

# Commercial Property Transaction Guide

Specialist commercial property  
advice for businesses





# BHW Solicitors Limited is the leading commercial law firm in Leicester and the East Midlands

## Why you should choose BHW:

- Ranked as a UK top 100 law firm for **Commercial Property** and **Corporate Services** (Legal 500)
- Ranked by Chambers and Partners for **Real Estate**
- All **Commercial Property** partners and senior associates are Recommended lawyers (Legal 500)
- Ranked for **Commercial Litigation, Employment, and IT & Telecoms** (Legal 500)
- BHW is on the panels of mainstream and other lenders
- Transparent fees, clear advice
- Expertise in secured lending, pensions, development and investment, property management, landlord and tenant, agricultural and rural land.
- **Lexcel quality standard** awarded by Law Society



**Beverley Merrell** is individually recommended in Legal 500 and Chambers & Partners



**Kate Burlinson** specialises in Secured Lending and is individually recommended in Legal 500



**Raj Hundal** is recommended in Legal 500



**Alison Harrod** is recommended in Legal 500



**Molly McLoughlin** is recommended in Legal 500



# Disbursements

On many commercial property transactions, certain third-party costs, known as disbursements, are necessary for the transaction to complete. These are not BHW's fees, and are charged separately.

This table shows some typical main disbursements and how much they are likely to be. These are estimates, and you should refer to the completion statement for accurate figures.

Disbursement	What it is for?	How much it is likely to be?
Land Registry Fees	<p>The fee charged by HM Land Registry to register the transaction.</p> <p>It is required when taking a lease or purchase and other transactions.</p>	<p>These vary and are based on two scales published by the Land Registry. They vary between <b>£20</b> to <b>£1105</b> according to the value of the transaction.</p> <p>For example, to register a purchase at £500,000, the Land Registry fee would be £150. We use the electronic portal to submit applications.</p> <p>If there is no 'price' the fee is payable on the estimated property value.</p> <p>The current HMLR Registration service fee scales can be found here: <a href="http://www.gov.uk/guidance/hm-land-registry-registration-services-fees">www.gov.uk/guidance/hm-land-registry-registration-services-fees</a></p>
Searches (carried out for a purchase, lease or legal charge) Please note our search broker charges a small admin fee.	<p>Local Authority search- this deals with matters relating to the property within the control of the local council including planning permissions, building regulation approvals (and breaches) and status of roads. Very important and can only be relied on for 3 months.</p>	<p>Approximately <b>£250</b> depending on the local authority.</p> <p>Highways search approximately <b>£25</b> depending on local authority</p>
	<p>Environmental search – this desktop search looks for potential contamination, subsidence, flooding, based on records.</p>	<p>Varies depending on location and size of property</p>

Disbursement	What it is for?	How much it is likely to be?
	<p>Drainage and Water search- this confirms whether the property is connected to mains water, drainage and sewers and identifies the location of pipes and sewers.</p>	<p>Approximately <b>£250</b></p>
	<p>Flood search- this can be indicated by the environmental search depending on location, gives likelihood of coastal, fluvial or surface water flooding.</p>	<p>Approximately <b>£150 - £300</b> up to 5 hectares</p>
	<p>Chancel repair search- sometimes required by lenders, assesses whether a property is in an area where there is a potential liability to pay for the repair of the chancel.</p>	<p>Approximately <b>£25</b></p>
	<p>Coal Mining - identifies nearby coal workings and how recent they are, measures risk. Can be indicated by location.</p>	<p>Coal search is <b>£114</b> up to 15 hectares  Mining report is <b>£120</b> up to 15 hectares</p>
<p>Stamp Duty Land Tax</p>	<p>SDLT is a tax imposed by HMRC on purchases and leases. It is based on the value of the property acquired (plus VAT), and in the case of a lease, the net present value of the rent plus VAT.</p> <p>Sometimes a notification is due to HMRC even if no duty is payable.</p>	<p>Non-residential rates:</p> <p>Up to £150,000: no SDLT payable</p> <p>The next £150,001 to £250,000: SDLT rate of 2%</p> <p>The portion above £250,000: SDLT rate of 5%</p> <p>Residential rates:</p> <p>Up to £125,000: no SDLT payable</p> <p>The next £125,001 to £250,000: SDLT rate of 2%</p> <p>The next £250,001 to £925,000: SDLT rate of 5%</p> <p>The next £925,001 to £1.5 million: SDLT rate of 10%</p> <p>The portion above £1.5 million: SDLT rate of 12%</p>

