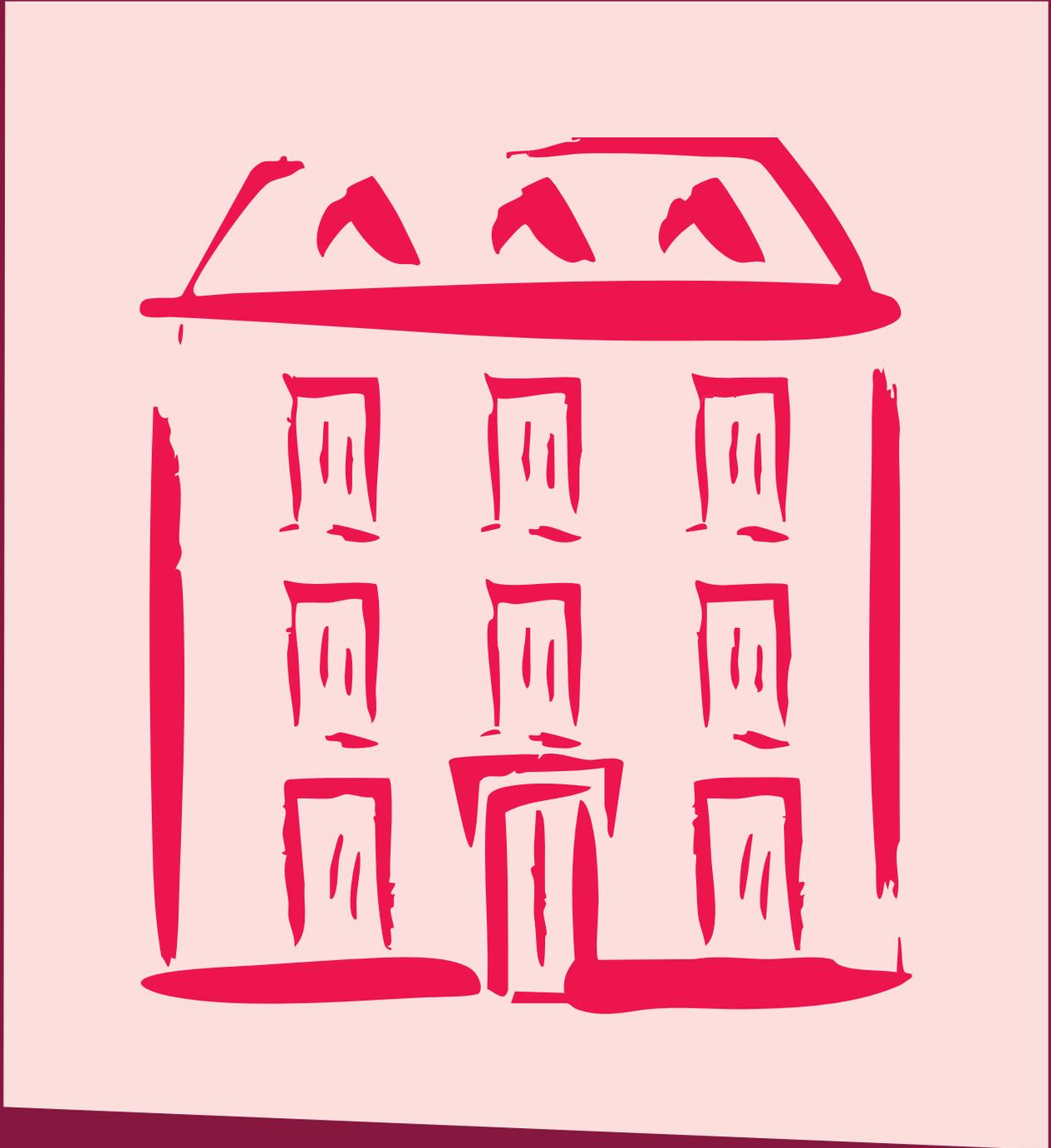


# Property Toolkits

## Investors



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# Buying and selling property in Jersey

## The Process

Residential freehold and flying freehold property in Jersey is bought or sold by contracts passed before the Royal Court of Jersey on a Friday afternoon (a conveyance).

The other way of buying or selling a residential property in Jersey is by share transfer. Here the buyer buys shares in a company which owns the whole building. Ownership of the block of shares provides the buyer with the right to occupy a particular flat within that building. Share transfers can take place on any day of the week but if your sale or purchase forms part of a chain including freehold or flying freehold properties, completion will probably still take place on a Friday.

Once a purchase price has been agreed for a residential property in Jersey, it is usual for the seller's to prepare the formal documents, including the draft Contract.



# Buying and selling property in Jersey

## Seller's lawyer

The seller's lawyers will prepare a draft contract for review by the buyer's lawyers, they will then address any queries raised and carry out any research required to address the queries.

The seller's lawyers will also liaise with the seller's mortgage lender (if applicable) to ensure all mortgages and secured charges are settled from the sale proceeds and that the mortgage lender's charges are cancelled following completion.

