

# Acquisitions and transfers of freehold title in Jersey

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This is an essential guide for those acquiring or transferring ownership of property in Jersey, covering various aspects of this process, from the legal requirements you must meet, to how much you can expect it to cost. The key to a smoother transaction is preparation.

## Generally

Title to real estate in Jersey is a matter of public record; transfers of property take place on a Friday afternoon before the Royal Court in the presence of the Bailiff of Jersey and two other officers of the Royal Court. They are then registered in the Public Registry of Jersey and are open to public inspection. Previously in French, contracts are now drafted in English.

Unlike England and Wales, the Registry does not give a certificate of title but merely enrolls the documents.

## Title research

Contracts by which the relevant property has been conveyed for at least the preceding 40 years must be examined. In Jersey, title can be obtained by *possession quadragenaire*, ie 40 years long user.

A conveyancer employed by a firm of Jersey advocates or solicitors undertakes the research. The conveyancer will check the Public Registry online or attend at the Public Registry to carry out the relevant searches and establish the title to the property, the boundaries to the property, any restrictions or servitudes that may encumber or be in favour of the property, and to discover whether any mortgages (*hypothecs*) have been registered against the property.

Each contract conveying the property must contain the date of passing, the contract of sale, the full names of the transacting parties, and a detailed description of the property and any relevant clauses. In addition, it should contain a *provenance* detailing the names and title of owners of the property for at least the previous 40 years. A Jersey qualified lawyer acting for the purchaser must present the contract to the Royal Court.

In addition to checking the records of the Public Registry, checks will also be made with the Planning & Environment Department, the various utility companies, the Department for Infrastructure and the parish in which the property is situated. Jersey is comprised of 12 parishes each separately administered by its own constable and various other honorary officers. Other checks and enquiries may also be made as necessary with the chief fire officer and the Health & Social Services Department.

All of the responses from the above bodies invariably carry a disclaimer to a greater or lesser extent. Thus the legal firm cannot guarantee either the accuracy or completeness of some of the information obtained from these searches. Accurate information cannot always be obtained from the utility services in relation to pipe and cable runs and rights of connection to mains services (where applicable). If there is a doubt, the matter is raised with the seller lawyers. Enquiries raised with the Planning & Environment Department will establish whether the buildings on the land being purchased have been constructed in accordance with the necessary consents and whether there are any planning proposals which are likely to affect that particular property.

It is not possible to run any searches on neighbouring properties unless the owners of such property consent to the search.

Finally, a visit will be made to the property to examine the boundaries of the same, and ascertain that there are no encroachments or breaches of any restrictions.

Buyers must be made aware that neither the seller nor his lawyers are required to disclose any defects in title, boundaries etc to either the purchaser or the purchaser's lawyers. The buyer acquires the property on a *caveat emptor* ('buyer beware') basis.

## **Survey**

Each and every contract of sale contains what is known as a *vices cachés* clause, which states that the buyer is acquiring the property in the state in which it is found on the date of the contract of sale with all and as many hidden or apparent defects (if any) as may exist. A prudent buyer is therefore well advised to have a full survey undertaken of the premises prior to passing the necessary contract of sale, for if problems do arise with regard to the structure of the property after sale, it is extremely doubtful that there would be any recourse against the seller.

## **Agreements of sale**

These are not usual in Jersey. One normally proceeds direct to passing contract. However, where they are required, they will set out the names of the parties, the description of the property (alternatively a copy of the draft contract will be attached) and the consideration. It is usual for a 10 per cent deposit, based on the sale consideration to be paid to the lawyers acting for the seller, who will hold the same in escrow. A prudent buyer would request that the interest on such deposit would accrue to the purchaser pending completion. There is no specific performance of contracts relating to the sale of real property in the Island. Therefore liquidated damages are included in the agreement, usually set at 25 or 33 per cent of the sale consideration. The agreement will also provide for the completion date and for the apportionment of any outgoings, eg rental and parish and Island rates. Again the *vices cachés* clause will be included which means you are buying the property with any hidden defects.

Where a buyer is required to execute an agreement of sale, either all of the title searches must have been undertaken and his lawyer satisfied on title, or the agreements should be executed conditionally. The same comment applies to surveys and finance. If a buyer signs the agreement unconditionally and he finds himself unwilling or unable to complete, either because of title or financial problems, there will still be a binding agreement and he will almost certainly be found in default, and liable to pay liquidated damages to the vendor.

## **Payment of the consideration**

Whilst the seller is entitled to the consideration on the day of passing of the contract of sale before the Royal Court of Jersey, the practice in the Island is for the consideration monies to be paid no later than the second working day following the passing of the contract of sale. Notwithstanding the delay in making the payment, the lawyers acting for the buyer will require that the funds or the balance of the same (if a deposit has already been paid) be placed with them or held to their order on the day of passing the contract of sale. Under Law Society rules in the Island, if a lawyer permits one of his clients to acquire a property, he makes himself personally liable to ensure that the funds are there to pay to the seller's lawyers in accordance with the terms of the contract of sale. Depending on the amount of the consideration then there may be a requirement for the buyer's lawyers to account to the seller's lawyers for interest earned on the consideration from the date of passing contract to the date of receipt of the funds by the seller's lawyers

## **Possession**

Notwithstanding the delay in the payment of consideration, it is usual for possession of commercial property to be given on the day of the passing of the contract (subject to any leases which may be in place). Usually, on residential property, the parties agree to a day or so grace period to allow them to vacate.

