

**LEVEL 3 – UNIT 19 – RESIDENTIAL AND COMMERCIAL LEASEHOLD
CONVEYANCING
SUGGESTED ANSWERS – JUNE 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 June 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) Oliver has asked for general advice in this instance, rather than specific advice about Flat 25.

One advantage, from the tenant's perspective, of leasing a property is the flexibility that a lease can provide in terms of the duration of the leasehold interest. The lease term may provide for a relatively short duration, which may suit those tenants who do not want to commit themselves to a longer property interest. Alternatively, the lease duration may provide for a lengthier period when the tenant is seeking the stability of a long term.

A further potential advantage for a tenant is that it can avoid major capital outlay in acquiring a leasehold interest, if the main form of payment for the lease is a 'rack' or market rent.

A disadvantage of leasing may be the fact that the tenant is not the outright owner of the property and is subject to the landlord's interest in the land. The landlord may impose obligations or restrictions on the tenant, for example, requiring the tenant to repair the property or limiting the tenant's use of the property.

Another disadvantage is that the lease is a 'wasting asset'. The value of the interest declines as the term gets closer to the end of the grant. This feature of a lease can create problems when a party is trying to secure a mortgage on a lease.

The risk of the lease being forfeited if the tenant breaches a lease obligation makes the tenant's occupation precarious and so is another potential disadvantage of leasing.

- (b) Entry number 3 in the proprietorship register reveals a restriction on the registered proprietor's ability to dispose of his estate without firstly obtaining the consent of his mortgagee.

Hastings Property Developments plc will have to secure the consent of Clifton Finance Group plc prior to the new lease to Oliver being granted.

Entry number 1 in the charges register reveals a notice of a restrictive covenant. This restrictive covenant will bind Oliver's leasehold title and so he should ensure that he complies with the covenant.

Oliver should ensure that evidence is provided of the consent from Thomas David Grant and Maureen Grant or their successors in title to build this property.

- (c) The NHBC Buildmark scheme provides a 10 year guarantee to the buyer that the property has been built in a proper and workmanlike manner, using appropriate materials.

This guarantee is backed by an insurance policy, which protects the buyer in situations where the builder goes out of business.

I would explain that the NHBC Buildmark scheme protects the buyer, between exchange and completion, against the builder's failure to complete the property, through insolvency or fraud, up to a specified financial limit. The cover protects the buyer from losing his deposit.

After completion, for the first two years, the builder is responsible for correcting defects. If the builder fails to comply, the NHBC may take responsibility for the repairs.

For the remaining years of the guarantee, the NHBC insures the property against certain types of major defects resulting from the builder's failure to adhere to NHBC standards.

- (d) I would explain that I would carry out a Land Registry OS2 search as this is used when carrying out a search when buying a part of a registered title.

The result of the OS2 search will ascertain if there are any further entries entered on the register since the date when the official copy entries, supplied as part of the pre-contract package, were issued.

The result also creates a priority period for the buyer. The period is a 30 business day period from the date of the search result. Provided the buyers' application is made within that 30 business day period the buyer will not be bound by entries made after the date of the search.

As Oliver is buying with aid of a mortgage from Nateast Bank and I am acting also for the bank in this transaction, I would also carry out a bankruptcy search against Oliver's name using form K16.

The result of the search could reveal whether Oliver has been made bankrupt.

The result also creates a priority period (the 'protection ends' date will be shown on the search result) for completion of the purchase and mortgage.

As the seller is a company I would also carry out a company search to see whether the company has gone into liquidation pre-completion.

Question 2

- (a) The SRA Handbook Principle 4 states that solicitors must act in the best interests of their clients. They cannot do this where there is a conflict of interest, as it is then impossible to act in the best interests of each client.

Solicitors are required to act in accordance with the SRA Code of Conduct 2011 (SRACC 2011) which is part of the SRA Handbook. This contains mandatory Outcomes, which must be complied with, and examples of conduct which would (or would not) demonstrate compliance with the Outcomes, called Indicative Behaviours (IBs).

O(3.5) SRACC 2011 states that a solicitor cannot act where there is a client conflict, or a significant risk of a client conflict, unless certain limited circumstances apply.

