

# A Guide to Share Transfer in Jersey

## Share Transfer Procedure

Buying an apartment or house by "share transfer" is a very different procedure to freehold acquisition, where the deed of conveyance of the property is passed before the Royal Court. Effectively, in order to buy a property or apartment by share transfer, you must acquire shares in a company, which shares will entitle you to exclusive occupation and use of that property or particular apartment.

Because the transaction not only involves a property but also a company, additional procedures and checks will need to be made by us to ensure that the company and its records are in order.

## WHAT YOU SHOULD DO

### Negotiations to purchase share transfer property

You should be aware that you can commit yourself either verbally or in writing to purchase share transfer property and therefore you should be careful to head any correspondence "Subject to Contract". Any offer made should also be conditional upon satisfactory survey, title and finance and if appropriate the sale of your existing property. Any verbal offer should also be made subject to the same conditions.

### Instructions and requirements

Once you have agreed the terms of the purchase you should advise us of the details as soon as possible, including:-

- the property concerned;
- the purchase price;
- the proposed completion and possession dates;
- details of your proposed funding arrangements including the name of the Bank, the amount of the loan and the name and contact details of the person you have been dealing with;
- whether you are proposing to carry out any alterations to the premises,
- whether you require an equity agreement (see paragraph 5. below);
- your contact details; and

- the name of the estate agent through whom you agreed to purchase the premises.

You may instruct us not to actively proceed with our property and company searches until you have received the results of a survey or a loan application.

We generally suggest to clients that they do authorise us to send out the usual search enquiry letters (which will incur disbursements of a few hundred pounds) as a delay in doing so could well cause a delay in completion.

The Planning Department put a disclaimer on their reply to our search enquiry to the effect that they do not warrant the accuracy or completeness of the information they provide. We strongly advise you to get your surveyor to attend at the Planning Department to inspect their files.

Additionally if you have any special requirement or particular concerns as to the property or the flat, or if any representations have been made to you by the vendor or his agent, then you should expressly advise us of these as soon as possible. If you require the flat for a particular purpose, this purpose should also be made known to us. Certain proposed uses of the flat could be prohibited in the Articles of Association of the company or could require applications to various statutory bodies which should obviously be attended to before the share vending agreement is signed and you are finally committed.

Additionally you may wish to make certain alterations to the flat and we should be advised of this so that we can check that the proposed alterations do not contravene any restrictions either in the articles of association or in the company's contract of purchase.

The Articles of Association of the Company may also place restrictions on pets or children.

Whilst we are pleased to accept your instructions by telephone, it may well be that this will present the ideal opportunity for you to ring and make an appointment to meet with the person who will handle your transaction, especially if you are instructing us for the first time in connection with a conveyancing matter. Written confirmation of instructions would also be appreciated.

## Survey and valuation

You should obtain a structural survey of the property in which the flat is situate, even where such property has only recently been erected. Generally, by the terms of the share vending agreement you acknowledge that you acquire the flat in its present condition, with all hidden or apparent defects. You will have a joint responsibility with

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the other shareholders in the company, for the structure and exterior of the property as a whole and, therefore, you should be concerned not only with the flat itself but with the whole building in which it is situated. Your bank will also require a valuation of the premises and should supply you with a list of surveyors who are on their approved panel. We cannot and do not provide professional advice as to the structural condition of any building nor as to the value of a property. In the same manner you should satisfy yourself with the appropriate professional that the electricity, water, heating and other services in the property are in good order and that there are no problems with drains or water supply where the property enjoys a supply other than mains services.

## Bank loan

One of the most frequent causes of delays in completing a purchase arises from the failure of banks to make mortgages finally available to purchasers on the day they are required for the completion of the transaction. This frequently is caused by the purchaser's own oversight in failing to sign the required facility letters or to make arrangements as soon as possible for insurance life cover where this is required. In some instances a medical examination may be required for life cover or mortgage protective insurance. You should therefore ensure that your lender has all of the relevant paperwork well in advance of completion.

