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United Kingdom
Real Estate

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This country-specific Q&A provides an overview of real estate laws and regulations applicable in United Kingdom.

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United Kingdom: Real Estate

1. Overview

The United Kingdom of Great Britain and Northern Ireland (or "UK") comprises four separate countries: England, Wales, Scotland and Northern Ireland. Each country has a level of devolved power and, as a result, a distinct legal framework. In relation to interests in land Scotland and Northern Ireland are effectively completely devolved and the laws relating to land ownership, transactions and registrations differ significantly. Therefore, this guide will focus on the law in England & Wales where, subject to some exceptions, the law is the same. The guide will focus primarily on commercial properties. For simplicity we will refer to E&W Law as an uniform reference. There is increasing divergence between English Law and Welsh Law in particular in relation to tax and residential properties.

As a common law jurisdiction ownership of land is governed by a mixture of written legislation and court decisions. Whilst many court decisions relate to the interpretation of legislation, there is a significant body of case law that has defined and then shaped legal concepts. At times these concepts have been enshrined in or varied by legislation. However, there is a significant volume of law that remains uncodified and dependent purely on case law. This means that in relation to any given question one may need to consider legislation, case law interpreting that legislation and other concepts developed through case law and not covered by legislation.

The UK has been at the forefront of capturing ownership of legal interests in land since the early 20th Century. Registration is compulsory on the occurrence of certain transactions. As a result the vast majority of land in England & Wales is registered with a target of 100% registration by 2030. The registry is called HM Land Registry.

2. What is the main legislation relating to real estate ownership?

Law of Property Act 1925: This Act codified and limited the legal interests in land that can be created in law. It also addresses third party interests in land and how third-party rights are dealt with.

Land Registration Act 2002: This Act updated and further refined the law relating to the registration of interests in land. It is the key piece of legislation addressing land registration at HM Land Registry.

The above two pieces of legislation form the backbone of E&W Law as it relates to ownership of land. However, there is a significant volume of additional legislation which, whilst not necessarily directly relating to ownership, has a very direct impact on ownership rights and enjoyment of real estate. This legislation covers:

- Commercial landlord and tenant relationships
- Residential landlord and tenant relationships
- Planning and zoning
- Environment and sustainability

3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2023 or are there any major anticipated new laws which are expected to materially impact them in the near future?

Biodiversity net gain: A mandatory biodiversity net gain (BNG) framework came into force on 12 February 2024. A BNG planning condition applies to developments in England involving planning applications submitted from 12 February 2024, with certain 'small' sites following from 2 April 2024. In short, these require a minimum increase in biodiversity following development of 10%. Complex metrics are applied to calculate how much habitat needs to be provided to achieve the 10% net gain required. There are only very limited exemptions. BNG can be delivered through any one, or a combination of, on-site and off-site units and statutory credits. Statutory credits will be purchased from the government and will be available as a 'last resort' where developers are unable to use on-site or off-site units to deliver BNG. BNG is expected to apply to Nationally Significant Infrastructure Projects from late November 2025.

The **Economic Crime and Corporate Transparency Act 2023** is a wide-ranging piece of legislation, addressing a number of issues, but broadly themed around measures to prevent financial crime and to promote transparency in the ownership and use of corporate structures. Some provisions came into force immediately in December

2023, others have been brought into force throughout 2024 and more are expected to follow in 2025.

The ECCTA introduces fundamental reforms to the role of the Registrar of Companies and changes to company law designed to promote the integrity of the register and increase the transparency of corporate entities in the UK although many of the reforms are not yet in force.

The ECCTA also makes various changes to the register of overseas entities (ROE) regime which is relevant for overseas entities owning freehold estates and leasehold estates granted for a term of more than seven years. From 4 March 2024 an overseas entity will no longer be treated as a 'registered overseas entity' for the purposes of the Land Registration Act 2002 (LRA 2002) unless it has both complied with its updating duty under the ROE regime **and now** also complied with any notice served by the registrar of companies under a new power contained in s.1092A of the Companies Act 2006 (which gives the registrar the power to require additional information to determine whether applicable filing obligations have been complied with). In England and Wales, if an overseas entity who owns property is not a 'registered overseas entity' for the purposes of the LRA 2002, then under the ROE regime that overseas entity is severely limited in its ability to deal with its property. It is a serious offence for an overseas entity and its officers to make any disposition of a freehold or leasehold estate in breach of the legislation. Overseas entities who are purchasing freehold or leasehold property also need to be a 'registered overseas entity' in order to make an application to become the registered proprietor a freehold or leasehold estate.

Other provisions already in force include expanded registration requirements for beneficial owners to capture certain situations involving trusts and nominees. This is to close perceived loopholes in the legislation. In addition, overseas entities must now provide their principal office address rather than having the option to provide either a registered office or principal office address as part of the required information which is submitted on registration or as part of an update. Provisions yet to come into force will include a new requirement for an overseas entity to provide the title numbers of any freehold or leasehold estates it owns. Amendments will also capture certain further 'required information' in relation to trusts and information about changes in beneficiaries under certain trusts where the trustee is itself a registrable beneficial owner. Further information may also be required from certain overseas entities in relation to the transitional period.

