

# A Guide to Buying and Selling Freehold Properties in Jersey

Jersey's system of freehold conveyancing is very much a public procedure and always has been.

The system has its origins in the old medieval practice which can be traced back to the sixteenth century of passing contracts relating to freehold property in the Island in the churchyard of the relevant parish subsequent to Sunday service 'within witness of the parish'. Eventually contracts came to be passed before the Royal Court as opposed to the parish churchyard.

In 1602, Sir Walter Raleigh as Governor of the Island decreed that all contracts relating to land passed before the Royal Court should be recorded in the rolls of the Public Registry. It is hence possible to have access in the Public Registry to title deeds going back to 1602.

## Current Procedure

Today contracts are still passed before the Royal Court of Jersey on Friday afternoons and the Court comprises the Bailiff and two Jurats. Up until 1 June 2006 all contracts were written in French, being the official language of the Court for transactions relating to land. Between 1 June and 31 October 2006 contracts were accepted in either English or French and from 1 November 2006 it became compulsory to use English.

Whereas previously copies of the contracts passed before Court were written out in long hand in the Public Registry, photocopies are now taken and it is that photocopy that constitutes the evidence of your title to the property which you acquire. We do not have a system of 'deeds' as known in the UK.

Once the original contract has been passed before the Royal Court and a copy of it retained in the Public Registry it ceases to be of any practical value to anyone other than the client's legal adviser who might wish to have access to it in the future in order that he may readily advise his client as to any queries that might arise in respect of servitudes, boundaries or title generally. There is accordingly no requirement that the title deeds be placed in a bank vault. The legal advisor will forward the original title deed to you following completion.

## THE ROLE OF THE VENDOR'S LAWYER

The work of conveying a property is divided between the Vendor's lawyer and the Purchaser's lawyer. It is the task of the Vendor's lawyer, having recourse to his client's own deed of purchase, to prepare a draft deed of sale of

what his client is offering to sell to the Purchaser. That draft deed of sale is then sent to the Purchaser's lawyer for him to check on behalf of his client purchaser.

Once the draft deed of sale has been prepared, the Vendor's lawyer will deal with queries raised by the Purchaser's lawyer, carry out research in respect of such queries, and attend on site if needed and will ensure the appropriate remedial steps are taken (if so instructed by the Vendor) to rectify any title defects. In fact many of the steps taken by the Purchaser's lawyer may also be performed by the Vendor's lawyer.

The task of the Purchaser's lawyer is now considered in some detail.

## THE ROLE OF THE PURCHASER'S LAWYER

### Housing Consent

The first task that the Purchaser's lawyer's office should undertake is to ensure that a Housing Application form has been submitted to the States of Jersey Housing Minister in respect of the prospective purchase to check your residential qualifications. This quite often will have been done either by the parties themselves or by the estate agent, but occasionally falls to be completed by the lawyers acting for the Vendor and Purchaser respectively.

In certain instances where agricultural land, or a particularly extensive garden is conveyed with a property, an agricultural consent from the Minister of Planning and Environment will also be required. The legal advisor will explain the effect of any conditions imposed on any consents issued by either the Housing Minister or the Planning and Environment Minister.

If you have any doubts as to your status or rights under the Housing Law, please do not hesitate to contact us. 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 term holiday 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.

# A Guide to Buying and Selling Freehold Properties in Jersey

## Statutory Searches

The next task that the Purchaser's lawyer should undertake is that of dispatching search letters to the various parochial and statutory bodies who may be able to provide information in respect of the property.

At the present time we dispatch search letters to the Planning & Environment Minister, Transport and Technical Services (in respect of both drainage and main roads), the relevant parish, Jersey Electricity, Jersey Water, Jersey Gas, Rent Control Tribunal and Public Health. All of those bodies can provide information which might have a profound effect on whether or not the Purchaser decides to buy the property. It should, however, be noted that in relation to our enquiries with the Planning and Environment Minister the response will deal exclusively with the property being purchased and will not include any information concerning adjoining properties, (unless specifically requested).

We would, however, point out that many of these authorities put disclaimers on the accuracy of information they provide so the Purchaser's lawyer is not liable if the information provided to him is incorrect. We would recommend that the Purchaser's surveyor/valuer attends at the Planning Department to inspect these records.

