

# ELITE RETIREMENT ACCOUNT <sup>TM</sup>

## PROPERTY ADMINISTRATION & RISK WARNING NOTICE

### Property Administration: Purchase/Leasing in your Scheme

You have informed us that you wish to purchase a property within your Scheme. **Please complete and return to us as quickly as possible the enclosed Property Questionnaire.** We will give you all the help we can but you also have a responsibility to help us to ensure that everything is in place in good time for the transaction to be successfully completed. Property is the most complex transaction for a scheme to undertake. We are the legal owners of the property and this form of investment imposes onerous responsibilities upon us. We therefore have to insist upon certain requirements, which you must understand before proceeding.

#### Legal Ownership

1. TM Trustees Limited (TMT) will be the **sole legal owner** of the property (which we hold on your behalf in the pension arrangement). In order to protect ourselves we need to be completely satisfied as to the legal title to the property.

#### Environmental Screening Report

2. The Environmental Protection Act 1990 was amended in 1995 to place a statutory duty on local authorities to inspect all land in their areas in the search for problem sites that come within the statutory definition of contaminated land.

Whilst any clean up is the responsibility of the polluter, the ultimate liability may reside with the owner or pension fund trustee. Accordingly, in order to protect the interests of our SIPP clients, we will arrange an initial environmental screening report for all new property purchases.

We will not proceed with the property purchase until we receive a satisfactory screening report with confirmation of insurability.

#### Insurance Cover

3. You must arrange this before contracts are exchanged. It is vital to us to ensure that the building is **always** insured therefore whilst the lease will be on a full repairing and insuring basis, any un-let property must be insured by you. Neither TM Trustees Limited nor Talbot & Muir are in any way responsible for arranging insurance or renewing existing cover. However, it is imperative that TM Trustees Limited are provided with copies of the relevant insurance documents once cover is in place, as well as confirmation on an annual basis that cover has been renewed. **Cover must be in place at exchange of purchase.** At all times it is your responsibility to ensure that the property insurance policy remains in force.

#### Solicitors

4. TM Trustees Limited will instruct a solicitor who is experienced in this class of property purchase to deal with the acquisition to represent them in the transaction. You are free to take your own separate legal representation. All legal costs associated with the transaction are payable by your SIPP.

If the Lease is being granted to your business, you will appreciate a solicitor cannot act on behalf of the pension fund and the member. This is because there is a potential conflict of interest between the members as Trustees and as occupants of the property, and as a member you may wish to consult separately with a solicitor concerning the provisions of the lease.

If a mortgage is required and the lender instructs its own Solicitors you will be responsible for their fees and your Solicitors may also charge for dealing with them.

### **High Value Transaction**

5. Where a transaction, for whatever reason, becomes exceptionally complex or involves more than one legal title we reserve the right to increase our charges, detailed in the Member Agreement.

### **Aborted Transaction**

6. The Solicitors will keep you fully informed of the progress of the transaction and you will be free to ask for advice or information at any time. If the transaction is aborted, there will be a fee payable to them (plus any disbursements), which will normally depend on the time that has been taken in dealing with the matter. This will be payable from your fund. This applies even if the transaction has to be aborted because our legal requirements cannot be met. We reserve the right to charge our property transaction fee in such circumstances.

### **Survey/Valuation**

7. A Surveyor, who is a member of the Royal Institute of Chartered Surveyors (or an equivalent body), must inspect the property. We require a basic assessment of the condition of the property, a recommendation as to whether a full structural survey is required, the market value, rebuilding valuation for insurance purposes and where a new Lease is to be granted a recommended current market rent which we are obliged by the Revenue to charge. For these purposes the valuer will need to know how long you want the Lease to be for and whether there will be any break clauses (allowing you to terminate the Lease before the end of the term). **The report must be addressed to ourselves but must be arranged by you.** The property must be re-valued, at the expense of your Scheme, every three years or sooner if rent reviews take place to meet Inland Revenue requirements.

### **Fees**

8. The Legal and Surveyor's fees together with all disbursements are your responsibility but must be paid from your pension fund. If there are insufficient funds in your Scheme at the start of the transaction to cover expected fees we reserve the right to request a payment into the scheme to cover these. All invoices **must** be addressed to ourselves. We also make a charge as set out in the Member Agreement. This is in addition to the legal and other charges and disbursements incurred on the purchase of the property. In exceptional circumstances we reserve the right to increase our charges e.g. if property is being developed and to charge where work outside the scope of our normal responsibilities has to be undertaken. This will normally be notified to you before work is commenced.

