

**CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS**

**JANUARY 2020**

**LEVEL 3 - UNIT 10 – CONVEYANCING**

**Note to Candidates and Learning Centre Tutors:**

The purpose of the suggested answers is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the January 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' comments contained within this report, which provide feedback on candidate performance in the examination.

**CHIEF EXAMINER COMMENTS**

The exam paper showed that candidates who were properly prepared were very much able to pass and, where appropriate, to achieve a higher grade. Conversely, those who had clearly failed to prepare, despite the pre-availability of the Case Study Materials, were not able to secure sufficient marks to pass.

Overall, candidate performance on the exam questions was reasonably good.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Question 1

- (a) Generally, well answered, although some candidates lost marks by not explaining the purpose of the step they identified. A number of candidates mistakenly referred to a need to obtain the death certificate or probate of the deceased proprietor: this would be unnecessary as his name had already been removed from the registered title, as shown in the Case Study materials.
- (b) Well answered, with most candidates accurately identifying the key points. Not all candidates pointed out that the TA6 is required by the Protocol and so missed a potential mark. Equally, quite a few candidates missed a potential mark by not explaining that the form covers practical matters within the seller's knowledge.
- (c) Generally well answered, although a minority of candidates failed to understand the nature and effect of overreaching.
- (d) Generally reasonably well answered, although some candidates missed a mark by not explaining the significance of *office copy* register entries being required. Some candidates missed out on a potential mark by simply listing the EPC and not explaining its purpose. Again, a number of candidates mistakenly referred to a need to obtain the death certificate or probate of the deceased proprietor.

### Question 2

- (a) Generally reasonably well answered, with most candidates getting a number of the main points, although relatively few scored maximum marks.
- (b) Generally reasonably answered. Many answers were generic, rather than focussing on the point flagged up in the Case Study materials, which is that the property had recently been extended.
- (c) (i) Generally reasonably well answered, with most candidates getting the key point.
- (c) (ii) Generally reasonably well answered, with most candidates getting the key points. Some candidates mistakenly discussed the Form TA13 or mortgage deed and so did not gain any marks.
- (d) (i) Generally well answered, with most candidates getting the key points.
- (d) (ii) Generally reasonably answered, although a surprising number of candidates failed to describe the position correctly (e.g. by stating that the deposit must be held as stakeholder only, or will be held automatically as agent) and so did not gain any marks.

### Question 3

- (a) Generally reasonably answered, with most candidates getting the key points, although a number failed to describe the position correctly or sufficiently clearly. Therefore, many candidates failed to identify the priority period correctly, typically describing it as being '30 days'. Only a small number of candidates made the point that the accuracy of an official search is guaranteed.
- (b) Generally reasonably answered, with most candidates getting the key points, although a number failed to describe the position correctly or sufficiently clearly. Therefore, some candidates referred to checking that the contract had been signed, or that the transfer had been signed by the client (as opposed to the seller).
- (c) (i) Generally reasonably answered, with most candidates identifying the key points. However, most candidates failed to make the point that the undertaking would be to discharge the mortgage 'forthwith' on completion.
- (c) (ii) Generally reasonably answered, with most candidates identifying the key points, although a number failed to describe the position correctly or sufficiently clearly.
- (d) Generally reasonably answered, with most candidates identifying the key points, although some candidates lost marks by not explaining the purpose of the document they identified.

## SUGGESTED ANSWERS

### LEVEL 3 - UNIT 10 – CONVEYANCING

### Question 1

#### (a) - (Preliminary steps upon receipt of instructions on sale)

This required the candidate to identify and explain that upon receipt of instructions to act on the clients' sale, they would need to take the following steps:

- Open a file for the sale – to attach file notes, checklist, quote for fees, etc.
- Obtain evidence of the client's identity - for anti-money laundering purposes.
- Send the Property Information Form (TA6) and the Fixtures & Contents Form (TA10) to the client – for the client to complete.
- Write to the estate agent - to request a copy of the Energy Performance Certificate.
- Write to the client as seller - to confirm instructions, using the firm's standard client care letter.
- Write to the buyer's lawyers – to confirm the firm is acting and that the pre-contract package will be sent to them shortly.
- Write to any third party who introduced the client to the firm - as a matter of courtesy.

- Carry out a conflict of interest check - to ensure that the firm acting for this client will not create a conflict.

**(b) - (Property Information Form (TA6) on sale)**

This required the candidate to explain that completion of the form is required under the Law Society Conveyancing Protocol and it covers practical matters that are within the seller's knowledge. The replies given are representations and must be accurate, otherwise the buyer may claim compensation or refuse to complete. Examples of matters covered by the Form include boundaries, disputes and occupiers.

**(c) - (Appointment of co-trustee on sale)**

This required candidates to explain that the client remains as sole legal owner of the property following her late husband's death. There is a 'joint ownership' Restriction in the proprietorship register, which indicates that the property was held under a beneficial tenancy in common. This means that there was no 'right of survivorship' and so the deceased husband's beneficial share passed under his Will. In consequence, third parties (i.e. the client's sons) now have beneficial shares in the property and there is a need for overreaching to occur. This happens when the property is sold by not less than two trustees. The restriction prevents registration of a transfer on sale by a sole proprietor. The client will therefore need to appoint a co-trustee to act with her in the sale. The buyer will then take the property free of the beneficial shares, which instead attach to the sale proceeds. The restriction will have been complied with and so the transfer can be registered.

