central London now find it necessary to employ a property finder to identify a property and negotiate on their behalf as there is still much competition in the Central London market for good properties.

Taxes and fees

Please see our separate tax guide for more information.

Buyers are required to pay Stamp Duty Land Tax (SDLT) on a sliding scale depending on the purchase price (SDLT is also payable when taking a short term let. In that case it is based on the rent due under the agreement).

Any property purchased for more than £500,000 by a "non-natural" entity such as a company, whether onshore or offshore, is required to pay SDLT at a minimum rate of 15% of the purchase price unless certain "business exemptions" apply.

The way in which you are taxed in connection with the property will depend on whether you purchase for your own use, to hold as an investment property or to develop and sell. Whether or not you are resident in the UK for tax purposes or own other property can also affect the rate paid. In addition to SDLT, taxes you will need to consider are: Income tax; Capital Gains Tax; Inheritance Tax; and the Annual Tax on Enveloped Dwellings.

Land Registry fees for registration of your ownership of the property are also payable in accordance with a scale according to the price. Any property over £1 million incurs the maximum fee of £910, although in most cases this can be reduced to £455 by using electronic registration.

As well as seeking tax advice, you should also consider creating or updating your will in light of the changes to your UK property portfolio.

Immigration and Residency

If you are not a citizen of the UK or an EEA National, you and any dependants travelling with you will require entry clearance to visit. Should you wish to acquire a more permanent status in the UK there are various categories under which you may qualify for residency, including:

- investor
- sole trader
- retired person
- highly skilled migrant

Our immigration department can provide further advice and assistance should you need it.

For advice please contact:



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Disclaimer:

This is a basic summary of a complex area of law and taxation. It is not to be taken as legal advice. Before acting or omitting to act in relation to your UK tax position, you should always take specialist tax advice.

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