

Self Invested Personal Pension

SIPP



Property Purchase Guide

The Retirement Planning Specialists

www.minervasipp.co.uk

Property Purchase Guide

Property purchasing and leasing through a Self Invested Personal Plan (SIPP) is a complex transaction. This guide will help actual and prospective SIPP members and their Advisers understand the processes involved. It is, however, only a guide. All property purchase proposals must satisfy all HMRC regulatory requirements, as well as InvestAcc Pension Administration Limited's requirements. These may vary from time to time. Please read the guide carefully. If you have any questions please call on 01228 538 988. Please note throughout this document, the words 'we/us' refers to InvestAcc Pension Administration Limited and/or InvestAcc Pension Trustees Limited and the word 'you' refers to the SIPP member(s).

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An Outline

This section of the guide briefly outlines some of the main points that are explained in greater detail within this guide.

- A SIPP may be used to purchase a freehold or leasehold commercial property, including land.
- Residential property may not be acquired through a SIPP.
- The purchase price must be the open market value of the property as confirmed by qualified RICS surveyors. The valuation must be addressed to us and the fee is paid from the member's fund.
- The property must not have any covenants or liabilities attached to it which are unacceptable to us.
- You and/or your advisers must ensure that the purchase price of the property and all associated costs are available from permitted pension contributions, transfers or secured lending. This must be in place before we can make a contract to purchase the property.
- Any loan offer and the subsequent loan must be in the name of InvestAcc Pension Trustees Limited and the member as trustees of the members SIPP arrangement. We must be satisfied that the rental income from the property is more than sufficient to meet the repayments and other costs of dealing with the property. Current Legislation also requires that no more than 50% of the net value of your pension fund can be borrowed.
- Any secured lender must agree that our liability under any loan or mortgage will be limited to the assets of the particular pension fund and also to our other procedural requirements.
- A property can be bought for the benefit of more than one SIPP member. In that case they benefit in the shares of their financial contribution to the purchase costs.
- A property may be bought subject to existing leases if they are on acceptable terms. The tenant may be you, your business partnership/or company connected to you as long as you, the partnership or the company use the property for your or its business purposes. Property may also be let to an independent third party. All lettings must be on commercial terms approved by a qualified surveyor.
- If VAT is payable on the purchase price, you must ensure that there are sufficient monies in the fund to cover this. Even if VAT is not payable at completion there may be circumstances where the property can be made subject to VAT after completion. VAT is then payable on the rent. We deal with all VAT procedures relating to the property investment.
- The Property Questionnaire is designed to provide a framework for supplying the information required to enable us to consider a proposal. **Please ensure that it is completed in full as any missing information may cause a delay.**
- Environmental matters including the possible presence of asbestos are of considerable concern to us, as they may result in a reduction in the value of your investment property. There is also the potential for your pension fund and/or tenant to incur environmental liabilities in the event that the property is found to be contaminated or the cause of other environmental damage. As your trustee, we could be ultimately responsible for costs that cannot be covered by your fund or recovered from the Tenant. The surveyor is therefore required to report on these matters when he prepares his valuation. We may then require an environmental report on the property in instances where there is some question over its environmental state, which will be at your or your pension fund's expense, and we may be unable to proceed if the result is unsatisfactory.

Introduction

Purchase of a property within a SIPP is the most complex transaction for a SIPP to undertake. It is essential that the proposal fits within HMRC rules to which we must work as well as our own requirements. The first step is to complete and return to us as soon as possible a Property Questionnaire with a Valuation Report, prepared in accordance with these notes, to allow us to assess the viability and acceptability of the purchase. If you have any questions please do not hesitate to contact us. Please ensure that if finance is required to assist with the purchase that the lender is aware. It is important in such cases that the relevant borrowing section of the Property Questionnaire is fully completed.

