

# SIPP

## Property administration and 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 our SIPPs and must be signed by the client before Talbot and Muir proceed with a proposed property purchase.

1. There is a greater risk associated with property investments as they are not readily realisable.
2. You may have difficulty in selling the property at a reasonable price.
3. In some circumstances it may be difficult to sell the property due to market conditions.
4. 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.
5. At the outset of any proposed property purchase you will incur legal and professional charges, irrespective of whether the proposed purchase is completed.
6. Talbot and Muir and the ATC can provide no assurance that any proposed property purchase will be acceptable to be acquired by your SIPP. 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.

## Overview of property administration

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You have informed us that you wish to purchase a property within your Scheme. **Please complete and return the Property Questionnaire to us as quickly as possible.** We will give you all the help we can but you also have a responsibility to help us by ensuring 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.

**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.

## 1. Legal Ownership

The appropriate trustee company\* (ATC) 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.

(\*TM Trustees Ltd, MYSIPP Trustees Ltd, Pensions Partnership SIPP Trustees Ltd)

## 2. Environmental Screening Report

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.

## 3. Insurance Cover

It is vital to ensure that the property 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 the ATC nor Talbot and Muir are in any way responsible for arranging property insurance or renewing existing insurance cover. Property insurance is arranged by Erskine Murray Insurance Brokers via a block insurance policy which is on a market leading wording, and matches the requirements set out by the ATC. Talbot and Muir will receive a commission payment from the insurer. If you require further details, please contact us. This insurance arrangement through Erskine Murray Insurance Brokers is not mandatory but if you do wish to make your own insurance arrangements there will be an additional charge of £150 plus VAT per annum. This is to cover the administration costs for reviewing the alternative cover you have arranged to ensure it meets our minimum criteria. We reserve the right to delay the exchange of contracts on the purchase until such time that we are satisfied with the policy wording.

The minimum criteria for any insurance arrangement is as follows:

- £10 million property owners liability cover
- 36 months loss of rent cover
- Terrorism cover
- No core exclusions are included in the policy
- If the property is a listed building, a Royal Institute of Chartered Surveyors (RICS) valuation has been obtained to establish the reinstatement value

If you make your own insurance arrangements it is imperative that the ATC is provided with copies of the relevant insurance schedule and written confirmation the policy is on risk as soon as possible, with confirmation on an annual basis that cover has been renewed. **Cover must be in place at exchange of contracts, and completion will be delayed until these documents are produced.** At all times it is your responsibility to ensure that the property insurance policy remains in force.

#### 4. Solicitors

Talbot and Muir will instruct a solicitor to act for the SIPP, who is experienced in this class of property purchase to carry out the legal work required. You can have your own separate legal representation, however we reserve the right to appoint our own solicitor to check all documentation, so there will be an element of 'double billing'. 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 both the SIPP and the member. This is because there is a potential conflict of interest between the member(s) as the owner and occupant of the property. As a SIPP 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 their own solicitor, you will be responsible for their fees and your solicitors may also charge for dealing with them.

#### 5. High Value Transaction

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 our Terms and Conditions.

#### 6. Aborted Transaction

The solicitors will keep you fully informed of the progress of the transaction and you will be able to ask them for advice or information at any time. If the transaction is aborted, there will be a fee payable to the solicitor (plus any disbursements), which will normally depend on the amount of work already undertaken. This will be payable from your SIPP. 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.

#### 7. Survey/Valuation

Unless this is a connected party transaction, we will not require to see a survey or valuation report of the property and we will never instruct a surveyor. You need to satisfy yourself that the purchase represents value for money. The solicitor undertaking the conveyancing work will produce a Report on Title, but this will not extend to an inspection of the property so will not include any opinion on the state of repair or if the purchase price is fair or reasonable. Therefore, for your own protection we recommend you arrange for a survey to be undertaken which should be by a RICS member (or equivalent body). The cost of this can be met by the SIPP.

For a connected party transaction (where there is a connection between the buyer and the seller, and/or tenant and landlord) all transactions must be undertaken on an arm's length basis, a **survey must be undertaken**. The surveyor, who should be a RICS member (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 the tenant is also to be a connected party, a recommended current market rent which we are obliged by HMRC to charge. For these purposes the valuer will need to know your proposed term for the lease 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 as trustee but must be arranged by you**. The property and rent payable must be re-valued, at the expense of your SIPP, whenever necessary to meet HM Revenue and Customs requirements.

## 8. Fees

In addition to the legal and surveyor's fees detailed in section 4, Talbot and Muir will also levy a property fee as set out in our published Fees and Services schedule. In exceptional circumstances we reserve the right to increase our charges (e.g. if the property is being developed) and to charge where work outside the scope of our standard responsibilities has to be undertaken. You will normally be notified of this before we commence any work.

## 9. Commercial Property

The property **must** be commercial property (i.e. offices, shops, factories etc.) at the point of purchase and **not** residential property (including properties used for holiday lettings). 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 SIPP, but ownership must cease before the property is deemed habitable as a dwelling. It is therefore imperative that any planned development or re-classification of a property owned by your SIPP is immediately notified to ourselves in order that we can calculate and inform you of any potential tax liabilities. The reason for this is that once a property is classed as residential, it is treated by HM Revenue and 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 your SIPP.

