

LEVEL 3 - UNIT 10 – CONVEYANCING

SUGGESTED ANSWERS - JUNE 2017

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the June 2017 examinations. 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 tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate performance in the examination.

Question 1(a) - (Obtaining official copy register entries)

This requires the candidate to explain that official copies of the register and title plan are issued only by the Land Registry and application may be made in paper form using Form OC1, or electronically using either the Land Registry Portal or the NLIS.

It is important to see what entries currently appear in the register and the official copies will provide up-to-date details of the register entries as at the date they are issued by the Land Registry. The accuracy of official copies issued by the Land Registry is guaranteed.

Question 1(b) - (Signature of contract by co-occupier)

This requires the candidate to explain that, as a non-owner in occupation, Sally Coyle may possibly have an overriding interest in the property. She will therefore need to sign the contract in order to release any interest she may have in the property and to confirm she will vacate the property on completion.

Question 1(c)(i) - (Restrictive covenant in charges register)

This requires the candidate to identify that it is the restrictive covenant which is likely to be the subject of a pre-contract enquiry, because it requires approval from the person entitled to the benefit of the covenant to the plans of any extension erected on the property. This will be of concern because the property has been extended since the date the covenant was entered into.

Question 1(c)(ii) - (Action required regarding restrictive covenant)

This requires the candidate to explain that there are four main options here. First, it may be possible to produce a copy of the approval, if this was obtained at the time. However, if approval was not obtained, the other options will need to

be considered. Another option is to now apply for retrospective approval, or possibly a release of the covenant from the person entitled to the benefit of it. A third option is to apply to the Lands Tribunal, Upper Chamber, for an order discharging the covenant. The final option is to utilise a 'title indemnity' insurance policy to protect against the covenant ever being enforced. The sellers may already have such a policy, or be willing to pay for one to be obtained.

Question 1(d)(i) - (Formula for exchange of contracts on sale)

This requires the candidate to explain that Law Society Formula C will be used in this case, because this is a chain transaction and the clients (as the sellers) have a related purchase. Use of this formula ensures simultaneous exchange of contracts on the clients' related sale and purchase and that they therefore have a binding commitment on both transactions.

Question 1(d)(ii) - (Deposit on sale)

This requires the candidate to explain that the Standard Conditions of Sale (SCS 2.2) will apply, which means that the deposit will be held as agent insofar as needed for deposit on related purchase, with any balance being held as stakeholder.

Question 2(a) - (Queries on draft contract on purchase)

This requires the candidate to identify the following amendments required to the draft Contract:

- The deletion of the 'leasehold' (rather than the 'freehold') option in the property description;
- The reference to a 'Full' rather than a 'Limited' title guarantee;
- The reference to a Contract rate of 'the Law Society rate' (or similar) rather than to '10%';
- The provision for a Deposit of 5%, as previously agreed between the parties, rather than 10%;
- The insertion of the Contents price, which should be £1500.

Question 2(b) - (Types of mortgage)

This requires the candidate to explain that there are four main types of mortgage available:

- Repayment mortgage;
- Endowment mortgage;
- Pension mortgage;
- Interest-only mortgage.

The most common form is now the Repayment mortgage.

Question 2(c) - (NHBC Buildmark scheme)

This requires the candidate to explain that the NHBC Buildmark scheme guarantee/insurance is applicable to a property built less than 10 years ago. This will provide insurance against structural damage for the remainder of the 10 year period. It will be a requirement of the clients' mortgage lender that such insurance is in place. The benefit transfers automatically to a buyer on completion of their purchase.

Question 2(d) - (Contamination - searches)

This requires the candidate to identify that the title register shows previous ownership by a chemical company, which indicates a possibility of contamination of the land. Two relevant pre-contract searches would be the CON29R and/or CON29O Enquiries of local authority, and an Environmental Search.

Question 3(a) - (Completion Information and Undertakings Form - TA13)

This requires the candidate to refer to any four of the following matters:

- Vacant possession: the handover of keys;
- Deeds and documents: a list of what is to be handed over;
- Completion: the place of completion/provision of an undertaking to adopt the Law Society's Code for Completion by Post;
- Money: the exact amount payable/the sellers' lawyer's bank details;
- Mortgages and charges: a list of mortgages to be discharged/provision of an undertaking to discharge these.

Question 3(b) - (Pre-completion searches)

This requires the candidate to explain that a 'bankruptcy' search against the full names of the clients in Form K16 (to check they are not affected by any bankruptcy proceedings/in financial difficulties) will be required.

Also, a Land Registry official search in Form OS1, which should be made in the name of the mortgagee so as to protect both the mortgagee and the clients. The search result will reveal any new entries made since the date of the official copies, and confer a priority period for registration of the clients' purchase at the Land Registry.

Question 3(c) (i) - (Timing of application for registration)

This requires the candidate to explain that the timing of the application for registration is very important. In particular, it needs to take place within the priority period of 30 business days conferred by the official search (discussed in question 3(b) above), otherwise priority may be lost. If priority is lost there will be a risk that any new adverse interests, which may have arisen in the meantime, could gain priority over the interests of the clients and the mortgagee.

Question 3(c) (ii) - (Documents required on application for registration)

This requires the candidate to explain that the following documents would be required:

- Form AP1, which is the correct form of application;
- Form DS1/confirmation of electronic discharge, so as to provide evidence of discharge of the existing mortgage;
- Form TR1, which is the correct form to transfer the title to the property to the clients;
- Mortgage deed relating to the clients' new mortgage, which must be protected by registration;
- LTR Certificate/Form SDLT5, which provides evidence of payment of SDLT on the clients' purchase.

In accordance with current Land Registry practice, in an application in paper form (rather than one made electronically) certified copies of Form TR1 and the Mortgage deed may be lodged, rather than the originals.

Question 3(d)(i) - (Entry of Standard Restriction)

This requires the candidate to explain that the entry will be made in the proprietorship register and will be in the form of a Standard Restriction (known as a Form A Restriction).

Question 3(d)(ii) - (Purpose of entry of Standard Restriction)

This requires the candidate to explain that the Standard Restriction reflects the existence of a trust of land, which means that a sole survivor of the registered proprietors cannot act alone and must appoint a co-trustee to act jointly with them. This ensures the sale proceeds are paid to at least 2 trustees on any future sale and therefore achieves overreaching of the beneficial interests (which then attach to the proceeds of sale).