



# EMBARK PROPERTY

COMMERCIAL PROPERTY GUIDE

[embarkproperty.co.uk](http://embarkproperty.co.uk)

**embark<sup>3</sup>**  
property

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This document provides information about the property services we provide through our Group companies. Please note it is primarily for use by Advisers and customers in conjunction with their Adviser. The information and opinions provided are for guidance only and are not intended as investment advice. We recommend that you seek advice from a recognised investment professional before making any decision to invest in property or one of our products.

## INTRODUCTION

Many people choose to invest in commercial property through their pension to satisfy the potential for capital growth and regular income.

### Advantages of investing in commercial property through your pension scheme

- Tax relief on contributions paid into your pension.
- Exemption from capital gains tax when the property is sold.
- Exemption from income tax on any rental payments.
- Increased cash flow if property is purchased from you or your company.

Please note: the tax information provided within this document is based on our understanding of current tax law and HMRC practice – which may change.

Our processes enable you to participate in the purchase and take control of the ongoing management of your property investment. We will be on hand to offer guidance on any issues you may confront throughout the process.

Purchasing property through a pension arrangement can be complex and requires a detailed knowledge of HM Revenue & Customs' (HMRC) intricate rules and other regulatory requirements. We have many years of experience dealing with these. This guide provides information on the purchase of property through your pension to help your understanding, which in turn should reduce some of the problems you might otherwise encounter.

It is vital that we have an indication of the proposed completion date at the outset. Embark Property will aim to meet the deadline, however, if documentation is outstanding, funds will not be released to complete the acquisition until the paperwork has been received, including a valid insurance certificate and a property management agreement. If the outstanding information is in relation to a new lease, the solicitors will be instructed not to hand over the keys to the building until all required documentation is in place.

Property transactions often take several months to complete. In some cases, delays may occur for reasons beyond our control, particularly when a number of parties are involved. Whilst we do all we can to minimise the delays, we have procedures in place to identify and mitigate any risks associated with a property's ownership, which must be satisfied before your pension can enter into any legally binding contract.

We reserve the right to defer or decline any investment if our requirements are not met. We cannot therefore give any guarantees for the date of completion of sale or purchase or be held liable for any adverse consequences arising from late completion.

You will understand more about the risks and our requirements once you have read this guide.

This guide is based upon our understanding of English law and therefore there may be some differences in legal and other requirements if property is purchased elsewhere.

Embark Property specialise in dealing with all administrative aspects of the life cycle of a property investment and are able to assist you with your enquiries. No two property transactions are the same and this guide cannot possibly cover all eventualities. We recommend that you always take appropriate professional advice when choosing to invest in a property.

## OWNING PROPERTY WITHIN YOUR PENSION

Any property purchased by your pension will be registered with the Land Registry jointly in your name along with your pension Trustee.

### Factors to consider

When considering the type of property you wish to invest in, there are many things that you must take into account. Pension legislation restricts you from investing in most types of residential property, or any other property where you would be able to gain some form of personal benefit. Most types of commercial property and land are acceptable but care must be taken to ensure that any risks associated with the purchase are carefully managed. Please refer to permitted, non-permitted and unacceptable property lists below and opposite.

### Permitted property

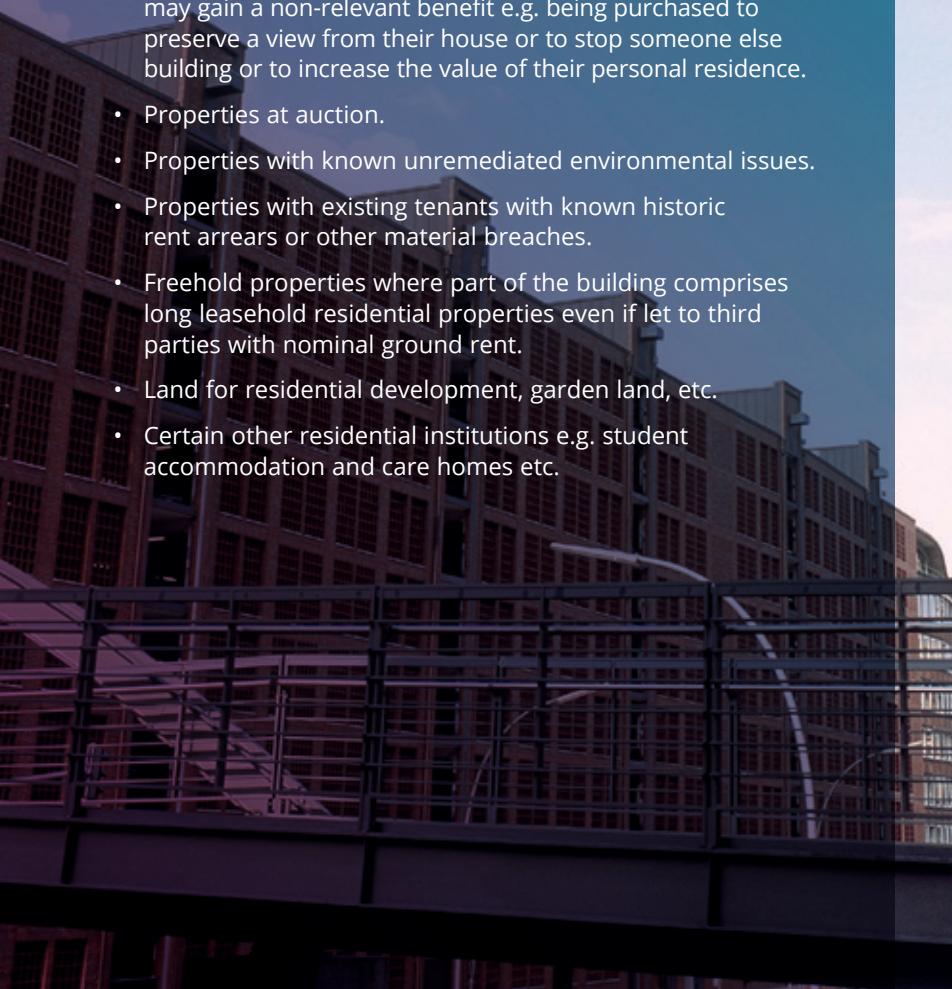
	Retail shop (Single tenant)		Retail shop (Multi-tenant)		Retail financial services
	Restaurant		Café		Drinking establishment
	Hot food takeaway		Office (Single tenant)		Office (Multi-tenant)
	Storage or distribution		Hotel		Non-residential institution
	Leisure		Land for commercial purposes		Agricultural land
	General industrial		Special industrial		