## Insurance

It is advisable that the buyer insures the property from 2:30pm on the day of passing the contract of sale notwithstanding that there may be any delay in possession. There is usually an obligation on the buyer to insure the property, in any event, where he is borrowing funds to make the purchase.

## Apportionments

The contract of sale will normally provide for the apportioning of the parish and Island rates, as well as rental, if the property is the subject of a lease.

## Consents

Prior to individuals acquiring residential property in Jersey, it is necessary for the buyer to obtain a registration card under the Control of Housing and Work (Jersey) Law 2012 (the **Law**). There are strict controls as to who can acquire residential property in the Island. In relation to commercial premises, consent is still required under the Law. It is essential that buyers apply for their registration cards from the Social Security Department or the Population Office as soon as reasonably practicable.

The Housing Minister usually issues consent to a company to purchase commercial property on the basis that, should any residential accommodation exist or be created at those premises, such accommodation must be occupied by persons approved by the Housing Minister under the Law.

No other consent to purchase a property in the Island is presently required, unless the property includes agricultural land, in which case, consent will be required under the relevant law. That consent will invariably require the agricultural land to be leased to a local farmer.

Prospective buyers must be aware that if they wish to carry out any works to a property, consent may be required from the Planning & Environment Minister of the States of Jersey. It is prudent to consider this matter prior to acquiring the property.

If a prospective buyer wishes to set up business in the Island, there are stringent controls, and advice must be sought prior to acquiring the property if it is done for this purpose.

## Stamp duty

Stamp duty is payable by the buyer on the acquisition of residential property in the Island. It is presently assessed on a sliding scale as follows:

### Residential

Up to £50,000	0.5 per cent with a minimum of £10
Over £50,000 but under £300,000	£250 for the first £50,000 plus 1.5 per cent of any amount in excess thereof
Over £300,000 and under £500,000	£4,000 for the first £300,000 plus 2 per cent for any amount in excess thereof
Over £500,000 and under £700,000	£8,000 for the first £500,000 plus 3 per cent of any amount in excess thereof
Over £700,000 but under £1,000,000	£14,000 for the first £700,000 plus 3.5 per cent of any amount in excess thereof
Over £1,000,000 but under £1,500,000	£24,500 for the first £1,000,000 plus 4.5 per cent of any amount in excess thereof
Over £1,500,000 but under £2,000,000	£47,000 for the first £1,500,000 plus 5.5 per cent of any amount in excess thereof
Over £2,000,000 but under £3,000,000	£74,500 for the first £2,000,000 plus 6.5 per cent of any amount in excess thereof
Over £3,000,000 but under £6,000,000	£139,500 for the first £3,000,000 plus 8.5 per cent of any amount in excess thereof
Over £6,000,000	£394,500 for the first £6,000,000 plus 9.5 per cent of any amount in excess thereof

Please note the scale used for the purchase of commercial property is slightly different:

### Commercial

Up to £1,000,000 but under £1,500,000	£22,000 for the first £1,000,000 plus 3.5 per cent of any amount in excess thereof
Over £1,500,000 but under £2,000,000	£39,500 for the first £1,500,000 plus 4 per cent of any amount in excess thereof.
Over £2,000,000	£59,500 for the first £2,000,000 plus 5 per cent of any amount in excess thereof

There is also a £80 duty for each document to be registered and £20 Jurats stamps.

If the buyer is borrowing and a mortgage is to be secured against the property then stamp duty is also payable on the registration of such mortgage at the rate of one half of one per cent of the money borrowed. Again, there is also a £80 duty for each document to be registered. Please note, stamp duty on borrowings which relate to purchases under £600,000, regardless of whether they are by first time buyers, will attract the £80 duty only, provided they are to be occupied by the borrower. Likewise, borrowings which relate to purchases between £600,000 and £700,000 attract duty at a slightly lower rate.

There are different stamp duty rates under the current threshold of £450,000 for first time buyers who satisfy the necessary criteria. These concessions apply to both the purchase and the associated borrowing.

The duty will be required on or prior to the date of passing the contract of sale.

### Representation before the Royal Court

The parties to the transaction either appear before the Royal Court personally or appoint an attorney to appear on his or her behalf. If a company is a party to the contract, either one of its directors appears, or an authorised agent or attorney. There are specific requirements in relation to the execution of powers of attorney and registration of the same with the Public Registry.

### Legal fees

Fees should be agreed between lawyer and client at the commencement of the transaction. Jersey lawyers agreed in late 2005 to the abolition of their ability to charge a scale fee.

The matter of fees must obviously be discussed between client and lawyer prior to authorising the latter to act.

This is by no means an exhaustive discourse on conveyancing in Jersey. Prior to committing oneself to buying a property in the Island, it is essential that legal advice from a Jersey law firm first be obtained.

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