

Commercial Property Disposals Guide

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Introduction

What is this guide about?

This guide is intended to provide information on our disposals process. Disposals include a sale of whole or part of the property, or a transfer to another pension scheme. It is, however, only a guide. All property transactions must satisfy HM Revenue & Customs (HMRC) and other regulatory requirements, as well as our own requirements. These may vary from time to time.

This guide is for use in connection with products provided by James Hay. We can't accept any liability if the information provided in this document is used for any other purpose. This document is based on our understanding of current UK legislation and HMRC practice at the date this document was produced.

Property disposals through a James Hay Self Invested Personal Pension (SIPP), whether by way of sale or transfer to another provider, are complex transactions. Please read this guide carefully. We recommend that you seek financial advice for any commercial property transactions.

We administer each case individually, taking into account its particular requirements. The tax treatment depends on the individual circumstances and may be subject to change in the future.



If you have any further questions, please call your Customer Support Team or our general enquiry number 03455 212 414.

Glossary

When the following words are used in this guide, this is what they mean:

Connected party: as defined under s 161(8) Finance Act 2004, ss 993 to 995 Income Tax Act 2007 and ss 450, 1122, 1123 and 1124 Corporation Tax Act 2010, connected parties are members, close relatives, partners or any company associated with a member or their family

In-specie transfer: the transfer of pension assets from one pension scheme to another pension scheme

SIPP: any of the relevant SIPP products offered by James Hay Partnership, as detailed on the front page of this guide

Valuer: means a person who is a qualified member of the Royal Institution of Chartered Surveyors (RICS) or equivalent body

We/Us/Our: refers to any of the Trustee Companies associated with James Hay Partnership

You/Your: the SIPP member(s).

Commercial property disposal form



Please complete the **Commercial Property Disposal Form** at the end of this guide to provide us with the information we need to progress the disposal of the property. This is your request to us to begin the sale process

Marketing the property

You can market the property with an agent of your choice, and the agent's fees can be paid from your SIPP. If your agent requires terms of business to be signed, please check that you are happy with them and that you have agreed the fees, then forward the terms of business to us for signing.

Alternatively, you can negotiate the terms of the sale with the potential purchaser directly, however we will need evidence of the reasonableness of the terms from an independent Valuer.

The sale of a property at auction is possible. Please refer to us before you consider placing it in the auction.

Please note that if the agreed sale price results in net sale proceeds being insufficient to repay any mortgage on the property, we reserve the right to refuse to proceed with the sale, unless you have surplus funds available in your SIPP to pay the mortgage balance.

Solicitors

We'll instruct a panel solicitor to act on behalf of your SIPP. Details of our panel solicitors can be found on the Commercial Property page of our [website](#). The panel solicitor appointed will also ensure that any loan on the property is repaid on completion from the sale proceeds.

For certain cases (such as land) you may be asked to provide a plan or title number of the property before we're able to instruct solicitors.

Please note that all legal costs and disbursements connected with the sale of property (but not of any tenant's interest) are payable from your SIPP fund. These are usually dealt with by payment from the sale proceeds of the property. **Please note that should the transaction not proceed, fees may still be payable.**

Where solicitors have been instructed in relation to an in-specie transfer, we reserve the right, in our absolute discretion, to refuse to:

1. undertake further property transactions (save for the transfer of the property to the receiving scheme), or
2. change the nature of the instructions to solicitors.

Any additional costs or fees incurred by solicitors or third parties in relation to any agreed change in instructions to solicitors or transaction structure will be charged to your SIPP.

In order to avoid a conflict of interest, the same solicitor cannot act on behalf of your SIPP and the buyer.

Existing occupational lease

If there is a tenant in the property and the term of the lease still has some time to run, you'll need to let us know whether the sale or transfer is subject to that tenancy or whether you intend to sell with vacant possession. If the sale is to proceed with vacant possession:

1. We will assume the lease will be surrendered immediately prior to completion of the sale. A solicitor must be instructed to deal with the surrender.
2. We will need to establish if the tenant is paying a premium to surrender the lease:
 - a. **If the tenant is connected to you:** we'll require independent RICS valuation advice confirming whether a premium is payable by or to the Trustee Company as landlord. The sum advised by the Valuer must be paid upon completion of the surrender. This is to ensure the transaction complied with HMRC rules and is at all times commercial.
 - b. **If the tenant is not connected to you:** the amount of this premium (if any) may be any sum negotiated with them for the surrender of the lease.

Please note that a surrender premium may attract a Stamp Duty Land Tax (SDLT) liability (England)/ Land Transaction Tax (LTT) liability (Wales)/ Land & Buildings Transaction Tax (LBTT) (Scotland), depending on whether the premium is being paid by the Landlord or the Tenant. The panel solicitor will advise you on any SDLT/ LTT/LBTT liability due from your SIPP, as appropriate.

Existing occupational lease (continued)

As Landlord of the property, we must comply with HMRC rules. This means we must act as a commercial landlord would at all times. We'll take action to recover rent and/or insurance arrears, particularly where the tenant is connected to you. We must ensure that all rent and insurance arrears are cleared before the sale can proceed to completion.

