

# SSAS

## Property administration and risk warning notice

### 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 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. This form of investment imposes onerous responsibilities upon the trustees. 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

In order to protect themselves the trustees need to be completely satisfied as to the legal title to the property.

The appropriate trustee company \* (ATC) will ordinarily be a **joint legal owner** of the property along with the member trustees (which they hold on behalf of the pension arrangement). However this will be dependent upon the property being purchased passing an Environmental Screening Report (see below).

**The ATC reserves the right to opt against becoming a joint legal owner of the property, and alternatively insist upon a restriction clause being inserted into the title documentation preventing the sale of the Property without the ATC's prior consent.** Where this is the case, we will not insist upon an Environmental Screening Report being carried out, however the member trustees should ensure they are fully aware of any potential liabilities that may fall upon them in respect of any land purchased that may be deemed by the local authority to fall under the definition of contaminated land (see below).

(\*TM Trustees Ltd, SAM Trustees Ltd, Oval Trustees Ltd, Ward Mitchell Trustees Ltd, MYSSAS Trustees Ltd, Pensions Partnership SSAS 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 trustees. Accordingly, in order to protect the interests of our SSAS clients, we can 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 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 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

The trustees are free to choose who will represent them legally. Talbot and Muir can recommend a solicitor who is experienced in this class of property purchase to represent the trustees in the transaction if required. **All legal costs associated with the transaction are payable by the SSAS.**

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 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 the Fees and Services Schedule.

## 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 SSAS. 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 SSAS.

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 SSAS, 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 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 SSAS 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 property owned by your SSAS 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 SSAS, 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 SSAS.

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 SSAS **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 SSAS without paying the appropriate market rate for the activity.

## 10. Land Adjacent to Connected Residential

Whilst owning land next to a residential property owned by you or any person connected to you is an allowable purchase there are additional requirements that apply to these transactions to ensure that they are seen to be a legitimate investment under HMRC legislation. For any such investment to be considered the following would need to apply:

- The solicitor assigned to the case must confirm that the land would not be seen as residential under HMRC pension scheme legislation
- You and your adviser must confirm the commercial nature of the investment, including detailing the commercial benefit for pension scheme, including all expected investment returns and growth
- Following agreement of the land usage and the associated bone fide trading entity, who will act as a tenant, a lease must be entered into. This can be a connected party however the requirements under section 7 apply
- The land would have to be individually insured, the cover cannot be included as part of the existing residential property insurance
- Where the property is used and maintained by a connected party, evidence must be provided on an **annual** basis that it continues to be used for the purpose agreed at the outset

## 11. Freehold

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

## 12. 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 adviser as appropriate and will reflect the terms negotiated. The lease will be a normal commercial one and where the property is being lease 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 the mortgage payments. Where the property is leased to a connected party i.e. you, the trustees 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 designated scheme bank account. We cannot be responsible for any late payment or interest charges if rent is not received in good time.

### 13. 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 the SSAS.

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 members informed of rental arrears. All rental income received is credited to the SSAS and these payments are shown on your annual SSAS 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 SSAS 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 SSAS bank account should be addressed to the ATC and sent to us at 55 Maid Marian Way, Nottingham, NG1 6GE.

### 14. Unoccupied Land and Property

To ensure the property continues to meet the terms of the associated insurance policy, and to enable Talbot and Muir and the ATC to confirm to HMRC, if requested, that the site is occupied, Talbot and Muir and the ATC reserve the right to inspect any land or property. The site inspections will be undertaken by a third party arranged by the ATC, with the costs of this being met by the pension scheme.

### 15. Financial arrangements

You should ensure that you have arranged the necessary finance in place to enable the property to be purchased **before** solicitors are instructed. Please supply a copy of your mortgage offer, **which should be addressed to the trustees**, 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 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. 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

into your SSAS to cover the shortfall. **All mortgage payments both capital and interest must come from the SSAS and must not be paid direct to the lender.**

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

## 16. 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, and as such will not complete registrations or returns on behalf of the trustees. We therefore recommend that the VAT application and quarterly returns are dealt with by a VAT specialist. We 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 trustees of the SSAS. 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 SSAS 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.

## 17. Forced Property Sale

If you do not make sufficient cash available to meet the ongoing liabilities of your pension scheme, and there are no further sources of funding available to the scheme you may be forced to sell the property. If this were the case, to ensure further liabilities are kept to a minimum and the property is disposed of in a timely manner, we would recommend this is completed via auction.

## 18. Energy Performance Certificates

From 1<sup>st</sup> 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.

## Property Purchase Risk Warning Notice

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This warning notice draws your attention to the risks and costs associated with the property purchase through a pension fund. It must be signed by the member trustees 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. The trustees 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. The trustees should carefully consider whether such investments are suitable for them in the light of each member's personal circumstances and the financial resources available to each of them.
5. At the outset of any proposed property purchase the trustees 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 SSAS. As all documentation must be checked by a solicitor, completion can only take place once they have confirmed to us that everything is in order.

## 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 SSAS 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.

Member name:

Signed:

Member name:

Signed:

Member name:

Signed:

Member name:

Signed:

Date:

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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.

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