## Funding

The Purchaser's lawyer should in the early stages also be enquiring of his client as to how he intends to fund the purchase. Frequently this will entail the obtaining of a mortgage from one of the lending institutions in the Island. It is highly advisable to inform the lawyer acting for the Purchaser as soon as possible as to the identity of the bank. Some banks' internal procedures dealing with loans are more cumbersome than others and it can frequently be of assistance for the Purchaser's lawyer to get in contact with both the bank concerned and the bank's own lawyers.

If a balance of funds is to be paid to the Purchaser's lawyer to make up the difference in the cash price payable for the property, arrangements should be made for that money in the form of cleared funds to be placed with the lawyer immediately prior to the passing of the contract.

The Purchaser's lawyer is under a legal obligation to pay over the monies on the fourth day after passing contract, so it is imperative from his point of view that he ensures that he is in a position to do this, otherwise he is liable to be sued himself.

## Checking Title

Perhaps the most important task fulfilled by the Purchaser's lawyer is to check title to the property. This entails the Purchaser's lawyer researching title on the

basis of the information provided in the Vendor's lawyer's deed of sale. This research can be conducted in the Public Registry, but is now usually conducted online using the PRIDE system. This takes the form of checking all transactions conducted by the Vendor and his predecessors in title for a minimum period of 40 years.

The main aim of such exercise is to ensure that the Vendor has a good unencumbered marketable title to the property free from any outstanding claims. The Purchaser's lawyer will at the same time ensure that the description of the property given in the draft deed of sale by the Vendor's lawyer corresponds with the earliest deeds and the evolution of the original description in the Public Registry. He will also be at pains to ensure that all rights of way and other rights either over or for the benefit of the property to be acquired are properly set out in the draft deed of sale.

The titles to the immediately neighbouring properties will also be looked at to ensure that the boundaries they claim towards the property to be purchased and rights set out in those properties' deeds again correspond with the information set out in the draft deed of sale.

## Site Visit

Once title has been checked and the relevant statutory and parochial authorities have all replied to the search letters sent to them, the Purchaser's lawyer will attend on site. The purpose of the site visit is to ensure that the Vendor's draft deed of sale corresponds with the circumstances on site. Certain buildings might have been demolished or extensions built. Demolitions can destroy boundaries and extensions can create encroachments which may or may not have been covered in previous deeds.

The Purchaser's lawyer will also on site ensure that the rights which the property requires, such as rights of way and drainage rights are provided for in the draft deed of sale.

If any defects are found then the Purchaser's lawyer will make a report to his client, explain the difficulties and discuss whether or not the problem requires any remedial action to be taken or whether the client should not proceed with the transaction. All that may be required is the obtaining of certain confirmations from the Vendor's lawyer as to what has been done.

Alternatively it may be necessary to approach a neighbour, to join him party to the client's deed of purchase 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 usually takes the form

# A Guide to Buying and Selling Freehold Properties in Jersey

of a one off premium which, generally speaking, the Purchaser would expect the Vendor to pay.

Some difficulties may arise as a result of the information provided by the Planning and Environment Minister. It may be unclear as to whether or not an extension or other works have been approved by the Planning and Environment Minister. If the Vendor cannot provide adequate assurances the next step is to ask one of the Planning and Environment Minister 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

The Purchaser's lawyer should ensure that his client has clearly agreed with the Vendor as to what items of furniture, carpeting etc are to be sold with the property. A written inventory should be prepared, carefully checked and countersigned by both parties. This simple step helps to avoid dispute in the future.

## Preliminary Agreement

Sometimes the arrangements of the Vendor or the Purchaser are such that, rather than going straight to the Royal Court, a preliminary agreement will have to be entered into binding both parties to the transaction but providing for delayed completion. 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 for liquidated damages of 25% to 30% of the consideration for failure to perform the contract. Accordingly a Purchaser should never sign a preliminary agreement of sale until his lawyer has completed all of his searches and advised that all is in order. Effectively at that stage the client is happy with the property, has conducted all his checks and is happy to unequivocally commit himself to the purchase.

