

Flying Freehold property in Jersey

Last reviewed: January 2021

This guide explains the steps in a flying freehold transaction.

Reaching an agreement

Once you have agreed a price for a flying freehold apartment, the seller's lawyers will prepare the sale documents, including a draft conveyance.

Qualification and consents

Permission is required under the Control of Housing and Work (Jersey) Law 2012 (CHW Law) to own freehold property in Jersey so you must obtain a Registration Card from the Population Office confirming your housing status prior to purchase.

If you wish to carry out any works to the apartment, Planning and Bye-law consent may be required as well as the consent of the other apartment owners so you should investigate this prior to purchase.

The Association

A multi-unit property (**Property**) is divided into flying freehold units by the registration in the Public Registry of a Declaration of Co-Ownership.

The owners of the flying freehold units are known as Co-owners, and together they form an Association of Co-Owners. The Association can introduce House Rules to regulate the use of the apartments and the Property.

The Declaration sets out the rules and obligations of the Association and the Co-Owners, including the Co-Owners' responsibility to maintain their private units and the contribution they must pay towards the Association's expenditure, usually by way of a regular service charge. The Company is responsible for implementing buildings insurance cover for the Property and each Co-owner is responsible for insuring their own contents.

Please bear in mind that levels of service charge will fluctuate and that the amount that is payable when you buy could be increased or decreased at any time should the Association decide that this is necessary.

The Property is managed and administered by an Association Representative appointed by the Co-Owners. For larger developments a professional Association Representative and/or a Managing Agent is often appointed.

We will review the Association's records to verify that the Association has been operated correctly and ask whether the Association is proposing to incur major expenditure on matters such as building repairs.

Title

We will check that the seller is the owner of the Property. Please see our guide Buying Property in Jersey <https://www.mourant.com/news-and-views/guides-2020/buying-property-in-jersey.aspx> for a full briefing on the conveyancing process.

If you are buying a unit and/or a property, please be aware that neither the seller nor their lawyer are required to disclose any defects in title, boundaries, etc, to either the buyer or the buyer's lawyers: the buyer acquires the unit or the property on a 'buyer beware' basis. Whilst we inspect the boundaries we do not undertake a survey of the Property, nor do we enter the unit/property.

Banks usually require a survey or estimate of value for valuation purposes but a prudent buyer should consider having their own full survey of the Property. Whilst this is expensive, purchase agreements provide that the buyer is acquiring the shares and the apartment/Property in the state in which they are found on the date of completion so each Co-Owner will have a proportionate liability in respect of structural repairs and decoration to the Property. If problems arise after completion, it is doubtful that there would be any recourse against the seller.

Apportionments

The contract of sale will provide for the apportioning of rates and other periodic payments between the buyer and seller, as well as rental, if the property is the subject of a lease.

Stamp duty

Please see our guide on Stamp Duty and LTT in Jersey <https://www.mourant.com/news-and-views/guides/guides-2021/stamp-duty-and-ltt-in-jersey.aspx>

Paying for the property

The practice in Jersey is for the consideration monies to be paid no later than the Tuesday following the passing of the contract of sale.

Under the Law Society of Jersey Code of Practice, if a lawyer permits one of their clients to acquire a property, they make themselves personally liable to ensure that the funds are in place to pay to the seller's lawyers in accordance with the terms of the contract. We will therefore require that cleared funds are provided, usually on the day before the passing of the contract.

If you have obtained a loan or mortgage to buy the shares we will liaise with the bank's lawyers, assist with the loan documentation and receive and allocate the mortgage funds.

Possession

Keys are handed over in court when the contract is passed and vacant possession can be given on the day of the passing of the contract but often the parties agree to a short grace period to allow the seller to move out.

Don't forget to let the various utility companies and relevant Parish know that you are moving so that they can transfer your details to your new property and update their records.

Completion

We will arrange to meet with you prior to completion to discuss your purchase and advise you about our title and other researches and ask you to complete any necessary paperwork.

The parties to the transaction either appear before the Royal Court personally or appoint an attorney, (usually one of our property team) to appear on your behalf. If a company is party to the contract, either one of its directors appears, or an authorised agent or attorney.

Contacts

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

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. © 2021 MOURANT OZANNES ALL RIGHTS RESERVED