Woodland may be considered permitted property in certain circumstances – please get in touch with our team to discuss further.

## Non-permitted property list

- Taxable property including residential (dwelling houses), holiday apartments, beach huts and caravans.
- Residential institutions.
- Secure residential institutions.
- Property that benefits from an aggregated income such as hotel rooms and storage pods.
- Types of property where we are advised that there is no re-sale market, or we foresee real management difficulties.
- Any property where insurance is unavailable or inadequate in the insurance market for any reason e.g. combustible composite panels, waste transfer and recycling sites, historic flooding, subsidence.
- Land purchased from a third party that adjoins a member's personal residence where the member or connected party may gain a non-relevant benefit e.g. being purchased to preserve a view from their house or to stop someone else building or to increase the value of their personal residence.
- Properties at auction.
- Properties with known unremediated environmental issues.
- Properties with existing tenants with known historic rent arrears or other material breaches.
- Freehold properties where part of the building comprises long leasehold residential properties even if let to third parties with nominal ground rent.
- Land for residential development, garden land, etc.
- Certain other residential institutions e.g. student accommodation and care homes etc.



## OWNING PROPERTY WITHIN YOUR PENSION (CONTINUED)

### Unacceptable Property

We endeavour to permit the purchase of any property or land that is permitted under current legislation and included within our permitted property list, however, we reserve the right to refuse to proceed with the purchase of any property, or to proceed subject to individually negotiated terms, at our discretion.

The circumstances when this might apply could be (but are not limited to):

- where we consider there to be a real risk of existing or future contamination or environmental damage for example the presence, now or in the past, of Japanese knotweed or petrol stations;
- acquisition of a leasehold interest, which is subject to a high rent or service charge, for example ground rent greater than £250 or an annual service charge over £1,000 or 1% of the Market value (whichever is the greater);
- possible breaches of pension legislation requirements, the SIPP's and/or the scheme's trust deed and rules;
- the Trustees are unable to obtain good and marketable title to the property;
- where a property will be unoccupied on completion.

You can consider the purchase of commercial property or land from any party, including connected parties. All property purchases and any lease arrangements must be on a fully commercial arm's length basis.

A connected party is:

- you;
- your spouse, civil partner or relative;
- a relative of your spouse or civil partner;
- a business partner, their spouse or civil partner;
- a company connected with you, your spouse or civil partner;
- the Trustee(s) of a settlement for which you are a settlor or for which a person, who is still alive and connected to you, is a settlor.

### Lease

We normally expect the property to be let from the date a purchase completes unless there are exceptional circumstances, for example, where a property is to be developed. It will not be possible to proceed where a property is to be unoccupied at completion, if we consider the pension is unable to meet any financial outgoings, for example, rates, mortgage repayments and insurance. You should contact us to discuss whether it is possible to proceed if you are not intending to let the property immediately on completion.

All leases should be granted on a full repairing and insuring basis at the rent recommended in the valuation and for a minimum term of three years for all new leases.

The tenant will be responsible for compliance with all relevant legislation including the Environmental Protection Act 1990 and Control of Asbestos at Work Regulations 2012. The tenant will be required to give the Trustees an up-to-date copy of the Asbestos Management Plan for the property on an annual basis, if applicable.

For a property to be developed, we require an Agreement for Lease to be entered into.



**Please note:** Where bank borrowing is required, the lender will usually require the term of the lease to match the term of the loan.



## 'In specie' transfer of property

It is possible to transfer a property currently held as an asset of another pension. As with any other transfer we would need a form completed to authorise us to contact the other scheme and they may have paperwork of their own. The process of transferring would be similar to a purchase. We will not accept any in specie transfer where there are ongoing issues e.g. rent arrears. Please note full due diligence will be carried on all property transactions including inspecie transfers and purchases.

## Purchase price

In accordance with pension legislation, anyone connected to the Scheme cannot receive benefits other than to provide retirement benefits. Therefore, where the vendor is connected to the Scheme Member(s), the purchase price must be in line with the open market valuation. This will need to be evidenced by an independent surveyor's valuation report addressed to the Trustees.

For unconnected transactions, the independent surveyor's valuation report will be used to ensure that the Scheme is paying a fair and reasonable price.

## FUNDING THE PURCHASE

Once you have identified a suitable property investment, the next stage is to consider how the purchase will be funded, as contracts for purchase cannot be exchanged until all funding is in place. This should include any funding to cover legal expenses and any administration fees payable. If any borrowing is required to fund the transaction, this must be agreed, documented and ready to be drawn prior to exchange of contracts.

### Contributions

Contributions can be made to your pension in order to increase the funds available to purchase a property. There is, however, a limit on the level of contributions eligible for tax relief in any one tax year, known as the annual allowance. There is also a limit on the funds you may have in your pension when you take your benefits, known as the lifetime allowance. Funds in excess of the lifetime allowance will be subject to additional tax charges unless you have obtained the necessary pension protection.

