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## **AN ESSENTIAL GUIDE TO BUYING AND SELLING PROPERTY IN JERSEY**

*This guide will help you grasp the basic components of buying and selling property in Jersey. For further information, please contact your usual advisor at Lexstone Lawyers. We would be delighted to assist you.*

*Kindly note that this guide is intended to provide general guidance and does not represent Jersey legal advice.*

### **IN THIS ARTICLE, WE EXPLORE: -**

Jersey property law

Different types of property in Jersey

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Keywords and phrases

### **JERSEY PROPERTY LAW**

Jersey property law is Norman in origin with feudal roots. All contracts relating to the property passed before the Royal Court of Jersey have been recorded by the Public Registry since 1602, listed in books and, more recently, available digitally.

In the UK, property contracts and leases may be exchanged and executed anywhere, on any given day, before or on completion. However, Jersey property law is unique because conveyances are only passed before the Royal Court on a Friday afternoon. Similarly, any charges over immovable property may also only be registered on Friday afternoons. Share transfer property is not

considered immovable property; therefore, not passed before the Royal Court. This means it can be transferred at any time by way of entry into a share purchase agreement. Contract leases must be passed through the Royal Court, whereas paper leases are considered a right, therefore, movable property. Hence, paper leases are not passed through the Royal Court.

Although the Public Registry holds copies of all contracts passed before the Royal Court, records only give each contract's written content; therefore, free title is not guaranteed. Each time a new conveyance is drawn up, title must be researched and verified to check that there are no hypothecs or burdens currently held over that property, and that the recorded boundaries are true to form.

## ASSOCIATED TAX

Stamp duty or land transaction tax is charged for all property transfers.

Stamp duty for the purchase of freehold property in Jersey is calculated on an accumulative scale. Therefore, the stamp duty is proportional to the purchase price of a property. Different stamp duty rates must be paid in respect to whether the property being purchased is residential property or property for residential development.

Land transfer tax is payable instead of stamp duty (at the equivalent rate to stamp duty) on the purchase of share transfer property when the purchase is in respect of residential accommodation. Stamp duty is payable on contract leases at a rate of 0.5% on the first £100,000 and 0.75% above that. There are stamp duty and land transaction tax reliefs offered to First Time Buyers – those who have a permanent entitled status and have never owned property before anywhere in the world.

In Jersey, stamp duty is also required to be paid at a straight rate of 0.5% on loans for property purchase, unless it is being purchased by a First Time Buyer, in which case reliefs might be offered.

## DIFFERENT TYPES OF PROPERTY IN JERSEY

<b>Freehold property</b>	property whereby the owner enjoys free ownership (free from ownership of anyone besides the owner) for perpetuity.
<b>Flying freehold property</b>	an individual lot comprising of both (1) a <i>corpus fundi</i> flat or private unit (a " <b>Lot</b> "); and (2) an undivided interest in the building, land and appurtenances of which the Lot is part of (the " <b>Collective Property</b> ").
<b>Share transfer property</b>	where a freehold property is owned by a Jersey company (a " <b>Corporate Owner</b> ") and purchasers acquire a block of shares in the Corporate Owner which give the shareholder certain express rights to use and enjoy a specific private unit (apartment) as detailed by the Corporate Owner's bespoke articles of association.
<b>Leasehold property</b>	property which is held under a contract lease - a lease of duration greater than nine years. A contract lease must be passed before the Royal Court to be enforceable.

## What to buy?

	Freehold	Flying freehold	Share transfer
<b>Property type</b>	Usually a house.	Typically an apartment.	Usually an apartment.
<b>Ownership</b>	Free, sole ownership.	Sole owner of a Lot which is part of a Collective Property, co-owned together with owners of other Lots. Each co-owner is a party to a declaration of co-ownership (a " <b>Declaration</b> ") where the terms of their ownership rights are set out.	Shareholder and sometimes also a director of a Corporate Owner which owns a whole property (the " <b>Common Parts</b> "). Each member's shares provide them with the right to reside in a specified apartment.
<b>Management rights</b>	The owner is responsible for managing their own property.	Voting rights are given to co-owners concerning the management of the Collective Property. Each co-owner is responsible for the management of their own Lot.	Directors make decisions for the management of the Common Parts. Each member is responsible for the management of their own apartment.
<b>Maintenance</b>	The owner is responsible for maintaining their own property.	Periodic service charges may be payable per the Declaration. Each co-owner is responsible for the maintenance of their own Lot.	Periodic service charges per the bespoke articles of association of the Corporate Owner. Each member is responsible for the maintenance of their own apartment.
<b>Insurance</b>	The owner is responsible for insuring their own property.	The Collective Property is insured by the association of co-owners, who are party to the Declaration. Each co-owner is responsible for insuring their own Lot.	The Corporate Owner usually insures the Common Parts. Each member is responsible for insuring their own apartment.

