

# Buying and Selling Freehold Property in Jersey

GUIDE

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## Generally

Title to property in Jersey is a matter of public record.

Transfers of property take place before the Royal Court on a Friday afternoon in the presence of the Bailiff of Jersey or his deputy, and two 'Jurats' of the Royal Court.

Title contracts are registered in the Public Registry of Jersey and are open to public inspection. They were drafted in French until 2006 when the requirement to draft in English was introduced.

Unlike the case with registered land in England and Wales, the Public Registry does not give any certificate of title and merely enrolls the contracts passed before the Royal Court.

## Title research

A conveyancer undertakes the research using title documents in the Public Registry to establish the title to the property, verify its boundaries, any restrictions or servitudes that may burden or be in favour of the property, and to discover whether any mortgages (*hypothecs*) have been registered against it.

The contract conveying a property must contain a detailed description of the property and any relevant clauses, together with 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 buyer must present the contract to the Royal Court.

In addition to checking the records of the Public Registry, enquiries will be made in relation to Planning, roads, drainage, utility services and the parish in which the property is situated. Other checks and enquiries may also be made as necessary with the Chief Fire Officer and the Environmental Health Department. The responses from these bodies carry a disclaimer to a greater or lesser extent, thus the legal firm cannot guarantee either the accuracy or completeness of the information.

Accurate information in relation to pipe and cable runs and connections to mains services is frequently unavailable in response to a standard enquiry and therefore, unless it is clear that mains are available, expert investigation should always be considered by a buyer.

Planning enquiries may establish whether the buildings at the property have been constructed in accordance with the necessary consents and whether there are any planning proposals which are likely to affect that particular property. These enquiries will not extend to neighbouring properties, nor to any works which were not the subject of a necessary planning application, and were therefore unauthorised. Lawyers and conveyancers are not qualified in planning matters and will not check the property for Planning infractions or advise on technical matters.

If a buyer wishes to carry out any works to the property, planning and building bye-law consent may also be required. It is prudent to consider this matter and consider consulting an architect and any other necessary professional advisers prior to buying the property.

Once all researches have been completed and enquires have been addressed, a visit will be made to the property to examine the boundaries, and verify that there are no encroachments or breaches of any title restrictions. The site inspection is external only and made with the express aim of checking title and boundary matters, conveyancers do not inspect the interior of any property.

Each 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 save that it is made clear that the buyer is entitled to rely on information given by the seller in a Standard Seller Questionnaire, if applicable.

### **Standard Seller Questionnaire ('SSQ')**

In 2019 the SSQ was introduced and its completion by a seller of a residential property made compulsory by the Jersey Law Society. The seller of a property must provide answers to a range of factual questions about the property which they must answer to the best of their ability as the buyer is entitled to place reliance on the truth and accuracy of the responses.

As the responses are in relation to factual rather than legal matters, the SSQ is treated as a matter direct between the buyer and seller, and a buyer's lawyer will not ordinarily advise upon its contents unless a specific concern is drawn to their attention.

### **Survey**

A lender will often require a valuation to be carried out, but buyers should understand that, even though the buyer pays for the valuation, it is for the bank's benefit, not the buyer. Further, a valuation is not a substitute for a thorough inspection and survey report. Therefore a prudent buyer is advised to have their own survey undertaken, as defects that are discovered prior to completion may justify a price adjustment, or even the withdrawal from a transaction to avoid expensive repairs and remedial works. It may also be beneficial for a buyer to have specialist inspections carried out to assess any service runs or address specific concerns raised in the survey.

### **Insurance**

The buyer should insure the property from 2:30pm on the day of passing contract, notwithstanding that there may be a delay in possession.

There is usually an obligation on the buyer to do this in any event if they are borrowing as the lender invariably requires evidence that insurance is in place at completion.

### **Payment of the price**

If a loan or mortgage is being taken to buy the property the buyer's lawyers will liaise with the bank's lawyers and check the loan documentation. The seller's lawyer will undertake to arrange for the release of all outstanding secured charges from the sale proceeds.

Whilst the seller is entitled to the consideration on the completion date, it is established practice for it to be on the second working day following the passing of the contract of sale.

The buyer's lawyer will require that any balance of funds payable by the buyer are held by them on the day of passing the contract of sale. This is because under Law Society rules, if a lawyer permits a client to buy a property, that lawyer is personally liable to ensure that the funds are available to pay to the seller's lawyers in accordance with the terms of the contract of sale.

### **Possession**

Usually, with a residential property, the parties agree to a short grace period to allow the seller to vacate. This tends to be the Saturday following completion at around midday to allow for removal company timings. A set of keys will still be handed over upon completion.

### **Apportionments**

The contract of sale will provide for the apportionment of the parish and Island rates (which the buyer and seller should address between themselves), as well as rental, if the property is the subject of a lease.

## Consents

Please see our guide to the [Control of Housing and Work Law](#) in relation to consent required under that Law.

No additional consent is presently required to buy a property in the Island, unless it includes agricultural land, in which case, environmental consent will be required under the relevant law which will often require the land to be occupied by a local farmer.

If a 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. Our [Employment team](#) provide a full advisory service in this regards.

## Stamp duty

Stamp duty is only payable by the buyer.

The buyer's lawyer will calculate the stamp duty and arrange for it to be paid to the Treasury following completion.

Please see our briefing on [Stamp Duty and LTT](#).

## GST

GST is not ordinarily payable on a residential transaction.

A commercial transaction may give rise to a GST liability and whilst we cannot give tax advice we can assist in analysing the position with regard to any GST that may be payable and liaising with the GST Office, where necessary.

## Representation before Court

The parties to the transaction either appear before the Royal Court personally or appoint an attorney to appear on their behalf.

If a company is a party to the contract, either one of its directors appears, or it is represented by an authorised agent or attorney.

There are specific requirements in relation to the execution and registration of powers of attorney with the Public Registry.

## Legal Fees

Fees should be agreed between lawyer and client at the commencement of the transaction.

Buyers and sellers should be aware that, given the nature of Jersey conveyancing, reputation and standards of service should be given at least the same importance as price.

## Contacts

A full list of contacts can be found [here](#).