



In the name of the Allah, The Beneficent, The Merciful

Assalamu-Alaikum Mufti Sahib,

We are in the business of buying and selling properties in the U.K. and wish to ensure that our business is ethical, halâl and permissible.

We list below the 3 options of conducting our business on which we would be pleased if you can give us the panel's views.

We buy all our properties with our own money and there is no outside funding required from any one and therefore there is no interest (Riba) being paid on any money used for our purchase and any renovation works.

When we want to sell a property, we use one of the following 3 options of selling:

Option 1: Selling a property via an estate agent

Option 2: Selling a property without an estate agent

Option 3: Selling a property at Auction

We would like confirmation on each of the 3 options of selling to check and confirm that it is islamically permissible.

Buying & Selling a Property in the UK

The majority of properties purchased in the UK are purchased with an interest-based mortgage from conventional banks. For example, for a property costing £100,000 the buyer would pay 10% deposit himself and for the remaining balance of 90% he would get a loan from the bank, which he would repay monthly over 25 years with interest. The estate agent or an independent mortgage advisor for the buyer normally arranges the mortgage.

When a property is sold or brought in the UK, the following parties are involved:

- 1) Seller, who is selling the property
- 2) Estate agent, who markets and advertises the property finding a suitable buyer
- 3) Buyer, who is buying the property
- 4) Independent mortgage advisor, who is independent from the estate agent and the bank. His job is to liaise with various banks to arrange a suitable mortgage for the buyer and he is paid commission by the bank for this and in some cases the buyer will also pay him a fee for his service
- 5) Surveyor, who will survey and value the property for the bank but is paid by the buyer

- 6) The seller's solicitor, who will liaise with the buyer's solicitor to complete the transaction of the property
- 7) The buyer's solicitor

Our Options for Selling

Option 1: Selling a property via an estate agent

As a typical scenario, I want to sell my property. I will instruct an estate agent to market my property, for which I will pay him a fee. He will find a suitable buyer and in most circumstances the buyer will want a mortgage, which is usually an interest-bearing type of mortgage. The estate agent will advise him to see a mortgage advisor who will arrange a mortgage for him. Once the mortgage is approved, the bank will instruct a Surveyor to survey and value the property. Once the property has been valued, the bank will advise the buyer of the value and offer him 90% loan. Once the buyer agrees to this, the bank will send 90% of the money to the (the buyer's) solicitor. The buyer's solicitor will then forward the money along with 10% of the deposit paid by the buyer to my (the seller's) solicitor and this completes the sale of the property.

Our Question

Because we are aware that the purchaser is buying our property with an interest based mortgage, although we are not in any way involved in arranging the mortgage or even referring the purchaser to obtain a mortgage>

Option 1 method of sale; is this islamically permissible?

Option 2: Selling a property without an estate agent

A typical scenario, I want to sell my property by myself and not through an estate agent. I would advertise in a newspaper and interested customers would contact me; I would give them details of the properties, in this method of sale all of the buyers would want a normal interest-bearing mortgage. In this method of sale I would source some good and reliable independent mortgage advisors and I would refer any buyer who wants a mortgage to one of these mortgage advisors. I do not get any commission or pay any commission or fee to these mortgage advisors as they will get paid by the mortgaging bank and/or the buyer. The mortgage advisor will arrange the mortgage for the buyer and the bank will send the money to the buyer's solicitor who will then send the money to our solicitor to complete the sale.

Our Question

We are aware that the purchaser is buying our property with an interest-based mortgage, although we are not in any way involved in arranging the mortgage. However we do refer the buyer to an independent mortgage advisor who we have sourced, to help him obtain a mortgage.

Option 2 method of sale; is this islamically permissible?

Option 3: Selling a property at Auction

On this sale we don't know who the buyer is at the time of the auction. On the fall of the hammer at the auction room, the buyer pays a 10% deposit there and then a contract is signed at the same time to bind the seller and the buyer and thereafter the buyer is legally bound to buy and the seller is also legally bound to sell the property. Completion of the sale takes place usually 28 days later. At the time of the auction we have no knowledge as to how the purchaser is funding his purchase, it may be his own money or it may be that after the auction he gets an interest-based mortgage to complete his purchase. However, if the buyer gets a mortgage the bank will instruct a valuer to contact us in order for us to allow him access to the property. At this stage we then become aware that the buyer will get a mortgage to complete his purchase.

We cannot at this stage refuse to sell the property irrespective of how the purchaser is funding his purchase.

Our Question

Option 3 method of sale; is this islamically permissible?

We would be grateful if you could answer our above questions and look forward to receiving a reply from you insha-Allah.

Jazakallahu Khair



10th Safar 1430 AH
6th February 2009

الجواب حَامِدًا و مُطِئًا و مِنْهُ الصَّدَق و الصَّوَاب

There are two materially relevant issues raised by the three options you have listed above.

1. Knowledge of the buyer's source of funds
2. Sourcing a financial advisor for the buyer in order to assist him to acquire an interest-based mortgage

With regards to the first, whilst the funds are sourced through an interest bearing loan, the loaned sum (90% of the purchase price) itself is not impure, but rather the payment of interest on that loan is unlawful.

A loan contract is a type of gratuitous contract - '*aqd tabarru*' and the condition of paying interest is an irregular condition - *shart fâsid*. In a gratuitous contract containing an irregular condition, the condition is deemed to be void whilst the contract itself remains valid. Accordingly, in an interest bearing loan contract, the condition of paying interest is void, i.e., the lender is entitled only to his principal, but the contract itself remains valid. Thus, whilst a Muslim buyer, who acquires a conventional mortgage, will be sinful for paying interest on the mortgage, the loan itself is not impure and thus you may receive it in payment for the sale of your property.

With regards to the second issue, it is not permitted for you to source a mortgage advisor and refer the buyer to him, otherwise you will be guilty of assisting the buyer in contracting an interest bearing loan contract and ultimately paying the interest thereby generated. If you do not assist the buyer to acquire a loan then the buyer's actions will not be attributed to you and you.

Thus, option 1 and option 3 as described are permitted, but option 2 is not permitted as described.

And Allah knows best.

Mufti Mohammed Zubair Butt
Chair, Al-Qalam Shariah Panel