## Flying freehold

The *Loi (1991) sur la copropriété des immeubles bâtis* (often referred to as the flying freehold law) provides for the division of a single property into separate, *corpus fundi* private units, usually apartments, to be purchased individually. On purchase of a flying freehold apartment, a co-owner is usually granted freehold title to an apartment. This sometimes comes together with a parking space, garden or other appurtenances by way of a percentage interest in the common parts of the property, management of which is shared with the other co-owners by way of service charges to cover the costs of maintenance.

Co-owners' rights and individual interests are set out by a co-owners' Declaration of flying freehold, signed by each co-owner of the Collective Property. The Declaration will stipulate any restrictions on the use of or activities permitted on the property, such as whether smoking is restricted, whether pets are allowed or whether owners may lease their apartments.

The purchase procedure of a flying freehold apartment is made by way of a contract passed before the Royal Court on a Friday afternoon. For this, stamp duty is payable at a proportion of the apartment's sale price per the **Stamp Duties & Fees (Jersey) Law 1998**.

## Share transfer

Ownership of a share transfer property is through rights determined by ownership of shares. Therefore, it is a movable asset and do not require to be passed before the Royal Court. For this reason, a prospective purchaser should ensure that any share purchase agreement is conditional upon the good title, and the seller should ensure that any such agreement is conditional upon the payment of consideration. Each party's lawyer should advise them on the draft share purchase agreement and ensure that such conditions are included. Unlike a contract passed before the Royal Court, the share transfer agreement used in the sale and purchase of a share transfer property allows more flexibility and negotiation between parties. For example, it is possible to negotiate each party contribution to the parish rates due in the transaction year in proportion to their respective duration of ownership of the property during that year. Although the contract isn't passed before the court, the purchaser will be liable to pay land transaction tax at equivalent of a stamp duty of a freehold property purchase of the same value. Being a movable asset, share transfer property is part of your movable estate. This is an essential consideration for your will, which may need to be revised if you make a sale or purchase of such property.

An important point to note is to review the Corporate Owner's articles of association if you are looking to purchase a share transfer apartment. These will stipulate any membership conditions such as whether members are permitted to have pets, if members may rent out their private unit or whether there are restrictions on any specified activities, for example, smoking or having a BBQ. Your lawyer can help and advise you with this.

When you instruct us as your lawyer regarding the purchase of a share transfer property, we will always check the Corporate Owner's records and corporate documents to ensure that you will be making a prudent purchase. We will readily advise you on any ambiguities regarding what your prospective share represents and seek to negotiate or remedy anything as required, ensuring you will get the best deal.

## THE ESSENTIAL CHECKLIST FOR BUYING JERSEY PROPERTY

### Residential status

- ◆ Before doing anything, you must check your residential status. This is important because it will affect whether you can purchase property and which property you are permitted to purchase under the **Control of Housing and Work (Jersey) Law 2012** (the "**Control Law**").

	Qualification	Housing
<b>Entitled</b>	Residence in Jersey for at least ten consecutive years, or qualify as a High Net Worth individual (having an annual worldwide net income of over £725,000 per year)	You may rent, purchase or sell any Jersey property
<b>Licensed</b>	An "essential employee"; employed under a Licensed position	You may rent, purchase or sell any Jersey property other than assisted purchase or social rented housing. Only one property can be own or occupy.
<b>Entitled for Work</b>	Residency of five consecutive years, or the spouse of someone with Entitled, Licensed or Entitled for Work status	You may purchase any Jersey property jointly with an Entitled spouse. You may rent "registered" property
<b>Registered</b>	Someone unqualified for any of the above	You may rent "registered" property

- ◆ To evidence your status, you need a registration card, which can be obtained from Customer and Local Services (formerly known as Social Security). Your lawyers and estate agents will need this card or a copy of it to ensure that you are qualified to make the purchase you want.
- ◆ Although no consent under the Control Law is required to purchase a share transfer property if you aren't entitled, the Corporate Owner's articles of association or the Declaration, could restrict who may purchase units,
- ◆ If a company hopes to purchase property, it will need to apply for consent from the Population Office under the Control Law.