Timescale

We cannot in any circumstances guarantee any timescale for completion as many aspects are out of our hands. Typically, however, in our experience, it takes 6-8 weeks from instruction of solicitors. It is essential that the SIPP is set up before the purchase commences and to ensure that everything is in place, in good time, for the transaction to be successfully completed. For this we need your help. Failure to provide the information we require may delay the purchase process. We cannot be responsible for the consequences of such delay nor if the vendor decides to sell to another buyer. Additionally we cannot be responsible for the timing of Solicitors, Surveyors or any other concerned third party. If there is a particular issue on timing please raise this with us at the earliest opportunity.

Communication

We will keep you and your Adviser (if they have indicated a wish to be) informed of the progress of the transaction so far as it is within our knowledge. If any additional information comes to light, please inform us as quickly as possible.

Ownership

In addition to you, we as Trustees of your pension plan will be the legal owners of the property. This form of investment imposes numerous responsibilities upon us. We therefore have to ensure certain requirements are met. Some may seem obvious, however the need to include them has been borne out by experience.

The Legalities

You must not commit us to a date for exchange of Contracts or completion of the purchase, as this may be unattainable for reasons beyond our control or yours. We will not instruct Solicitors or enter into a Contract to purchase a property unless our requirements at the appropriate stages have been fully satisfied and any financial obligations can be met either through the assets of your pension plan or through borrowing.

Auctions

Property may be bought at auction, although such circumstances may cause particular problems.

Please refer to us before the auction. We should not be named as the buyer in any Contract without our agreement.

Fees

Please refer to the Schedule of Charges for details of our fees.

What may be acquired in a SIPP

Property must be commercial

The Inland Revenue impose certain restrictions on what can be bought. The property must be commercial (i.e. shops, offices, factories etc.) not residential property, unless any residential part is to be occupied in connection with the business being run from the commercial part.

Property with current residential use

If a property has planning permission and is used for residential purposes and it is intended to convert it to an acceptable commercial use, the necessary planning permission must be obtained and the change of use implemented before we can complete the purchase.

No fixtures, fittings or goodwill

Under HMRC rules, we cannot buy fixtures, fittings or business goodwill - only the land and fabric of the building

Development land / Agricultural land

Development land and agricultural land are usually acceptable, however please contact us for more information as to any special requirements in such cases.

Properties with specific problems

Some properties may cause particular problems both in terms of management and legal liability, for example properties with known environmental issues may not be acceptable.

Right to refuse

We reserve the right to refuse to purchase any property where we foresee significant management or resale difficulties, significant environmental exposure or where there are particularly formidable covenants. We will consider the purchase of overseas property.

Property should be freehold

The property should generally be freehold* and not leasehold unless the Lease is a long one (at least 50 years) at a nominal ground rent (not more than £500 per annum) with no onerous covenants. Sometimes, because we are Trustee, our requirements as to the legal title etc. may be more demanding than if you were purchasing the property yourself. For example, we have to be careful where there are high service charges or arduous maintenance obligations for which we could be personally liable. Please supply a copy of the headlease, where applicable, for our examination as soon as possible.

* A Freehold property is absolute ownership of the property. Leasehold is where one is a tenant under a long lease, typically for 99 years or above.

Property Development

Protecting ourselves

Development of a property within a SIPP can be undertaken however we must ensure that we fully protect our interests. We reserve the right to refuse to agree to any development work if this cannot be done. Other than for minor improvements, a project manager (a qualified surveyor or architect) must be appointed.

Limiting our liability

We must ensure that if we enter into any contract for works our liability to the developer is limited to the assets of your fund.

Residential development prohibited

Residential development cannot be carried out by a SIPP.

Increased rent

The development must add appropriate capital and rental value to the property and must not solely be for the convenience of the Tenant. The increased rent will be as advised by a Chartered Surveyor and applied immediately when the development has been completed.

Who may a property be bought from / let to

Connected persons

Under HMRC rules, property can be purchased from or sold to an unconnected third party, a member or close relative, partner, or any company associated with a member or anyone else connected with a member.

Any transactions involving any connected party must be supported by an independent valuation.

