

Explanatory Memorandum

Regarding contracts for the Sale of Properties at Auction Where Woods Hogan Solicitors act for the Receivers

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Dear Sirs,

We wish to advise that the property in sale is being sold by Receivers (on behalf of the bank) and therefore the standard Contract for Sale must be varied by certain Special Conditions.

To facilitate the examination of the Title and Contracts this memorandum has been prepared. We would hope that this memorandum will avoid the necessity for you to raise pre contract queries.

Introduction

The property is sold by “the Receivers” for and on behalf of “the bank.” Details regarding the receivers, the bank, the date, location and time of the auction, are set out in the first pages of the contract.

The property would have been subject to a mortgage as between the bank and the mortgagors (named as the Vendors in the contract). Pursuant to the terms of the said mortgage the bank appointed the Receivers to recover possession and then sell the property.

The property is now being sold by the receiver on foot of his power as set out in the mortgage. The Receivers sell as agents of the mortgagors (“the Vendors”).

If successful on the day of the auction, the purchaser(s) will be required to sign unconditional contracts for the purchase of the property on that date and be in a position to pay over a deposit in the amount of 10% of the purchase price.

Caveat and Disclaimer

This document is furnished solely as an explanatory memorandum to help explain the contracts furnished and the special conditions relating to the contract.

It is furnished to assist the purchaser(s) and their solicitor and is furnished on an entirely without prejudice basis to the contract furnished.

This document does not form part of the documents of title or part of the contract documentation. It is an explanatory memorandum only.

For the avoidance of doubt nothing herein shall be construed as a note or memorandum for the purposes of Section 51 of the land and Conveyancing Law Reform Act 2009.

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Caveat and Disclaimer (continued)

Note 1

In most property transactions the Vendor will be familiar with the property in sale and so from his or her own personal knowledge will be able to provide the Purchaser with warranties in respect of identity, planning, development, notices etc.

In this case however the Receivers do not have any personal or specific knowledge of the property and so is unable to provide any of the warranties that would normally be provided.

We would therefore suggest that the purchaser(s) carry out the necessary inspection and/or survey of the property and confirm to you that they are satisfied with the boundaries, condition of the property, roads and services etc.

Note 2

The documents of title as set out in the documents schedule are the only documents held by the Receivers and the only documentation that can be furnished.

If the Purchaser(s) is interested in bidding for the property at auction he and or his solicitors must be satisfied with the title that is furnished.

No further documentation can or will be furnished by the Receivers regarding title.

Note 3

The sale proceeds from this transaction will be put towards the debt which is owed by the mortgagor to the Bank. As a result the Vendor owes a strict fiduciary duty to the mortgagor to obtain the maximum value possible from the sale of this property. This duty will include the charging of interest should General Conditions 25 and 26 apply and same will be strictly applied by the Receivers

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The Special Conditions Explained

Receivers Right of Sale

The Receiver's right of sale derives from the Mortgage Deed referred to in the Documents Schedule of the Contract for Sale.

They were appointed by Deed and a copy of the deed of appointment is exhibited as a document of title.

The power of the Receivers to sell is set out under the conditions of the mortgage conditions pertaining to the mortgage and these conditions are exhibited in the documents schedule.

Documents which will be furnished on closing

This is a somewhat standard condition however it does restrict the Documents, Certificates, Declarations or Undertakings that will be furnished on closing. No Documents other than those listed in the Documents Schedule of the Contract for Sale ("the document schedule") shall be furnished on closing. Notwithstanding this all title Documents in the possession of the Vendor shall be handed over on closing.

The Documents furnished are all that are in the possession of the Receivers and the Receivers are unable to provide any further Undertakings, Certificates or Declarations as they have no knowledge of the property in sale and the purchaser should satisfy himself in this regard by making the necessary enquiries and searches.

Title

Title to the property

The Property is set out in the description section of the contract and the title to the property is set out in the document schedule. All documents are available from the website.

This is the full title that is on offer for the property and no further details will be forthcoming from the Receivers.

Covenants and Conditions of Lease (Leasehold Properties Only)

As the Receivers have no actual knowledge of the property in sale no Declaration can be furnished confirming compliance with the Covenants and Conditions of the Lease. We would suggest that your client make all necessary enquiries and inspections.

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The Special Conditions Explained

Title (continued)

Identity and Boundaries

The Receivers have no knowledge of the property and therefore cannot provide any warranties in respect of the identity of the property.

We would suggest that the Purchaser(s) satisfy themselves from the documents provided and from an inspection/survey of the premises as to the identity and boundaries.

Easements Rights other burdens

General Conditions 15 and 16 are amended as the Receivers do not have any actual knowledge of the property in sale which would allow any warranties to be provided with regard to easements, rights, reservations, exceptions, privileges, covenants, restrictions, rents, taxes or other liabilities.

It is very important that the purchaser(s) should satisfy themselves in respect of these matters by making all necessary enquiries and inspections.

Objections and Requisitions on Title

Again this condition sets out that only the Documents listed in the Schedule of the Contract for Sale shall be furnished on completion. It also sets out that no Objections or Requisitions shall be completed by the receivers save those furnished with the Contract. Any further or additional replies to Requisitions cannot be provided because as Receiver, the Receiver has no actual knowledge of the property in sale and as a result cannot provide any warranties in this regard.

We would suggest that your client make all necessary enquiries and inspections and confirm to you that they are satisfied with the property and title thereto.

