



Buying a residential property in

England and Wales

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Buying a residential property in England and Wales

Buying property in England and Wales should be relatively straightforward and we hope the information in this document is of interest, but in every case you must make your own independent inquiries and take your own independent professional advice. We would always recommend that you instruct the services of a reputable agent, surveyor and solicitor. In particular, the Information does not seek to provide or replace legal advice, which you should obtain.

The information prepared for us by Nicholas Vaughan and Tim George from Withers LLP, has been compiled. It is provided strictly on the basis that you cannot rely upon it and neither we nor they (nor any of our or their members, consultants, 'partners' or employees) will have any responsibility or liability in relation to the accuracy or completeness or otherwise of the Information or the reasonableness of any assumption made or any other information made available in this connection.



Freehold, Leasehold and Commonhold properties

What is a Freehold property?

The majority of residential properties in England and Wales are freehold. As the owner of a freehold property:

- You own both the property and the land on which the property stands
- You are responsible for its maintenance and repair
- You can do what you wish within the property as long as this is in accordance with legal requirements

If the property is Listed or lies within a Conservation Area there will be limitations on the works you can undertake to the property. Historic England is a body designated to oversee all Listed Buildings, or those of a special architectural interest. Look at their website for more information on Listed Buildings and Conservation Areas

www.historicengland.org.uk

What is a Leasehold property?

If the property is leasehold you will be buying a property for a set period of time only. Most apartments in England and Wales are leasehold. Some houses are also leasehold.

- Unlike a freehold property you will not own the ground upon which the property stands, only the apartment or house for a number of years;
- There will be a document called a 'lease' which outlines the rights and obligations of the parties (generally referred to as landlord/lessor and tenant/lessee)
- Most leases when initially granted are for approximately 99 years but can also be 125 or 999 years; the length may be extended by agreement with the freeholder at a specified cost or in accordance with current legislation
- Most leasehold properties will have a ground rent which is payable to the freeholder or landlord
- There will also be service charges payable for services provided to the apartments and the communal areas
- The lease should outline how the service charge is worked out and how it is allocated between other owners; it is important to confirm all of these costs before committing to a leasehold property
- Some finance companies insist that the leasehold property being bought has a minimum of 80 years remaining although this varies from lender to lender. Your solicitor will check the lenders requirements
- Once the set period in the lease comes to an end, unless extended, the ownership of property goes back to the freeholder.

What is a Commonhold property?

Commonhold property was introduced in 2004 as a new way to own an apartment in a building. Each apartment is a freehold rather than leasehold interest. The building is owned by all apartment owners who share the management of the building and common areas.

The Legal Process of buying property in the United Kingdom

Although freehold, leasehold and commonhold properties are completely different types of ownership, the steps required are similar. There are a few additional requirements for leasehold and commonhold properties.

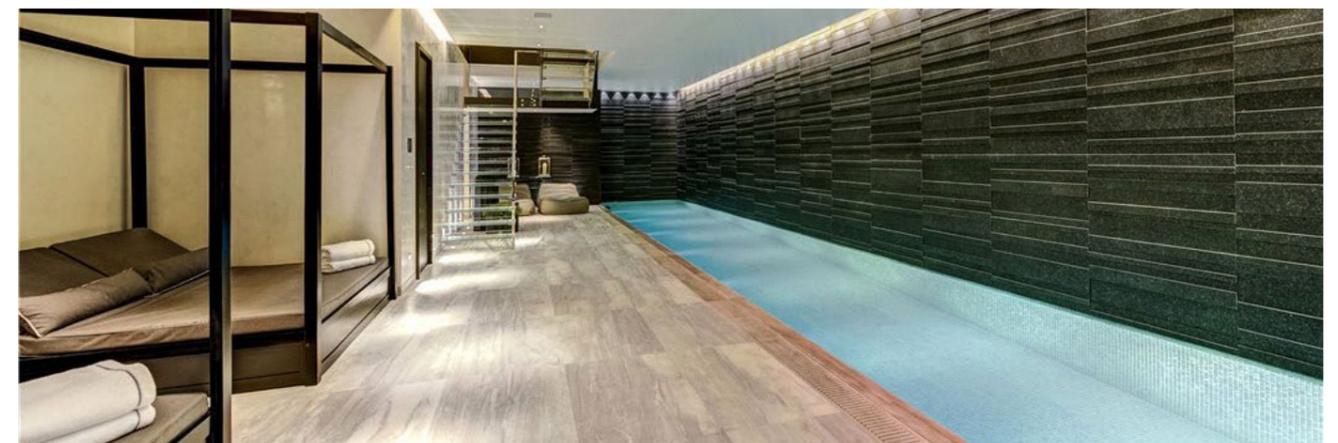
1. The buyer normally views the property through the estate agents and puts forward an offer.
2. The seller, through the estate agent, may counter the offer triggering negotiations. Once a price is agreed a Memorandum of Sale is prepared by the estate agents.
3. The buyer instructs a solicitor to act on his/her behalf to conclude the purchase of the property.