**(d) - (Documents included in pre-contract package on sale)**

This required candidates to identify five documents that would need to be included in the pre-contract package sent by the firm to the buyer's lawyers and explain the purpose of these, which could include the following:

- Draft Contract in duplicate – for approval/amendment by the buyer's lawyers.
- Fixtures & Contents Form (TA10) – this confirms items included/excluded and any additional price payable for items.
- Official copy register entries and title plan for Title number CT257384 – these show the up-to-date state of the register and the state guarantee of title applies to them.
- Official copy of the Conveyance dated 2 August 1988 – this is referred to in charges register and contains restrictive covenants.
- Energy Performance Certificate (if not already provided) - to provide information about the energy efficiency and environmental impact of the property and confirmation of whether there is any Green Deal.

**Question 2**

**(a) - (Financial aspects of purchase)**

This required candidates to identify five financial aspects of the client's purchase which they would need to discuss with the client when receiving initial instructions to act, which could include the following:

- Funding of the purchase (i.e. a mortgage loan and the balance from the client's savings).
- The need for payment of a deposit on exchange of contracts.
- Details of the firm's fees and disbursements (e.g. search fees, land registration fee).
- The need to pay SDLT on completion.
- A request for money on account from the client (e.g. to cover search fees).
- Whether any fixtures or fittings are to be purchased for an extra sum in addition to the purchase price for the property.

**(b) - (Planning matters on purchase)**

This required candidates to identify two potential conveyancing sources of information on planning matters relating to Rowton Cottage, which could have included:

- The replies to the local land charges search in form LLC1/standard enquiries of the local authority in form CON29.
- The replies given in the Property Information Form (TA6) – in particular section 4.
- Copy planning consents and building regulations approvals, which should be supplied as part of the pre-contract package.

It is important to check that any necessary planning consents were obtained for the original erection of the property and any extensions. Also, as to whether these contain any conditions/outstanding requirements. In case of doubt, further enquiries will need to be made before exchange of contracts, to ensure there has been no breach of planning requirements – otherwise there will be a risk of enforcement action by the local planning authority. Checking planning matters will also be a requirement of the mortgage lender.

**(c)(i) – (Timing of mortgage offer on purchase)**

This required candidates to explain that a copy of the client's mortgage offer will need to be received prior to exchange of contracts for the following reasons:

- It ensures the client will have sufficient funds to complete.
- It will enable the mortgage lender's requirements/conditions to be checked.
- It confirms the mortgage lender's acceptance of the client's mortgage application.

**(ii) – (Report on title on purchase)**

This required candidates to explain that they must submit a report on title to Pan Euro Bank plc for the following reasons:

- To confirm the title is marketable and that no onerous matters affect it.
- To confirm the property can be accepted as security for the mortgage loan.
- To request the release of the mortgage funds in readiness for completion.

**(d)(i) - (Formula for exchange on purchase)**

This required candidates to explain that Law Society Formula C would be used as the seller has a related purchase and this is therefore part of a 'chain' transaction. The use of Formula C ensures that there can be a simultaneous exchange on the seller's sale and purchase and there is a binding commitment on the seller's related purchase and vice versa.

**(ii) - (Holding of deposit on purchase)**

This required candidates to explain that the Standard Conditions of Sale (5<sup>th</sup> edition – 2018 Revision) apply. Therefore, the deposit paid by the client will be held by the seller's lawyer as agent insofar as it is needed as a deposit on the seller's related purchase, with any balance being held as stakeholder.

**Question 3**

**(a) - (Official Search on purchase)**

This required candidates to explain that the result of the pre-completion search of the register of Rowton Cottage at the Land Registry using Form OS1 will disclose any new entries since the date of the official copies. The search result has guaranteed accuracy and compensation will be payable for any loss arising from a mistake in it. In addition, the search result confers a priority period of 30 working days. The search should be made in the name of the mortgage lender, in order to protect both the buyer and the lender. The purchase should be registered within the priority period of the search, otherwise there will be a risk of losing priority to new third-party interests.

**(b) – (Pre-completion checks on purchase)**

This required candidates to describe five matters which they would need to check on the date of completion before proceeding to complete the client's purchase, which could include the following:

- That the mortgage deed has been executed by the client.
- That the mortgage advance has been received from the lender.
- That satisfactory replies to Completion Information and Undertakings Form (TA13) have been received from the seller's lawyer.
- That satisfactory results have been received to the pre-completion searches (i.e. the OS1 search of the register and K16 bankruptcy search).
- That the Land Transaction Return (LTR) form for SDLT purposes has been signed or approved by the client.
- That the balance to complete has been received from the client.

**(c)(i) – (Undertaking to redeem mortgage on sale)**

This required candidates to explain that the matters to be covered by the undertaking given to the buyer's lawyer in relation to the client's existing mortgage would include the following:

- An undertaking to discharge the seller's mortgage forthwith on completion; and

- To deliver Form DS1/confirmation from the mortgagee as to e-discharge at the Land Registry to the buyer's lawyer as soon as received.

**(ii) – (Effect of undertaking on sale)**

This required candidates to explain that the professional consequences for the firm in providing such an undertaking are that it is binding on the firm giving it and must be complied with, even if there was a shortfall from the sale proceeds. Failure to do so would be a breach of the SRA Code of Conduct 2011.

**(d) - (Application for registration on purchase)**

This required candidates to identify and explain the purpose of five documents which would need to be sent when making the application for registration of the client's purchase at the Land Registry. These could include any of the following:

- Form AP1, which is the form of application.
- Form DS1/confirmation of electronic discharge, which is the necessary evidence for the discharge of the existing mortgage.
- Form TR1 (or a certified copy), which is the prescribed form of transfer of the property to the client.
- Mortgage deed in favour of Pan Euro Bank plc (or a certified copy), which is the new mortgage which must be protected by registration.
- LTR Certificate/Form SDLT5, which is the evidence of payment of SDLT.
- Form DI, which is used to disclose any overriding interests affecting the property.