Letting the property

The property can be leased to an independent third party. It may also be leased to you, your business partnership or a company connected to you, provided that you or it uses the property for your or its business purposes. The transactions must be at arms length on normal commercial terms at the full market rent under a formal Lease.

Energy Performance Certificate

A certificate is necessary when a vacant building is let or when a building is sold or when a building is constructed.

The responsibility of the certificate is the owner of the building or the person constructing it. So if a building is purchased within the SIPP with a tenant in place the obligation is that of the seller and not the tenant. InvestAcc Pension Administration Limited will require sight of the Energy Performance Certificate where applicable before completion.

Environmental Risk (Contamination, Asbestos, Legislation etc.)

Environmental risk involves the potential to incur financial liabilities in the event that the property is found to be contaminated or the cause of other environmental damage. If there were a serious pollution problem, the cost of which could not be covered by the tenant or your fund, then under recent legislation we as trustee could be held legally responsible for the cost of this.

We therefore need to be sure there are no potential problems at the time of purchase and may require an environmental report. Landfill sites and sites which may have been subject to contamination in the past, e.g. gasworks, are not normally acceptable. Examples of properties which could be higher risk and so require an environmental report are garages and petrol stations, paint shops, chemical works, dry cleaners, printers and certain manufacturing units. Properties with asbestos containing materials, constructed before 1980, will not be accepted without written confirmation from a surveyor that there are no known or foreseeable risks associated with ownership of the property. If this is not given, we will require an environmental risk report. In the case of later properties we reserve the right to request a surveyor's confirmation that there are no similar risks. The cost of any survey report will be borne by your pension fund.

In May 2004, new regulations came in to force covering the control of asbestos in commercial properties. From this date, all properties must have an asbestos risk assessment carried out and an asbestos management plan in place if asbestos is identified (which is reviewed annually). InvestAcc Pension Administration Limited will require proof that such assessment has been conducted and appropriate actions are being taken. These responsibilities will normally fall on the tenant, as they are liable for the upkeep of the property, however if the property is vacant or the tenant is not responsible we need to be notified as soon as possible.

Surveys / Valuations

Who will do this

The property must be inspected by a surveyor who is a member of the Royal Institute of Chartered Surveyors (RICS) or equivalent body. The report should be produced in accordance with the relevant sections of the current RICS appraisal and valuation manual, as amended, and include:

What we require from the surveyor's report

- A basic assessment of the condition of the property as per the Valuers 'Red Book' instructions and a description of the property and current occupation.
- A recommendation as to whether a full structural survey/environmental risk/contamination or asbestos survey is required. The report should specifically state whether such surveys are recommended or not.
- Colour photographs and OS plan in addition to street and location maps.
- The open market value.
- A reinstatement figure for insurance purposes.
- A recommended current market rent (based on our standard lease terms), which we are obliged by HMRC to charge. For these purposes the valuer will need to know how long you want the lease to run (it must normally be at least as long as the repayment period of any loan taken to assist the purchase) and whether there will be any break clauses (allowing the lease to be terminated before the end of the term but not before the end of the loan period).

Report addressed to ourselves

The Surveyor's Report must be addressed to us. We may accept a report that has been prepared for a prospective lender, but it must be re-addressed to ourselves and contain or be accompanied by an identification plan and all other information referred to above. You will need to arrange this.

No liability

We accept no liability in any circumstance for the condition or suitability of the property. That is a matter for you to satisfy yourself upon before deciding to proceed.

Further investigations

Whether or not we require a structural survey is entirely at our discretion even if one is recommended and is solely for our protection. Your authorisation will be obtained before this is undertaken and a copy made available upon request. For properties where environmental concerns are identified, we will require a preliminary desktop environmental survey, which can normally be arranged by the solicitor. This must be from a provider acceptable to us. If this raises concerns an environmental report based on a site visit may be required which we will arrange with a specialist firm, normally one we have used previously. You will be responsible for the costs of all reports, which will be debited to your fund even if as a result of these we are unable to proceed with the purchase. If there are insufficient monies in your fund we may need you to cover the prospective cost before we can proceed. We may also, where a potential issue is identified or arises subsequent to purchase, require an environmental report and for any recommended remedial action to be taken, at your fund's expense.