### **Commercial Property**

9. The property **must** be commercial property (i.e. offices, shops, factories, etc) at the point of purchase and **not** residential property. However, it is possible to apply for residential property status on a commercial property asset. Any development work pertaining to such a change in status can be undertaken whilst the property is an asset of the scheme but must cease before the property is deemed habitable as a dwelling. It is therefore imperative that any planned development or re-classification of property owned by your pension scheme is immediately notified to ourselves in order that any potential tax liabilities can be calculated and advised of. Once a property is classed as residential, it is treated by HM Revenue & Customs (HMRC) as Taxable Property

within the SIPP, and will be subject to punitive tax charges. In these circumstances, any tax charges levied by HMRC will be deducted in their entirety from the member's Elite Retirement Account. Development land and agricultural land are normally acceptable. Hotels and guest houses are not normally acceptable to us because of the difficulty of determining the residential element, nor are properties that may cause special problems both in terms of management and legal liability e.g. landfill sites and sites, which may have been subject to contamination in the past.

Amenity land and any land or property adjacent to land or property owned by you or any person connected to you is an allowable purchase, however we do require the valuer to confirm these are physically and practically separate and that there is no marriage value. It should be noted that HMRC may investigate any amenity rights (for example, fishing or hunting) or any other leisure or recreational activities on the land, to ensure scheme members or connected persons could not directly benefit from these activities following the acquisition of the land by your SIPP without paying the appropriate market rate for the activity.

If development takes place within the Scheme itself this counts as a separate transaction for our fee purposes. We must ensure that our liability to the developer is limited to the assets of your fund **and** that a Project Manager (a qualified surveyor or architect) is appointed to protect our interests. Please remember this is an onerous responsibility for us and we reserve the right to refuse to permit it in certain circumstances. The purchase of property at auction causes particular problems. Please refer to us **before** the auction.

### **Freehold**

10. The property should normally be freehold **not leasehold** unless the Lease is a long one at a **nominal ground rent** with no onerous covenants. Very often, because we are Trustees, our requirements as to the legal title etc. may be more demanding than if you were purchasing the land yourself. For example, we have to be careful where there are high service charges or onerous maintenance obligations for which we could be personally liable and may require certain indemnities from you.

### **Lease**

11. A formal Lease must be entered into if there is not an existing Lease, which is being assigned. The Solicitors will prepare a Lease, which will be supplied to the prospective tenant or his legal advisor as appropriate and will reflect the terms negotiated. The Lease will be a normal commercial one and **must be at the full market rent** where the property is being leased to you. You cannot decide to pay a reduced rent, e.g. just to cover the mortgage payments. We are required by HMRC to ensure all rent is collected. If the Lease requires the landlord to undertake certain covenants TM Trustees may not be in a position to undertake or fulfil those and may require an indemnity from the tenant/lessee.

Where the property is let to you it is essential that you ensure the rent is paid to us a few days before the mortgage payment is due. We therefore request that all rentals are paid by direct debit into the separately designated scheme property bank account. We cannot be responsible for any late payment or interest charges if rent is not received in good time.

### **Property Purchase by Partnership**

12. Where one property is being purchased by several members only one property transaction charge is normally payable. However we must establish a separate Scheme for each member and maintain a central property account for the property itself, which receives the rent and pays the mortgage and distributes any balance to each member's Scheme, in proportion to his or her shares in the property. It is therefore essential for us to know at the start what your shares will be. This will normally reflect the amount of contributions the respective participants have put in to purchase the property. It is not possible to make a gift of part of one partner's entitlement to the other. You are recommended to enter into a Partnership Agreement to cover death/retirement/new partners coming in, etc. We do not provide precedents for this. Even if a member is only entitled to a percentage share in a property, each member's fund is fully liable for the mortgage should it

becomes repayable in the event of default etc. It should be understood that each member cannot give a mortgage on his or her share of the property in relation to someone else's mortgage.