In many instances, however, there will be one or two outstanding points which the Purchaser will wish to be dealt with to his satisfaction before completion is effected. Accordingly certain conditions may be imposed when the preliminary agreement is returned. Such conditions might relate to clarification of problems with title, the joining of a neighbour as a party to ratify a boundary or grant rights, the granting of a required mortgage, obtaining a satisfactory structural survey etc.

## COMPLETION

### The Contract of Conveyance

Once the Purchaser's lawyer has completed all the above tasks he will consult with the Purchaser and provide a full report as to any difficulties encountered, if he has not already done so, and will go through the terms of the deed of purchase and explaining its provisions and effect. Frequently it is desirable to read and explain the deed to the client on site at the property.

In addition all that is involved in the simple procedure of passing contract before Court will be explained to the client who will be accompanied to Court by a legal representative from the firm.

### Vacant Possession and Keys

The Purchaser's lawyer will also deal with one or two matters which are not strictly of a legal nature. He will liaise with his client and his client should liaise with him as to anticipated possession dates. It is usual for possession to be given either on the day of the passing of contract or within three or four days thereafter. Longer delays do occasionally occur but should be covered in the terms of the conveyance.

If possession is to be given upon the day that contract passes before the Court then arrangements should be made to ensure that keys are handed over in Court on the Friday afternoon. The Purchaser, from a practical point of view, should consider replacing all exterior locks if the house he purchases has been on the open-market and keys for it have been made available.

### Timing of Completion

The time elapsing between the initial visit to the Lawyer and the passing of contract before Court can vary enormously depending on the circumstances and requirements of the parties. Generally it takes three to five weeks to complete, although contracts may be passed more quickly in emergencies. Unless a preliminary agreement has been signed providing for completion on a specified date, it is impossible to guarantee completion on a particular date and the client should treat tentative completion dates with caution.

## WHAT THE CLIENT SHOULD DO

### Instructions and Requirements

The client should, as soon as possible, advise his lawyer as to the terms of the transaction, the property concerned, and as to the proposed completion and possession dates although the client may well instruct the Lawyer not to actively proceed until the client has received the results of a survey or a loan application.

# A Guide to Buying and Selling Freehold Properties in Jersey

As indicated above, advice as to the manner in which funding is to be effected should also be provided as soon as possible. Additionally if the Purchaser has any special requirement or particular concerns as to the property, or any representations which may or may not have been made to him by the Vendor or his agent, then he should expressly advise his lawyer of these as soon as possible. If he requires the property for a particular purpose, this purpose should also be made known to the Purchaser's lawyer. Certain proposed uses of the property could require applications to various statutory bodies which should obviously be attended to before the contract is passed and the client is finally committed.

Additionally the Purchaser may wish to construct some new building upon the property and the Purchaser's lawyer should be advised of this so that he can check that the proposed building does not contravene any restrictions in the deed of sale nor encroach upon neighbouring property. In such instances, copies of plans and permits should be supplied to the lawyer.

## Survey

The Purchaser should always obtain a structural survey of the property he intends to buy where buildings are erected on the land, even where such buildings have only recently been erected. By the terms of the conveyance a purchaser acknowledges that he acquires the property in its present condition, with all hidden or apparent defects. We cannot and do not provide professional advice as to the structural condition of any building nor as to the value of a property.

The client should check with the appropriate authorities 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. As mentioned above we would also strongly recommend that the Purchaser's surveyor attends at the Planning Department to check their records to ensure that any alterations that have been done to the property have been completed in accordance with any required planning approvals.

## Bank Loans

One of the most frequent causes of delays in passing contract arises from the failure of banks to make mortgages finally available to purchasers on the day they are required for the passing of contract before the Royal Court. 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.

## House Insurance

From the day of the passing of contract the property should be insured in the Purchaser's own name by means of a standard comprehensive insurance policy with the interest of any party holding a mortgage or charge over the property duly noted on the policy.

## Attending Court

The Purchaser and Vendor must either attend or be represented before Court when contract is passed. If either party is going to be absent from the Island or cannot otherwise be present then that party's lawyer can draw up a Power of Attorney in order that someone (most frequently the lawyer himself or one of his colleagues) is appointed as Attorney to appear in Court. A Power of Attorney may take the form of a general Power of Attorney which can be used again (as a matter of practice only where the client has approved the use of the Power of Attorney for the future transaction) or by means of a Special Power of Attorney which will afford the Attorney only limited powers to act either for a particular transaction or for a particular species of transactions.