# Buying/selling or taking/granting a lease of a commercial property:

## The typical process

1

### **Instruct a solicitor**

You will need to name your solicitor when agreeing heads of terms. Once heads of terms are circulated to us, we will confirm instructions with you and arrange to open a file, for which we will require your ID. If you are an existing client, we will probably already have ID for you, (although this does need to be updated annually.) If you are a new client, we will ask for two forms of ID for each party, or relevant company information.

We will also ask about source of funds if you are purchasing, because this is a regulatory requirement, and you may need to provide copy bank statements. We will get in touch with the other party's solicitor and confirm we are acting for you. If you are acquiring a lease or purchasing, we will ask for the papers.

2

### **Investigate title and enquiries**

If buying or taking a lease, we will raise commercial property standard enquiries with the seller/landlord. We will review the registered title, and your valuation or survey report and raise any additional enquiries that are necessary. We will also carry out property searches and raise enquiries on these.

If acting for a seller or landlord, we will provide draft replies to commercial property standard enquiries to you for you to check, and ask you for any other relevant or required information to send to the buyer or tenant. We will respond to the enquiries raised by the other side.

3

### **Mortgage offer**

If you need a mortgage, we will also receive the paperwork from the bank, and if instructed by the bank, we will prepare our report to them. If the bank uses third party solicitors, we will deal with their enquiries and requirements.

4

### **Negotiate documents**

If acting for a purchaser, we will draft and agree the transfer, and agree the sale contract prepared by the seller's solicitor.

If acting for a landlord, we will draft the lease and any other documents such as licences or deeds and negotiate these with the tenant's solicitor.

If acting for a seller, we will draft a sale contract and agree this with the purchaser's solicitor and agree the form of transfer.

This can take many weeks, as the documents sometimes go through many rounds of amendments before they are agreed by all parties.

5

**Property Report**

At the same time, we will be preparing our property or lease report to you, if you are buying or taking a lease. This involves reviewing all the paperwork and the search results. We will also arrange for you to sign the transaction documents, which may be done electronically. We will prepare a draft completion statement and send this to you around this time, along with a draft SDLT return for you to review and check, if you are purchasing or taking a lease.

We will also request a redemption figure from your lender where applicable.

6

**Exchange**

Many commercial purchases exchange and complete simultaneously, but exchange of contracts is when the transaction becomes legally binding and a completion date is agreed. The documents are exchanged by way of telephone call and sent by post.

On exchange the deposit is paid to the seller's solicitor. Failure to complete on the agreed date can lead to the purchaser forfeiting the deposit

7

**Pre completion searches**

If purchasing, a few days before completion, we will carry out priority searches at HM Land Registry and also any bankruptcy or winding up searches.

8

**Prepare for completion**

If purchasing, we will request funds from your lender and any balance from you.

9

**Completion**

On the agreed day of completion, if purchasing or taking a lease, we will send the sum required to the seller's or landlord's solicitors.

Once completed, if selling, we will send funds to the lender to discharge the mortgage. Proceeds of sale will be sent to you where applicable. The legal title in the property will pass over.

10

**Post completion**

We will arrange for copies of the transaction documents to be circulated to the relevant parties. If purchasing or taking a lease, we will pay any SDLT due to HMRC and file the SDLT return. We will then apply to register the transaction at HM Land Registry. Any company charges will be registered at Companies House.

HM Land Registry is currently working under a backlog, and you should be aware that registration times are currently taking much longer than usual. HM Land Registry sometimes raises questions on applications, known as requisitions, and these must be satisfactorily answered before registration is completed. Unfortunately, these can be raised many months after the transaction has completed.

# FAQs

Here are some frequently asked questions and answers concerning commercial property transactions. Please speak to your Project Leader about any other queries.