You may obtain tax relief in excess of the annual allowance in a single tax year by using unused annual allowance from the previous three qualifying tax years, provided you were a member of a UK registered pension scheme. This facility is called carry-forward.

Your employer can contribute to your pension and will receive tax relief, provided the contributions are made wholly and exclusively for the purpose of the employer's trade. If the total of your employer's contribution and your personal contributions exceeds your maximum permitted annual contribution limit you will have to pay tax on the excess contributions.

If you are making a personal contribution, please be aware that the tax reclaim can take six to 11 weeks to be received from HMRC. This timescale is out of our control.

We strongly recommend that you seek advice on the financial and other consequences of making contributions to your pension, as in some circumstances making contributions may lead to tax charges. It is recommended that you seek advice on such matters from your accountant or financial adviser.

### Existing investments

If any assets, already held in your pension, need to be sold to assist in the purchase, sufficient time needs to be allowed for the realisation to take place and the cleared monies to be available in your pension bank account prior to exchange of contracts.

If you are considering transferring benefits from existing arrangements into your pension, you should seek advice from your financial adviser.

### Transfer from other pension arrangements

Applications for the transfer of benefits cannot start until your pension has been formally established. Enough time needs to be allowed for the transfer to be completed and for any money to clear in the pension scheme bank account before exchange of contracts. This can take several weeks or, sometimes, longer.

### Property contacts

In accordance with the Data Protection Act 2018, before we are able to correspond with third parties about your membership to the scheme, you must give us authorisation. Please provide full details of all parties who are involved with this investment transaction.

## FUNDING THE PURCHASE (CONTINUED)

### Borrowing

Your pension can borrow money to help fund a property transaction. The borrowing can be from a high street lender, but you may also borrow from a connected party, provided it is on a fully commercial basis, subject to a commercial rate of interest and is formally documented with all parties signing the agreement. We would expect borrowing repayments to be met from the rental income.

Pension legislation limits the amount your pension can borrow to 50% of its net fund value at the time the loan is drawn down. The net fund value excludes any existing borrowing which will be deducted to calculate the net value of your pension. The 50% borrowing limit will take into account any existing outstanding borrowing already in place.

We can help with any borrowing calculations once we receive the full details of the transaction and we will therefore need up to date values (within six months) of any scheme assets at the date of drawing down any borrowing. The value of the property being acquired will not be included in any calculation but any existing borrowing will be included in the calculation.



#### Example

A scheme has assets worth £200,000 but has a liability in the form of borrowing of £50,000. Therefore the net fund value is £150,000

The maximum amount which can be borrowed is £200,000 less £50,000 (existing borrowing) x 50% = £75,000, i.e. further borrowing allowed of £25,000.

### Connected party borrowing

We will allow the scheme to borrow from a connected party in limited circumstances. This would be only to cover short term liquidity issues and should be on an arm's length basis for an unsecured loan. Any loan should be less than one year, with no security and no ability for the lender to request early repayment but allow the borrower to repay early.

The terms on which any borrowing is taken must be agreed by you and us. The following should be considered before agreeing to a repayment schedule:

- the amount of rental income to be received and whether this is sufficient to cover the mortgage repayments.  
Please note that we will require 125% coverage on a fixed rate loan and 130% coverage on a variable rate loan, in terms of rental income against the mortgage repayments (capital and interest). We will also need to be satisfied that the scheme has sufficient liquidity to support itself in the absence of rental payments for a period of six months;
- the age at which you wish to take pension benefits, particularly if the property is to form a substantial proportion of the assets of your pension;
- the ability of your pension to pay any current and future commitments in addition to the borrowing, such as a pension payment;
- the term of the lease compared to the term of any borrowing.

All documentation needs to be individually agreed by us before the borrowing may proceed. This includes the Offer/Facility Letter, Mortgage Agreement and Legal Charge. The solicitor acting on behalf of your pension will need to see the Offer/Facility Letter and agree to the terms of the loan before any documentation can be executed on behalf of the pension. The lender will usually want to secure their lending against the property by way of a Legal Charge. We will not be able to proceed with any lending agreements that require a floating charge to be registered against the trustee company's assets, mandate any rental or insurance proceeds be paid direct to the lender or where the lender will not agree to limit the Trustees' liability to the assets held in the pension scheme.

The liability of both your pension Trustees and the pension member must be limited to the assets of the pension in all legal documentation including the Offer/Facility Letter, Mortgage Agreement and Legal Charge and the solicitor will be instructed to ensure this is included within the documentation.

## FUNDING THE PURCHASE (CONTINUED)

### Joint ownership

Joint ownership can be a good solution for you if your pension is unable to raise the funds to buy a property outright. However, you also need to consider what would happen should you, or the other party, wish to sell a share in the future or, unfortunately, die. It may be off-putting to a potential buyer to be able to buy only part of the property and this could be reflected in the value of the seller's share, which may be reduced disproportionately against the total value of the property. You could also find yourself in a situation where your pension jointly owns the property with a totally unconnected third party.

We may permit the joint ownership of a property with another Embark pension or a connected person or company provided:

- the Trustees have the freedom to realise their investment whenever they wish;
- an independent valuation of the property is carried out and each party's share agreed, (the value of each share is then recorded in a separate Deed); or
- A professional independent property manager is appointed to deal with the collection and distribution of rent to the joint owners as well as other management responsibilities.

We will not accept a joint purchase of property that requires the pension to become part of certain special purpose vehicles, for example a limited liability partnership or limited partnership. Please contact us if you are considering such a joint purchase.

Owing to a restriction in the Companies Act 2006, a joint property purchase with a company that is a connected party, where there is borrowing by the pension or by any joint owner, must be carefully documented. If borrowing is involved it should be noted that some lenders' documentation may not be acceptable. We recommend that advice is taken from a suitably qualified professional.