If a party attends Court personally then he should bear in mind that the Royal Court requires appropriate and smart dress. Gentlemen are required to wear a jacket and tie. When the client's name is called in Court, he should stand and raise his right hand and the Court will then ask him to swear on Oath that he will not act against the terms of the Contract. This is not as daunting a procedure as it might sound and one of our firm's qualified lawyers will in any event be on hand to assist and guide the client.

## Wills

If a purchase is to be effected by a husband and wife then the Purchasers' lawyer will, unless he is instructed otherwise, provide that property is to be conveyed to the spouses themselves, for the survivor of them and the heirs of such survivor. This means that as between the spouses the property on the death of one, will automatically be passed to the other without any Will being required. When the second spouse dies or should spouses die simultaneously, or should the client acquire in his sole name, however, a Will is required otherwise there will be an intestacy. It is thus 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 at the earliest opportunity.

## Removal and Services

The Purchaser will also obviously arrange his own removal and the transfer of services, such as electricity, water and telephones into his own name. Lawyers do not normally become involved in the transfer of services, however, you should note that completion of a Transfer

# A Guide to Buying and Selling Freehold Properties in Jersey

Form will be required in respect of all of the services. These are available upon request at the offices of the various Utility Companies or from their websites (click here for links). 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.

## Tax

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

If subsequent to acquiring a property a client decides to build an extension or effect structural alterations it is always sensible for him to refer his plans and proposals to his lawyer who will be able to advise whether the proposals would contravene any legal restrictions.

## FURTHER EXPLANATION/ASSISTANCE

### Stamp Duty

Stamp duty is levied by the Treasurer of the States on every contract passed before Court. The duty is payable by the party acquiring the property (whether by purchase, lease or gift) and is not payable by the party who is disposing of the property. Stamp duty is also payable on all loans secured against property. Click here for stamp duty calculators.

### First Time Buyers

It should be noted that various levels of discount are applicable in respect of stamp duty in some cases where the Purchaser is a first time buyer. If you are a first time buyer please enquire further from us about possible reductions or click here for our stamp duty calculator for first time buyers.

### Payment of Fees and Stamp Duty

By, at the latest, the morning of the Friday on which contract is to be passed, the 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 property) all stamp duty payable and our legal fees and disbursements. Reference is made to the net amount of sums borrowed because the lender's lawyer will deduct fees and stamp duty payable to him in respect of the legal services provided by him to the lender. Prior to the Friday upon which contract is passed we will provide you with a typed statement of the funds we will require before the passing of contract.

The consideration will be held by us on an interest bearing account for four days and then paid over to the

Vendor's lawyers. Unless specifically agreed otherwise, the interest earned during this period is payable to the Purchaser.

## About Ogier

Ogier is an award winning offshore legal and fiduciary services provider. The Group advises on all aspects of BVI, Cayman, Guernsey and Jersey law and provides fiduciary services through a global network of offices covering all time zones and key financial markets.

Ogier continues to be recognised as a leading law firm by the principal legal directories, including Legal 500 and Chambers.

# A Guide to Buying and Selling Freehold Properties in Jersey

## Contact details

### Jersey

Chris Renouf - Partner  
+44 (0) 1534 504106  
christopher.renouf@ogier.com

Peter Bertram - Partner  
+44 (0) 1534 504111  
peter.bertram@ogier.com

Martin Le Boutillier - Managing Associate  
+44 (0) 1534 504106  
martin.leboutillier@ogier.com

Barry Le Feuvre - Senior Conveyancer  
+44 (0)1534 504117  
barry.le\_feuvre@ogier.com

Tim Bechelet - Senior Conveyancer  
+44 (0)1534 504101  
tim.bechelet@ogier.com

Kate Westwater - Senior Conveyancer  
+44 (0)1534 504122  
kate.westwater@ogier.com

This client briefing has been prepared for clients and professional associates of the firm. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Ogier includes separate partnerships which advise on BVI, Cayman, Guernsey and Jersey law. For a full list of partners please visit our website.