Any delay in the payment of rent and/or insurance arrears may result in a delay to the completion of the sale. We can give no preferential treatment if the tenant is connected to you.

If the tenant is in liquidation or administration and the property is to be disposed of with vacant possession, the lease must be properly brought to an end prior to disposal of the property. Termination of a lease will require the involvement of the acting solicitor.

It is your responsibility to ensure that accurate meter readings are taken at the point of sale.

Property valuation

Connected sales: a sale to a Connected party

If the buyer of the property is connected to you, we must be able to demonstrate to HMRC the sale terms are in line with the open market. A valuation report will be required.

The valuation report must be dated within 12 months of the proposed completion date. If a valuation report is not available or within the 12 months timeframe, we would ask that you instruct a local RICS qualified surveyor to provide a desktop survey addressed to the Trustee.

The cost of the valuation must be settled by your SIPP. Please ask the Valuer to submit their invoice to us alongside the report.

Unconnected sales: a sale to a third party

If the property is being sold to an unconnected party, we can again use a valuation report as long as it is dated within 12 months of the sale. Alternatively, we can obtain confirmation from a Valuer the agreed sale price is fair and reasonable in the current market. If the property has been placed on the open market by an agent, this too can be accepted as the sale price.

Sale subject to an existing occupational lease

The Valuer must confirm the market value of your property on the basis it is to be sold subject to an existing lease. If an existing lease is to be surrendered, then the Valuer should also advise what premium (if any) should reasonably be paid and by whom. **Please see the section 'Existing Occupational Lease' above.**



Connected parties

All property transactions involving a Connected party must be substantiated as commercial by an independent Valuer. Any connected transaction that is not substantiated in this way must be reported to HMRC, triggering potential unauthorised payment charges (payable by you) and scheme sanction charges (payable from your SIPP).

Value Added Tax (VAT)

Where a property has been opted to tax and is being sold with vacant possession, VAT will be added to the sale price. Should the property be sold with the benefit of the existing lease and be VAT opted in the hands of the new owner prior to completion, the property could potentially be a 'transfer of going concern' (TOGC) meaning VAT may not be applied.

HMRC has very specific rulings regarding the treatment of VAT (particularly TOGCs). It is therefore important to seek your own tax advice on this before proceeding, as we are not authorised to provide tax advice.

Energy Performance Certificate

It is a legal requirement to produce an Energy Performance Certificate (EPC) for the sale and letting of commercial properties and this must be available within one week of marketing commencing, unless the property is exempt from providing an EPC under legislation. Where appropriate, you should arrange to obtain an EPC which will be payable by your fund as soon as possible.

The marketing agent should be able to provide an EPC or you may choose an Energy Performance Assessor.

Please note that with effect from 1 April 2018, Landlords of commercial property cannot let a property with an F or G rating. While this does not stop us selling a property, it may affect its marketability.

Disposal of part of the property

If you wish to only dispose of part of the property, we will require a plan marked by the Valuer defining the areas to be sold and retained within the SIPP. A copy of this plan will need to be verified by you to confirm that the part has been correctly identified.

We will also require the Valuer's confirmation of the market value of the area to be sold. If there is a tenant, they must also comment on whether there will be a premium payable by or to the tenant in respect of the part of the property they will be vacating. In relation to the part to be retained in your SIPP, we'll require confirmation of the market value, market rental value and reinstatement figure for insurance purposes.

If there is a mortgage and the sale proceeds are insufficient to redeem it in full, then the solicitor will have to obtain the lenders consent for the sale.

Please be aware that the lender may require the funds to be used towards the discharge of the loan. If there is a mortgage and only part of the loan is discharged the new rent must be sufficient to cover the current level of mortgage payments.

The part sold must be separate from the part of the property which is to remain in your SIPP. This includes the proper separation of any shared services and access so that the different parts of the property can exist independently.

After the disposal completes

Where the property is sold

We will expect the solicitor to send us a completion statement, which not only shows the sale proceeds but also details any invoices that have been deducted from the sale proceeds. This will typically be the solicitor's fee and agent's fee if they marketed the property. A copy of the completion statement will be forwarded to you.

For an in-specie transfer

Where the property is transferring to a new pension provider, there will be no completion statement, and we will pay invoices received for the costs incurred directly from money held in your SIPP. Please note that the transfer cannot be completed until there is sufficient money held in your SIPP to meet all associated costs.

Once the disposal has completed, we require confirmation from the acting solicitor that the property has been re-registered with the Land Registry in the name of the new owner.

Closing your SIPP property account

Once the solicitor confirms to us that the disposal has completed, we will ensure that:

1. all invoices have been paid from your SIPP,
2. all rent and any insurance apportionments have been dealt with and
3. if applicable, all VAT payments/receipts have been paid or received.

Please be advised that this process may take several months, particularly in respect of obtaining insurance refunds from third parties and finalising any VAT issues (if applicable).