On 16 October 2024 the government published an outline transition plan for Companies House in relation to the ECCTA. This indicated that in relation to the ROE by 'Summer 2025' Companies House should be able to 'allow access on request to certain trust information on the Register of Overseas Entities'. The government also consulted on improving transparency of land ownership involving trusts. This consultation was launched on 27 December 2023 and ran until 21 February 2024.

The Leasehold and Freehold Reform Act 2024 received Royal Assent on 24 May 2024. The Act contains measures to:

- Make it 'cheaper and easier' for existing leaseholders in houses and flats to extend their lease or buy their freehold and increase the standard lease extension term to 990 years for both houses and flats. The Act also removes the two year ownership requirement for a new leaseholder before they can benefit from these changes.
- Allow leaseholders in buildings with up to 50 per cent non-residential floorspace to buy their freehold or take over the building's management.
- Ban the creation of new leasehold houses (save for exceptional circumstances).
- Increase transparency on service charge (including by requiring certain bills in standardised formats) and replacing buildings insurance commissions for managing agents, landlords and freeholders with administration fees.
- Require freeholders who directly manage a building to belong to a redress scheme so leaseholders can challenge 'poor practice'.
- Set a maximum time and fee for the provision of information required by a leaseholder from their landlord on a sale (such as building insurance or financial records).
- Grant freehold homeowners on private and mixed tenure estates the same rights of redress as leaseholders and increased transparency on charges.
- Regulate remedies for arrears of rent charges.

The provisions are gradually being brought into force.

The Building Safety Act 2022 continues to be a significant piece of legislation impacting the real estate sector. Additional guidance and secondary legislation continues to be brought in and the practical implications of the Act understood. The new Labour government continues to focus on building safety as a legislative priority.

Provisions in the **Levelling-up and Regeneration Act 2023** continue to come into force. Provisions in relation to high street rental auctions came fully into force on 2

December 2024. From this date local authorities in England will have new powers allowing them to auction long term vacant commercial 'high street' properties to new tenants on short term tenancies of between one and five years. There is also a consultation response awaited on the implementation of measures in relation to contractual controls on land and plans to capture details about agreements such as options, conditional contracts and pre-emption rights related to development of land which are expected to be implemented in 2026.

Renters' Rights Bill

The proposed legislation provides for significant reform of the residential private rented sector in England and seeks to strengthen residential tenants' rights and protections. If the Bill progresses it will:

- Bring about the end of assured shorthold tenancies and section 21 'no fault' evictions. The private rented sector will move to a system of periodic assured tenancies known as 'relevant assured tenancies' with annual rent review (which is subject to a statutory tenant appeal process). Tenants will be required to give a minimum of two months' notice to bring a tenancy to an end. There will no longer be fixed term tenancies of less than 7 years.
- End the practice of rental bidding by prohibiting landlords and agents from asking for or accepting offers above the advertised rent.
- Reform certain possession grounds.
- Introduce anti-discrimination provisions in relation to any practices which discourage renting to tenants in receipt of benefits or with children.
- Introduce a new Ombudsman scheme that private landlords must join and a Private Rented Sector Database which will be a new database of residential landlords and privately rented properties in England.
- Provide for greater enforcement provisions and sanctions.
- Introduce a decent homes standard for the private rented sector and also apply 'Awaab's Law' to the sector. In short, Awaab's Law will require specific response times to deal with complaints about the condition of the property.
- Give tenants the right to request a pet

Leasehold and Commonhold Reform Bill

This is expected in the second half of 2025. The Bill's focus will be the reinvigoration of commonhold through the introduction of a comprehensive new legal framework. The government has stated the new Bill will also look to deliver on its manifesto commitment to 'tackle unregulated and unaffordable ground rents' as well as looking at forfeiture and other measures to further bolster leaseholder's rights.

The Labour government has stated it will 'bring the feudal leasehold system to an end' and has also committed to consult next year on the 'best approach to banning new leasehold flats'. The government has stated it will also 'engage' on the conversion of existing flats to commonhold'. This will sit alongside developments in the commonhold space and the intention to make commonhold the default tenure by the end of the parliament.

The government has also committed to consultations on:

- reforms to the section 20 consultation process (relating to residential service charge) under the Landlord and Tenant Act 1985.
- strengthening regulation of managing agents including mandatory professional qualifications to achieve a new 'basic standard' all managing agents must meet.
- the 'legislative and policy options to reduce the prevalence of private estate management arrangements'.

Planning and Infrastructure Bill

The background briefing notes to the King's Speech note that the Bill will accelerate housebuilding and infrastructure delivery by:

- streamlining the delivery process for critical infrastructure including:
    - accelerating upgrades to the national grid and boosting renewable energy
    - simplifying the consenting process for major infrastructure projects
    - enabling relevant, new and improved National Policy Statements to come forward and establishing a review process that provides the opportunity for them to be updated every five years, giving 'increased certainty to developers and communities'.
- further reforming compulsory purchase compensation rules
- modernising planning committees
- increasing local planning authorities capacity
- 'using development to fund nature recovery where currently both are stalled.