### Financing your purchase

- ◆ Before beginning to search for a property, you need to know your budget. This means if you are planning to borrow, for example, by taking out a mortgage, you need to check with your bank or lender how much they will agree to lend you. Having your financing arranged before making an offer on a property is the most crucial step to ensuring that a transaction will complete on time.
- ◆ If you plan to use your new property as security for any financing arrangements, your lender is likely to arrange a survey of that property to ensure its value is enough to secure the amount you are borrowing. If the property value seems lower than estimated by the lender, this could cause a last-minute reduction in your financing. Therefore, it is vital to allow lots of time between instructing us, making an offer on a property and your proposed completion date.

- ◆ As your lawyers, we can advise you on any financing contractual terms to make sure you understand and agree with a loan offer before you sign.
- ◆ We can also help you calculate stamp duty or land transaction tax and any fees associated with purchasing a property in a given price bracket, should you appoint us as your lawyers.
- ◆ It is important to find out whether you classify as a First Time Buyer\*. First Time Buyers are eligible for significantly reduced stamp duty or land transaction tax. We can help advise you of whether you are eligible as a First Time Buyer when you instruct us as your lawyers.

### Choosing the right property

- ◆ Valuation, contents and inventory – you may wish to request an inventory of the property's contents and check what is included in the sale price and its condition.
- ◆ The structural survey, property searches and title checks – we recommend that you have searches over the property carried out in respect of the building's structure and utilities so that you are fully informed of the state of the property, any fixed assets and its borders before you make a purchase. If searches and title checks reveal any significant problems, you can pull out of the transaction with no significant impact to you.
- ◆ Boundaries and neighbours – boundary encroachments could cause problems and delay completion. You may be required to bear extra costs if significantly more work must be carried out to complete a transaction than was expected when we issued our fee quote.

### Legal guidance

- ◆ When making a purchase, you will need to appoint a lawyer to help you with title checks and advise the contract of sale and purchase.
- ◆ By instructing a lawyer at an early stage, they will help and advise you on every aspect of your purchase so that you can ensure that you are getting the best property deal for you.
- ◆ When instructing your chosen lawyer, make sure that you give clear instructions and allow them enough time to complete the transaction thoroughly and to let them advise you the best of their ability. We would usually recommend instructing a lawyer no later than one month before completion to leave enough time to carry out title checks and property searches. These are essential to ensure that your property will be purchased free from any monetary burdens, unsafe utilities or contamination or any other nasty surprises.

### Insurance

- ◆ As part of financing conditions, some lenders will require insurance to be placed on the property immediately on purchase. In such instance, check that your insurance cover will be in place on completion.

- ◆ On purchase of a flying freehold or share transfer apartment, completion will often be conditional on the apartment being insured to a standard set out by the corporate owner (share transfer) or the co-owner association (flying freehold) of the whole property. In such an instance, the entire property will be insured by that co-owner association or corporate owner as the case may be.

## **Moving**

- ◆ If an estate agent is involved, they will usually be in possession of any keys, codes and other forms of access to the property. Completion will usually be on condition that the purchaser is given access to the property.
- ◆ Remember to arrange for a removal company to help with your move in advance if you need one. Make sure they know your completion date or if it is not set in stone, make sure they are aware.
- ◆ Make sure you notify your utility providers that you will be moving at least four days in advance of completion so that when you move into your new property, you have electricity, hot water and other necessities.

## **THE ESSENTIAL CHECKLIST FOR SELLING JERSEY PROPERTY**

### **Legal guidance**

- ◆ By instructing a lawyer at an early stage, they will help and advise you on every aspect of your purchase so that you can ensure that you are getting the best property deal for you.
- ◆ You could experience boundary rights issues if any new structures have been built or there are any pre-existing structures such as an extension or a wall on the boundary between your property and a neighbouring property, which were not agreed by a contract passed before the court. To ensure that potential problems are kept to a minimum, we recommend that you allow extra time between instructing us as your lawyers before completing a sale. You may be required to bear additional costs if we must carry out significantly more work to complete a transaction than was expected when we issued our fee quote.

### **Accepting an offer**

- ◆ When accepting an offer, ensure that the purchaser has consent under the Control Law to purchase your property. This is essential if you want the transaction to complete. As your lawyers, we will ensure that a prospective purchaser is permitted to buy your property.
- ◆ When agreeing to an offer on your property, you should ensure that the proposed purchaser has made stable financial arrangements with any lender. This is imperative to ensure that your property sale completes on time, especially if you are using the sale income to purchase your own.

