

Commentary

This question appears quite straightforward but you must read the facts carefully. You should always consider the terms of the contract, as these will govern the contents of the purchase deed. Moreover, a competent answer to part (a) will be impossible unless you grasp the significance of the reference to the Standard Conditions of Sale.

Once you have recognised that the transaction involves a sale of part of registered land, part (b) at least should be plain sailing. Note that part (b) is worth three times as many marks as part (a) so do not get carried away on part (a). Leave yourself enough time to give part (b) the attention it deserves. For part (b) you should identify the relevant transfer deed (in this case, Form TP1) and then explain concisely its contents, that is; how you would fill it in. For ease of reference when considering the suggested answer refer to blank Form TP1.

Many students get confused as to when an acknowledgement for production and undertaking for safe custody of deeds is required in a purchase deed. Such a clause is normally only appropriate on a sale of **part of unregistered land** or, on a sale by personal representatives (PRs) of **unregistered land** (whole or part) where the grant of representation is being retained by the PRs. As PRs are fiduciary owners, they can only give the acknowledgement, not the undertaking.

An acknowledgement and undertaking is not required on the transfer of part of registered land. This is because the transferor will not be retaining any title deeds. Accordingly, it is not necessary to include an acknowledgement and undertaking clause in the purchase deed under discussion in this question.

Suggested answer

a) The contractual completion date is three weeks today. As the contract incorporates the Standard Conditions of Sale regard must be had to Standard Condition 4.3.2. Where the period between exchange and completion is 15 working days or more (see S.C. 4.3.4), as is the case here, the draft transfer should be sent to the seller at least twelve working days before the completion date. The seller then has four working days after delivery to approve or revise the draft and either return it or retain it for use as the engrossment. If the draft is returned, the buyer must send an engrossment to the seller at least five working days before the completion date.

The transferor must execute the deed in order to transfer the legal estate. Execution by both transferees is also necessary in this case because the transfer imposes fresh restrictive covenants and other obligations on the transferees.

When the transfer has been approved and the engrossment is ready for signature, the transferees should execute the transfer first. This is because the transferor will not wish to complete before the transferees have executed it bearing in mind that they are entering into new obligations. After execution by the transferees, the transfer deed will be delivered to the transferor in escrow (conditional upon the transferor also executing it) for execution by the transferor in readiness for completion.

b) The Law of Property Act 1925, s.52(1) provides that in order to transfer the legal estate to the buyer the transfer document must be in the form of a deed. This deed must implement the terms of the contract and will mirror those terms.

As 10 Ellesmere Close has a registered title the relevant purchase deed is a Land Registry transfer, the form of which is prescribed by the Land Registration Rules 2003. The clients are buying part of the land within the registered title of 10 Ellesmere Close and so the appropriate form of transfer is a transfer of part of registered title, namely Land Registry Form TP1. I would complete the form as follows:

Box 1: I would insert title number KM 74859 being the title number out of which the property is transferred.

Box 2: This is left blank as there are no other relevant title numbers.

Box 3: I would insert a description of the land being acquired. The description of the land given in the contract should be adequate for this purpose. I must attach a plan showing the land being acquired edged red and 'check' the first square box. The land retained by the seller should also be defined and identified on the plan, as reference to it will be made later in the document (see Box 12 below). The plan should be securely attached to the engrossed transfer.

Box 4: The date is left blank until completion.

Box 5: I would insert the full name of the seller, Ingrid Kirsten Smits.

Box 6: I would insert the full names of my client purchasers, namely David Hobbs and Stephen Christopher Ingles.

Box 7: I would insert my clients' intended address for service for entry on the register. This should be their home address rather than the subject property address. I would therefore insert 7 Brookfield Lane, Basingstoke, Hants BR1 7JK. An email address may also be given.

Box 8: This provides that the transferor transfers the subject property to the transferees.

Box 9: Checking the first square box I would insert the consideration of £70,000 in both words and figures.

Box 10: The question tells me that the contract provides for a full title guarantee and so I would check the full title guarantee box.

Box 11: In accordance with my instructions I would indicate that the transferees are to hold the property on trust for themselves as tenants in common in equal shares.

Box 12: The contract provides for the mutual grant and reservation of easements and these must be expressly repeated in the transfer deed. The same applies to the new restrictive covenants. Reference can be made to the subject property (edged red on the plan) and the retained land (edged blue on the plan).

Box 13: The transfer will conclude with the attestation provisions, providing for execution by all parties in the presence of a witness. The reason why the transferees must execute the deed is because they are entering into new obligations. The attestation provisions will read 'signed as a deed' to make it clear on the face of the document that it is deed (The Law of Property (Miscellaneous Provisions) Act 1989 s.1(2)).