Major planning reforms are expected, primarily aimed at addressing chronic shortages in housing stock. These reforms are likely to have a significantly broader impact.

4. How is ownership of real estate proved and are ownership records available for public inspection?

There are two separate regimes: Registered and Unregistered.

Registered Land

Ownership of registered land is proved by being the "registered proprietor" at HM Land Registry. Records are available for public inspection and can be ordered online for an administrative fee. Whilst this fee is increasing from £3 to £7 for a single title or document it remains relatively low cost. The registered title will include details of all legal encumbrances affecting the land (including mortgages). Apart from limited specific exceptions all encumbrances need to be registered against the property they burden in order to be binding on successors in title. There is a state indemnity in the event that the registered title is shown to be incorrect due to a mistake by HM Land Registry – this is often referred to as the "State guarantee of title". As a result of the Covid-19 pandemic a significant backlog developed at HM Land Registry in registrations. As such many titles are not up to date. This is made clear when obtaining information but does add a level of complication to the proving of titles. HM Land Registry is working to reduce the backlog.

Unregistered Land

Ownership of unregistered land is proved by deducing title. This involves producing documentary evidence of the transfer of the title to the party claiming ownership. In order to be accepted it needs to be dated at least 15 years prior. If not then further documentation evidencing a transfer to the previous owner is required and so on until the 15-year time period is reached. This is commonly referred to as "good root of title".

The above relates to legal interests in land. Beneficial interests in land are not registered in detail but should be protected by a relevant entry in the registered title (where registered). As a matter of law, any beneficial ownership can be bypassed (legally referred to as "overreached") provided that the transfer of the legal title is undertaken by all legal owners (and a minimum of two unless the sole legal owner is a trust corporation) who receive the consideration. Provided this requirement is satisfied a buyer will acquire the legal and beneficial interests in the property; any previous beneficial interest in the property will transfer to being a beneficial interest in the consideration paid. There are also certain interests in land that are legal interests but are not registered and these may take effect as "overriding interests".

5. Are there any restrictions on who can own real estate, including ownership by any foreign entities?

In England and Wales, minors (persons under the age of 18) cannot hold a legal interest in real estate in their own name. Any transfer of land to a minor will result in the creation of a trust in land in favour of the minor until they reach 18.

There are no restrictions on ownership based on jurisdiction. However, the Economic Crime (Transparency and Enforcement) Act 2022 outlines specific requirements for overseas entities owning real estate. Save in the case of an exempt overseas entity (currently none), an overseas entity who owns a qualifying estate, must be registered at Companies House on the Register of Overseas Entities. A qualifying estate is defined as a freehold estate in land or a leasehold estate granted for a term of more than seven years. An overseas entity must be a registered or exempt overseas entity to be registered as the proprietor of a qualifying estate. Restrictions are placed on the disposal of such properties unless the entity complies with registration requirements or meets one of the other statutory obligations.

For an entity to be registered it must provide certain information to the registrar of companies. Included in the information to be provided are details regarding the entity's beneficial ownership and there are strict verification requirements. Where real estate is transferred (including the granting or transferring of a leasehold interest for more than 7 years) to an overseas entity the transfer cannot be registered unless and until the entity has been registered. All existing overseas entities must already have complied with this obligation and all registered titles vested in overseas entities have restrictions on the title which would prevent any disposition where the overseas entity has failed to register and/or comply with the ongoing obligations to keep the register up to date.

The requirement to register does not apply to an overseas entity that became the registered proprietor pursuant to an application made before 1 January 1999. Any new acquisitions by that entity would then bring them within the registration requirements.

Separately the National Security and Investments Act 2021 governs foreign and direct investment into the UK which may impact on the acquisition of real estate or real estate-rich entities.

6. What types of proprietary interests in real estate can be created?

In broad terms, there are three legal interests in land that can be created:

Freehold: A freehold interest in land denotes complete ownership of the property and the land on which it stands, without any fixed duration or end date. Apart from encumbrances created by the freehold owner (or its predecessors in title), it has complete power to deal with the land as it sees fit. Ordinarily a freehold title includes the subsoil and the airspace above. However it is possible to transfer a horizontal strip of land (ie between certain heights/depths). This is unusual and the use of leasehold interests is the more common approach. However, many freehold estates do exclude the mines and minerals that may be located underneath the property.

Leasehold: a leasehold interest in land denotes a type of property interest where a tenant holds rights to use and occupy land or property for a specified term, under conditions set out in a lease agreement. This interest is distinct from freehold ownership, where the owner has permanent and absolute ownership of the property. The key differences between freehold and leasehold are that a leasehold is limited in time and subject to the conditions set out in the lease. A leasehold interest does not have to be for a rent but does have to confer exclusive possession on the tenant. The term “lease” and “tenancy” are often used interchangeably and both refer to the grant of exclusive possession of a defined area of land for a defined period of time by the owner (landlord) to another party (tenant).