## Buyer's lawyer

The buyer's lawyers will conduct enquiries/searches to ensure that all available information is obtained in connection with the property which may impact the buyer's decision to proceed with the purchase. Enquiries are made with the Planning Department, Department for Infrastructure, the relevant Parish, Jersey Electricity, Jersey Water, and Jersey Gas.

Buyers of freehold property are required to demonstrate their legal entitlement to buy property in Jersey by producing a valid and up-to-date Registration Card. Registration Cards can be permanent or for limited periods of time dependent upon certain criteria and can be obtained from the Social Security Department or the Population Office.



# Buying and selling property in Jersey

## Qualification to buy

Buyers of freehold property are required to demonstrate their legal entitlement to buy property in Jersey by producing a valid and up-to-date Registration Card. Registration Cards can be permanent or for limited periods of time dependent upon certain criteria and can be obtained from the Social Security Department or the Population Office.



# Jargon busting

## Share transfer

The purchase of shares in a company which owns the property. The company's Articles of Association will set out which part of the building the shares you buy allow you to use and live in.

## Articles of Association

The document which sets out a company's duties to the shareholders and the shareholder's rights and duties as the owner of shares in the company.

## Company Secretary

A person or business that looks after the company's paperwork and records. They will usually be responsible for calling annual general meetings to discuss the company's accounts and other administrative matters.



# Jargon busting

## Flying freehold

A property that is split into separate units through a document called a Declaration which is registered in the Royal Court.

## Association

The name of the legal body which owns the property created through the flying freehold Declaration.

## Declaration

The document which sets out how the Association owns the property. It will define the boundaries of the property and state the number and how it is split into units. It also sets out the Association's duties to maintain and insure the property and the co-owner's rights and duties in relation to their part of the property.



# Jargon busting

## Managing Agent

The person or business who looks after a property split into multiple units. They will look after the common areas and collect the payment of service charges from the owners. Managing agents can manage both share transfer or flying freehold properties.

## Common areas

Both Declarations and Articles of Association will set out the parts of the building the owners share between themselves. This will usually include stairways, halls, any shared gardens, foundations and structural parts of the property.

## Budget

A statement prepared by the Managing Agent detailing the likely expenses for the property's maintenance, insurance and administration fees. The budget gives guidance for the expenses which may differ during the course of a year.



# Jargon busting

## Sinking fund

An account which a company or Association may have a savings account to pay for future expenses such as redecoration or replacement of a lift. A sinking fund is an amount of money which is set aside to cover any major work which is needed to the property in the future. Monies towards the company's or Association's sinking fund are commonly included within your monthly or quarterly service charge, which is paid to the Managing Agent. Any expense which cannot be covered by the sinking fund will be for the co-owners to pay based on the contributions set out within the Articles of Association for share transfer properties and through the Declaration for flying freehold properties.

## Service charges

An amount the owner pays to the company or Association and is based upon the budget figures. The amount paid is set out in the Company's Articles of Association and Declaration as percentage. They may be paid monthly or quarterly depending upon how the company or Association decide to collect the charges.



# Jargon busting

## Consents

If the property being purchased includes agricultural land or more than three verges of other land, consent will be required from the Planning and Environment Department of the States of Jersey under the Agricultural (Control of Sales and Leases) (Jersey) Law 1974. This consent usually requires the agricultural land to be leased to a bona fide agriculturalist.

If a buyer wishes to conduct any works on the property, Planning and Building Bye-Law consent may also be required. It is therefore important for the buyer to take this into consideration prior to acquiring the property. The buyer's lawyer can assist in drafting and submitting an application to obtain Planning and Building Bye-Law consent.

## Title

Title to Jersey immovable property is a matter of public record. Title checks will therefore be undertaken at the Public Registry to ensure that the seller is the owner of the property being sold and that the draft contract accurately reflects the title owned. Checks are also undertaken to ensure that no one else has any rights or claims over the property. This is referred to as "checking title".



# Jargon busting

## Survey

Although the buyer's conveyancer will attend the property to conduct a site visit and to check the boundaries, they do not conduct any survey of the property.

The mortgage company may conduct a "valuation survey" but the purpose of this valuation is not to highlight structural issues to the buyer. The buyer is advised to commission a full survey of the property prior to passing contracts in the Royal Court as, if there are any issues with the structure of the property which are not found until after the sale, the buyer is unlikely to have any recourse against the seller, as in Jersey a property is bought "as seen"

## Vacant possession

It is usual for vacant possession of the property to be given on the Friday afternoon when the contract is passed at the Royal Court, which is usually when the keys to the property are handed over. However, on occasion, the seller and the buyer agree to allow a period of grace for the seller to move out.



# Jargon busting

## Fees and Stamp Duty

Stamp Duty is payable by the buyer on both the purchase contract and any registered mortgage. Stamp Duty is payable by the buyer on or prior to the date of passing the contract to purchase the property. Cleared funds equal to the purchase price, all Stamp Duty, legal fees and disbursements must therefore be held by the buyer's lawyer by close of business on the day prior to passing contracts in the Royal Court or completing the share transfer.

Stamp Duty discounts are available to first time buyers (up to a certain threshold) and any prospective buyer should liaise with their lawyer if they believe they qualify for the discounted first time buyer rates.



