

# JOELSON WILSON

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## BUYING ENGLISH RESIDENTIAL PROPERTY FOR INVESTMENT



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## A) The first steps

### 1) Seeing the agents

Your first step in selecting a property to buy will normally be to visit a firm of 'estate agents' (the expression 'real estate agent' is not English usage), who usually deal with residential property.

The agent, you should understand, is generally acting for the vendor (the seller) of the property being sold or the lessor (the landlord) where it is being let. **His prime duty is to his client, who pays his fee** (commission). Having said that, agents have legal and professional duties not to mislead applicants as to the physical or legal features of the property they advertise. Before a property is offered on the market, a Home Information Pack (HIP) must be available, containing certain prescribed information about the property, including an Energy Proficiency Certificate (EPC).

It is possible to employ an agent to find suitable properties. You will be paying his fees for that work, unless you take a property already on his books, so the exact arrangements and fees must be made clear from the start.

At a later stage, you will want to employ an agent to manage the property for you. Not all agents include a letting agency in their services, so you want to choose your firm of agents carefully (preferably, they should be members of the Association of Residential Management Agents).

### 2) The choice of property

The first choice to make will be between **freehold** and **leasehold** properties.

- a) **Freehold property** is land or buildings which you own outright. In some countries it is not popular to buy freehold property. However, land in England is freely bought and sold, so that property bought with sound advice will normally be easy to dispose of when the time comes, certainly no more difficult than premises held on lease. Also, freehold owners will be free, subject to planning laws (and any restrictive covenants which may affect the property), to do what

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they like with their building, whereas in leasehold premises the landlords (there may be more than one and sometimes several, which inevitably causes delay) have control over many aspects, e.g. how the property is used, what alterations may be made and who may occupy it.

- b) All flats (apartments) and some houses in England and Wales are **leasehold**. The term for which they are let will vary, but flats which are to be bought and sold will usually be for 99 years or longer. Generally speaking, a term of more than 60 years is acceptable to lenders. Obviously, you will want to be certain that you will have the freedom to let the property.

Once a property has been chosen and terms agreed, the agent will prepare '**Particulars of Sale**'. These are **not intended to be binding** on the parties and are invariably headed 'Subject to Contract'. They will record the details of the parties, the price or rent to be paid, fixtures and fittings to be included, who pays the costs and other relevant facts, and possibly the estimated date for occupation, although it is difficult to guess how long the transaction will take.

The parties then instruct their lawyers to complete the deal.

### **3) Seeing the lawyers**

You should be aware that it is not accepted practice for agents (or their clients or banks or other lending institutions) to stipulate which solicitors, should be used, nor should a solicitor act for both parties where one is not an existing client. You are free to decide who will represent you.

If you or your company are new clients of the solicitors, they will by law have to check certain details **about your identity** (unless you have already been 'verified' by another source, such as a bank) and this should not cause you offence. It is now standard procedure in most countries which have adopted international rules to counter money-laundering.

We will at our first meeting explain our terms and conditions and the work which we will carry out. As soon as possible we will give you an estimate of the cost of carrying out the transaction for you, including the disbursements which you will have to pay, such as registration fees.

## **B) Doing the job**

### **1) All transactions**

Whether you are buying or leasing, there are certain steps we will take in any transaction. These are:-

- a) **Searches** – A list of enquiries is sent to the local council, including questions about (i) planning (the authorised use of the property) (ii) highways (iii) matters relating to health and compliance with statutes and (iv) certain types of notice affecting the property. Separate searches are made of the water company responsible for drainage and the supply of water; a provider of environmental searches; and a ‘chancel check’, relating to possible liabilities to contribute to chancel repairs for a local church. Unless such searches have been made available with the HIP, we lodge searches, study the replies and report on any points of concern.
- b) **Preliminary Enquiries** – These are questions about the property which are sent to the solicitors acting for the seller or landlord. They should reveal information about boundaries, claims by or disputes with third parties, use of the property, services and environmental matters. Again we report on the answers given.
- c) **Title** – We check the right of the seller or landlord to sell or lease the property and make sure that all charges over the property are discharged and all necessary consents are obtained.
- d) **Special searches** – It may be necessary in certain regions or with some types of property to make particular enquiries, for example about mining or mineral workings, tenants in occupation or special licences or permits.
- e) **Surveys** – You should almost always have a survey (structural appraisal) of the property carried out and we can advise you on any queries arising. In the case of newly-built properties, where guarantees should be provided; mostly these will be arranged through an insurance company or the National House-Building Council. In special cases environmental studies of the land should be arranged also.