## Equity agreements

If you are buying a home jointly with another person and are not married to that person one partner may put more money into the property than the other. Whilst matrimonial legislation can regulate this arrangement where parties are married an Equity Agreement can protect an unmarried partner with more equity in the event of a sale in that it will provide that on any sale after repayment of any mortgage, that partner's equity should first be repaid and the proceeds split thereafter. Similarly if one of you does not have Housing Qualifications or are contributing more to the mortgage you would need to be protected in the event that you separate.

## Property insurance

You will generally only need to insure the contents of the flat and in addition all internal wall, floor and ceiling finishes, kitchen and bathroom fittings and appliances, doors and windows and the decorative finishes as you will be responsible for everything within the structural confines of the flat. The property itself will be insured by the company. You may however, need to request that the interest of any Bank or other lending institutions is noted on the company's insurance policy. This should be arranged with the company secretary and we will assist with this if requested to do so.

## Advising of absence from the island

If you are going to be away from the Island at any time nearing completion of the transaction, you should notify us of this absence and provide a contact telephone number and where possible a contact fax number or e-mail address. If you are going to be away at the actual completion of the purchase, a power of attorney can be drawn up appointing us to complete all necessary documentation on your behalf. We will need to go through all documentation in detail with you before executing any document on your behalf.

## Wills

It is always important to consider making or revising a Will if a property is to be acquired so as to ensure that the appropriate arrangements have been put in place for the property or share to be inherited by the person or persons whom you wish to benefit.

## Removal and services

You will have to arrange your own removals and the transfer of services, such as electricity, water and telephones into your own name. We do not normally become involved in the transfer of services, however, you should note that completion of a transfer form will be required in respect of all of the services, these are available upon request at the offices of the various Utility Companies. When completing and submitting the transfer forms, you should liaise closely with the Vendor in order to avoid unnecessary delays, which can result in the disconnection of the relevant service.

In particular, disconnection of the electricity service can act as a prompt for the JEC to inspect before re-connection and require the electrical system to be brought up to current specification, sometimes at considerable cost.

If you have any difficulty or query in respect of this aspect of the transaction please do not hesitate to contact us.

## Tax

If you are intending to purchase with a view to re-development and profit upon a re-sale, it is important to seek advice from an accountant as to whether such will amount to the undertaking of a 'trade' so as to give rise to income tax liabilities.

## Development post completion

If subsequent to acquiring a flat you decide to make structural alterations to the flat it is always sensible for you to refer your plans and proposals to us and we will be able to advise whether the proposals would contravene any legal restrictions or the article of association of the company.

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You should feel free at all times to contact any member of our conveyancing team for further discussion or explanation of any matter raised in these notes or otherwise arising in respect of your particular transaction.

## Fees and land transaction tax

As from 1<sup>st</sup> January 2010, land transaction tax ("LTT") is payable on a property bought by share transfer and on securing a mortgage over the shares. The amount of LTT is the same as the amount of stamp duty that would be payable on a freehold purchase, click here to access the [LTT calculator](#). You will also generally be responsible for fees incurred by the bank's legal advisors in preparing the mortgage documentation.

By, at the latest, the morning of the completion date of the transaction, this firm must hold cleared funds sufficient to meet the consideration payable (less the net amount of any sums being borrowed by secured charge over the shares) and our legal fees and disbursements. Prior to completion we will provide you with a typed statement of the funds we will require in order to complete the transaction.

## WHAT WE DO

### Housing consent

Our first task is to ensure that an application has been submitted to the States of Jersey Housing Minister to enable you to occupy the flat if this has not already been done either by yourselves or by the estate agent. If you have any doubts as to your status or rights under the Housing Law, please do not hesitate to contact us and we will be able to explain your position and rights to you. If you are proposing to leave the Island for anything more than a short period it is essential that you consult with us as to the effect of such absence on your qualifications because a lengthy absence can in certain circumstances deprive a resident of his housing qualifications.

