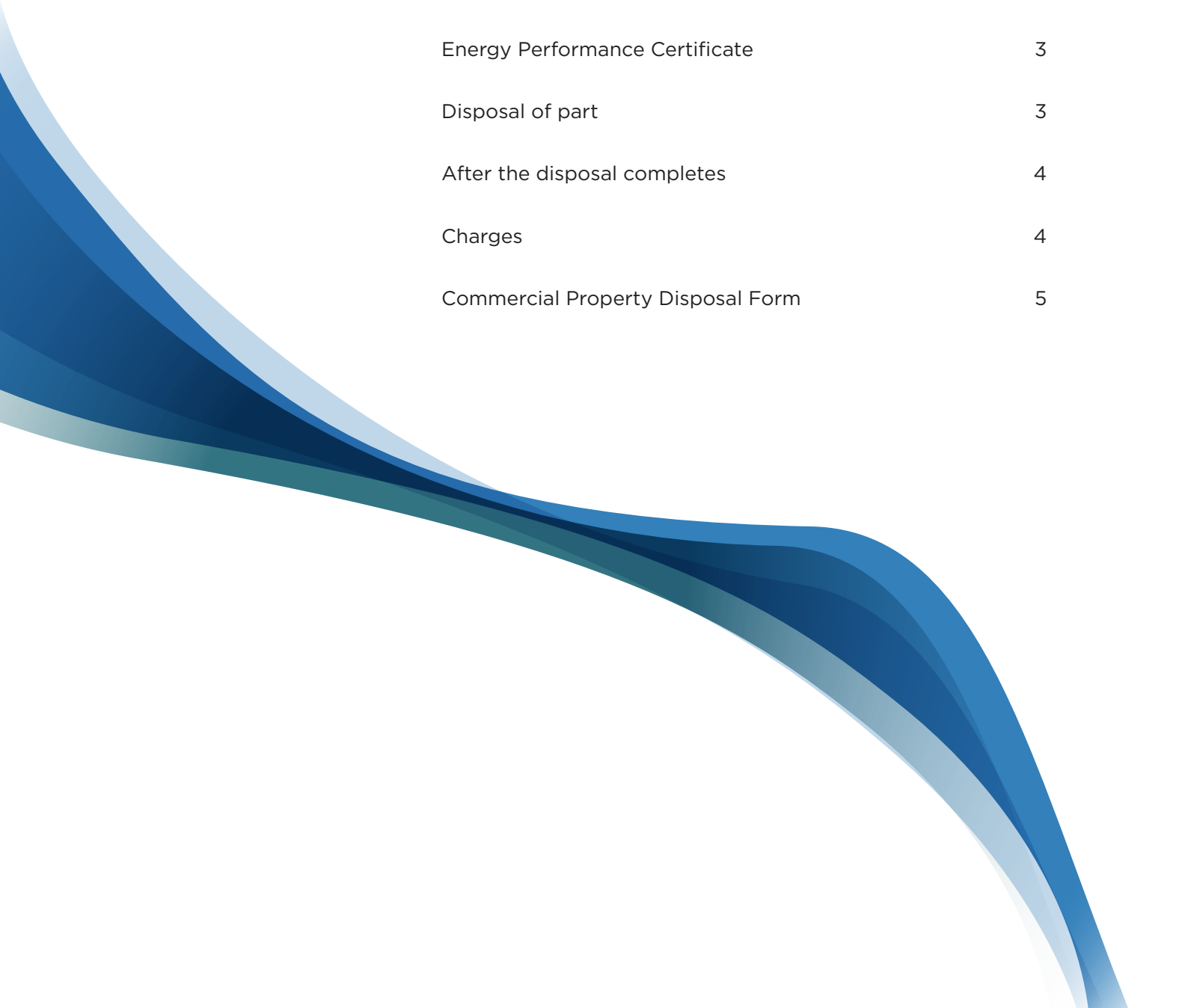


# Commercial Property Disposals Guide



# Contents

Introduction	1
Marketing the property	1
Solicitors	1
Existing occupational lease	2
Property valuation	2
Connected parties	3
VAT	3
Energy Performance Certificate	3
Disposal of part	3
After the disposal completes	4
Charges	4
Commercial Property Disposal Form	5



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# Introduction

Property disposals through a James Hay Self Invested Personal Pension (SIPP) or Small Self Administered Scheme (SSAS), whether by way of sale or transfer to another provider, are complex transactions.