## **How long will it take?**

The conveyancing process typically takes between 6-12 weeks, but this varies greatly depending on the transaction and the parties. Bear in mind that the more parties and solicitors, the longer it can take. We will keep you updated as to progress, and if you have an agent, please ask them to make sure things keep moving with the other party. Registration times at HM Land Registry can also vary depending on the nature of the transaction.

Please be assured that we regularly check on the progress of all our pending applications at HM Land Registry and we chase them where necessary. Please do not contact us for regular updates unless it is urgent, because we will always contact you if there is something to tell you.

## **When can completion happen?**

Completion can take place once all the documents are agreed, signed, searches are clear, and funds available. Completion can take place on any day when banks and solicitors are open, it does not need to be on a Friday.

## **Do I need to do searches?**

We recommend that property searches are carried out on all purchases and all longer leases (over 5 years). As buyer or tenant the risk lies with you (Buyer Beware) and you will not be able to claim against the seller or landlord if a matter arises that would have been evident if searches had been undertaken. Our search broker advises the most relevant searches depending on the property location. Matters affecting a property are not necessarily apparent from a visual inspection, but we always recommend a survey is carried out too. Sometimes it is cheaper or more efficient to take out search indemnity insurance or indemnity insurance against a specific risk. If this is the case, we will let you know.

## **What is due diligence?**

This is the investigative process carried out before a purchase or taking a lease. It involves title investigation, searches and raising enquiries. We will do all of this, but we will not commission a survey or (usually) visit the Property ourselves.

## **Do I need to register my lease?**

If you are the tenant of a lease granted for a term of seven years or more, then you must register this at HM Land Registry. All transfers and charges also need to be registered at HM Land Registry. If SDLT was due to be paid, this must be done before the application to HM Land Registry can be made.





### **What is a solicitor's undertaking?**

On certain transactions, it is usual to give an undertaking for costs. This means we promise irrevocably to pay another party's legal or surveyors' fees on their behalf. If we have to give an undertaking, we need to have the funds in our client account. This is why we ask you to put us in funds before we give costs undertakings.

### **Why can't I claim back VAT on monies paid for an undertaking?**

This is because the third party solicitor must only raise an invoice to their own client. However this is 'payable by' us. It is not a VAT invoice because the service has been provided to their own client.

### **Who can witness signatures to documents?**

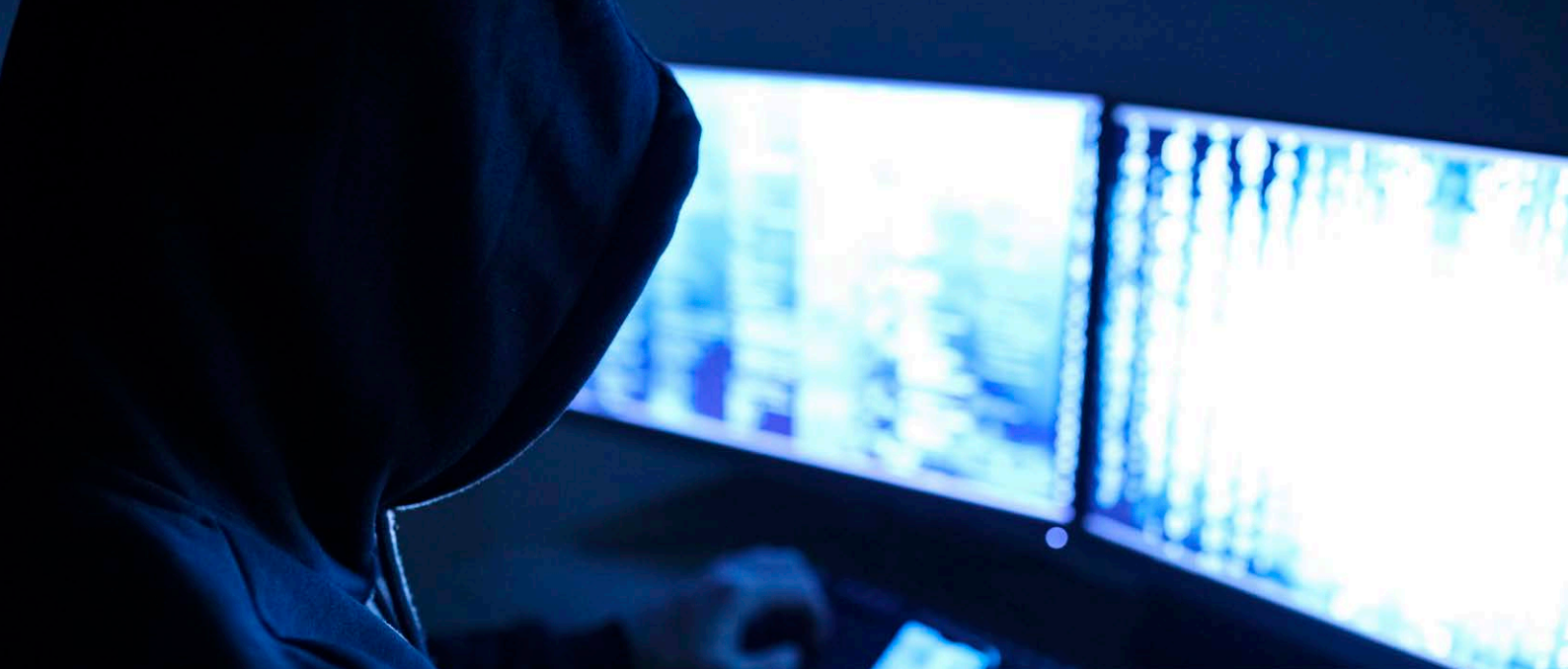
Witnesses need to be over 18, not a family member or living at the same address, and not a party to the transaction. The witness needs to sign where indicated, and add their name, address and occupation.