## Moving

- ◆ Completion will usually be on condition that the purchaser is given access to the property, so make sure you have all forms of access available to hand over on the completion date.
- ◆ Remember to arrange for a removal company to help with your move in advance if you need one. Make sure they know your completion date or if it is not set in stone, make sure they are aware.
- ◆ Ensure you notify your utility providers and insurer that you will be selling the property at least four days in advance of completion so that you are not liable to pay any bills after you have sold or moved out of the property.

## \*FIRST TIME BUYER STATUS

If you qualify as a First Time Buyer, you become eligible for a significant reduction in stamp duty or land transaction tax, as the case may be, payable when purchasing property for less than £450,000 or a small reduction when buying property for between £450,000 and £500,000.

To qualify as a First Time Buyer: -

- ◆ you must have a **Entitled residential status** (or be jointly purchasing with a spouse or civil partner who is Entitled); and
- ◆ you (and your partner, if purchasing together) must **never have owned any property before**, anywhere in the world. Previous property ownership includes ownership through inheritance, joint ownership, ownership of share transfer property, being the tenant of a contract lease or owning property held by a nominee or trustee for your benefit.

If you are entering into a contract lease and qualify as the above, you may also be eligible for a reduced stamp duty rate.

You may be eligible to purchase a property which is part of a first-time buyer development (although you won't be eligible for reduced stamp duty or land transaction tax) if: -

- ◆ you are selling share transfer property and purchasing a larger property; or
- ◆ you sell flying freehold property to another First Time Buyer and are buying a larger property;
- ◆ you are buying and moving to a larger property;
- ◆ you have only previously owned inherited agricultural land; and
- ◆ you have solely previously owned jointly inherited family property with siblings.

We can help advise you of whether you are eligible as a First Time Buyer when you instruct us as your lawyers.

## BUYING TOGETHER

A lot of consideration must be made if you plan to purchase property together with a partner or someone else. The preferred type of co-ownership of the property to be purchased must be chosen when the contract of purchase is drafted.

<p><b>Joint</b></p>	<p>Joint owners own a property <i>jointly and for the survivor</i> such that, if one joint owner dies, their part of a shared estate is given to or vested in the surviving joint owner. To purchase a property through this type of co-ownership, express wording must be included in the sale contract.</p> <p>Spouses often own property jointly. Share transfer property owned by more than one party is always owned jointly because the shares which grant the relevant residency rights must be owned by the parties jointly.</p>
<p><b>Tenants-in-common</b></p>	<p>The default type of co-ownership of land or property, whereby each tenant-in-common owns a specified fraction of the rights to a specified fraction of total proceeds of the property's sale. If one tenant-in-common dies, their fraction of a shared estate passes to that tenant-in-common's heirs and not to the remaining tenant-in-common.</p> <p>Couples who each have their own children may prefer this type of co-ownership. Still, consideration must be made in respect of the survivor's living circumstances if one co-owner predeceases the other.</p>

Each party should seek independent legal advice to ensure that they understand and are happy with all the terms of a contract or an agreement related to co-ownership of a property.

If the parties consider it necessary, they can enter into a cohabitee/equity participation agreement regarding each of their interests in a co-owned property in case their circumstances change in the future. The following example scenarios can be incorporated into an agreement concerning parties' interests in a property to ensure that any circumstance is covered.

- ◆ Different residential statuses – if unmarried, only the Entitled partner can own any type of property.
- ◆ Varied financial input to the property purchase price, deposit or financing arrangements.
- ◆ Preparing for the future – separation or death.

Any such agreement dividing interest in a property must be drafted so that if your circumstances change, such as if you have children or if one of your financial circumstances change more than the other's, the terms set out remain clear. We recommend that you revise such an agreement if your circumstances change dramatically so that the separation of your interests is as simple as possible. It must be noted that out-dated agreements can be superseded by the court, as demonstrated in *Flynn v Reid 2012*.

## FINANCING – TAKING SECURITY OVER THE PROPERTY

Using property as security for a loan facility is commonly used to finance a property purchase, for example, taking out a mortgage with a bank. This gives the lender ownership rights over the borrower's property for the duration of a loan term until full repayment of the loan is made, permitting the borrower to reside in the property subject to a range of terms and conditions such that the value of the property does not decrease further than the loan amount borrowed. It can be a risk for the borrower because if they cannot repay the loan amount, they can go into default and be forced to give up their property to the lender. The borrower must receive legal advice before entering into any such agreement to understand and agree to all terms and conditions.