Commonhold: A commonhold interest in land is a form of property ownership and management introduced by the Commonhold and Leasehold Reform Act 2002. It was created to provide a new way of owning and managing flats and other properties where there is a degree of interdependence among unit owners. Commonhold land refers to land for which the freehold estate is registered as a freehold estate in commonhold land. This type of land is managed by a commonhold association, and a commonhold community statement outlines the rights and duties of both the association and the unit-holders. Commonhold units are individual properties within the commonhold, and their owners are referred to as unit-holders. These unit-holders have the freehold estate in their units and are free to sell or lease their units, subject to certain restrictions.. The public areas within the commonhold, known as common parts, are owned and managed by the commonhold association. Overall, commonhold provides homeowners with greater control and autonomy over the management of their building and shared facilities, distinguishing it from traditional leasehold arrangements. Despite being introduced with great fanfare to improve the control residential tenants would have, it has not been adopted en masse and remains unusual. However, the new Labour Government has suggested that they will seek to ban new residential leaseholds and force the use of commonhold for residential flats. Draft legislation is awaited.

7. Is ownership of real estate and the buildings on it separate?

Generally speaking no – whilst technically you could split the freehold interest in land and the freehold interest in a building on it, it would create material challenges in law to manage. In practice, therefore, creating separate ownership of land and buildings is generally achieved through the grant of leases.

8. What are common ownership structures for ownership of commercial real estate?

Limited companies: Investors often use limited liability companies to hold real estate. These companies are sometimes set up offshore. The main advantage of using such companies is that they protect investors by keeping their assets and liabilities separate. Additionally, they can be tax-efficient. For instance, if you sell the shares of a company that owns property, the buyer might not have to pay stamp duty land tax on the property transfer. Whilst historically there have been a lot of offshore companies, changes in UK corporation tax plus the additional burden of the requirement to register overseas entities with Companies House (and associated loss of privacy) are reducing the attractiveness of the use of offshore entities.

Limited partnerships: Limited partnerships have been in use for the holding of real estate in England and Wales for a long time. They can be set-up as English limited partnerships or offshore limited partnerships (Scottish, Jersey and Guernsey are common). Some forms of limited partnerships (for example, English LPs) do not have their own legal personality and so real estate needs to be held by a minimum of two partners on trust (normally a general partner and a nominee). Other forms of limited partnership do have their own legal identity. A key attraction of limited partnerships is that they are largely tax-transparent which makes it particularly beneficial for tax-exempt investors. However, this tax transparency does mean that a transfer of interests in a limited partnership can give rise to stamp duty land tax (whereas the sale of an interest in a non-tax-transparent

entity would not).

Unit Trusts: A property unit trust is a collective investment scheme where investors pool their money to invest in real estate. The trust holds the property, and investors hold units in the trust, similar to shares in a company. When properly constituted and managed a transfer of an interest in a unit trust will not incur stamp duty land tax. Whilst historically, these trusts were treated as tax-transparent for income, they were treated as tax-opaque for capital gains, meaning the trust itself was taxed on gains. Since 2019, these trusts are generally considered tax-opaque for capital gains, but they can elect to be tax-transparent, which can be beneficial for tax-exempt investors. As with all areas of tax the treatment is complicated and requires careful analysis to ensure the structure is appropriate and properly managed. For example a unit trust cannot be a member of a group for SDLT purposes so, where the unit trust is utilised as part of a wider group, any group restructuring involving the transfer of property in or out of the unit trust would result in SDLT.

9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

On the acquisition of real estate, the legal due diligence undertaken normally comprises:

a. Reviewing the title and lease documentation – a detailed review of the title, all encumbrances and the terms of all leases and ancillary documents (where relevant). Whilst most of this information is available via HM Land Registry, many lease documents are generally not and so a buyer is dependent on the seller providing a full title pack for this purpose.
b. Enquiries of the seller – the seller will be required to reply to standard enquiries (Commercial Property Standard Enquiries or "CPSEs" for short). These are intended to elicit further information that is not necessarily evident from the title documents including information regarding disputes, rental payments and receipts, service charge, details of employees and the VAT status of the property. The buyer's lawyers will also raise specific enquiries of the seller in respect of matters revealed by its due diligence.
c. Enquiries/Searches of public bodies – the buyer's lawyers will carry out standard searches of various public bodies to obtain information relating to the property. This information will include planning history, access to public highways, proposals for expropriation and water and drainage. It is common for a desktop environmental survey to be included in the searches carried out although a buyer may instruct this directly. The exact searches carried out will depend on factors such as the nature of the property, its location and whether it is being acquired as an investment or for development.

The process is time-consuming and takes place over quite a few weeks. In particular the enquiries and searches of public bodies can take a month or longer to be returned and this needs to be factored into the transaction timeline. It should also be noted that whilst a buyer may have exclusivity at this time there will be no contractual obligation on the seller to sell nor the buyer to buy, so both parties are at "at-risk" in terms of the costs incurred. This is an accepted risk in the UK market and it is unusual for a seller to withdraw from a sale where the buyer is ready to proceed on the original terms since doing so exposes the seller to reputational and financial risk.

There is an increasing use of insurance in place of certain aspects of the due diligence. In particular where searches or enquiries of public bodies are delayed a "no search" or "gap" insurance policy can be placed. On large portfolio transactions (especially in an insolvency scenario) title insurance can be placed to fill the gap between the publicly available information and the inability of the seller to provide further information.

