

Buying and selling residential property in Jersey



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Introduction

This briefing note is intended as an overview of some of the legal issues which should be considered when buying and selling a residential property in Jersey. More detailed guidance on specific subjects is available on request.

The Process

Residential freehold and flying freehold property in Jersey is bought or sold by contracts passed before the Royal Court of Jersey on a Friday afternoon (a conveyance). Conveyances used to be written in French but as a lot of the language used included old French words which had long fallen out of use, the system was changed and conveyances have been written in English since 2006.

The other way of buying or selling a residential property in Jersey is by share transfer. Here the Buyer buys shares in a company which owns the whole building. Ownership of the block of shares provides the Buyer with the right to occupy a particular flat within that building. Share transfers can take place on any day of the week but if your sale or purchase forms part of a chain including freehold or flying freehold properties, completion will probably still take place on a Friday.

Once a purchase price has been agreed for a residential property in Jersey, it is usual for the Seller's to prepare the formal documents, including the draft Contract.

The Process - Seller's Lawyer

The Seller's lawyers will prepare a draft contract for review by the Buyer's lawyers, they will then address any queries raised and carry out any research required to address the queries.

The Seller's lawyers will also liaise with the Seller's mortgage lender (if applicable) to ensure all mortgages and secured charges are settled from the sale proceeds and that the mortgage lender's charges are cancelled following completion.

The Process - Buyer's Lawyer

The Buyer's lawyers will conduct enquiries/searches to ensure that all available information is obtained in connection with the property which may impact the Buyer's decision to proceed with the purchase. Enquiries are made with the Planning Department, Department for Infrastructure, the relevant Parish, Jersey Electricity, Jersey Water, and Jersey Gas.

Qualification to Buy

Buyers of freehold property are required to demonstrate their legal entitlement to buy property in Jersey by producing a valid and up-to-date Registration Card. Registration Cards can be permanent or for limited periods of time dependent upon certain criteria and can be obtained from the Social Security Department or the Population Office.

Consents

If the property being purchased includes agricultural land or more than [3] vergées of other land, consent will be required from the Planning and Environment Department of the States of Jersey under the Agricultural (Control of Sales and Leases) (Jersey) Law 1974. This consent usually requires the agricultural land to be leased to a bona fide agriculturalist.

If a Purchaser wishes to conduct any works on the property, Planning and Building Bye-Law consent may also be required. It is therefore important for the Purchaser to take this into consideration prior to acquiring the property.

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The Buyer's lawyer can assist in drafting and submitting an application to obtain planning and building bye-law consent.

Title

Title to Jersey real property is a matter of public record. Title checks will therefore be undertaken at the Public Registry to ensure that the Seller is the owner of the property being sold and that the draft contract accurately reflects the title owned. Checks are also undertaken to ensure that no one else has any rights or claims over the property. This is referred to as "checking title".

Site Visit

Once title checks have been conducted and responses have been received from the enquiry/search letters, the Buyer's lawyer will instruct a conveyancer to undertake a site visit. The main purpose of these site visits is to check boundaries and to ensure that the property does not encroach upon neighbouring properties and that there have been no breaches in any of the clauses in the title. Should any encroachments be found, and will remain, they must be incorporated into the contract. In some circumstances, this may require the owners of the neighbouring property to join into the contact to agree remedial clauses.

Survey

Although the Buyer's conveyancer attend the property to conduct a site visit and to check the boundaries, they do not conduct any survey of the property.

The mortgage company will may conduct a "valuation survey" but the purpose of this valuation is not to highlight structural issues to the buyer. The Buyer is advised to commission a full survey of the property prior to passing contracts in the Royal Court as, if there are any issues with the structure of the property which are not found until after the sale, the Buyer is unlikely to have any recourse against the Seller, as in Jersey a property is bought "as seen".

Fees and Stamp Duty

Stamp Duty is payable by the Buyer on both the purchase contract and any registered mortgage. Stamp duty is payable by the Buyer on or prior to the date of passing the contract to purchase the property. Cleared funds equal to the purchase price, all stamp duty, legal fees and disbursements must therefore be held by the Buyer's lawyer by close of business on the day prior to passing

contracts in the Royal Court or completing the share transfer. Stamp duty discounts are available to first time buyers (up to a certain threshold) and any prospective Buyer should liaise with their lawyer if they believe they qualify for the discounted first time buyer rates.

Completion before the Royal Court

The Buyer and Seller of the property must appear before the Royal Court in person for completion of the sale and purchase of the property. If the Buyer or Seller is unable to attend, a representative (usually a conveyancer or lawyer) from their respective law firm may attend in their stead under a Power of Attorney. If a company is party to the contract, either one of its directors appears, or an authorised agent or attorney must appear.

Vacant Possession

It is usual for vacant possession of the property to be given on the Friday afternoon when the contract is passed at the Royal Court, which is usually when the keys to the property are handed over. However, on occasion, the Seller and the Buyer agree to allow a period of grace for the Seller to move out.

Insurance

The property should be insured by the Buyer at the point of completion (usually 2:30 pm on the day the contract is passed before the Royal Court). Preliminary arrangements should be put in place at an early stage, with formal confirmation provided to the insurance company on the day of completion.

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the contact details below.

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