

Whilst the process of buying a boat does not have to be complicated there are a number of key factors that every buyer should take into account. This guide therefore aims to provide some general advice to both buyer and seller. For further advice please see the publications list at the end of this guide.

### **Legal Protection**

The rights of purchaser and seller may be varied by many circumstances. There are various Acts of Parliament designed to protect the purchaser, the so called Consumer Protection Statutes, such as The Consumer Rights Act 2015, The Sale of Goods Act 1979, The Misrepresentation Act 1967, The Unfair Contract Terms Act 1977, The Unfair Terms in Consumer Contracts Regulations 1999, The Supply of Goods and Services Act 1982 and The Sale and Supply of Goods to Consumer Regulations 2002. Further information on this area of law is available in our Consumer Protection Guidance Note.

### **Type of Boat**

When considering purchasing a boat, you must first decide which type of boat best suits your requirements. These may range from sailboards to very large sailing or powered boats and the type and size of boat itself can make a considerable difference to the process. As will whether the boat is being built to order, sold new or sold second-hand.

It is well worth taking some time to consider just what you want to achieve from your life on the water, what type of use you intend to put your boat to; are you interested in racing, will you be cruising off-shore; where will you keep it; at a marina or does it need to be a trailer sailor etc.. It is essential to make sure it is suitable for your particular requirements.

Boats may be advertised for sale in the newspaper, yachting press, website, through a brokerage as well as Post Office windows, etc.

### **Parties**

The parties involved in a sale and purchase, depending on whether you are buying a new or second-hand boat, are likely to include:

- Purchaser and Seller;
- Seller's agent/broker;
- Surveyor/Builder/Measurer/Designer;
- Dealer/manufacturer;

## **Brokers**

The sale of second-hand boats may take the form of a sale between private individuals often conducted via a broker, as agent for the seller.

VAT is not chargeable on the sale of second-hand boats between private individuals but VAT is charged to the seller for the services rendered by the broker. The broker usually charges the seller a commission for his services.

If the seller fails to disclose to the broker some material fact the broker may not be liable to the purchaser, instead the purchaser may have to seek redress from the seller.

Further information on using a Broker is available in our Broker Guidance Note.

## **New Boats**

The sale of new boats is often dealt with via a dealer or direct from manufacturer and may involve the taking out of a marine mortgage.

## **Newly Constructed Boats**

If you are having a boat specially built (rather than buying one from stock) you should ensure that you have a proper construction agreement. The British Marine Federation produce an Agreement for the Construction of a New Boat together with accompanying notes. This is approved by the RYA and we recommend that you ensure that your boat builder uses this agreement. This Agreement can be obtained from the RYA or direct from the BMF.

## **Pre-Contract Negotiations**

The purchaser will no doubt arrange to view the boat and it is at this stage that negotiations will take place in relation to what is to be included in the sale, such as sails, radar equipment, life raft etc., and finally the parties will reach agreement on the purchase price. It is advisable to ensure that the negotiated purchase price is subject to contract and survey.

## **Seller's Obligations**

In a private sale – that is a sale by an individual who is not in the business of selling boats – the purchaser buys what he sees and has only limited redress against the seller in the event that any defects are subsequently discovered. The common law rule of 'Caveat Emptor' – let the buyer beware applies. We therefore recommend that you make a list of pertinent questions to put to the seller, in relation to, for example, the type of construction of the boat, the condition of the boat, type of use, whether it has been involved in any collisions, repair work, engine service etc. The seller is not obliged to voluntarily offer up this information but he is obliged to provide accurate answers to any questions you ask.

Indeed, whether a seller is selling in the course of a business or as a private individual, he must not misrepresent the facts. He must also be in a position to sell "free of encumbrances". It is possible for a seller to sell a boat without paying off the finance company, without settling a hire purchase agreement; or a boat which is a security against a personal loan from a bank; or a boat upon which a boatyard or marina is owed money; in all such circumstances, this could well leave the purchaser in the position of having, later, to pay off the debt(s).

The fact that the seller offers the boat for sale and remains silent about any of these encumbrances and subsequently does not clear off these debts may leave the purchaser having to fight a Court action. It is therefore essential that the purchaser obtains a written undertaking in some form or other from the seller that the boat is not subject to any encumbrances, debts, liens, charges etc.

Likewise, the seller may make himself liable if he makes statements which are calculated to deceive. In fact a "professional" seller of boats is bound by The Misrepresentation Act 1967 not to make grandiose and untrue statements. Even a seller managing his own sale can be sued for misrepresentation.

## **Title Documents**

Prior to entering into agreement to buy the boat, the purchaser will wish to make sure that the seller does indeed own the boat and have the right to sell it. Also he will wish to ensure that the boat is not subject to any mortgages, debts, charges, encumbrances, liens etc.

If the boat is subject to a mortgage we recommend that the purchaser have a 3 way conversation with the seller, himself and the lenders. It is often the case that the purchaser will pay the proportion of the purchase monies that are outstanding on the mortgage, direct to the lenders. The lenders will more often than not hold all the title documentation for the boat and upon redemption of the outstanding mortgage, release the title deeds direct to the seller/purchaser.