### Freehold

Freehold property can have burdens, hypothecs or charges held against it. These can be created by an owner using the property as security when taking out a loan; however, if not entirely paid off, the encumbrances can be sold as part of the title to the property. Unlike in the UK, Jersey property is not sold with a guarantee of free title. Purchasers should ensure that they arrange for a title check to be carried out before purchase to ensure that their property is purchased free of all encumbrances.

### Flying freehold

As flying freehold lots are *corpus fundi*, they can be used as security for a loan in the same way as freehold property. As with freehold property, title to flying freehold property can be sold with encumbrances; therefore, a title check should be carried out ensuring that the property is free of encumbrances before purchase.

### Share transfer

An owner cannot create a hypothec over a share in a share transfer property, because it provides a right rather than being a *corpus fundi* lot or unit. If a share transfer property owner wants to provide a lender with security for a loan facility, they must create a security interest over their shares. A security interest agreement acts whereby the parties agree to a transfer of the borrower's shares to the lender for the loan duration. On full repayment of the loan, the lender returns the shares to the borrower.

### Leasehold

As contract leases are passed before the Royal Court, they can be used as security for a loan. However, this is subject to express wording in the contract lease permitting the property to be used as security. This usually requires the landlord to become a party to the loan agreement and the lender and the borrower.

### Co-ownership

Security for a loan may only ever be taken over the property as a *corpus fundi* (as a whole). Therefore, if the property is owned by tenants-in-common, security cannot be taken over one tenant-in-common's fraction of the property. This means that if one owner chooses to take security over a co-owned property, the other partner must either receive separate legal advice or waive their right to obtain independent legal advice.

## WHAT WE DO TO HELP YOU IN THE SALE OR PURCHASE OF PROPERTY?

Sale	Purchase
	<p>If you are borrowing to finance your property purchase, we will advise you in respect of the terms and conditions of the facility agreement and ancillary documents</p> <p>We arrange for public and utility searches to be carried out in respect of the property</p> <p>If an apartment, we search the records of the association of co-owners or the company owner of the building, as the case may be</p>
We draft a contract of sale and purchase	We liaise with the lawyers of the vendor in respect of the contract of sale and purchase to ensure it works in your favour
We will help you with any pre-contract enquiries and the completion of the standard seller questionnaire	We organise a title check to be made and issue a title report
	We will arrange for any stamp duty to be paid and submit the contract to the Royal Court or, in the case of a share transfer property we can prepare the corporate formalities and resolutions and advise you in respect of a share transfer
We can attend the passing of contract before the Royal Court on your behalf, if required	We can attend the passing of contract before the Royal Court on your behalf, if required
We will issue a completion statement to you setting out the income and different expenses involved with the sale	We will issue a completion statement to you setting out the different costs involved with the purchase
We can arrange the cancellation of your existing mortgage recorded in the Public Registry	

## KEYWORDS AND PHRASES

<b>Contract lease</b>	a lease with a duration of nine years or greater.
<b>Conveyance</b>	the legal contract or deed of title to the property passed before the court during a sale and purchase of that property, granting the new owner ownership.
<b>Corpus fundi</b>	a separate and distinct parcel of land.
<b>First Time Buyer</b>	a purchaser who qualifies for a reduced rate of stamp duty or land transaction tax, as the case may be, in connection with the purchase of their first property.
<b>Fixed assets</b>	assets which are attached or integral to an immovable property's function, which may have a shorter lifespan than such immovable property, e.g. ventilation, heating, lifts, plumbing, electrics etc.
<b>Immovable property</b>	property which cannot be moved from one place to another, such as land or buildings.
<b>Hypothec</b>	a lender's legal right over a debtor's property, similar to a mortgage, where such property remains in the debtor's possession.
<b>Mortgage</b>	a document in which an owner pledges his or her title to the immovable property to a lender (such as a bank) as security for a loan.
<b>Movable property</b>	all property which is not immovable property. This includes but is not limited to tangible assets such as jewellery, art, or vehicles; and intangible assets such as insurance policies, shares or intellectual property.
<b>Paper lease</b>	a lease with a duration of less than nine years.
<b>Stamp duty or Land transaction tax</b>	a government charge or fee paid on certain transactions which is applied in respect to the Stamp Duties & Fees (Jersey) Law 1998, as amended. The amount of stamp duty or land transaction tax payable is based on the property's value, not including contents.
<b>Title</b>	an interest in land. In Jersey, the conveyances held by the registry do not guarantee free title to the property, so the purchaser's lawyer must check that there are no prior hypothecs, servitudes or other burdens. Contracts of sale and purchase often state that property is transferred in its current condition. This means purchasers are also recommended to arrange a property survey before transfer to reduce the risk of purchasing a faulty property.

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