Arranging Finance

Finance must be in place

It is essential before the purchase can proceed that you ensure that you have arranged the necessary finance to enable the purchase to be completed. Please refer to us for further guidance if the lending is proposed to be secured on more than one property held within the SIPP. If the transaction is a transfer In-Specie, from your current Pension Scheme to your SIPP, you must ensure that funds are in place to cover solicitors costs, surveyor costs, and any other related fees. We will not proceed to instruct your chosen solicitor until necessary funding is in place.

Obtaining a mortgage

You should complete the necessary details in the Property Questionnaire as to who the lender will be. It must be a commercial lender acceptable to us. We will contact them to provide details of our requirements. If you have already received an offer, please let us have a copy of this but we require the offer to be addressed to your pension scheme.

HMRC rules on borrowing

The legislation restricts the amount we can borrow to purchase a property to a maximum of 50% of the value of your fund less any existing borrowing.

Rent must cover mortgage payments

Problems may arise if the rent is not sufficient to cover the mortgage payments. **We therefore need the rental income to be at least 110% of the mortgage repayment with a fixed rate loan. In the case of a variable rate loan, in order to cover the possibility of interest rate rises we need the rental income to be at least 130% of the mortgage repayment. We cannot rely on you making further contributions each year to cover the shortfall. You must ensure before completion that there is enough funding in your scheme to make the first three monthly payments.**

Exchanging Contracts

Contracts cannot be exchanged until we have received the mortgage offer and/or have sufficient monies in your plan to cover the purchase price. This may cause difficulties if an early exchange is required.

Unacceptable conditions

Please note we insist on the mortgage offer limiting our liability to the value of your fund. A few lenders will not accept this. If not, the borrowing cannot proceed. Some insist on onerous conditions which are unacceptable to us.

Financial arrangements your responsibility

We do not arrange finance for the purchase of your property, and cannot provide bridging loans. It is essential you ensure that you will have enough monies from contributions, transfers and/or loans to complete the deal including all expenses which are many and varied, such as legal and surveyor's fees, stamp duty, land registry fees, lender's mortgage arrangement fees, local search fees and our fees etc. In particular you and your Advisers must ensure before the transaction starts that you will put in sufficient funds to complete the purchase.

Paying the mortgage

All mortgage payments, both capital and interest, must come from the fund and must not be paid by you direct to the lender.

Starting the mortgage payment

We need the equivalent of the first three months mortgage repayments to be available in your fund following the purchase to avoid any possibility of a delay in receiving rental payment and to avoid unnecessary bank charges.

Instructing Solicitors

Using our own Solicitors

At the request of members we can appoint our own Solicitors who are experienced in dealing with acquisitions on behalf of the SIPP and are familiar with our requirements. They are a well established firm with whom we have dealt over a long period. The solicitor will inform you of the anticipated costs.

Using your own Solicitors

If we agree to use your own Solicitors we will also be their clients as one of the Trustees, and legal purchaser of the property. You will be responsible for negotiating their fees which will be payable from the fund.

Keeping you informed

The Solicitors will keep you and your Adviser, if requested, informed of the progress of the transaction and you will be free to ask them for advice or information at any time.

Legal advice on the lease

If the lease is being granted to yourself you can consult your own Solicitor as to its provisions, unless your Solicitor is acting for us when, under the Law Society Rules, he cannot advise you on this aspect and you will have to find another solicitor if you require advice on the terms of the lease.

Lender instructing own Solicitor

If a mortgage is being obtained and the lender instructs its own Solicitor, your fund will be responsible for their fees.

Ownership of a property

InvestAcc Pension Trustees Limited and you as trustees of your own pension scheme will be the owner of the property.

Do not enter into a Contract

It is important that you do not enter into any contract to purchase the property and then ask us to complete the purchase on your behalf without prior consultation with us first. We may not be able to do this as it may be unacceptable to HMRC.