If the boat is on the Part I Register of British Ships, the purchaser has some protection in relation to the good title of the seller. However, in most cases pleasure craft are not officially Registered British Ships (and inclusion of the name in Lloyds Register does not mean that the boat is on the Official Register). The purchaser must therefore take great care to ensure that the seller has proper title to sell the boat.

The purchaser should ask to see a copy of all title documentation for the boat so that he may be confident that the seller does indeed own the boat, that the boat is VAT paid or exempt, and is RCD compliant.

The RYA's Title Checking Guidance Note contains detailed information on a boat's 'title documents'.

## **Recreational Craft Directive**

Since 16<sup>th</sup> June 1998, all recreational craft with few exceptions, between 2.5 and 24 metres in length, sold or put into service for within the European Economic Area (EEA) for the first time must comply with the essential safety requirements of the RCD and must be CE marked to certify compliance. This includes boats imported either new or second-hand and home builds intended for sports and leisure purposes if placed on the market within five years of completion. The builder, his agent, or the person importing the boat is responsible for compliance and marking. Further information on the RCD can be obtained from our Technical Department.

## **Contract**

At its simplest, a boat is no different from some other chattel such as a wardrobe, a filling cabinet etc. The law does not stipulate a process for the sale and purchase (as it does for the sale and purchase of land).

The RYA strongly recommends that a written Sale and Purchase Agreement is used on all boat purchases. Whilst verbal agreements are perfectly valid in law, they are notoriously difficult to prove and any disagreement will come down to one party's word against the other.

A written Agreement sets out clearly the rights and duties of the parties. The parties can agree exactly what is being sold and what is included in the inventory. The inventory should be attached to the Agreement and signed by both Parties.

The RYA produces a Standard form of Agreement for the Sale and Purchase of a Second-hand Boat, which is available to members.

The RYA recommends each party have a copy of the Agreement, which should be signed and dated by both parties.

The actual transfer of the property in the boat is accomplished by the use of a Bill of Sale; which is the document normally used in the transfer of a British Registered Ship, but can equally be used for the transfer of unregistered boats. Again the RYA has produced a Standard form of Bill of Sale for use on boats which are on the Part III Register (SSR) or unregistered.

Depending on the complexity and value of the purchase, the purchaser may well wish to instruct specialist marine solicitors to act on his behalf. A list of marine lawyers can be obtained from the RYA Legal Department.

## **Deposit**

Whilst it is usual to pay a deposit to secure the purchase of a boat, it is by no means a legal requirement; the parties may therefore negotiate over whether any deposit is paid at all, or

indeed the sum of any deposit payable. As a purchaser, you will wish to ensure that the payment of a deposit acts as security that the seller will not offer the boat for sale to any other person.

If a deposit is to be paid, where a broker is acting on behalf of the seller, the broker should hold the deposit monies in a bona fide designated Client Trust Account. Where there is no broker involvement, the parties must agree who is to hold the deposit and upon what conditions, if any.

## **Survey**

The RYA always recommend that its members have a survey carried out on a boat prior to finally agreeing the purchase (regardless of its purchase price); this is especially so if the boat is second-hand and being sold privately (even where a broker is involved). Remember Caveat Emptor! If you buy a boat without survey and later find defects with it, you may not have any legal rights. It is for this reason that the use of a surveyor is well advised. There is of course an initial outlay in the commissioning of a survey report but both the time and expense may well be justified by saving you money and indeed your safety in the long run.

Upon appointing the surveyor you should agree with him the extent of his report.

The RYA advise its members to use a surveyor that belongs to one of the professional bodies; this way you can be sure that he holds Professional Indemnity Insurance which you may need to call on should the survey, for any reason, prove itself to be faulty.

The survey will be carried out at the purchaser's expense and if the surveyor requires the boat to be slipped and removes any part of the boat, for example, keel bolts etc., the purchaser must either reinstate the boat to the condition in which he found it (including re-slipping) or expect that, if he decides not to purchase, some part of his deposit will be retained by the seller to pay for reinstating the boat.

Do bear in mind that surveyors do not generally report on engines and as this is usually an expensive and essential bit of kit, you are well advised to obtain an engineer's report.

A Surveyor will no doubt include a disclaimer in his report in respect of latent defects, because this is really notice given after the survey has been done the surveyor has a liability regardless of this notice, but not for something which happens three months or three years after he has surveyed the boat.

Further information please see our various Guidance Notes on Surveys.

## **Defects on Survey and the Contract**

Often a surveyor will find a number of defects on a boat (this may be so even where the boat is new). If the parties are using the RYA standard form Agreement for the Sale and

Purchase of a Second-hand Boat, the purchaser may reject the boat as a result of the survey or require the seller to rectify the defects listed in the survey or negotiate a reduction in the purchase price to enable the purchaser to rectify the defects.