Once all these aspects have been resolved, we will check that your SIPP property account has been fully reconciled. Once confirmed, we will proceed to close the SIPP property account and transfer the balance to your SIPP trustee bank account. If applicable (for in-specie transfers), any money in your SIPP will then be transferred to your new pension provider.

Partial transfers of cash while we are awaiting information before we can close the SIPP property account may be possible if requested. In such circumstances we would retain some money in the SIPP property account to meet any outstanding costs.

Charges

In addition to the Valuer's and solicitor's fees indicated above, please note our current charges for administering the disposal are given in the relevant SIPP Charges Schedule. This is available on our website at jameshay.co.uk or on request.

Please note that charges may still be applied should the transaction not proceed or be cancelled for any reason.

Commercial Property Disposal Form

Application guide

Please complete this form in BLOCK CAPITALS and return it to the address below:



James Hay Partnership, Suite 202 Warner House, 123 Castle Street, Salisbury, SP1 3TB.



If you need any help with completing this form, please call your Customer Support Team or our general enquiry number on 03455 212 414.

1 Name of pension product in which property is held

Applicant to complete

- | | |
|---|---|
| <input type="checkbox"/> Partnership SIPP | <input type="checkbox"/> IPS Family SIPP |
| <input type="checkbox"/> IPS SIPP | <input type="checkbox"/> IPS Pension Builder SIPP |
| <input type="checkbox"/> IPS (2008) SIPP | <input type="checkbox"/> Other James Hay SIPPs |

2 Property address

Applicant to complete

Property
address

Postcode	

3 Details of SIPP member(s)

Applicant to complete

Member 1

Member name	
Reference number	
Email address	
Telephone	

Member 2

Member name	
Reference number	
Email address	
Telephone	

3 Details of SIPP member(s) (continued)

Applicant to complete

Member 3Member name Reference number Email address Telephone **Member 4**Member name Reference number Email address Telephone **4** Proposed sale of the property

Applicant to complete

I/We confirm the proposed sale of the above property and the agreed sale price is:

£ **5** Property disposal information

Applicant to complete

Is the tenant connected to you?

Yes No

If the tenant is not connected to you, please advise what terms have been agreed

The property is to be sold:

 with vacant possession subject to the current occupational lease

Is the lease to be surrendered prior to disposal?:

Yes No

Is the disposal expected to be a transfer of going concern?:

Yes No

I/We enclose a copy of the valid Energy Performance Certificate:

Yes No

6 Current rent arrears

Applicant to complete

Please provide information on the current rent arrears for the property:

7 Details of the Valuer

Applicant to complete

Please provide details of the Valuer you will instruct to undertake a Market Valuation of the property. The valuation report and invoice must be addressed to the relevant Trustee for your SIPP.

Name of Valuer

Address of Valuer

8 Details of the buyer

Applicant to complete

Buyer's name

Buyer's address

Is the buyer connected to you? (Please see page 1 for definitions of connected parties)

Yes No

8a Details of the buyer's solicitor(s)

Applicant to complete

Buyer's solicitor's name

Buyer's solicitor's address



Please note that we will appoint a solicitor from our approved panel of solicitors to act for the SIPP Trustees. Please refer to the **Commercial Property Purchase and Maintenance Guide** for further information.

Please note this section is only applicable to Partnership/IPS SIPP/IPS(2008)/IPS Pension Builder SIPP products

Full name of tenant

Annual rent amount £

Frequency of payments

Account details to which the rent is paid:

Sort code

Account number

I enclose the following: (please tick)

Copy of insurance schedule

Copy of external SIPP account statements

I/We confirm that my SIPP will meet all fees in connection with this transaction.

Member 1

Print name

Signature

Date

Member 2

Print name

Signature

Date

Member 3

Print name

Signature

Date

Member 4

Print name

Signature

Date

We are able to provide literature in alternative formats. For a Braille, large print, audio or E-text version of this document call us on 03455 212 414 (or via the Typetalk service on 18001 03455 212 414).

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NGSL, IPS, JHAC, JHPT, JHWM, JHWNC, PAL, SarumTL, IPSP, UPT have their registered office at Suite B & C, First Floor, Milford House, 43-55 Milford Street, Salisbury, SP1 2BP. JHS has its registered office at Aztec Group House, IFC6, The Esplanade, St Helier, Jersey, JE4 0QH. JHAC, JHWM, IPS, IPSP, are authorised and regulated by the Financial Conduct Authority. NGSL, IPS, IPSP, PAL, UPT, JHWM, JHPT, JHAC, SarumTL and JHS are members of a VAT group with VAT registration number 514 0358 80. All companies are wholly owned subsidiaries of Nucleus Financial Platforms Limited (registered in England, number 06033126) whose registered office is at Suite B & C, First Floor, Milford House, 43-55 Milford Street, Salisbury, SP1 2BP, and are members of the Nucleus Group. Further details of the Nucleus Group can be found at nucleusfinancial.com. (12/24)