### **Do I need to sign the plans?**

You will need to sign transfer plans and lease plans. These do not need to be executed in front of a witness, but just signed in the normal way. You can sign anywhere there is a blank space.

### **Why is the SDLT higher than I thought?**

Please remember that SDLT is charged on rent or the purchase price plus any VAT. You can check the SDLT due using HMRC's online calculator at [tax.service.gov.uk/calculate-stamp-duty-land-tax/#/intro](https://www.tax.service.gov.uk/calculate-stamp-duty-land-tax/#/intro). SDLT is a complicated tax and we cannot provide detailed advice on it, which is why we always recommend you consult an accountant.



# Combating Fraud

At BHW we take combating fraud very seriously. Unfortunately, the conveyancing industry has seen a rise in fraud targeting buyers and sellers during their property transaction. Below are the steps you can take to help ensure you don't become a victim of fraud.

## **Push Payment Conveyancing Fraud – How It Works**

Conveyancing fraud is what's known as an 'Authorised Push Payment' scam. In this type of scam, the victim is tricked into authorising the transfer of money from their bank account to the fraudsters. Conveyancing fraud begins with criminals hacking into the email accounts of their victims using 'phishing attacks' and infiltrating genuine email chains between buyers and sellers and their solicitors and estate agents.

Phishing attacks are emails masquerading as a trusted email or internet service provider. The emails will contain a link asking you to enter information or reset your login credentials which once input, will pass your user data to the criminals.

Once the fraudster has access to the victim's email account they will monitor the genuine correspondence, waiting for the right time to insert themselves into the email chain. When the time comes to transfer funds to the solicitor, either for a deposit or the purchase balance, the fraudster sends the victim an email that looks like it's an authentic communication from their solicitor but is in fact a scam email linking to the criminal's own bank details. As fraudsters monitor previous communications, they can make emails appear identical and delete real ones from accounts.