## **Sea-trial**

The parties may also agree that the purchaser will conduct a sea-trial with the boat. Again this is something the RYA recommend (and indeed is provided for in the standard form Agreement), especially as the handling of boats may differ so greatly.

## **Completion**

Once the survey/sea-trial has been concluded and any defects dealt with between the parties according to the contract, the purchaser will proceed to completion.

If the boat is registered the purchaser is advised to make a search of the UK Ship Register (RSS) for a copy of the Transcript of the boat, just prior to completion and indeed again on the day of completion. If the boat is Part I Registered, any mortgages on the boat must be noted on the Register in order to be valid as against subsequent purchasers.

Completion itself usually involves the transfer of the balance of the purchase monies by the purchaser and a simultaneous handover of the 'title documents' of the boat. The purchaser should have seen a copy of these documents well in advance of completion and so should not be getting any late surprises. At the very least the purchaser will want to receive Bills of Sale going back at least 5 years, Certificate of Registry, proof of VAT status and proof of RCD compliance. The RYA's Title Checking Guidance Note contains detailed information on a boat's 'title documents'.

## **Insurance**

Boat insurance is not compulsory in the UK, however here again the RYA advises its members to consider taking out, at the very least, third party liability insurance. Boats are generally expensive items and a prudent owner may well consider that the cost of insurance is indeed a wise investment in order to protect that asset.

Bishop Skinner Marine offer a discounted insurance scheme for RYA members – see contacts section below.

## **Registration**

Boat Registration in the UK is not compulsory unless it is intended to cruise outside of territorial waters. There are two Registers in the UK that one may put one's boat on 1) the Part I Register – which has a mechanism for mortgage registration and 2) the Part III Register/SSR – which acts as a passport for British boats cruising overseas – there is no mechanism for the registration of mortgages.

Once completion has taken place the purchaser may wish to either a) where the boat is already registered, transfer the registration of the boat into his name or b) where the boat is not already on the Register, put the boat on the Register.

Further information on Registration is contained within our Guidance Note 'Boat Registration in the UK'.

## **CONTACTS:**

### **UK Ship Register (RSS)**

Anchor Court	Tel:	02920 448800
Keen Road	Fax:	02920 448866
Cardiff	Website:	<a href="http://www.ukshipregister.co.uk">www.ukshipregister.co.uk</a> or
CF24 5JW		<a href="http://www.mcga.gov.uk">www.mcga.gov.uk</a> then follow the link
		for online registration
	Email:	<a href="mailto:ukshipregister@mcga.gov.uk">ukshipregister@mcga.gov.uk</a>

### **The Yacht Brokers, Designers and Surveyors Association**

The Glass Works	Tel:	01730 710425
Penns Road	Fax:	01730 710423
Petersfield	Website:	<a href="http://www.ybdsa.co.uk">www.ybdsa.co.uk</a>
GU32 2EW		

### **Bishop Skinner Marine**

Kingfisher House	Tel:	01245 291167
12 Hoffmanns Way	Fax:	01245 291291
Chelmsford	Website:	<a href="http://www.bishopskinner.com">www.bishopskinner.com</a>
CM1 1GU		

### **British Marine Federation**

Marine House	Tel:	01784 473377
Meadlake Place	Fax:	01784 439678
Thorpe Lea Road	Website:	<a href="http://www.britishmarine.co.uk">www.britishmarine.co.uk</a>
Egham	email:	<a href="mailto:info@britishmarine.co.uk">info@britishmarine.co.uk</a>
Surrey, TW20 8BF		

### **Guidance Notes/Publications**

- Consumer Protection
- Dealing with a Yacht Broker
- Title Check
- Agreement for the Sale and Purchase of a Secondhand Boat
- RYA Bill of Sale for unregistered or SSR registered boat
- MCA Bill of Sale for Part I registered boats
- List of Marine Lawyers

- Survey – various Guidances
- Boat Registration in the UK
- Fixed Price, New Boat Construction Agreement and accompanying notes to the Agreement
- A Short Guide to Buying a Boat

## **RYA Contacts**

Cruising Team on 023 8060 4233 or email [cruising@rya.org.uk](mailto:cruising@rya.org.uk)

Technical Team on 023 8060 4204 or email [technical@rya.org.uk](mailto:technical@rya.org.uk)

Training Team on 023 8060 4191 or email [training@rya.org.uk](mailto:training@rya.org.uk)

For more information kindly contact the RYA Legal Team on 023 8060 4223 or [legal@rya.org.uk](mailto:legal@rya.org.uk)

## **RYA Responsibility Statement:**

The RYA Legal Team provides generic legal advice for RYA members, affiliated clubs, class associations and Recognised Training Centres. The information contained in this Guidance represents the RYA's interpretation of the law as at the date of this edition. The RYA takes all reasonable care to ensure that the information contained in this Guidance is accurate and that any opinions, interpretations and guidance expressed have been carefully considered in the context in which they are expressed. However, before taking any action based on the contents of this Guidance, readers are advised to confirm the up to date position and to take appropriate professional advice specific to their individual circumstances.