Leases

Full rent payable

The lease must be a normal commercial one on terms which are acceptable to us, and must be at the full market rent if being let to a connected tenant.

Connected tenants

If you are to be the tenant, you cannot decide to pay a reduced rent, for example just to cover the mortgage payment, or to pay an increased rent if the mortgage payments are higher than the rent or to defer paying the rent. We are required by HMRC to ensure that all rent is collected and any covenants in the lease are enforced - in other words we must treat you as we would any other tenant. However HMRC do recognise connected tenants should be allowed a payment holiday or a temporary rent reduction in certain circumstances such as financial difficulty. We require certain evidence to support this, please contact us for further details.

However, any unpaid connected tenant rent, only after being written off, is classed as a connected loan to the member and, as only third party loans are allowable, this will result in an unauthorised payment equal to the amount of the loan. The related tax charge could be up to 70%.

Sub letting

In approved cases we will accept the sub letting of the whole or part of a property but this will depend on the terms of the lease and the advice we receive from our advisers as to suitability including compliance with HMRC rules.

Length of lease

Our preference is for the lease to have upward only rent reviews. Lenders will normally require the lease to be at least equal to the borrowing period, and possibly longer, according to the specific requirements of the lender in question.

Paying the rent

Rent must be paid on the due dates shown in the lease, usually by standing order, the arrangements for which will be made by us. It is also essential that the rent is paid a few days before the mortgage payments are due. We cannot be responsible for any late payment or interest charges if rent is not received in good time nor for charges made for matters outside our control.

Insurance

It is vital to us to ensure that the building is always insured because we as the legal owner are responsible for any claim. Accordingly, we can agree to you arranging the insurance or alternatively we can arrange the insurance on your instruction, using our appointed Insurance Broker. Insurance should be arranged in the name of the Pension Scheme, e.g. "InvestAcc Pension Trustees Limited & "Member Name" as Trustees of the SIPP for "Member Name" (Member No)".

It should also show our address: Minerva House, Port Road Business Park, Carlisle CA2 7AF. If you own the property personally in the first instance and already have an insurance policy in place, you must ensure that InvestAcc Pension Trustees Limited are noted on the policy before completion as an interested party as the freeholder/leaseholder of the property.

Property purchase by joint members

How it works

It is quite common for one property to be purchased on behalf of several members. This is normally known as a 'grouped' arrangement. It is not necessary to have an existing business partnership for this to be effected. Only one 'property charge' is payable, but we need to establish a separate SIPP for each member to which our reduced group members charges apply. For administration purposes the grouped members will need to provide a group name.

How are the shares calculated?

It is essential for us to know at the start what each member's share in the property will be. This must reflect the amount of contribution each participant puts into the purchase of the property. It is not possible to make a gift of part of one partner's entitlement to another nor for one partner's fund to accept a disproportionate share of the mortgage liability in order to increase their share of the property at outset. The shares in the property will change if expenses cannot be met in the percentages initially specified by the members; we may have no alternative but to use monies in one or more members' account to meet liabilities where there is insufficient cash in other members' accounts even though this will alter the intended percentage shares in the property. We cannot undertake to contact members every time this happens due to the high volume of transactions we deal with.

Buying extra shares

As cash (for example from rent or further contributions) becomes available in a member's fund, additional property shares may be purchased from one or more of the other members with no further legal formality - just a transfer of the cash from the member's fund as appropriate. The property would normally be revalued at that time to determine the new split. The purchase of an extra share can of course only be done with the other partner's agreement.

Partnership agreement (Sometimes called a 'Syndicate Agreement')

You are recommended to enter into a partnership agreement to cover such things as death, retirement, and new partners joining the partnership. At these times the property would normally be revalued. Please note we do not give advice on this type of agreement.