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The Special Conditions Explained

Planning

Planning Documents

The Planning Documents listed in the Documents Schedule shall be the only planning documentation furnished to the Purchaser(s).

Again as the Receivers do not have any actual knowledge of the property no warranties can be provided to the Purchaser in respect of any planning matters and accordingly General Condition 36 is deleted in its entirety.

We would suggest that your client make all necessary enquiries and inspections to satisfy themselves in this regard.

Roads and Services

The Receivers have very limited knowledge of the existence of and present situation regarding roads and services relating to the property.

The only legal documentation available and that can be furnished to the purchaser is the documentation as set in the document schedule to the contract.

It is for this reason that the purchaser should thoroughly and completely check that he is satisfied as to the condition and legal position regarding roads and services.

Outgoings

Local Property Tax (LPT) Charge

The LPT charge relating to the property will be discharged prior to closing or an undertaking given to discharge it from the proceeds of sale. The Purchaser(s) must agree to apportion the charge up to the date of closing.

NPPR Charge

The NPPR charge relating to the property will be discharged prior to closing or an undertaking given to discharge it from the proceeds of sale.

Household Charge

The household charge relating to the property will be discharged prior to closing or an undertaking given to discharge it from the proceeds of sale.

Service Charge – if applicable

An undertaking will be provided on closing to discharge the service charge arrears up to the date of completion.

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Other outgoings

Any other outgoings are solely a matter for the purchaser. In this regard the purchaser should check the situation electricity, gas, phone and any other utility charges.

Management Company – if applicable

A company search will be furnished with the contracts and the Receivers will set out whatever legal documentation they have in relation to the management company

Prior to the auction and as soon as it becomes available details regarding the name and address of the management agent and the service charge will be made available.

The Receivers will try to find out as much information as possible regarding the management company and will make available any relevant information that comes into the possession of the Receivers.

However we would recommend that the purchaser(s) should contact the managing agent to satisfy themselves as to

- Payment of the service charge
- Arrears outstanding
- Sinking fund
- Transfer of the common areas
- Any other issues pertaining to the management company

Tenants – if applicable

If the property is sold subject to a tenancy then the following will apply:-

- If the deposit has been furnished by the tenant to the Receivers then it will be deducted from the purchase price
- If rent has been paid in advance to the Receivers then an apportionment will be allowed at the time of closing.
- If no deposit or rent has been paid then it will be a matter for the purchaser to deal with the tenant directly regarding same, after closing.
- In the event that we do not hold a copy of the letting agreement we will endeavour to obtain details of the tenancy and to provide same prior to the auction.

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The Special Conditions Explained

Other issues

Contents

If there are any contents remaining in the property at the time of sale they are a matter to be resolved between the Purchaser(s) and the mortgagor.

Keys

If the property is vacant and the Receivers have keys they will be handed over on closing.
If the property is tenanted and the Receivers have keys they will be handed over on closing.

If **no keys are available** then it is a matter for the Purchaser(s) to resolve this issue themselves after closing. If the property is sold with tenants in place the Purchaser(s) may be able to obtain copies of the keys from the tenants.

Condition of the Property

The Purchaser(s) buys the property as they find it and the Receivers do not provide any warranties as to the condition, repair or otherwise of the property.

We would suggest that the Purchaser(s) completes the necessary inspection and survey of the property. The Purchaser(s) buys the property as it is and should the property deteriorate in any way this is not a matter for the Receivers.

Interest

This purchase must be completed on the closing date. As the Receivers have a duty to account, to the Bank and to the mortgagor for interest charged on the mortgage after the sale, the Receivers will charge interest if the closing is delayed.

The Fiduciary Duty of the Receivers

The Purchaser(s) are put on Notice of the fiduciary requirement which is owed by the Receivers to the mortgagor. As a result of this duty General Conditions 24 and 25 must be strictly enforced and cannot be waived by the Receivers

Tax Designation and Taxation

All prospective purchaser(s) should check out the tax situation regarding the property prior to the auction.

Non Title Information

This information can be obtained by the Purchaser(s) if required by making the relevant enquiries and inspections. The Receivers do not have any knowledge of the property to provide this information and any information provided would be on a strictly without prejudice basis and accordingly would not provide any comfort to the purchaser(s).

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The Special Conditions Explained

Other issues (continued)

Orders or Notices

The Receivers confirm that they have no knowledge of any closing, demolition or clearance Order or Notice for compulsory acquisition or other Notice since it took possession of the property however no warranties can be provided in this regard to the period prior to it taking possession and accordingly General Condition 35 is deleted.

PLEASE TAKE NOTE THAT THIS MEMORANDUM IS PREPARED FOR THE PURPOSE OF ASSISTING THE PURCHASERS SOLICITORS IN THE EXAMINATION OF TITLE AND CONTRACTS – THIS MEMORANDUM IS PROVIDED ON A STRICTLY WITHOUT PREJUDICE BASIS AND DOES NOT FORM PART OF THE CONTRACT FOR SALE.

PLEASE NOTE THAT WE DO NOT HAVE AUTHORITY TO BIND OUR CLIENT AND NO CONTRACT SHALL BE DEEMED TO BE IN EXISTENCE UNTIL SUCH TIME AS CONTRACT FOR SALE IS SIGNED BY BOTH PARTIES, EXCHANGED AND A FULL CONTRACT DEPOSIT PAID.

Yours faithfully



Woods Hogan & Company