

## Commentary

This is a question in this area that could appear in subject assessment papers with predictable regularity. If there is one area of paramount importance within pre-completion procedures then this must be it. Searches at this stage of a conveyance are of critical significance and will therefore be central to the examination of your knowledge of the conveyancing process. As is always the case with subject assessment questions, information is contained within it for a reason. For example, here you have been told that you also act for the Bank. This should immediately raise alarm bells in your mind that your set of double instructions will mean additional information required in your answer. Similarly the reference in the latter part of the question to changes consequent upon the property being unregistered will require you to highlight the alternate searches required for unregistered land.

The question also talks about 'searches you would arrange'. This is because you should also arrange to have the property to be purchased inspected before completion. You should always refer to a pre-completion property inspection as a search in an answer of this kind (remember the effects of *Williams & Glyn's Bank Ltd v Boland* [1981] AC 487 and the fact that commercial lessees can leave premises without warning).

Finally, you will also need to show the need for an extra search should the seller be a limited company.

## Suggested answer

The searches required in the several situations contemplated by this question are as follows: -

1. Registered land
  - land registry search – OS2
  - bankruptcy search against one of the buyers – K16
  - inspection of the property
2. Unregistered land
  - land charges search – K15
  - bankruptcy search against one of the buyers – K16
  - inspection of the property
3. Limited company seller
  - as above and also a full search in the Companies Register.

### Registered land

The buyers are purchasing part of a registered property and, as a consequence, the first pre-completion search that should be carried out is an official search of part of the register at the Land Registry. Buyers should only accept as proof of title official copy entries as searches should not be made against mere photocopies. Indeed, best practice dictates that searches should only be made against official copy entries that are less than twelve

months old. Accordingly the buyer will want to check that there are no additional entries on the register that have not been seen and made since the date of the issue of the official copies. As it would appear that the clients are buying a part of the seller's title the search is carried out on form OS2 and the search will be from the date of the official copy entries and must be accompanied by a clear scale plan that plainly identifies the property to be sold. The search will reveal whether or not there are any adverse entries made since that date and the buyer is given a priority period of thirty days. This priority period gives the buyers time during which their registration of ownership at the Land Registry can take place without regard to any other application, adverse or otherwise, made during that period.

Apart from the buyer's instructions there are also instructions from the lenders and a bankruptcy search against one of the buyers, (Mr. Odinga), is made on behalf of the Bank. The search is carried out at the Land Charges Registry on form K16. The purpose is of course to check that this individual buyer is not an undischarged bankrupt. Any adverse entry disclosed could very well mean that the mortgage offer is withdrawn and as a consequence any such entry has to be reported to the lender without delay. A company search should be made against the other buyer to make sure there is nothing at Companies House that might be prejudicial, for example liquidation or receivership. See below for further details regarding company searches.

Finally the subject property should be inspected prior to completion. The reason for this is primarily to check on exactly who is in occupation. The existence of a third party occupant might amount to an overriding interest to which the purchase would be subject (as was the case in *Williams & Glyn's Bank Ltd v Boland* [1981] AC 487).

### Unregistered land

If the property is unregistered then two of the three searches mentioned above would still apply, and for the same reasons. Accordingly, the bankruptcy search would be carried out and the pre-completion inspection would still be necessary. However if the land is unregistered an official search of the register at the Land Register would be wholly inappropriate and should be replaced by a land charges search in the registers maintained by the central Land Charges Department in Plymouth. S.198 of the Law of Property Act 1925 provides that registration is deemed to be actual notice of any registrable matter whether or not a search is carried out. It is therefore imperative to make such a search against all estate owners on form K15. A period of years is required for each estate owner but in doubt the period can be expressed to be from 1925 to the year the search is being made. Any adverse entries will be disclosed on the search result including a puisne mortgage, an estate contract such as an option to purchase or a restrictive covenant affecting the property (in domestic transactions, registrations under the Family Law Act 1996 will also be disclosed). The search result confers a priority period of 15 working days upon the searcher/applicant. Accordingly, if completion takes place during this period, the searcher/applicant will take free of any entries placed on the register between the date of the search and the completion date, on the proviso that completion did indeed take place within the priority period. (You should note that it is not necessary to apply for first registration of title within the search priority period; the time limit is simply two months from the completion date; see s 6(4) of the Land Registration Act 2002.)

### Limited company seller

If the seller is a limited company then there will be an alteration to the list of searches required and the additional search will apply to both registered and unregistered land. Where the seller is a company, a search of the Companies Register at Companies House should be carried out. This can either be done in person or through search agents. In the case of registered land a companies search will be necessary because a buyer may wish to be sure that the company still subsists and has not been struck off the register, perhaps for failing to file returns. Of course if the company were subject to winding up proceedings these too would be shown by this search and would be information that a buyer would need to be aware of in the context of the imminence of completion. If the land is registered then there is no need to carry out a company search to check on financial charges made by the company, as they will only bind a purchaser if they are registered at the land registry.

In the case of unregistered land the company search is very important. The search will reveal floating charges, specific charges created before 1 January 1970, and the commencement of winding up proceedings. All three items are of material importance to a buyer and any such registration would be clearly adverse. No purchaser should proceed until the seller has in the appropriate way shown how and when the adverse entry would be dealt with. Bearing in mind that any disposition by a company subject to winding up proceedings is void, (s.127 Insolvency Act 1986), it will be appreciated just how important a company search can be. Finally it should be noted that there is no priority period of protection available for a company search. Consequently such a search should therefore be made immediately before completion.