Save in respect of specific statutory warranties as to title, sellers do not give warranties in relation to the property itself so the due diligence is key to managing risk. The replies provided by the seller to both the CPSE and any additional enquiries will be representations but not warranted in the sale agreement. Therefore any claim resulting from that information being incorrect will be a claim in misrepresentation and not a claim for breach of warranty.

The above sets out the usual scope for an asset acquisition. Where the acquisition involves the acquisition of the ownership structure (eg acquiring a limited company or units in a unit trust) (often referred to as a "corporate wrapper") significant additional diligence is required. Depending on the circumstances this may include legal due diligence on the entity itself and its governance (including considering whether it has been managed appropriately for tax purposes) as well as financial and tax due diligence. The use of warranty and indemnity (W&I) insurance is commonplace for corporate wrapper transactions.

10. What legal issues (if any) are outside the

scope of the usual legal due diligence process on an acquisition of real estate?

The legal due diligence scope is quite wide. As mentioned elsewhere, there are certain interests which are not identifiable from the documentation (ie overriding interests). Further legal issues arising from specific physical characteristics would not normally be covered – for example environmental and health and safety related matters would need to be identified by other specialists as the ability to identify these issues through the legal due diligence alone is limited. The legal team should ordinarily agree on a detailed scope with the client before embarking on the due diligence. This scope will depend on the nature of the transaction and the client's intentions for the property post-acquisition. Due diligence for the purposes of a potential development may need to consider significantly more than due diligence for a fully-let property to be held as an investment.

11. What is the usual process for transfer of real estate, and when does liability pass to the buyer?

Outlined below is the most common process for the transfer of real estate, starting with the agreeing of heads of terms until registration of the buyer as the owner of the property at HM Land Registry. This assumes an asset sale by private treaty. There are open commercial (and residential auctions) which will follow a different process although they still involve a contract being entered into (effectively when the winning bid is accepted at auction) which binds both parties.

Stage 1: Marketing and Heads of Terms

The seller will prepare the Property for market and invite offers from interested parties. Once the seller has identified the party with whom it wishes to proceed with, the seller and the buyer will agree heads of terms setting out the key terms of the proposed sale. These heads of terms are non-binding although often provide the provisions relating to exclusivity and confidentiality are binding. As such separate exclusivity agreements are less common.

Stage 2: Pre-contract

The seller's lawyers will prepare a draft agreement for sale (SPA) and ancillary documents which will be reviewed by the buyer's lawyers and then negotiated. Whilst there are standard conditions these are not binding; most firms have their own form of contract which incorporates aspects of the standard conditions.

Ancillary documents may include assignment of rent arrears, assignments of benefits of rights under building contracts/warranties and assignment of rent deposits.

Whilst not strictly required, usual practice is to agree the form of property transfer as well at this point,. The form of transfer is prescribed by HM Land Registry and so, save where the transaction is for a sale of part of a property, it involves very limited negotiation.

The buyer will arrange various surveys of the property and a valuation (which is required for financing purposes).

The seller's lawyers will deduce title to the property and the buyer's lawyers will carry out legal due diligence on the property. All due diligence is carried out prior to the SPA being signed and the SPA is generally unconditional.

If the buyer is an overseas entity it should be registered with Companies House prior to Stage 3 (albeit technically this would only be required for registration, a seller is likely to require this prior to exchange).

Stage 3: Exchange of Contracts

Once the SPA and ancillary documents are agreed the parties proceed to “exchange of contracts". This involves the parties signing the contract and a deposit (customarily 10% although less is sometimes agreed) being paid by the buyer to the seller. The deposit is generally held by the seller's lawyer until closing.

Risk passes to the buyer at this point but the economic benefits of ownership do not. Therefore, the buyer is not entitled to withdraw from the acquisition even if a negative event occurs (eg the building is damaged). The seller remains entitled to the income from the property up to the date of closing. Materially adverse change clauses are not a feature of real estate transactions.

Stage 4: Exchange to Closing

The seller and the buyer will agree the closing statement including all apportionments.

The seller will arrange a redemption statement and arrangements are made with the existing lender (if any) to ensure that its charge will be released on closing.

The buyer will ensure its funding is in place and satisfy any necessary conditions precedent to its drawdown.

The documents required for closing will be executed by the parties. The transfer must be executed in accordance with HM Land Registry requirements. HM Land Registry

does permit e-signing but it has strict rules regarding e-signing (eg use of an e-signing platform, two factor authentication and the signing and dating to take place on the same platform).

Where the property is leasehold and landlord's consent is required to an assignment (or other third party consents are required) these need to be obtained prior to closing.

Pre-completion searches are carried out to ensure that nothing has changed in respect of the seller's title and its ability to sell.

It is advisable that all parties are represented by a conveyancer to avoid complicated certification of identity requirements at HM Land Registry.

Stage 5: Closing

The buyer pays the seller the purchase price and the seller uses as much of the monies received as necessary to pay off any outstanding debt. Where the seller or the buyer is an overseas entity a legal opinion letter will normally be required to confirm solvency, capacity and due execution.