It should also be investigated whether the property in question is VAT registered. If that is the case, we will require tax matters such as VAT for these types of transactions to be put on a professional footing. Although members should ensure they take appropriate professional advice to establish the appropriate way forward, we understand that there may be a requirement for a VAT partnership and careful consideration should be given as to how VAT will be paid to HMRC and where the VAT will be paid from if the purchase is not between multiple pensions, where a property account will be established.

To help safeguard the value of your pension's investment, a joint ownership agreement must be drawn up between the parties at the time of the purchase. Such an agreement normally gives either owner first refusal to buy the other party's share of the property if it comes up for sale or on the death of an owner, what happens if the other party does not wish or is unable to purchase the other share, and sets out the parties respective rights and liabilities in respect of the properties.

### Purchase by multiple pension Members

You will be asked to detail all the Members who are purchasing this property. Where there is more than one scheme investor, a joint account will be set up, which will receive all property income. Periodically we will distribute funds to members' individual accounts, proportionately to their share in the property.

## INSURANCE

To ensure your property investment is protected, the property must be insured from exchange of contracts for buildings reinstatement, loss of rent, terrorism and property owner's liability.

We have negotiated a block policy, through our broker, Hettle Andrews Associates Limited. They are able to offer cover with one of the world's largest insurers. The block insurance policy offers:

- competitive rates;
- comprehensive cover, including unforeseen and environmental risks; and
- 24 hour, seven days a week access to the loss adjuster.

In order to obtain a quote please visit [hettleandrews.co.uk/embark](http://hettleandrews.co.uk/embark) and click on the 'Get Quote' button.

We would expect the property to be insured under the Embark Property block policy. However, in exceptional circumstances you may wish to arrange the insurance, we must have sight of and approve any proposed policy prior to exchange and completion. The insured parties will need to be the registered owners, being the pension Trustees and Members. The policy must include:

- full buildings reinstatement cover as per the reinstatement figure provided by the surveyor;
- loss of rent cover for 36 months;
- terrorism cover; and
- property owner's liability cover of at least £5,000,000.

An additional annual fee will apply where insurance is not through the Embark Block Policy because of the additional administration we have to carry out.



**Please note:** Unless we have approved an alternate insurer we will insure the property under our block policy for buildings reinstatement, loss of rent, terrorism and property owner's liability. Any existing insurance will have to be cancelled from the completion date. In order to avoid under insurance, we reserve the right to instruct an independent insurance reinstatement cost assessment at the expense of the pension scheme.

## ENERGY PERFORMANCE CERTIFICATE (EPC)

An EPC provides a rating of the environmental efficiency of a commercial building, with 'A+' being the most efficient and 'G' being the least efficient. It is based on the energy efficiency of the building fabric, heating, ventilation, lighting and any cooling systems and must be accompanied by a report containing recommendations for improving the energy performance of the building.

The owner of a commercial building who sells or lets it, (or markets it for either purpose) must by law obtain an EPC and make it available to prospective purchasers or tenants at the earliest opportunity.

When a property is being purchased or transferred (including in-specie) we will require an EPC to be produced before the transaction can complete.

Since April 2018 it has been illegal to sell or rent out commercial property with a rating of F or G (the two lowest ratings). Properties that are rated F or G will need to be brought up to standard using the recommendations report. We will consider the investment viability of properties rated F or G on a case by case basis. Further investigations may be required before we can agree to the transaction, such as obtaining quotes for the work and monies in the pension scheme to carry out those works to increase the rating. If the EPC rating cannot be improved to the minimum standard we will need confirmation that the property has been registered on the PRS Exemptions Register.

It is our understanding that an EPC is not required for listed buildings, places of worship, workshops or industrial or agricultural buildings with low energy usage, however as this is a legal issue, we will follow the guidance of the appointed solicitor. These too will need to be registered on the PRS Exemptions Register.

Your property manager will be required to confirm that any exempted properties have been updated on the Register every five years to comply with current legislation.



### The National Private Rented Sector (PRS) Exemptions Register

If a landlord believes that an EPC F or G rated property they let qualifies for an exemption from the minimum energy efficiency standard, that exemption must be registered on the PRS Exemptions Register – a self-certification database.

Detailed information on exemptions criteria is set out in the published guidance. A summary of exemption types and the evidence requirements are available via [gov.uk](https://www.gov.uk/government/publications/private-rented-sector-minimum-energy-efficiency-standard-exemptions/guidance-on-prs-exemptions-and-exemptions-register-evidence-requirements).

Landlords (or a landlord's agent) can register an exemption and will be responsible for updating the register every five years.

Source: <https://www.gov.uk/government/publications/private-rented-sector-minimum-energy-efficiency-standard-exemptions/guidance-on-prs-exemptions-and-exemptions-register-evidence-requirements>  
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## ASBESTOS

Asbestos may be an issue with properties built before 2000 and we will ask the Trustees' solicitor to investigate as part of our instructions. If there is evidence supplied that the property contains asbestos it will be necessary to put an Asbestos Management Plan in force if there is no existing one.

If the vendor is unable to provide clear evidence that the property is free from asbestos, then Embark require, as a minimum, a management type survey (previously referred to as a type 2 asbestos survey) for all property built prior to the year 2000. The survey must include the sampling and testing of any suspected Asbestos Containing Materials (ACMs), which will provide definitive results on samples of suspected ACMs.

Embark will not permit the purchase or ownership of a property which contains Blue or Brown Asbestos.

Embark will not permit the purchase or ownership of a property which contains damaged or deteriorating White Asbestos, unless remediated as part of the recommendations

Embark will permit the purchase or ownership of a property which contains White Asbestos, provided an Asbestos Survey confirms that the asbestos poses no risk.