## **2) Freehold purchase**

We will:-

- a) approve the **agreement for the sale and purchase** ('the contract') and give you a full report on the property and the terms of the contract before you sign it. We then collect from you the 'deposit', which is usually 10% of the price. Under legal rules, we need to have cleared funds from you in our bank before paying the deposit to the seller's solicitors;
- b) **check your mortgage offer**, if you are obtaining a loan, and make sure that all the lender's requirements can be met or conditions satisfied. If you intend to let the property you must notify the lender, or you may be in breach of their mortgage conditions;
- c) **exchange the contract** with the seller, at which stage you generally become committed to buy the property on a specified date ('the completion date'), unless there are pre-conditions to be satisfied or the house has to be constructed satisfactorily;
- d) collect from you the rest of the money for completion (including Stamp Duty Land Tax), Land Registry fees and costs, then, after making final title searches, **complete the purchase** and arrange for you to have access;
- e) lodge a Stamp Duty Land Tax return, pay the tax due and arrange for you to be **registered as owner of the property at the Land Registry**.

## **3) Government charges**

- a) Stamp Duty Land Tax is chargeable on all purchases of freeholds and leases. There is a scale in respect of residential properties commencing at 1% for prices above £175,000 (until 31 December 2009) up to 4% for prices above £500,000.
- b) Land Registry fees are relatively low. For example, the fee to register a property worth £500,000 is £280, while for a property worth £2,000,000 the rate is £920 (the maximum).

## **4) Taking a lease**

### **a) The form of the Lease**

Every firm of solicitors has its own favourite form of lease. Some are more acceptable than others. Often there will be wording which is either inappropriate, unfair to the tenant or simply wrong. It is our job to ensure that your lease is fair and suited to your needs wherever possible.

If you are buying a lease of a flat, there will first be an exchange of contracts, as for a freehold property. If you are obtaining a mortgage, the lender's requirements will usually be more stringent than in the case of a freehold property.

### **b) Completion**

Once all consents are in place, we will ask you to sign (or 'execute') the Lease as a deed and sign the Stamp Duty Land Tax (SDLT) return form. We will collect from you the costs, SDLT and Land Registry fees and **complete the Lease**.

If you plan any **alterations** (see below) to the property, it is wise to have your proposals approved before you take up the lease.

## **5) Special rules for blocks of flats**

If you are thinking of buying a building containing several flats, special considerations apply. Depending on the proportion of tenants who are 'sitting tenants' (on short leases) or who own their flats on long leases, a landlord selling the building will have to offer the freehold interest to the tenants. In such circumstances, you will require specialist advice both when buying and selling.

## **C) Owning the Property**

### **1) Outgoings**

No special taxes are charged on overseas companies or individuals in respect of the ownership of property in England (but see the Shelley Stock Hutter memorandum herewith).

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As owner of a freehold or long leasehold property you will normally only be required to pay **Council tax** to the local authority or municipality. Every property is in a tax band (A to H) and the amount of tax payable will depend on the particular council's level of precept for the year in question.

A flat owner (and some freehold owners in estate developments) will normally also pay **service charges**. We will advise you when describing the Lease (or the freehold title) how these charges are calculated and collected, obtain an estimate of the amount likely to be payable in the relevant year and possibly try to have the amount 'capped' – limited to a certain level.

## **2) Leases – Alterations**

We will advise you when reporting on the lease about the restrictions which it contains on carrying out alterations to your premises. Often, but not always, internal alterations and additions are allowed, but normally you must first show drawings of your proposals to the landlord and get his written consent. **Every lease is different**, so you must check before you start any such work.

## **3) Planning permission**

In most districts the local council (the London Borough in Greater London) is the planning authority. This means that firstly it has a duty to prepare overall plans for land uses within the district. Secondly it has responsibility under the Town & Country Planning Acts (TCPA) for the control of development within its council area.

So far as development control is concerned, it will be necessary for you to make an application to the council for planning permission if you intend to carry out certain types of activity ('development') at your premises.

**Operations** – permission is required for building or other operations on land, other than work exempted under TCPA or by an order made by the planning authority itself.

If you own a property which is a 'listed building' (of special architectural or historic interest) or in a Conservation Area (an area designated as being of particular character), you will also have to apply for Listed Building Consent.

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You will realise therefore that specialist advice is going to be necessary, not only on the application, but also on the decision when received, as it might be a refusal or a permission which is subject to unacceptable conditions. You will then want to decide whether to lodge an appeal.

## **CONCLUSION**

Even though 'Particulars of Sale' are not intended to be binding, you may later feel obliged to accept terms unfavourable to you although, at the time, you did not appreciate their effect on you. Whichever type of property you are hoping to acquire, the sooner you approach your legal advisers, the better.

At the same time you should consider your tax position and consult your accountant or other financial adviser.

## **Need to know more?**

**Ask us. For information/advice on property issues, please contact:**

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**This document is not intended to be a comprehensive review of all developments in the law or practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions.**

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