Transfer of property from another pension scheme

Transfer of a property from another pension plan can be quite complex. Typically a property will be held by the Trustees of a Small Self Administered Scheme (SSAS) who want to transfer it to a SIPP or sometimes to a grouped arrangement referred to above. In these cases the normal charges apply as do our usual requirements to obtain a Surveyor's Report and instruct our Solicitors, however it is our understanding that Stamp Duty is not normally payable on the Transfer. We will need to ensure the Title and any existing leases are satisfactory from our viewpoint. If there is existing borrowing the lender will normally require a new mortgage to be granted in your pension schemes name.

Mortgage liability warning

Even though a partner maybe only entitled to a percentage share in a property, each member is fully liable for the mortgage and all other liabilities associated with the property in the event of default etc.

Death or withdrawal of partner

Funds will need to be raised to purchase a partner's share in the event of death or withdrawal. There may be enough cash in the other members' funds to facilitate this. Members may put in further contributions, additional members may join, bringing in additional funds and partners can take out insurance on each other's lives.

Value added tax (VAT)

Waiving exemption

It is possible for us to arrange to elect to waive exemption from VAT where appropriate. For example on purchase of a new property where the purchase price is subject to VAT in order that it may be reclaimed, or where major renovations are proposed. This is also known as "Opting to Tax".

Taking advice

We will arrange to waive VAT exemption and set up the VAT registration on your written instruction. You should consult your Adviser as to whether it is appropriate.

Delay in reclaiming VAT

Please remember it takes several weeks to reclaim VAT. Where this has been paid on the purchase price or the invoiced rent before the rent itself is paid, you must ensure you have adequate funds within the plan to cover any temporary shortfall.

Tenants exempt from VAT

Occasionally it may not be possible to register for VAT and therefore recover the VAT on expenditure.

Transfer of going concern

If the property is subject to VAT but there is already an ongoing tenancy in place then it may be possible to avoid payment of VAT on the purchase price as the purchase can be treated as a 'transfer of going concern' (TOGC). We notify HMRC of this at the time that we elect to waive exemption from VAT. In some circumstances it is possible that HMRC will overrule this concession after completion. If this happens VAT becomes payable immediately and can then only be recovered on the next VAT Return if a valid VAT invoice is received from the vendor. As there will be a time delay in recovering the VAT there must be sufficient monies in the member's fund to pay the VAT.

Fees

Who pays them

The legal, Surveyor's, and all other relevant fees, together with all disbursements are your responsibility and can be paid directly by you or your pension scheme. If there are insufficient funds in your plan at the start of the transaction to cover expected fees we may have to request a payment in to cover these (that counts as a contribution). All invoices must be addressed to your pension scheme. Please note any stamp duty has to be paid from your pension scheme.

What are the charges?

We do not make a property transaction charge to cover our costs, but we do charge an annual management fee. Legal and other charges and disbursements incurred in the purchase of the property are your responsibility and may be paid directly by you or your pension scheme.

Aborted Transactions

Solicitor's charges

If the transaction is aborted there will be a fee payable to the solicitors.