The transfer (and other closing documents) are dated and the outgoing funder dates its release of its security.

Due to the perceived risks of security being released before monies have been received it is usual for completion monies to be transferred via lawyers and complicated undertakings to be put in place to provide comfort to all parties that all required documentation will be dated on closing and monies will be routed to the correct locations. The use of escrows for this purpose remains unusual.

Stage 6: Post Closing

The buyer's lawyer will prepare a Land Transaction Return (for stamp duty land tax purposes) for the buyer to review and sign. This must be submitted to HM Revenue & Customs within 14 days of closing along with payment of any SDLT (or Land Transaction Tax if the property is in Wales).

Any third parties requiring notification (eg superior landlords or tenants) will be notified of the change in ownership following closing.

The buyer's lawyer will apply to HM Land Registry to register the transfer. Currently there is a significant backlog at HM Land Registry with some applications waiting in excess of a year to be registered.

12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

Yes, particularly on higher-value properties, as this can be more tax efficient (albeit due diligence related costs are likely to be higher).

13. On the sale of freehold interests in land does the benefit of any occupational leases and income derived from such lettings automatically transfer to the buyer?

Yes, any transfer will automatically transfer the benefit and burden of any subsidiary interests, including leases.

14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

Under English and Welsh law, there are a multitude of rights and obligations that can be created in connection with land. Due to the way in which the law has evolved the creation of these matters can occur in various ways; most obviously through documentation, but also through necessity or simply the passage of time.

Most of the time these interests need to be protected by registration on the title to the land that is affected (burdened) by them but not always. There is a specific category of interests referred to as “overriding interests" that do not need to be registered. This category has been reduced significantly as a result of the Land Registry Act 2002 but there remain important types of interest (eg leases for a term of less than 7 years) that do not require registration.

Another right which brings challenges is rights to light – these are often enjoyed as a result of the passage of time and are not noted on the affected property (or indeed the benefitting property). Identifying the existence of such rights and whether any proposed or actual development infringes them involves not only legal analysis but also careful analysis by surveyors.

Positive covenants also have an anachronistic treatment under English and Welsh law. Whilst the benefit of a positive covenant can be transferred the burden (ie the obligation to comply with it) cannot. There are various methods deployed to ensure that successors in title will be bound to comply with such positive obligations and poor implementation of these methods can lead to

challenges in the future dealing with the property.

15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised?

Yes, as a matter of law, there can be a maximum of four legal owners of land. The existence of a trust arrangement is generally noted on the registered title but not the details of it.

16. Is public disclosure of the ultimate beneficial owners of real estate required?

The ultimate beneficial owners are not directly recorded on the title. HM Land Registry records the legal owners only and notes that a trust may be in place regarding the land. However, where land is held by an overseas entity that entity needs to be registered on the Register of Overseas Entities at Companies House. Registration on the Register of Overseas Entities does require details of ultimate beneficial owners to be provided. Where real estate is owned by a UK corporate entity then Companies House registration will include registering details of "persons with significant control". These are all relatively recent changes intended to address the use of UK property to "hide" wealth, prevent money laundering and circumvention of sanctions.

17. What are the main taxes associated with real estate ownership and transfer of real estate?

Ownership:

Business rates – charged on the party "in rateable occupation" of the property and payable to the local authority. Ordinarily, this will be the tenant, but the parties can agree that the landlord will "pay" the rates (albeit the legal liability will still be the tenant's).

Other taxes – a landowner may be taxed on its income from and gains on a property.

Transfer:

Stamp Duty Land Tax/Land Transaction Action (LTT) – this is the main tax payable on the transfer or creation of an interest in land. It is calculated by reference to the "chargeable consideration"; on a sale between unconnected parties this is likely to be the sale prices whereas on a lease between unconnected parties there is a calculation based on the net present value of all rent payable over the term of the lease. LTT is the Welsh equivalent of SDLT.

Value Added Tax – where a land owner has validly opted its property then it must charge value added tax in relation to any supply of the property (eg leasing or selling). VAT is set at 20%. However, sales of real estate can be exempt or be treated as a transfer of a business as a going concern (TOGC) and be VAT exempt.

The above is a brief summary of the common taxes that arise. However due to the complicated nature of tax it is not possible to consider every potential tax obligation that could arise in relation to the ownership or transfer of real estate in England and Wales.

18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

The majority of commercial leases are full, repairing and insuring (FRI), also referred to as "triple net" or NNN leases. This means that the tenant either directly or indirectly is liable for the full cost of the upkeep of the building and its insurance. Common terms of commercial leases include:

Rent – expressed as an annual sum and usually payable quarterly. Most common payment dates are the "usual quarter days" being 25 March, 24 June, 29 September and 25 December. Some leases use the "modern quarter days" of 1 January, 1 April, 1 July and 1 October. As a concession tenants may be permitted to pay rent monthly (more common in retail and leisure lettings). Rent is normally expressed to be payable without deduction or set-off which means that even where the landlord is in breach the tenant must pay the rent. Whilst open market rents are the norm in commercial leases, in retail and leisure unit leases there has been an increase in the use of turnover based rents.