Money laundering regulations

4. The seller's solicitor prepares a sale pack and sends it to the buyer's solicitor.
5. The buyer's solicitor checks the title to the property and carries out the usual searches to provide essential information on the title, planning, environmental and other details relevant to the property and the area in which the property is located.
6. It is always advisable for a buyer to instruct a surveyor to inspect the property and provide a survey report on its condition. There are different types of surveys.
7. Once the buyer's solicitor is satisfied with the title to the property, he will liaise with the seller's solicitor to confirm approval of the contract. The buyer's solicitor arranges for the buyer to sign the contract and to provide the deposit, which is usually 10% of the agreed purchase price. The buyer's solicitor checks that the buyer has secured insurance on the property. The risk usually passes to the buyer upon exchange of the contract.

Until a contract is exchanged, either party can withdraw from the sale. The seller can accept other offers but cannot issue a contract to another party without first advising the buyer that another contract is to be issued. This is usually referred to as a 'contract race'.

8. Once the contract has been exchanged, both the seller and the buyer are contractually bound. If either party fails to complete on the agreed completion date then that party will be in breach of contract. If the buyer is at fault he/she will lose the deposit and there is a potential for a further claim by the seller.
9. If external financing is being secured to buy the property, it must be in place by the agreed completion date.
10. With some leasehold properties there may be a requirement by the landlord for the seller to provide details of the buyer and secure the landlord's consent. The buyer may be required to provide references. Sometimes non-UK nationals are required to provide a rent deposit to cover liabilities in the lease relating to ground rent and service charges.
11. With commonhold properties, the buyer's solicitor will have reviewed the commonhold documentation and there is usually a requirement within 14 days of completion for the buyer's solicitor to provide the secretary of the commonhold association with a notice of the transfer.
12. The purchase of a freehold property can proceed quickly. However, this is dependent upon the seller and also if financing is being secured on the lender's requirements.
13. If the buyer is acquiring a new lease, the process can sometimes be longer as the buyer's solicitor will have to approve the terms of the new lease.
14. If the buyer is acquiring a lease which already exists, this is referred to as an assignment of lease. This too can proceed swiftly but once again it is very much dependent on the seller's solicitor providing a comprehensive package of information.



Property Tax in the United Kingdom

Income Tax

If the property is bought as an investment property, income tax is chargeable on rental income regardless of the residence or domicile position. Tax is collected through the submission of UK tax returns and, if non-resident, tax is deducted at source by a UK letting agent. Non-resident investors can also apply to HMRC to receive rental income without tax deducted at source.

Inheritance Tax

Inheritance tax is a form of death duty so without tax planning in advance you could leave your beneficiaries with unnecessary tax bills. The excess value of an estate on death above the threshold (currently £325,000 or a maximum of £650,000 in the case of married couples/civil partners) is generally taxed at 40% unless it is left to a spouse/civil partner or to a UK Charity. Additional nil-rate band when a residence is passed on death to a direct descendant or if you have downsized to a less valuable property before death will start at £100,000 for 2017/18 tax year and will increase by 2020/21 to £175,000. If the relief is not used on the first death, a surviving spouse/civil partner can 'inherit' the relief, however the relief will not be available for high value properties.

Stamp Duty Land Tax (SDLT)

SDLT is payable on all property transactions, save where one of a small number of specified tax reliefs applies, within 30 days of completion. The rate of tax is dependent on the purchase price (see page 9 for current rates and bands). SDLT is progressive tax. There will be no tax paid on the first £125,000, 2% on the next portion from £125,001 to £250,000, 5% on the next portion from £250,001 to £925,000, 10% on the portion from £925,001 to £1.5 million and 12% on the portion above £1.5 million.

Additional 3% on top of the normal SDLT rates will apply if you are buying a new residential property while owning one or more residential properties (regardless of its location), unless you are replacing your main residence. Companies investing in UK residential properties will pay flat 15% SDLT, unless there is a relief applicable for rental businesses. Special rates apply to purchases of multiple residential properties.

Capital Gains Tax (CGT) for non-resident owners of UK property

UK Capital Gains Tax ('CGT') is charged on the gain on the sale of the property (or on the market value of the property if it is given away) over its original cost (or value at acquisition by gift). Most selling expenses and building improvement costs can be taken into account to reduce the taxable gain. CGT is payable on or by 31 January following the end of the tax year of Exchange of Contracts for the sale or completion of a gift of the property.

From 6 April 2015, CGT was introduced for non-UK residents. CGT will be levied on sales of non-primary residential property at 18%/28%, depending on a taxpayer's status. The tax will be applicable to non-resident individuals, non-resident companies, trustees and estates. The base cost of properties can be rebased to 5 April 2015 and the gain will therefore only be chargeable from that date. There is a requirement to submit non-resident CGT return within 30 days after the disposal of UK residential property.