Additionally, where a property contains White Asbestos a Full Repairing and Insuring Lease (FRI Lease) must be granted to a tenant who is then responsible for the management of any Asbestos and any costs. The tenant is also required to provide a copy of an Asbestos Management Plan annually.

In the event that an FRI Lease is not in place, the property is vacant or there are common parts that fall outside of the tenants responsibility, the Trustees as landlord will be responsible for the management of any Asbestos and any costs. The Member Trustee(s) is/are required to provide a copy of an Asbestos Management Plan annually.

Where the Trustees are responsible for putting in place an Asbestos Management Plan and the Member Trustees do not fulfil this responsibility, Embark will arrange an Asbestos Management Plan to be put in place at the cost of the scheme and if necessary appoint the appropriate professionals to undertake any inspections or action points.

Where development/refurbishment works are planned to take place at a property containing Asbestos, it is a legal requirement not to commence works until an Asbestos Management Plan has been provided to the relevant contractor(s). We will be unable to sanction any works until this has been carried out.

In the event that a property is to be demolished, a demolition type asbestos survey (formerly a type 3 asbestos survey), will be required before any demolition can take place.



## PROPERTY DEVELOPMENT

Any development works that are to be carried out at the property must be agreed by Embark Property prior to any works commencing. We will need full plans, anticipated costs for any development work and cashflow forecast. We will require an RICS Surveyor's advice on the impact of the works with regard to values and marketability. A project manager may need to be appointed to oversee the development and sign off any works as complete.

The development must produce a genuine increase in the value of the property and a further valuation of the property would need to be carried out once the work had been completed.

The scheme cannot pay for any material enhancements to the property e.g. works which would generally be tenant specific works such as shelving, phone systems, fixtures or fittings.

Invoices must be submitted and approved by the project manager and addressed to the scheme quoting the supplier's VAT registration number and the VAT amount.

## SOLICITORS

We will appoint solicitors to oversee all legal work on property assets in your pension. Whether the pension is purchasing the property from you, your business, a third party or it is a transfer from another pension provider, we require the solicitor acting on behalf of the pension fund to carry out detailed property investigations. This is important as the Trustees need to know of any problems before we reach a binding agreement to buy the property.

Once preliminary checks have been completed and we are happy that the transaction can proceed we will instruct the solicitor you have selected in the Property Questionnaire to act on behalf of your pension.

The solicitor will be instructed to prepare or review and approve documentation to enable you to be registered as a title holder of the property, along with ourselves. The instructions will also require a review of and a report on the property title.

Where appropriate, the solicitor will handle any requirements of the lender for the purchase. They will deal with all property purchase and letting documentation and request copies of any Asbestos Management Plan, Energy Performance Certificate or Display Energy Certificate required. They will obtain reports relating to environmental issues and all other appropriate searches to ensure your pension obtains a good and marketable title to the property. Any concerns they may have about any part of the purchase will be raised with us and you for immediate attention.

Unless one has recently been produced and addressed to the pension Trustees, we will always instruct the solicitor to obtain a desktop report showing the history of the site. Under the Environmental Liability Directive, it is the owner who inherits the liability of any environmental contamination claim irrespective of whether the current owner was responsible for the contamination. As a means of protecting your pension, the Trustees require an environmental search so as to be aware of any potential liability they may be taking on.

The cost of this report will be met from your pension and will be in the region of £300-£500 and these funds will typically be required by the solicitors at the beginning of the transaction.

If the environmental report highlights a potential issue, further reports such as a Phase One report, will be required at an additional cost. Any environmental issues will need to be resolved prior to completion. If we consider a property has unacceptable environmental risks, we will not be able to proceed with the purchase.

## SOLICITORS (CONTINUED)

Exchange of contracts will not take place until all necessary checks are complete, documentation has been approved and any borrowing has been agreed, together with appropriate funds being available in the pension bank account to cover the total costs of the purchase, including our administration fees.

Working with many different professionals has taught us the value that experience can add. For this reason Embark Property prefers to choose a solicitor from our panel who is familiar both with pension property purchases and our way of working. Over the years we have used 'non-panel' solicitors and have come up against delays, incorrect documentation and excessive charges. For this reason additional charges apply for using 'non-panel' solicitors (please refer to your pension Fee Schedule).

Due to the complexities of commercial properties together with HMRC and pension regulations and rules surrounding owning a commercial property in a pension, we will insist that a panel solicitor is used if we encounter any issues with using a non-panel solicitor.

If you do not select a solicitor, we will select one of our panel solicitors to act on behalf of the pension.

### Limitation of liability

We can only proceed if the Trustees' liability under any contract, loan, mortgage or lease documentation (including headleases, superior leases and occupational leases) is limited to the assets of your pension.

We suggest where there are existing leases in place that the requirement for our limited liability clause is discussed with relevant parties prior to completing the property questionnaire in order that the parties are aware of this prior to commencing this transaction.

### Appointment of solicitor – Fees and disbursements

You should consider how the cost of the purchase is to be funded. Costs could include (but are not necessarily limited to):

- Solicitor's and other legal fees;
- Stamp duty land tax (or land and building transaction tax in Scotland);
- Borrowing arrangement and other fees;
- Surveyor's fees;
- Specialist risk reports, environmental, contamination and hazardous materials for example;
- Value Added Tax (VAT);
- Insurance; and
- Our administration fees.

## LIQUIDITY

It is your responsibility to ensure that there are sufficient funds within your pension to meet the liabilities associated with the property, such as mortgage payments, third party bills (including service charges, business rates, utility bills and insurance) and our fees.

This is particularly important to consider if the property is vacant as no rent will be being received by your pension. If funds are not available you will need to sell other assets held within your pension, make a contribution, if allowed, or transfer funds from another pension plan to meet your obligations. Where possible sufficient funds should be held in the scheme to cover six months' worth of void costs in the event the property becomes vacant.