### Finance Arrangements

13. You should ensure that you have arranged the necessary finance to enable the property to be purchased **before** the Solicitors are instructed. Please supply a copy of the offer, **which should be addressed to ourselves**, when returning the Property Questionnaire if you are obtaining a mortgage. If this is not possible please ask the lender to let us have it as quickly as possible. Contracts cannot be exchanged until we have received the mortgage offer or have sufficient monies in place to cover the purchase price. This may cause difficulties if an early exchange is required which is sometimes the case, particularly in Scotland. **Please note we insist on the offer letter containing a clause limiting our liability to the value of your fund.** Some lenders will not accept this. If not, the borrowing cannot proceed. Some insist on onerous conditions, which are unacceptable to us, e.g. a floating charge over our assets or an assignment of the rent. Again, in those cases an alternative source of finance must be obtained. Some appoint their own Solicitors, which you will have to pay for.

Please note that problems may arise if the rent is not sufficient to cover the mortgage payments. For example, you may not be able to justify making further contributions to your Scheme to cover the shortfall. **All mortgage payments both capital and interest must come from the fund and must not be paid direct to the lender.**

It should be noted that the aggregate amount of borrowing a fund can undertake **CANNOT** exceed 50% of the net asset value of the fund, minus any existing borrowing, immediately before the borrowing is undertaken.

### Property Management

14. Where the property is being leased we reserve the right to appoint a property management company to act as our agents in collecting rent and ensuring repairs and tenants' obligations under the Lease are carried out. We undertake to notify you at the earliest opportunity if this is a requirement. Such costs will be met by your pension fund.

### VAT

15. It is normally possible to arrange to opt for VAT where appropriate (e.g. purchase of a new property where the purchase price is subject to VAT or where major renovations are proposed). **Advice should be obtained from a qualified VAT specialist before registering.** Please bear in mind that neither TM Trustees Limited nor Talbot & Muir are qualified VAT specialists. We therefore recommend that the VAT application and quarterly returns are dealt with by such a specialist. We can undertake these tasks if required, but do not accept responsibility for any fines or charges imposed by HMRC as a result of erroneous information provided by external sources. These will be the sole responsibility of the member's Elite Retirement Account. There is an additional quarterly charge if we are involved in completing and filing VAT applications for registration, and quarterly returns. Please remember it takes a few weeks to reclaim VAT. Where it has been paid on the purchase price or the invoiced rent before the rent itself is paid you must ensure you have adequate funds within the Plan to cover any temporary shortfall. A successful VAT registration does not imply that any subsequent reclaim of input tax will be successful and, as mentioned above, advice should be sought from a qualified VAT specialist before registering.

As TMT is responsible for VAT liabilities an Indemnity Agreement between TMT and the member(s) will be required and enforced.

### Energy Performance Certificates

16. From 1<sup>st</sup> October 2008 an EPC will be required when all commercial buildings that are constructed, sold or rented out. Renting out also includes an assignment of lease and sub-lettings. Responsibility for the production

of an EPC rest with the owner who must make the certificate available to any prospective buyer or tenant at the earliest opportunity.  
This list may not be exhaustive, as we have found from experience that individual properties may occasionally have particular problems that only become apparent after the legal work has commenced. We cannot be responsible for any additional costs incurred as a result.

If you have any queries, please do not hesitate to contact us.

### **Property Purchase Risk Warning Notice**

This warning notice draws your attention to the risks and costs associated with the property purchase through a pension fund. It should be read in conjunction with the company's guidance and requirements for property purchase through the Elite Retirement Account (ERA) and must be signed by the client before Talbot & Muir proceed with a proposed property purchase.

1. There is a greater risk associated with property investments as they are not readily realisable.  
  
You may have difficulty in selling the property at a reasonable price.  
  
In some circumstances it may be difficult to sell the property due to market conditions.  
  
Accordingly, you should carefully consider whether such investments are suitable for you in the light of your personal circumstances and the financial resources available to you.
2. At the outset of any proposed property purchase you will incur legal and professional charges, irrespective of whether the proposed purchase is completed.
3. Talbot & Muir and TM Trustees Limited can provide no assurance that any proposed property purchase will be acceptable under your ERA. As all documentation must be checked by our solicitor, completion can only take place once they have confirmed to us that everything is in order.

### **Client Undertaking**

1. I/We have received the Talbot & Muir Administration and Risk Warning Notice for property purchase through our ERA and confirm we understand the requirements therein and the risk warning notice above.
2. I/We undertake to settle legal and professional fees incurred by or on behalf of Talbot & Muir in respect of any proposed property purchase, irrespective of whether such property purchase is completed.

Member name ..... Signature .....

Member name ..... Signature .....

Member name ..... Signature .....

Member name ..... Signature .....

Date .....