Annual Tax on Enveloped Dwellings (ATED)

ATED is an annual tax payable mainly by companies that own UK residential property valued at more than £500,000. The following increased rates apply for period from 1 April 2017 to 31 March 2018:

Property value	Annual charge
More than £500,000 but not more than £1 million	£3,500
More than £1 million but not more than £2 million	£7,050
More than £2 million but not more than £5 million	£23,550
More than £5 million but not more than £10 million	£54,950
More than £10 million but not more than £20 million	£110,100
More than £20 million	£220,350





New deemed domicile rules

From 6 April 2017 individuals who have been resident in the UK in 15 out of preceding 20 tax year will be deemed domiciled for all UK tax purposes. This means that the residents who have a non-domiciled tax status will only be able to use remittance basis of taxation regime until they become deemed domiciled under new rules. This also means that UK inheritance tax will apply to their worldwide assets unless non-UK assets are properly structured. The earlier remittance basis charge of £90,000 is abolished as it will no longer be possible to use the regime after 15 years of tax residency, the charge for those who have been resident for seven out of nine years will remain at £30,000 per annum. The rate for those who have been resident for 12 out of the last 14 years will remain £60,000.

SDLT and ATED Appendix

Property or lease premium or transfer value	SDLT rate
Up to £125,000	Zero
The next £125,000 (the portion from £125,001 to £250,000)	2%
The next £675,000 (the portion from £250,001 to £925,000)	5%
The next £575,000 (the portion from £925,001 to £1.5 million)	10%
The remaining amount (the portion above £1.5 million)	12%

Additional 3% on top of the normal SDLT rates applies if buying a new residential property which means that you'll own more than one, unless you are replacing your main residence Companies investing in UK residential properties will pay flat 15% SDLT, unless there is a relief. Special rates apply to purchases of multiple residential properties.

ATED

(Chargeable amounts for 1 April 2017 to 31 March 2018)

Property value	Annual charge
More than £500,000 but not more than £1 million	£3,500
More than £1 million but not more than £2 million	£7,050
More than £2 million but not more than £5 million	£23,550
More than £5 million but not more than £10 million	£54,950
More than £10 million but not more than £20 million	£110,100
More than £20 million	£220,350



Glossary of terms used

Contract

An agreement between the seller and the buyer in relation to the sale and purchase of the property.

Conveyance

This is the term used in respect to affecting the transfer of the property from the seller to the buyer and is also referred to as a transfer or, (between solicitors) a TR1.

Covenant

Is an agreement to do or provide something or to refrain from doing or providing something which is meant to be binding on the party giving the covenant (who may be referred to as the covenantor). They are also referred to in leases.

Default

This is a failure on the part of the seller or the buyer to perform or observe any provision in the contract or, as the case may be, in the lease which he or she is required to perform or observe (a covenant).

Deposit

This is the payment that is required when the contract is exchanged and is usually 10% of the agreed purchase price.

Encumbrances

These usually encompass mortgages, covenants and conditions to which the property is respectively subject.

Exchange

This is the term used when the contract becomes binding. The seller and the buyer's solicitor agrees to exchange the contract and agree a date for completion. Both the seller and the buyer at this stage are contractually bound to proceed to completion on the completion date.

Freehold

You own both the property and the land on which the property stands. You are responsible for its maintenance and repair. You can do what you wish within the property as long as this is in accordance with legal requirements.

Ground rent

An annual rent payable to the landlord or the owner of the freehold. In effect, it is a rent in return for allowing the property to stand on the freeholder's land. There is usually a mechanism in the lease for the rent to increase at certain intervals.

Land Registry

This is a government body that guarantees the title to land and records ownership and the interests in registered land in England and Wales.

Lease Covenants

These are covenants, agreements and conditions in the lease which must be complied with by the lessee so far as they affect the property.

Leasehold

Land which will provide the buyer with rights of possession and use of the land for a term of years but not ownership. An interest in the freehold is retained by the freeholder who grants the lease as landlord to the tenant (also referred to as the lessee). There can also be strings of leases granted so, for example, the freeholder may grant a lease (headlease/ superior lease) to a tenant (head/superior tenant) who in turn may grant a lease (underlease/sub-lease) to an undertenant/ sub-tenant who in turn may grant a subunderlease to a sub-tenant and so on.

Licence to Assign

Assignment means the transfer of the leasehold interest by the tenant (seller) to the buyer. Sometimes the consent of the landlord is required to such an assignment and this is known as Licence to Assign.

Mortgage

The term used by lenders, commonly referred to as mortgagees, to refer to the deed which will charge the property by way of legal mortgage and secure the payment of the borrower's indebtedness.

Registered Properties

Properties that have been registered at the Land Registry.

Service charges

The costs incurred by the lessor/freeholder or managing agents in providing the services referred to in the lease.

Term

This is the phrase used in a lease in relation to the number of years granted.

Title Documents

These usually encompass office copy entries, which is a copy of the register at the Land Registry, together with a copy of the filed plan of the property and copies of any documents referred to in them.

Unregistered Properties

Properties that have not been registered but will now be subject to a first registration. A more detailed investigation of title needs to be undertaken and documents secured are referred to as an abstract or epitome of title.

Contact



Katya Zenkovich
katya.zenkovich@knightfrank.com
+44 20 7861 5035



Nicholas Vaughan
nicholas.vaughan@withersworldwide.com
+44 20 7597 6585



Tim George
tim.george@withersworldwide.com
+44 20 7597 6348

 @KnightFrank
KnightFrank.com

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