**This guide has been written to help you understand the processes involved. It is, however, only a guide. All property transactions must satisfy HM Revenue & Customs (HMRC) and other regulatory requirements, as well as James Hay Partnership's requirements. These may vary from time to time.**

**Please read this guide carefully.**

**If you have any further questions please call your Service Executive Team if you are a financial adviser, or our general helpline 03455 212 414 if you do not have a financial adviser.**

Please note the following terms throughout this document:

**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

**Product:** any of the relevant SIPP or SSAS products offered by James Hay Partnership

**Valuer:** a person who is a qualified member of the Royal Institution of Chartered Surveyors or equivalent body

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

**You/Your:** the SIPP or SSAS member(s), including SSAS member/non-member trustees.

**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.**

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## Marketing the property

You can market the property with an agent of your choice, and the agent's fees can be paid from your Product. 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, however, please refer to us before you consider placing it in the auction.

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## Solicitors

We will 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.

If you hold a SSAS product, in certain circumstances we may agree for you to use your choice of solicitor. If you wish to use your own solicitor, please give full details in Section 14 of the Commercial Property Disposal Form. Please note, additional charges will apply.

Where a non-panel solicitor is requested that has previously been unable to fulfil our requirements or does not have the relevant experience required, we will not be able to instruct them in relation to your disposal or any other work.

Where it becomes apparent after instruction that your choice of non-panel solicitor is not able to satisfactorily complete our instructions, we reserve the right, in our absolute discretion, to appoint a panel solicitor. If this is required, it is likely that your SSAS will incur additional costs.

For certain cases (such as land) you may be asked to provide a plan or title number of the property before we are 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 or SSAS fund. These are usually dealt with by payment from the sale proceeds of the property. Please note that should the transaction abort, fees may still be payable.

In relation to an in-specie transfer, once solicitors have been instructed to transfer the property to the receiving scheme, we reserve the right, in our absolute discretion, to refuse to undertake further transactions unrelated to the

transfer and/or to change the nature of the instructions passed to solicitors. Should changes be required to which we agree, your Product may incur additional fees.

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

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## Existing occupational lease

If there is a tenant in the property and the term of the lease still has some time to run, you will 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, we will assume the lease will be surrendered immediately prior to completion of the sale, and the solicitor will be instructed to deal with this issue accordingly.

We will need to establish if the tenant is paying a premium to surrender the lease.

If the tenant is unconnected to you, the amount of this premium (if any) may be whatever has been negotiated with them for the surrender of the lease. However, if the tenant is a connected party, we are required (by the regulations laid down by HMRC) to recover the open market value of the surrender (if any) for the benefit of your Product. Therefore, a Valuer must be appointed to advise what premium or reverse premium would be payable if the surrender were an open market arms length transaction.

We, as Landlord, must act within regulations laid out by HMRC, and subsequently we must adhere to rules and guidelines which stipulate how we act as a commercial landlord in respect of the recovery of rent and/or insurance arrears, particularly when the member is connected to the tenant. 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 you, or a party 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 solicitor acting.

If the property is vacant, or will be by the time the disposal completes, it is your responsibility to ensure that accurate meter readings are taken at the point of sale.

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## Property valuation

We require a valuation of the property from a Valuer, addressed to the relevant Trustee(s) for your Product, confirming that the sale terms are fair and reasonable. You are at liberty to choose who undertakes this valuation. You should confirm on the Commercial Property Disposal Form the name of the Valuer you intend to instruct. Please note that any fees incurred will be met from your Product. The Valuer's invoice should be addressed to the relevant Trustee for your Product and forwarded to us for payment.

If the property is to be sold subject to the existing occupational lease, then the Valuer should tell us the market value of your property on that basis.

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, having taken into account the terms of the lease and any surrounding circumstances which might benefit the landlord and/or tenant as a result of their early release from their lease obligations. 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 Product, as appropriate.

Please bear in mind that if the net sale proceeds receivable by the Trustee(s) are insufficient to repay any mortgage on the property, then it may not be possible to sell the property at this stage, unless you have surplus funds available in your Product to pay the mortgage balance.

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## Connected parties

We are required to report transactions with connected parties to HMRC. For such transactions the price paid must be as advised to us by an independent Valuer.

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## 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 and VAT may not be applied. HMRC has very specific rulings regarding the treatment of VAT, therefore it is important to seek your own guidance on this before proceeding. James Hay is not authorised to provide tax advice.

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## 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. You should therefore, where appropriate, 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.**

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## Disposal of part

If you wish to only dispose of part of your property, we will require a plan marked by the Valuer defining the areas to be sold and retained within the Product. A copy of this plan will need to be verified by you (including all SSAS trustees, if applicable) 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 giving up. In relation to the part to be retained in your Product, we will 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 bank's consent for the sale.

Please be aware that the bank may want the money 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 Product (including separation of any shared services and adequate access).