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.

If development takes place 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 SIPP **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.

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.

## 10. Freehold

The property should normally be freehold **not leasehold** unless the lease is a long one with a **nominal ground rent** and no onerous covenants. Very often, because we are the trustee, 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 so we may require certain indemnities from you.

## 11. Lease

A formal lease must be entered into if there is not an existing lease in place 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 where the property is being leased to a connected party **the rent must be at the full market** rate and you are responsible for ensuring the rent is paid in accordance with the terms of the lease. You cannot decide to pay a reduced rent say just to cover any mortgage payments. Where the property is leased to a connected party i.e. you, we are required by HMRC to ensure a full market rent is charged, and all rent should be paid in accordance with the lease. If the lease requires the landlord to undertake certain covenants the ATC may not be in a position to undertake or fulfil those covenants 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 require all rental payments to be made by standing order 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.

## 12. Property Purchase by Partnership

Where one property is being purchased by several SIPP members only one initial property transaction charge is normally payable. We will establish a separate SIPP for each member (which will be subject to our full annual property charge) and maintain a central property account for the property itself, which receives the rent, and distributes any balance into each member's SIPP, in proportion to his or her shares in the property. It is therefore essential for us to know at the outset what your share will be. This will normally reflect the amount of contributions the respective participants have made to purchase the property. It is not possible to make a gift of part of one partner's entitlement to another partner. You are recommended to enter into a Partnership Agreement to cover issues such as death, retirement or new partners being brought in. We do not provide precedents for this. Even if a member is only entitled to a percentage share in a property, each member's SIPP is fully liable for the mortgage should it become repayable in the event of default. It should be understood that each member cannot draw down a loan that is larger than his or her share of the property, as they cannot commit another members share of the property as security for their loan.

## 13. Finance Arrangements

You should ensure that you have arranged any necessary finance to enable the property to be purchased **before** solicitors are instructed. Please supply a copy of your mortgage offer, **which should be addressed to ourselves**, when returning the Property Questionnaire. If this is not possible, please ask the lender to let us have a copy 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 and if that is the case then 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. If this is the case, an alternative source of finance must be obtained. Also some lenders appoint their own solicitors, which you will have to pay for.

Please note that problems may arise if the rental income is not sufficient to cover the mortgage payments. For example, if you have fully used your annual allowance you may not be able to justify making further contributions to your SIPP to cover the shortfall. **All mortgage payments both capital and interest must be paid from the fund and must not be paid direct to the lender.**

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

## 14. Property Management

We do not act in any property management capacity and in the absence of any alternative arrangements put in place, this responsibility falls to you. However, where the property is being leased we do 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 will tell you if this is the case with your property. Such costs will be met by your SIPP.

Please be aware that we do not monitor rental income, this is your responsibility, or a property manager if one has been appointed. This means we do not take responsible for the collection of unpaid rent or for keeping the SIPP member informed of rental arrears. All rental income received is credited to the SIPP property account and these payments are shown on your annual SIPP transaction statement. It is your responsibility to ensure the correct amount of rent has been paid and rent is up to date. On request, we can provide you with a copy of the SIPP bank statement each month which will evidence the rental payments received.

On completion of the purchase, if the property has no tenant, you are responsible for notifying the relevant local authority and utility providers that the registered owner of the property is the ATC, and that any account for payment from money in the SIPP bank account should be addressed to the ATC and sent to us at 55 Maid Marian Way, Nottingham, NG1 6GE.

## 15. VAT

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 the ATC or Talbot and Muir are qualified VAT specialists. We therefore recommend that the VAT application and quarterly returns are dealt with by a VAT 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 SIPP. 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 SIPP bank account 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 the ATC is responsible for VAT liabilities an Indemnity Agreement between the ATC and the member(s) will be required and enforced.

## 16. Energy Performance Certificates

From 1st October 2008 an EPC will be required when all commercial buildings are constructed, sold or rented out. Renting out also includes an assignment of lease and sub-lettings. Responsibility for the production of an EPC rests with the owner who must make the certificate available to any prospective buyer or tenant at the earliest opportunity.

## Client Undertaking

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1. I/We have received the Talbot and Muir Property Administration and Risk Warning Notice for property purchase through our SIPP 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 and Muir in respect of any proposed property purchase, irrespective of whether such property purchase is completed.
3. I/We understand that Talbot and Muir will not take responsibility for collection of rental arrears, or monitoring incoming rent.

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Talbot and Muir Limited provides administration to Small Self-Administered Pension Schemes and is authorised by and regulated by the Financial Conduct Authority to provide administration to Self-Invested Personal Pensions.

Talbot and Muir is the trading name for Talbot and Muir Limited (company number 02869547), registered in England, registered address 55 Maid Marian Way, Nottingham, NG1 6GE. A list of directors is available upon request.

SIPP Proprisk07.1 Nov 2020