You will need to consider when and how you may wish to take benefits from your pension. Funds will need to be available in cash to make benefit payments. If a property investment represents a significant proportion of your pension funds, you could be forced to sell it to pay your benefits. This could lead to having to reduce the asking price of the property for a quick sale.

The property will need to be professionally valued when you take pension benefits (as well as regular income reviews for capped drawdown plans), loan requests and when rent reviews or lease renewals are required. On these occasions your pension will incur the associated professional costs and fees.

Our fees will be directly deducted from your pension. You should ensure there is sufficient cash available in your SIPP to pay fees when due.

Fee and service details for purchasing and ongoing administration of property as an asset of your pension, along with a guide to our retained solicitors' fees, are available via the [Embark Property](#) website.



## VAT

VAT may be payable on the purchase price if the vendor has 'Opted to Tax' or if the property is a new build. For the Scheme to reclaim this back from HMRC, the Scheme must register for VAT and an Option to Tax would need to be sent to HMRC prior to the purchase completing. The scheme would submit a return to reclaim VAT paid, less any VAT received on rent. From when the return is submitted, it can take up to six weeks for the VAT to be received back from HMRC.

Where the property is being sold as a going concern (i.e. where the existing tenant will continue to be the tenant), VAT does not need to be paid to the vendor, as long as an option is in place.

The solicitor will check whether the property is already opted for VAT. If not, it may be advantageous to opt to tax if development work is proposed. However, once the property is opted, VAT will be charged on rent and on the selling price if and when the property is sold.

When considering the funding for your property investment, please note Stamp Duty Land Tax is calculated on the purchase price including VAT.

You can always choose not to opt. VAT would not be charged on the rent and the property can be sold without VAT. However, you would not be able to reclaim any VAT paid on the purchase price, or on any development work.

You are reminded of the following points:

- **We will not provide advice in relation to whether or not a property should register for VAT purposes.**
- **If you are in any doubt as to whether the scheme ought to be, or must be, registered for VAT purposes then you must seek VAT advice from an appropriate adviser.**
- **If an Option to Tax has been taken in respect of a given property, the option cannot be reversed for a period of 20 years.**

There will be occasions when we will require specialist VAT Advice, this will include: Transfer of Going Concern, where one of the property owners is not part of your pension, or if the tenant is a Connected Party but 'Exempt' for VAT purposes.

Embark Property has an experienced VAT team and, where a request to opt a property to tax is made, they will submit the necessary paperwork to deal with any application to opt the property. The team will also deal with any ongoing VAT administration including the filing of VAT returns for your pension.

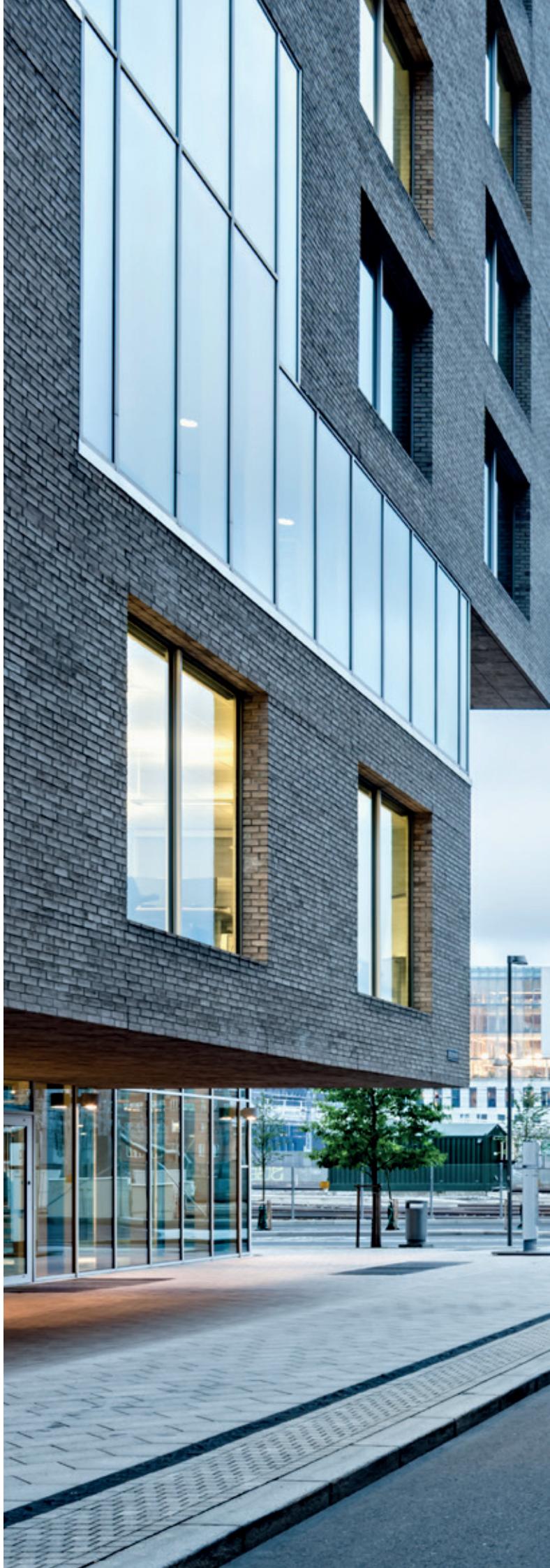
Additional fees will be payable should we need to use the services of our VAT team.

## SECURITY AGAINST BORROWING

Property owned by your pension cannot be used by you or any other party as security against any personal borrowing.

## SOLAR PANELS

You will not be able to use pension funds to purchase solar panels. It may be possible for a tenant to install solar panels in certain circumstances. Any request to do so must be referred to us for prior approval.