## **Protecting Yourself - Stay Vigilant**

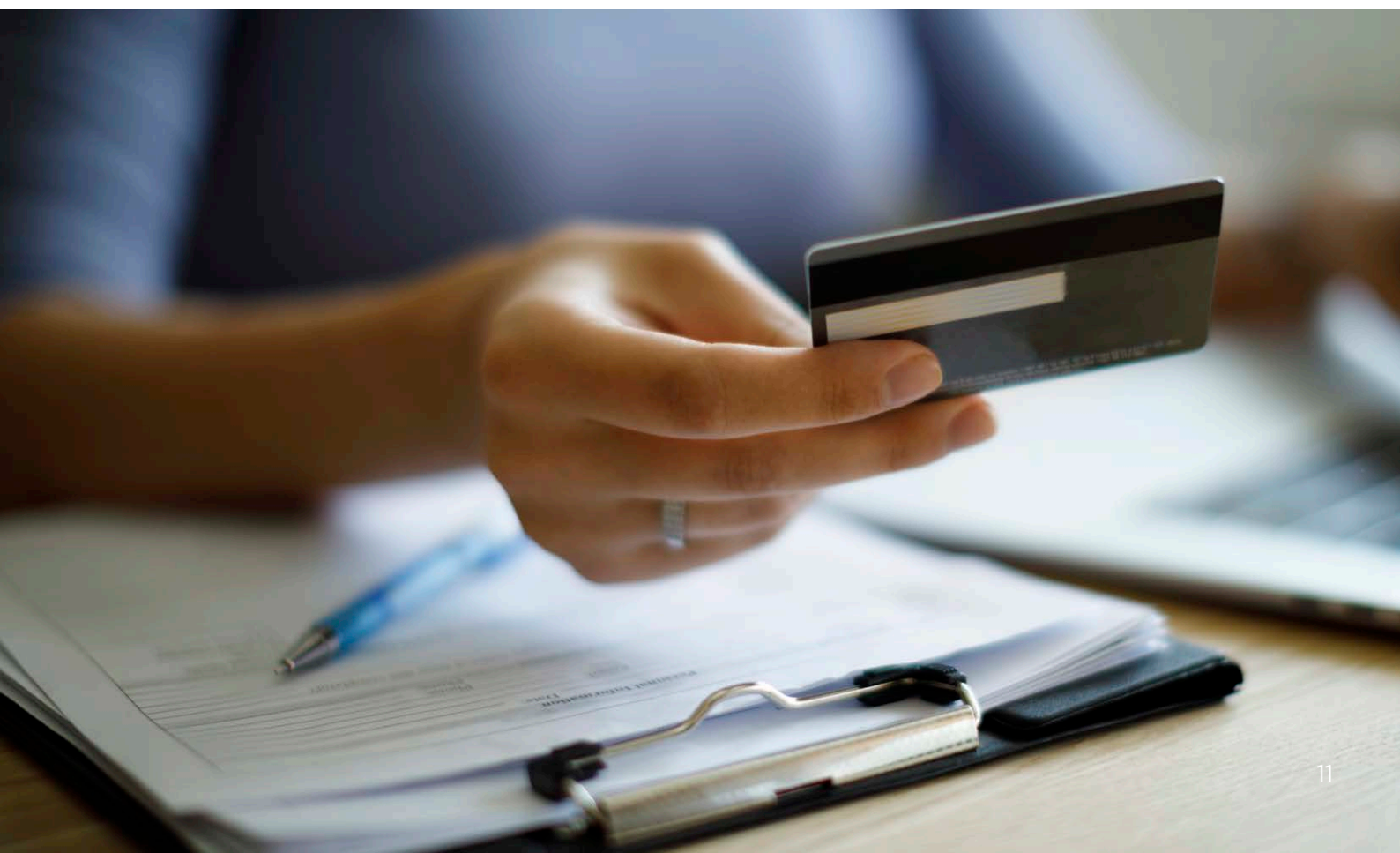
Before you transfer any money to us, you should call us to verify the account details you have are correct. The best way to do this is to call our main switchboard number and ask to speak to one of your conveyancing team who will be happy to confirm our bank details over the phone. Always obtain our telephone number from a trusted source, such as our website, and do not call any number from the email that is asking for funds (this could be the fraudsters number). Finally, we will never change our bank account details during a conveyancing transaction.

Always check the email address that has sent a request for funds matches our genuine email domain. Fraudsters will often send emails from very similar looking addresses to fool you, changing one letter or symbol to that of a company's real email address. If you receive any correspondence that you are unsure about, or you believe is suspicious, contact us immediately and we will confirm if it is genuine or not.

## **Action Fraud**

The latest information on fraud activity and how to protect yourself, as well as reporting a crime if you believe you have been the victim of fraud, can be found on the Action Fraud website: <https://www.actionfraud.police.uk/>

Thank you for trusting BHW with your transaction.





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