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## 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 Product. Please note that the transfer cannot be completed until there is sufficient money held in your Product 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 (not applicable to SSAS)

Once the solicitor confirms to us that the disposal has completed, we will ensure that all invoices have been paid from your SIPP, that all rent and any insurance apportionments have been dealt with and that, 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 the property account has been fully reconciled, and, once confirmed, we will proceed to close the SIPP property account and transfer the balance to your SIPP trustee bank account. If applicable, any money in your SIPP will then be transferred to your new pension provider. Partial transfers of cash while we are awaiting information may be possible, in which circumstances we would retain some money in the SIPP property account to meet any outstanding costs.

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## Charges

In addition to the Valuer's and solicitor's fees indicated above, please note James Hay Partnership's current charges for administering the disposal are given in the relevant Product Charges Schedule. This is available on our website at [www.jameshay.co.uk](http://www.jameshay.co.uk), or on request.

Please note that charges may still be applied should the transaction abort for any reason.

**These notes are for your guidance only and do not constitute advice. We will administer each case taking account of its particular requirements.**

# Commercial Property Disposal Form

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**1. Name of pension product in which property is held**

- |  |   |
|--|---|
| <input type="checkbox"/> IPS Family SIPP     | <input type="checkbox"/> IPS SIPP, IPS (2008) SIPP or<br>IPS Pension Builder SIPP |
| <input type="checkbox"/> Partnership SIPP    | <input type="checkbox"/> Wrap SIPP  |
| <input type="checkbox"/> Modular iSIPP       | <input type="checkbox"/> SSAS   |
| <input type="checkbox"/> Private Client SIPP |   |

**2. Property address:**

**3. SSAS name/SIPP member's name and reference number(s):**

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

£

**5. Is the tenant connected to you?**

- Yes       No

**6. The property is to be sold:**

- With vacant possession
- Subject to the current occupational lease

**7. Is the lease to be surrendered prior to disposal?**

- Yes       No

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

**8. Current rent arrears:**

**9. I/We will instruct:** (name and address of Valuer)

to undertake a Market Valuation of the property. The Valuation Report and invoice will be addressed to James Hay Partnership.

**10. Buyer's name and address:**

**11. Buyer's solicitor's name and address:**

**12. Is the buyer connected to you?** (See page 1 for definitions of connected parties)

Yes  No

**13. Is the disposal expected to be a transfer of going concern?**

Yes  No

**14. Solicitor to act on behalf of the Trustees:**

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.

**For SSAS only**

If you wish to appoint a non panel solicitor, please give details below. I/We acknowledge that by requesting a non-panel solicitor James Hay's procedures will take longer.

**Company name**

**Contact name**

**Address**



15. I/We enclose a copy of the valid EPC

**For Partnership SIPP/IPS SIPP/IPS (2008) SIPP/IPS Pension Builder SIPP or SSAS only.**

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/SSAS will meet all fees in connection with this transaction.**

Signed by member(s) - please continue on a blank sheet if needed.

<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

Date

-

### Important information

This guide is issued by us for use in connection with products provided by James Hay Partnership. James Hay Partnership does not accept any liability if the information provided in this document is used for any other purpose. This fact sheet is based on our understanding of current UK legislation and HMRC practice at the date this document was produced. We cannot be held responsible for any action you may take as a result of reading these notes. We recommend that you seek financial advice. The tax treatment depends on the individual circumstances and may be subject to change in the future.

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

James Hay Partnership is the trading name of James Hay Services Limited (JHS) (registered in Jersey number 77318); IPS Pensions Limited (IPS) (registered in England number 2601833); James Hay Administration Company Limited (JHAC) (registered in England number 4068398); James Hay Pension Trustees Limited (JHPT) (registered in England number 1435887); James Hay Wrap Managers Limited (JHWM) (registered in England number 4773695); James Hay Wrap Nominee Company Limited (JHWNC) (registered in England number 7259308); PAL Trustees Limited (PAL) (registered in England number 1666419); Santhouse Pensions Trustee Company Limited (SPTCL) (registered in England number 1670940); Sarum Trustees Limited (SarumTL) (registered in England number 1003681); Sealgrove Trustees Limited (STL) (registered in England number 1444964); The IPS Partnership Plc (IPS Plc) (registered in England number 1458445); Union Pension Trustees Limited (UPT) (registered in England number 2634371) and Union Pensions Trustees (London) Limited (UPTL) (registered in England number 1739546). JHS has its registered office at 2nd Floor, Gaspé House, 66-72 Esplanade, St Helier, Jersey, JE1 1GH. IPS, JHAC, JHPT, JHWM, JHWNC, SPTCL, SarumTL, IPS Plc, PAL, STL, UPT and UPTL have their registered office at Dunn's House, St Paul's Road, Salisbury, SP2 7BF. JHAC, JHWM, IPS and IPS Plc are authorised and regulated by the Financial Conduct Authority. The provision of Small Self Administered Schemes (SSAS) and trustee and/or administration services for SSAS are not regulated by the FCA. Therefore, IPS and IPS Plc are not regulated by the FCA in relation to these schemes or services. (04/19)