### Statutory searches

We send search letters to the various parochial and statutory bodies who may be able to provide information in respect of the property in which the flat is situate. At the present time we send search letters to the Minister of Planning and Environment, the Technical Services Department (in respect of drainage and main roads), the relevant parish, JEC, Waterworks, Jersey Gas, Rent Control Tribunal and Public Health. All of those bodies can provide information which might effect whether or not you decide to buy the flat. It should, however, be noted that in relation to our Planning enquiry the response will deal exclusively with the property in which the flat is situate and will not include any information concerning adjoining properties (unless specifically requested).

### Funding the purchase

You should advise us of details of your proposed loan including the bank, the amount of the loan and the person

with whom you have been dealing. Some banks' internal procedures dealing with loans are more cumbersome than others and it can frequently be of assistance for us to get in contact with both the bank concerned and the bank's lawyers.

Any balance of funds to make up the difference in the cash price payable for the property will have to be paid in cleared funds. Cleared funds will be required before the transaction can proceed to completion.

## Checking the company

Because you will be buying shares in a company in order to occupy the flat, we will carry out careful checks of the company's records and generally as to the company's good standing.

## Memorandum and articles of Association

The memorandum and articles of association are the constitutional documents of a company. The memorandum describes the company's powers and objects. The articles of association are effectively the agreement between the company and its shareholders and directors which set out the rights and obligations of the individual shareholders and the obligations of the company as a whole for, amongst other things, the maintenance of the property.

We will check the memorandum and particularly the articles of association to ensure that they are not defective in relation to the flat and your obligations and more importantly are consistent with what you are expecting to buy.

We will explain any areas of difficulty or ambiguity in the memorandum and articles of association and, if necessary, may request the Vendor's lawyer to arrange for any defects to be amended. It is always particularly important to check that the description of the flat and any additional areas to be enjoyed exclusively by the flat-holder (such as gardens, parking areas, garage, etc.) are properly described.

## The company's records

Every company must keep records regarding shareholders, directors, secretary and decisions made by its shareholders and directors. These records should consist of a minute book, share register, share certificate book and register of directors and secretaries and usually accounts detailing the financial position of the company. We will check all of these records and inform you of any relevant matters which may require the records to be updated and rectified.

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## Public records of the company

Public records of every company incorporated in Jersey are available for inspection at the Financial Services Department of the States of Jersey. We will conduct a check of these records to ensure that they are consistent with the company's own records and that all documents required by law to be filed with that Department, have been correctly filed.

## Other company checks

We will also request from the Vendor's lawyer details of the company's property insurance, the accounts of the company, details of past and proposed expenditure and any rules or regulations affecting the occupation of the property.

## Checking title

One of the most important tasks fulfilled by us relating to the property, is to check title. This entails researching title on the basis of the information provided in the company's contract of purchase of the property. This research is conducted in the Public Registry and takes the form of checking all transactions conducted by the company and its predecessors in title for a minimum period of 40 years. The main aim of such an exercise is to ensure that the company has a good marketable title to the property free from any registered charges. We will at the same time check that the details in the company's contract regarding boundaries and servitudes or easements of the property are correct and whether or not the property is subject to an onerous building or other restrictions and makes claim to all necessary rights of access and services.

## The site visit

Once title has been checked in the Public Registry and the relevant statutory and parochial authorities have all replied to the search letters sent to them, we will attend on site. The purpose of the site visit is to ensure that the company's contract of purchase corresponds with the circumstances on site. Certain buildings might have been demolished or extensions built. Demolition of buildings or walls can affect the boundaries of the property and extensions can create encroachments which may or may not have been covered in previous deeds. We also ensure that the rights which the property requires, such as rights of way and drainage and other mains service rights, are as set out in the company's contract of purchase and are sufficient for the reasonable enjoyment of the property.