## PROPERTY MANAGEMENT

A property manager, who can either be a pension scheme member or a third party firm, must be appointed. If you appoint an independent professional property manager to perform the task we will need to approve and authorise the contract of appointment prior to formalising the appointment.

The day-to-day management of the property will be the responsibility of the property manager in accordance with the principles of good estate management and will need to consider how to manage the property to ensure the terms and conditions of any leases are met.

A property manager will ensure that any tenant fully meets their responsibilities as detailed in the lease agreement. The property manager's responsibilities will include, but are not limited to:

-  Advertising tenant vacancies for the landlord
-  Performing due diligence checks on tenants
-  Invoicing and collection of rent and other income
-  Payment of expenses on behalf of the landlord
-  Addressing ongoing maintenance issues
-  Managing construction, development and repair issues
-  Providing an interface between the landlord and the tenant
-  Providing the landlord with information on any issues that might affect them
-  Dealing with rent reviews and expiry of leases
-  Dealing with VAT issues including at sale
-  Meeting legislative and regulatory requirements  
*e.g. Arranging for adequate signage to protect individuals from potentially dangerous situations*

We will not act as property manager as this does not form part of the services we provide. We need to be kept up to date at all times on any matters affecting the property including approval of new leases, rent reviews etc. to ensure compliance with current pensions legislation. HMRC expects robust management of connected tenancies to take place and any 'unauthorised benefits' such as non-payment of rent or failure to keep properties in repair in accordance with lease terms would need to be reported and will attract tax penalties.

## PROPERTY MANAGEMENT (CONTINUED)

### Leases

The property manager must notify us and the insurer when there are any change in tenant for any reason. There must be a lease for each tenant occupying the property and this must be drafted by a solicitor.

When a pension leases property to a 'connected' tenant and the tenant reduces or ceases paying rent, significant tax charges could result if HMRC rules aren't followed. If at any time a tenant has difficulties in meeting the rental obligations the property manager must contact us immediately so that we can discuss a suitable way forward.

#### A 'connected tenant' is, briefly:

- scheme members, their spouses or relatives; or
- a company, where one of the directors or shareholders is a member or a relative of a scheme member.

#### HMRC requires that:

- a fully repairing and insuring commercial lease must be in place;
- rent must be at a market rate;
- the landlord must enforce the lease as a third party would. This includes pursuing outstanding rent and any 'late payment interest' as the lease dictates.

### Valuations

Throughout the time you hold a property within your pension you may wish to request formal valuations to help with your financial planning. There will also be times that we will require valuations of the property, either as a result of pension regulations or the terms of the lease.

#### Events include:

- taking retirement benefits or, if you are already in capped drawdown, reviewing your income limits. Income limit reviews will be required every three years prior to age 75 and annually thereafter;
- when you reach 75;
- in accordance with the terms of insurance – at least every five years;
- lease renewals or new leases; and
- rent reviews in accordance with the terms of the lease.

You can nominate a valuer of your choice to carry out the report. Once a valuation has been conducted, provided it is addressed to the Trustees, we can rely on the values within the report for pension and legislative requirements for a period of up to six months. The cost of any valuations will need to be met by your pension.



## NEXT STEPS

To begin your property purchase process, you will need to first complete our Property Questionnaire. The Property Questionnaire should be completed in full, signed by you and returned to us. We will not appoint a solicitor until we have received the completed questionnaire and a valuation for the property in which you wish to invest.

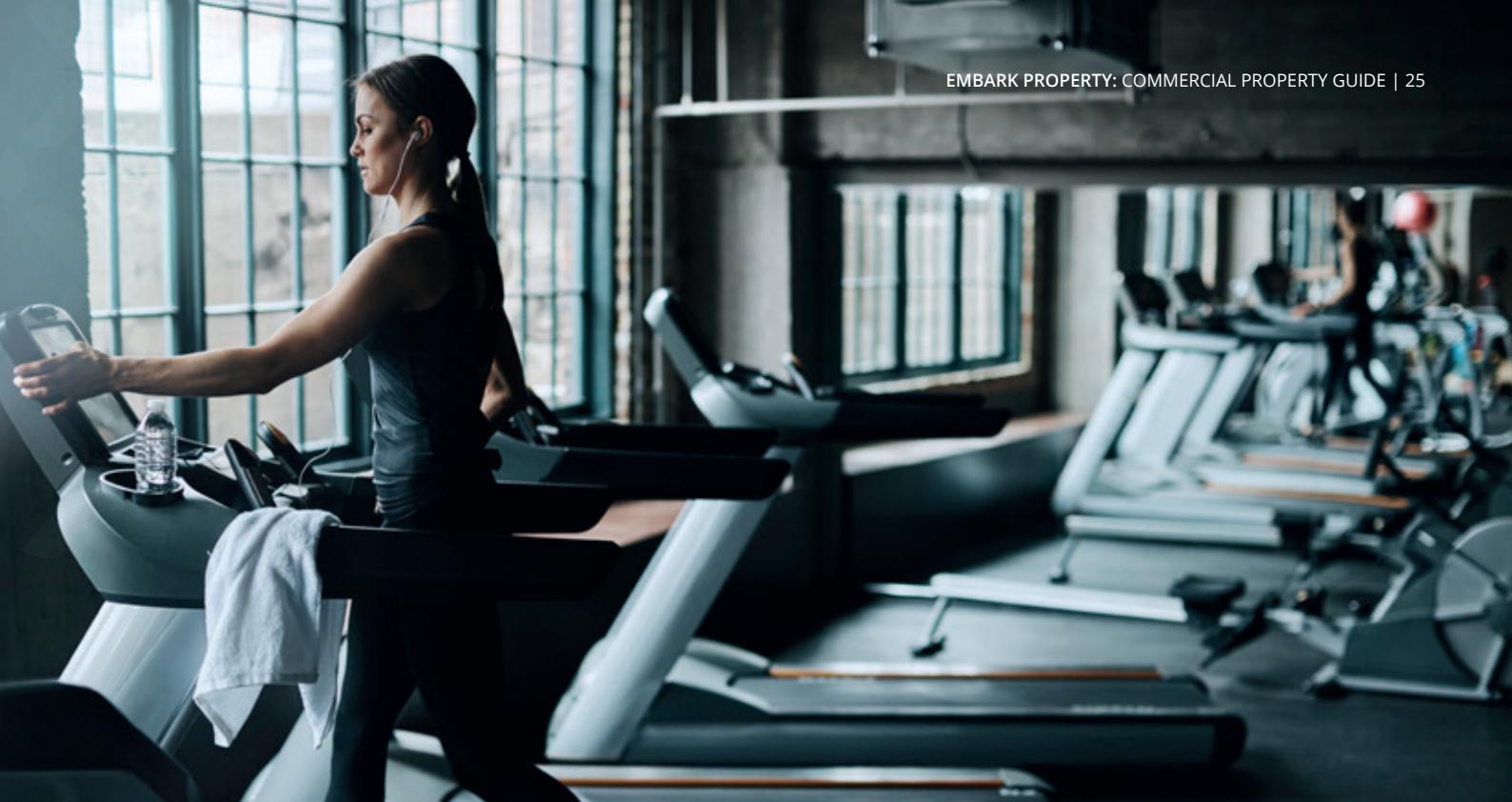
Your completed questionnaire constitutes your instruction to us to invest.