Rent review – rent is subject to review on a periodic basis. Most common are open market rent reviews every five years. Index-linked reviews are also used particularly where there is concern regarding available comparables for assessing the open market as well as in sale and leaseback transactions. The use of cap and collars to guarantee minimum uplifts and protect against inflationary rents is common in index-linked arrangements.

Services and Service Charge – where a lease is of part of a building the lease will have detailed services and service charge provisions. These set out the specific services that the landlord is to provide and the mechanisms for the landlord to recover the costs. Under FRI leases the expectation is that if a building is fully let,

all costs incurred will be recovered. Whilst there is no regulatory control regarding services and service charge in commercial leases, there are codes of practice issued by the Royal Institute of Chartered Surveyors to which its members are expected to adhere. Its focus is on best practice in the management and administration of service charges rather than limiting the services or charges that can be levied.

Repair, Decoration and Yielding Up – it is up to the parties to agree who is responsible for maintaining the state and condition of the property. Commonly the tenant is responsible for repairing its demise (which may or may not include structural aspects) and the landlord is responsible for repairing everything that is not let or intended to be let to a tenant (ie common parts and shared M&E).

Alterations – it is up to the parties to agree on restrictions regarding alterations. The normal position is no structural alterations are permitted at all and non-structural require consent. Where alterations are permitted with consent then the law implies an obligation on the landlord that it cannot unreasonably withhold consent. There is also a statutory right for a tenant to seek "improvements" but it is quite limited in scope and rarely utilised.

Alienation – whilst the parties are free to agree on the level of restriction on a tenant dealing with its interest there are regulatory limits to the obligations a landlord can impose on the tenant where alienation is permitted. Where alienation is permitted with landlord's consent such consent cannot be unreasonably withheld. On an assignment whilst a landlord can require the outgoing tenant (and its guarantor) to guarantee the incoming tenant it can only require this once (this guarantee is referred to as an authorised guarantee agreement or AGA for short). On a subsequent assignment the former tenant and guarantee are not permitted (even willingly) to remain liable and any attempt to circumvent this will be struck down by the courts. Whether or not underletting is permitted is subject to agreement between the parties. It is common to require underleases to exclude security of tenure particularly if the underlease is of part only. This is because it would be the undertenant who would be entitled to a renewal lease at expiry.

Use restrictions – use is governed by legislation (eg planning law). Leases will generally limit the tenant's use and ability to change the use of the property.

Insurance – the usual position is that the landlord insures and recovers the cost from the tenant. It is very unusual for a tenant to insure the property. Insurance will include covering loss of rent for between 3 to 5 years with a rent suspension in the event of damage or destruction. The lease will set out the obligations of the landlord to reinstate following damage or destruction with the tenant generally being responsible for any excess but not where the landlord has underinsured. Leases tend to address damage or destruction by uninsured risks although there is no fixed definition of what is an uninsured risk. Absent a contractual right in the lease, there is no legal right to terminate a lease where a building has been damaged or destroyed even if that means the tenant has no way of occupying or benefitting from the property.

Termination rights – the parties can agree break options on any basis. Any time limits and conditions will be interpreted strictly and so need to be considered in that context. In particular conditions relating to compliance with covenants can make the exercise of a tenant break option challenging.

In terms of regulatory controls there is very little restriction on the terms a landlord and tenant can agree in a commercial lease (residential leases have much tighter controls). The key area of regulatory impact relates to security of tenure. In the absence of a valid agreement to the contrary, a commercial tenant will automatically be entitled to seek a renewal of its lease at the end of the contractual term. There are limited grounds on which the landlord can rely to object to the grant of a new lease – the most common ground relied on is that the landlord intends to redevelop the property and cannot do so without obtaining vacant possession. The landlord and the tenant can agree before entering into a lease that the tenant will not benefit from security of tenure. For such an agreement to be valid notices are required to be served and the tenant has to make a declaration (or, if time is short, a statutory declaration) validating the agreement. If the procedure is not followed strictly then the tenant will benefit from security of tenure. The Law Commission of England & Wales (a government body which reviews and makes recommendations regarding changes to the law) is undertaking a review of the law of security of tenure.

19. What remedies are commonly available for landlords in the event of a tenant breach of a commercial lease?

The two key legal remedies available are:

Enforcement through courts – the landlord can apply to court to seek a court order for the tenant to comply with its obligations and to obtain damages for breach. Historically, leases often contained a full indemnity in favour of landlords in the event of a tenant breach.

However, this has become less common in the market and is viewed as onerous.

Forfeiture – leases invariably contain a provision entitling the landlord to bring the lease to an end unilaterally through forfeiture. Where the breach is for non-payment of rent, forfeiture can be effected by the landlord entering the property and changing the locks (forfeiture by peaceable re-entry). For all other types of breach forfeiture requires a court order. Whilst a lease has an express right to forfeit on breach the courts always have a discretion to grant relief to the tenant (ie refuse to permit the landlord to forfeit). Relief from forfeiture is an equitable right and therefore totally discretionary on the part of the court. This protects tenants against aggressive landlords. As a rule of thumb if the tenant remedies the breach (or makes a clear commitment to do so in a reasonable period of time) the courts are more likely to grant relief.

