

‘Mixed Use’ Property

Some properties contain a mixture of commercial and residential elements, these can be problematic for pension scheme trustees who cannot usually hold an interest in residential property (see ‘Permitted Residential Use’ for exceptions).

For example, the purchase of a freehold property which is a shop on the ground floor with a separate residential flat above, is not permitted within a pension scheme, even if the flat is subject to a long leasehold.

There are alternative options to the purchase structure that can be discussed with a solicitor:

- 1) The pension scheme purchases a long leasehold of the commercial element only. This would usually mean that the freehold of the entire property would remain with the current owner, or would be purchased outside the pension scheme, and the “freeholder” then grants a long leasehold to the pension scheme for the commercial part of the property only.
- 2) The freehold title is split, creating two separate freehold titles. This option would have to be discussed with a solicitor at the outset of the purchase as the splitting of the freehold title may not be possible. Advice should be sought from a legal expert.

Please note that with option 1 the minimum length of a leasehold to be purchased by the pension scheme would be 50 years and must be drawn up by a solicitor.

We would require a Surveyor’s valuation report based on the part of the property the pension scheme was to purchase and reflecting the correct tenure of the proposed purchase. The freehold and leasehold values would be different in almost all cases.

Permitted Residential Use

In some specific instances the residential element of the property may be owned by the pension scheme, if the residential element is ‘job related’ such as a caretaker’s flat. You can read HMRC’s guidance using the link below:

www.gov.uk/hmrc-internal-manuals/pensions-tax-manual

We will consider the above guidance and will decline a request to acquire the property if we believe it is likely to attract unauthorised payment tax charges for you and your pension scheme.

If in our view the residential element of the property is classed as ‘job related’ residential property, specific clauses will need to be included in any lease put in place at the property to ensure the residential element is occupied by an employee who:

- is neither a member of the pension scheme nor connected with such a member
- is not connected with the employer, and
- is required as a condition of employment to occupy the property.

Furthermore, a clause will need to be included to ensure the residential element cannot be sub-let.

If the property has a current lease in place over the entire property, which is to continue after the purchase is completed, then the lease will have to be varied before the purchase to complete to include the above.

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