If any defects are found then we will make a report to you, explain the difficulties and discuss whether or not the problem requires any remedial action to be taken and help you to decide whether or not to proceed with the transaction.

It may be necessary to approach a neighbour, to request that he enters into a contract with the company to be passed before the Royal Court to agree certain remedial

clauses to cover the problem encountered on site. An alternative approach may be to obtain defective title insurance cover in respect of which we will give you guidance and will provide all information required by the insurance company. The premium will usually be a one off payment for which, generally speaking, the Vendor would be liable. As with any insurance there are drawbacks with defective title indemnity insurance as it only covers the particular risk set out in the proposal form and defined in the policy, it relies upon the Insurance Company still being able to meet the claim and there are exclusions.

Some difficulties may arise as a result of the information provided in response to the Planning enquiry. It may be unclear as to whether or not an extension or other works have been approved by the Minister. If the Vendor cannot provide adequate assurances the next step is to ask one of the building inspectors to attend on site and view the property.

As a general rule the costs incurred in rectifying any defect are borne by the Vendor although this may be a matter for negotiation.

## Inventory of contents

We recommend that a written inventory of all furniture, carpeting etc. should be prepared, carefully checked, countersigned by both parties and attached to the share vending agreement. This simple step helps to avoid dispute in the future.

## Share vending agreement

We will receive from the Vendor's lawyer a draft agreement selling the shares to you. Customarily this agreement should contain a number of confirmations or "warranties" to be provided by the Vendor. These warranties should relate to the company and the property.

Before you sign the share vending agreement, we will go through the terms of the agreement in detail and provide a report on any areas of concern with the property or the company, and discuss these with you.

## COMPLETION

We normally advise clients not to sign the share vending agreement until they are ready and able to complete the transaction and move into the flat. Sometimes however, the arrangements between the Vendor and yourselves are such that rather than completing the transaction immediately, there will be a delay between signing the agreement and completing the transaction. It is usual to provide a 10% deposit upon the signing of such an agreement. The Vendor may at times be prepared to waive or reduce this deposit.

The agreement will also provide liquidated damages of 25% to 30% of the consideration for failure to perform the contract. Accordingly you should never sign a share vending agreement until we have completed all of our

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searches and advised that all is in order. At that stage you should be happy with all matters relating to both the Company and the property and be happy to unequivocally commit yourself to the purchase.

In many instances, however, there will be one or two outstanding points which you will wish to be dealt with to your satisfaction before completion is effected. Accordingly certain conditions may be imposed when the share vending agreement is returned. Such conditions might relate to clarification of problems with title, ratification of defects into the company's records, the granting of a required mortgage, obtaining a satisfactory structural survey etc. If the conditions are not complied with you have the option to withdraw from the transaction.

## Vacant possession and keys

We will also deal with one or two matters which are not strictly of a legal nature. We will liaise with you as to anticipated possession dates. It is usual for possession to be given either on the day of signing the share vending agreement or within three or four days thereafter. Longer delays do occasionally occur but should be covered in the terms of the agreement. If possession is to be given upon the day that the agreement is signed by both parties then arrangements should be made to ensure that keys are handed over at the completion meeting. From a practical point of view, you should consider replacing all locks on exterior doors if the flat you purchase has been on the openmarket and keys for it have been made available to the public.

## Timing of completion

The time elapsing between your initial visit to us and signing the share vending agreement can vary enormously depending on the circumstances and requirements of the parties.

Generally it takes three to five weeks to complete, although transaction may be completed more quickly in emergencies. It is very difficult to guarantee completion on a particular date and you should treat tentative completion dates with caution.

Please remember that providing us with early and full instructions helps us to help you. When providing us with instructions please feel free to contact the lawyer within this firm with whom you have previously dealt or contact one of our conveyancing team who are dedicated to dealing with conveyancing and related issues.

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