Self-help – where the breach relates to a failure to repair leases generally include a self-help provision. This entitles the landlord to enter the property and carry out the necessary repairs itself and to recover the costs of doing so from the tenant. Whilst the recovery of the costs may still require making a claim in court the use of this self-help at least enables a landlord to take action to prevent further deterioration of the property. However, this right must be expressly included in the lease; without it any entry by the landlord to carry out works could itself be a material breach of the lease.

20. How are use, planning and zoning restrictions on real estate regulated?

The use, planning, and zoning restrictions on real estate in the UK are governed by a combination of legislation and judicial decisions. Planning permission is required in order to be able to carry out “development” on land. What amounts to “development” is set out in statute as interpreted in case law. Changing the type of use of a property can be “development” if the change is to a different “class” of use (eg from office to retail). Certain actions, whilst amounting to “development” do not require permission as they are treated as “permitted development”. Planning power is initially devolved to local planning authorities who decide whether or not to grant planning permission for any proposed development.

Planning permissions will have conditions attached. These can be:

- Pre-development -conditions that need to be satisfied before the development can start
- Pre-occupation – conditions that must be satisfied before the completed development can be occupied for its intended end us
- Continuing -conditions that continue to apply after the development has been completed

Frequently a party will be required to enter into a section 106 agreement with the local authority as a pre-requisite to being granted planning permission. These contain additional obligations (often contributions to wider improvements in the neighbourhood).

There is also a development tax (called a community infrastructure levy or CIL) which can be payable on implementation of a planning permission.

21. Who can be liable for environmental contamination on real estate?

The basic principle is “polluter pays". Under the Environmental Protection Act 1990, liability for environmental contamination on real estate can fall on several types of “appropriate persons."

Primarily, any person who caused or knowingly permitted the substances, by reason of which the contaminated land is such land, to be in, on, or under the land is considered an appropriate person. This includes anyone who has taken actions that led to the contamination or knowingly allowed it to continue. If no such person can be identified after a reasonable inquiry, the owner or occupier of the contaminated land at the time is deemed the appropriate person to bear responsibility for remediation. The Environmental Protection Act 1990 also addresses situations where contamination has spread to adjacent land. In these cases, liability can still extend to the person who originally caused or knowingly permitted the contamination, even if it has moved to other areas.

However, when land is being sold the parties can agree to apportion the risk and liability for any contamination (known or unknown). The authorities will recognise such agreements in terms of the order of liability but, of course, if the party that had agreed to be liable ceases to exist then the authority is still able to pursue other parties under the statutory principles.

22. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

In summary, buildings are legally required to have their energy performance assessed, and there are specific regulations and situations where minimum energy performance levels must be met.

The minimum energy efficiency standards (MEES) make it unlawful for a landlord to grant a new tenancy or to extend or renew an existing tenancy of certain property having an Energy Performance Certificate (EPC) rating of F or G unless:

- all the relevant energy efficiency improvements for the property have been made; or
- an exemption applies.

From 01 April 2023, the scope of MEES was extended to **existing** tenancies of most commercial property and restricts a landlord's ability to continue to let property with an F or G rating. It is anticipated that the minimum rating will increase but legislation is not yet in place to give effect to this.

23. Is expropriation of real estate possible?

Yes – there is legislation that entitles public bodies to acquire land from private ownership. This is generally referred to as compulsory purchase. Further certain other bodies exercising public functions (eg utility companies) have limited rights to expropriate land required for infrastructure. Generally, use of these powers is seen as a last resort and the parties involved seek to agree on commercial terms. Any expropriation requires compensation to be paid to the private owner.

24. Is it possible to create mortgages over real estate and how are these protected and enforced?

Yes mortgages can be created over real estate. In almost all circumstances a mortgage is a legal interest in land and should be protected by registration against the registered title to the land; failure to register would result in it not binding successors. If the grantor of the mortgage is a UK registered entity then the mortgage must also be registered at Companies House.

Enforcement of mortgages is relatively straightforward with the options for the mortgagee being:

- Appointing a receiver over the asset – subject to the terms of the charge a receiver will have wide-ranging powers to manage the property, collect income and sell the property with the proceeds being used first to settle the debt
- Sell the property – a mortgagee has a power of sale that enables it to sell the property. To do so it does not need to take possession of the property.
- Take possession of the property – a mortgagee can go into possession of the property. This is rarely used since the mortgagee is exposed to liabilities in respect of the property (eg environmental liability)
- Foreclosure – this is a court process vesting the property in the name of the mortgagee. It is rare to see this used.

25. Are there material registration costs associated with the creation of mortgages over real estate?

Not generally – the fees for registration at HM Land Registry and Companies House are low cost (less than £1,000) and the costs are normally borne by the borrower. There is no notarisation requirement.

26. Is it possible to create a trust structure for mortgage security over real estate?

Yes. The use of security trustees (commonly referred to as a 'security agent') is common where there are multiple beneficiaries of security and this ensures flexibility as the interests of the beneficiaries can be managed without any need to update the mortgage. The security trustee can exercise the powers of the mortgagee.

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