

LEVEL 3 - UNIT 10 – CONVEYANCING

SUGGESTED ANSWERS - JANUARY 2017

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

Question 1(a) (Search of the Index Map)

This requires the candidate to explain that the relevant type of official search carried out in relation to the title to Grove Cottage would have been a Search of the Index Map at the Land Registry. This search is applied for either in paper form using Form SIM, or electronically via the Land Registry Portal or the NLIS. The search result will confirm whether the title is registered or unregistered and, if applicable, it will list any title number(s) which affect.

Question 1(b) (Pre-contract documentation on sale)

This requires the candidate to explain that the Death Certificate of William Knowles will need to be provided, in order to confirm that his interest passed by survivorship to Diane Knowles as the surviving beneficial joint tenant (there being no standard form restriction in the register indicating a beneficial tenancy in common).

Also required is the Grant of Probate to Diane Knowles' estate in favour of the client as Executor, which provides evidence of her death and the client's authority to deal with the property as part of that estate.

Question 1(c) (Formula for exchange of contracts on Grove Cottage)

This requires the candidate to identify that it is either Law Society Formula A or Formula B which would be used to exchange contracts on the sale of Grove Cottage. This is because it does not form part of a chain transaction - neither party has a related transaction.

Question 1(d)(i) (Type of implied covenant for title to be given)

This requires the candidate to explain that the client should be advised to sell with Limited title guarantee, as he is selling as Executor and therefore has limited knowledge of the title to the property.

Question 1(d)(ii) (Implied covenants under Limited title guarantee)

This requires the candidate to list the covenants which will be implied under a Limited title guarantee, which are that:

- the seller has the right to sell the property;
- he will do everything he reasonably can to give title to the buyer;
- he has not encumbered the title; and
- he is not aware of anyone else having done so since the last sale of the property.

Question 2(a) (Home Rights Notice in register)

This requires the candidate to identify that a pre-contract enquiry on title would need to be raised regarding the Homes Rights Notice in the charges register. This enquiry needs to be raised because the Notice will bind the buyers if it is not removed on or before completion.

The required action is for a special condition to be inserted in the Contract, which will provide that Mrs Reynolds agrees to the sale, agrees to remove the Notice from the register before completion, and agrees to vacate the property on completion. Mrs Reynolds will also need to sign the contract.

Question 2(b) (Pre-contract searches)

This requires the candidate to list two types of pre-contract search to be carried out on 18 Weston Road. There are a number of such searches which can be made. A typical example is the Enquiries of Local Authority (CON29). This will provide information on public matters affecting the property (e.g. maintenance of the highway).

Another example is the Drainage and Water Search. This will provide information on drainage and water matters (e.g. the availability of mains water, drainage, etc).

Question 2(c) – (Types of survey)

This requires the candidate to identify that the different types of survey which may be carried out upon a property are:

- a Lender's Mortgage Valuation;
- a Condition Report;
- a Homebuyer Report;
- a Full Structural Survey.

If the clients commission their own survey report, this independent report will provide more information than one commissioned by their mortgage lender. An independent report is particularly important for older or more unusual types of property. Such a report also has the advantage that it may give the clients more scope to sue the surveyor if the report fails to reveal existing defects.

Question 2(d)(i) (Co-ownership of 18 Weston Road)

This requires the candidate to explain that, as they are just friends, the clients should be advised to hold the property as beneficial tenants in common (the legal title will be held automatically as joint tenants). This means that they will hold the property in distinct, identifiable shares and the 'rule of survivorship' does not apply. Their respective shares can therefore be willed/gifted instead of passing to the surviving co-owner.

Question 2(d)(ii) (Declaration of Trust)

This requires the candidate to explain that the clients should be advised to complete a Declaration of Trust (or alternatively Land Registry Form JO), in order to specify their beneficial shares/proportions; to confirm their responsibility for outgoings (e.g. mortgage payments, utility bills, repairs); and to make provision regarding a future sale of the property.

Question 3(a) – (Infills in Certificate of Title)

This requires the candidate to identify that the correct infills are:

Box 1: Title Number: PB118529

Box 2: Mortgage Advance: £100,000

Box 3: Price stated in transfer: £150,000

Question 3(b) – (Redemption statement on 18 Weston Road)

This requires the candidate to explain that the seller's lawyers will need to obtain a redemption statement in relation to 18 Weston Road prior to completion, because they will be responsible for discharging the existing mortgage on that property on completion. This responsibility arises from the undertaking which they will have given to the buyers' lawyers prior to completion. The redemption statement will provide them with an accurate figure as to the amount required to redeem as at the completion date, together with a daily rate thereafter in case completion is delayed.

Question 3(c)(i) (Transmission of balance of purchase price to seller's lawyers)

This requires the candidate to explain that they will need to send to the seller's lawyers £135,000, being the purchase price less the 10% deposit, on the day of completion. The contract normally requires that this must be received before 2 pm. The money will usually be sent by bank Telegraphic Transfer (TT)/CHAPS transfer.

Question 3(c)(ii) (Confirmations required from seller's lawyers)

This requires the candidate to explain that, having sent the balance of the purchase price, they will need to receive confirmation from the seller's lawyers that:

- they have received the balance of the purchase price;
- the keys to the property have been released; and
- the TR1 and related documents will be sent in the post/DX.

Question 3(d) – (Requirement for registration of purchase)

This requires the candidate to explain that an application to the Land Registry is necessary because the transfer must be completed by registration in order to take effect at law. The clients do not become the legal owners unless registered as the new proprietors. The new mortgage to Pan Euro Bank also needs to be protected by registration. The application needs to be made within the priority period of the Official Search which will have been carried out pre-completion, otherwise there is a risk of adverse entries gaining priority over the interests of the buyers and their mortgagee.