There is an exception in O(3.6) SRACC 2011 which allows a solicitor to act, subject to safeguards, where the clients have a substantially common interest in relation to the transaction and the conflict is minor or peripheral.

The Outcomes are reinforced by Indicative Behaviours (IBs):

IB(3.3) SRACC 2011 – it will tend to show compliance with the Outcomes if you decline to act where there may be a need to negotiate on matters of substance – e.g. price.

IB(3.14) SRACC 2011 states that it will tend not to show compliance with the Outcomes where a solicitor acts for seller and buyer in a transaction relating to the transfer of land for value.

Taking the provisions of the SRA Handbook and SRACC 2011 into account, there is a high risk of a conflict where a solicitor acts for both sellers and buyers of land for value, as would be the case here.

For this professional conduct reason, Sara and Daniel will be advised that it is not possible for Kempstons to act for Viktor and Ingrid as well.

- (b) I would explain that there are two types of co-ownership in land, a joint tenancy and a tenancy in common.

A tenancy in common may be the appropriate co-ownership option for Sara and Daniel.

One reason for this is because they are not a married couple. In addition, Sara has children from a previous relationship. She may not wish her share of the property to pass automatically to Daniel in the event of her death, but may wish to provide for her children by leaving a share of the property to them in her will.

In order for Sara's share in the property not to pass automatically, according to the right of survivorship, to Daniel, she would have to hold her interest as a tenant in common. As tenants in common, each party

would own distinct shares in the property, which can be left by will on death.

Sara and Daniel are also contributing differing amounts towards the purchase. A tenancy in common can recognise the distinct contributions, whilst in the case of a joint tenancy the co-owners own the whole of the property together, rather than having distinct shares.

- (c) As this is an assignment of the whole of the leasehold title I would identify clauses 14.2 and 14.3 as potentially relevant.

I must check the lease for confirmation that there is in excess of 7 years left on the lease term and so the seller does not require the consent of the landlord to this assignment.

I would also check that rent and any other sums have been paid by the seller.

- (d) I would explain that Formula B is the formula that I will use in this transaction. This is the Formula where each party's solicitor holds their client's signed part of the contract and agrees to effect exchange over the telephone.

Viktor and Ingrid are selling 76 Portland Street, but there is no onward chain, as they do not intend to purchase a new property as they already own a property to live in. Therefore, Law Society Formula B is likely to be used to exchange contracts on the clients' purchase.

- (e) I would explain that when I apply to the Land Registry to register Sara and Daniel as new proprietors of 76 Portland Street I will submit the following with Form AP1:

- (i) Certified copy of the TR1 transfer form
- (ii) LTR Certificate (SDLT 5)
- (iii) Fee
- (iv) Certified copy of the new mortgage with Nateast Bank plc
- (v) Evidence of discharge of seller's mortgage (Form DS1 or reference in Form AP1 to discharge by electronic means)
- (vi) Form DI if there are disclosable overriding interests

Question 3

- (a) I would explain that clause 15 could provide assistance to Len on an assignment to Aldgate as it would allow his consent to the assignment to be conditional upon Tony entering into an authorised guarantee agreement (AGA) with him.

As Tony would be released from his liability on the lease covenants following the assignment, and Len has concerns about the financial and covenant strength of Aldgate, it would be important for Len that he secures the ability to sue the outgoing tenant, Tony, on the AGA for any breach by Aldgate.

- (b) I would advise Len that he will be able to pursue a number of potential remedies in respect of the tenant's non-payment of rent.

Len could sue Aldgate for the debt, but this is unlikely to be useful as the tenant may not have the available money to satisfy any court order to repay the arrears.

Len could sue Tony, the outgoing tenant, for the debt if he entered an authorised guarantee agreement with Tony on the assignment.

Forfeiture (the right of re-entry) would determine the lease and allow Len to re-take possession against Aldgate.

The commercial rent arrears recovery procedure (CRAR) would allow regulated enforcement agents to enter Aldgate's property after giving at least 7 days' notice. The agents would then be able to take control of items in Aldgate's property and after at least 7 days, sell them to pay off the arrears.

- (c) I would explain that the phrase 'clear rent' indicates that the landlord would receive the entire income from the tenant. The lease would impose all leasehold obligations and costs on the tenant.