Our charges

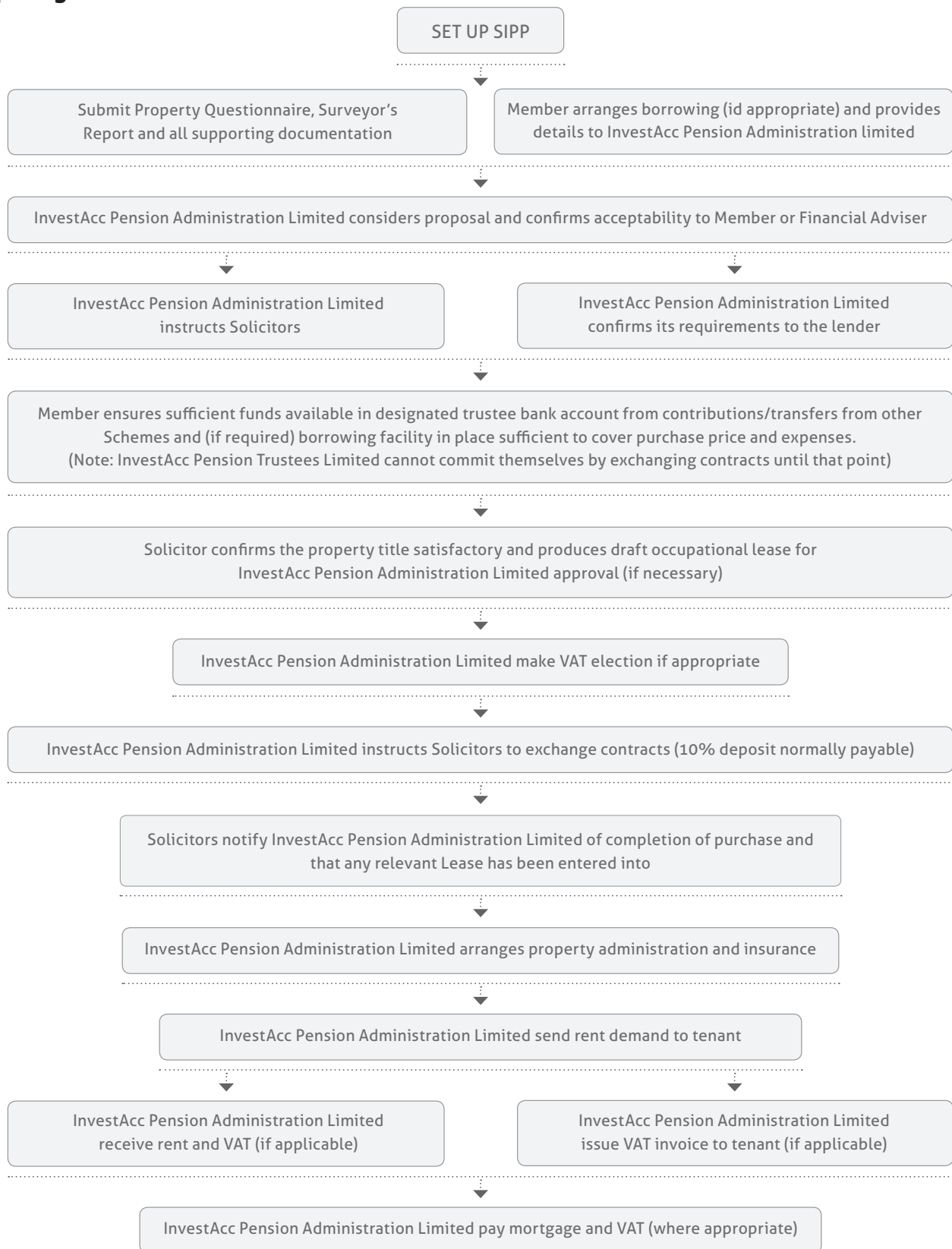
We reserve the right to charge for our time dealing with any aborted transactions, any such fees will be notified to you prior to charge.

Consequences

Even if the deal falls through, the SIPP remains in force and cannot be cancelled, nor can contributions be refunded unless still within the 30 days cancellation period and cancellation was not waived at outset.

This guide may not be exhaustive, as we have found from experience that individual properties may sometimes have particular problems or involve additional costs that only become apparent after the legal work has commenced. The information provided in this guide may also be affected by changes in the relevant legislation. If you have any queries or would like any further information then please do not hesitate to contact us.

Property Purchase Process



The Minerva SIPP and the Flexi SIPP is offered without pensions advice.

A SIPP may not be suitable for all investors. If in doubt you should consult an independent financial adviser.

InvestAcc Pension Administration Limited is the Operator and Scheme Administrator and is responsible for the maintenance and running of the scheme.


InvestAcc Pension Trustees Limited is the Scheme Trustee.

The levels of and bases of taxation can change. The value to an investor of any tax benefits will depend on that investor's tax position. Investors should consult their own tax advisers in order to understand any applicable tax consequence.

InvestAcc Pension Administration Limited is authorised and regulated by the Financial Services Authority.

InvestAcc Pension Administration Limited is registered in England and Wales, Company number 7118349.

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