You should appoint an independent Royal Institution of Chartered Surveyors (RICS) qualified surveyor to provide a survey report and valuation, as this is required to support the purchase price and to ensure that the property is an acceptable investment. All fees should be paid from your pension. The report must be less than six months old at the date of completion. If the purchase takes longer than six months an updated valuation will be required.

To avoid running up unnecessary costs we generally do not instruct solicitors until we have received and approved the Property Questionnaire and valuation report.

The report must be addressed to you and your pension Trustees and will need to include (but is not necessarily limited to):

- An open Market Value (MV) of the property in its current condition, based on the tenure of the property and whether it is being purchased with vacant possession or subject to an existing lease.
- An open Market Rental Value (MRV) of the property in its current condition subject to any existing or proposed lease terms. These terms should be clearly outlined in the report, so we can establish on what basis the MRV has been reached. This applies to all properties whether they have or intend to have a single tenant or multiple tenants.
- An Insurance Reinstatement Value (IRV) for insurance purposes to ensure that the correct level of insurance cover is in place should the property need to be rebuilt. This should be on a 'new for old' basis and include professional fees and removal of debris etc. This will not apply to land only assets.
- Location and address of the property.
- Description of the property covering the approximate date of construction, materials used (including the presence, or otherwise, of Asbestos within the property), accommodation and existing condition.
- Confirmation of approved planning permission for current and proposed (if different) use.
- Details of any obvious areas of concern they notice at the property/land, for example any clear environmental risks (e.g. oil tanks) or the presence of invasive plant life such as Japanese Knotweed.
- Whether an Energy Performance Certificate is required.
- Details of any residential element to the property.
- Where the property is adjacent to any land or property owned by a member or a connected party whether, among other things, there is an enhanced valuation of the other property.



- Anything that has to be provided for in the title to the property such as access, services, common parts (and its maintenance). Any changes of use, erections, alterations or demolitions that demand statutory or title consents.
- Details of the presence of solar panels, wind turbines or any equipment used for the collection of renewable energy.
- Whether they recommend a structural survey or any additional specialist reports to be carried out.
- Photographs of the property/land should be annexed to the report, including photographs of anything specifically mentioned in the report they feel we should be aware of.
- If works to the property are proposed or ongoing, we require confirmation of the pre and post works values for MV, MRV and IRV. Ideally, we would like the Surveyor to re-inspect the property when the works have been completed to ensure they have been carried out to the agreed standard.
- If the property is or is intended to be occupied by more than one tenant:
  - that the property is capable of being physically split; and
  - advice on how the building's value (for insurance purposes) should be split between the tenants.



It is important to note that if there is borrowing, the lender will usually wish to appoint a surveyor from their panel. To try and reduce costs, you should liaise with the lender to ensure that the same surveyor is also able to produce the report required for the Trustees.

A surveyor's report and a valuation will also be required, other than at purchase, if the tenant intends to make improvements as opposed to repairs to the property and the Trustees, as landlord, wish to consider granting a concession on the rent payable to reflect the work. Any concession will only be acceptable if it is supported by an independent valuation carried out by a RICS qualified surveyor.

The Trustees also need to take into account whether such a concession may affect their ability to service any liabilities of your pension fund, such as mortgage payments or pension payments.

Further environmental reports may be required before we can agree to proceed with the purchase. This may arise if there is any suggestion of a possible risk of contamination or environmental damage, due to the type of materials used in the construction of property, or the previous use of the land or buildings, for example.

If you are ready to go ahead with your property purchase, please refer to the checklist on the following page which lists the documentation you will need to begin the process.

## CHECKLIST

The following checklist summarises the minimum information that is needed to proceed with a property purchase within your pension.

-  Property Questionnaire – fully completed and signed by the pension member(s).
-  Lease(s) – copies of any existing agreements as requested in the Property Questionnaire.
-  Surveyor's Report.
-  Asbestos Management Survey and/or Asbestos Management Plan.
-  Borrowing Agreement (if applicable) this includes any Offer/Facility Letter/ Mortgage Agreement or Legal Charge.
-  Any existing available Environmental Report.
-  Energy Performance Certificate.
-  The Vendor's VAT registration details and a copy of Vendor's Option to Tax.





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