# Jargon busting

## Completion before the Royal Court

The buyer and seller of the property must appear before the Royal Court in person for completion of the sale and purchase of the property. If the buyer or seller is unable to attend, a representative (usually a conveyancer or lawyer) from their respective law firm may attend in their stead under a Power of Attorney. If a company is party to the contract, either one of its directors appears, or an authorised agent or attorney must appear.

## Insurance

The property should be insured by the buyer at the point of completion (usually 2:30 pm on the day the contract is passed before the Royal Court). Preliminary arrangements should be put in place at an early stage, with formal confirmation provided to the insurance company on the day of completion.



# Share transfer

## What is share transfer?

Often you will find that apartments will be sold as a share transfer. This is when a Company owns a block of apartments (freehold). If you were to purchase the apartment you would buy shares in a company for that specific unit, and would be deemed the owner.

## How share transfer works

If you purchase a share transfer apartment, you are buying an allocation of shares in the property owning company. Although you are the owner of the apartment by virtue of ownership of the shares, you are also deemed to be co-owner along with the other shareholders.

The Company's Articles of Association governs the relationship and rights between the shareholders/co-owners and the Company, including how the Collective Property should be administered, the voting rights of the shareholders and how common expenses should be dealt with.



# Share transfer

The Company will have certain obligations that it will need to fulfil under the Articles of Association, such as insuring the building and filing certain documentation with the JFSC, and decisions made on behalf of the Company will usually be set out in a meeting of the shareholders, with the decision decided by a majority vote.

It is common practice for each shareholder to have one vote. As there are expenses which the company must pay, the shareholders will usually pay a service charge on either a monthly or quarterly basis. The service charge that a shareholder will pay is usually decided by the square footage of their apartment and so if you have a larger apartment, you will tend to pay more service charge.

The Law Society of Jersey introduced a standard Share Vending Agreement which all law firms in Jersey use for this type of transaction. The Share Vending Agreement stipulates certain warranties for the benefit of the purchaser, but these are qualified to an extent so it is vital that all aspects of the Company documentation are viewed.



# What is flying freehold?

Flying Freehold has certain similarities to Share Transfer but is important not to confuse the two. The Flying freehold Law was introduced because there were certain issues which arose regarding the ownership of apartment blocks and other property. Prior to the introduction of the Flying Freehold Law, only the freehold principle was applicable.

The Freehold principle was an understanding that when you own property, you own all the ground underneath the property and all the air space above the property. As you can see, this causes certain issues when you look at a block of apartments because there will be apartments below and above each other and so the freehold principle could not apply.

The Flying Freehold Law allowed purchasers to purchase an Apartment knowing that they will own the apartment freehold but such freehold will be limited to the space between the floor and ceilings of their apartment and in such case the freehold would be “flying”.



# How does flying freehold work?

The owner of a property will register a Declaration with the Royal Court. The Declaration sets out how the Association (the collective group of all the co-owners) owns the property and will also clearly set out the division of the property into certain “Lots”. When you purchase a property by the tenure of flying freehold, you will be purchasing Lots in an Association. The Declaration will clearly set out what those Lots confer ownership of. The Association’s Declaration prescribes those parts of the “Collective Property” that form the “Private Units” and those parts which are “Common Parts”.

The division of ownership referred to above shall be effected by shares each comprising a private unit and an interest in the common parts of the immovable property. The private units are those parts of the buildings and lands reserved for the exclusive use of a given co-owner. The common parts are those parts of the buildings and land intended for the use or benefit of all the co-owners or some of them.



# Buyer beware

It is an exciting moment when you are handed the keys to your new home. However that excitement can quickly fade if you later discover that there was a defect with the property which the seller was aware of, but failed to tell you about.

The Royal Court has previously ruled that where a seller has given misleading information a buyer may have some recourse against the seller. This decision has led to buyers asking many more questions of sellers - sometimes running to over 70 queries.



# Obligations of the seller

To streamline the process law firms now use a Law Society of Jersey standard 'Questionnaire' for all residential purchases. This then forms part of the seller's contract of sale, binding them to their answers. The Questionnaire asks a limited number of questions. Any additional queries should be raised through the estate agent rather than a lawyer. The Questionnaire sets out in clear terms the obligation on the seller to be truthful and the ability of a buyer to rely upon the answers.

A seller is not expected to carry out surveys or inspections in order to answer the questions. However, giving a false answer may lead to a claim being made against the seller. Such claims can be made up to three years after completion.



# What should buyers be aware of?

Whilst the Questionnaire is helpful, it is still largely a case of 'buyer beware'. The Questionnaire is not a substitute for a buyer carrying out their own enquiry by way of a survey. It may be that a problem with a property is not actually known to the seller but could have been discovered if a survey had been carried out.

Banks lending a mortgage will invariably have a valuation carried out. This is not a survey. A valuation is an assessment a bank carries out to make sure a property meets its criteria for advancing the loan. It is really to assess the risk faced by the bank in relation to the value of the property in the case of default on the mortgage repayments. The valuation report may only be a couple of pages. It will list all the main details about the property, the recommended valuation and comparable evidence to support that valuation. It is a 'tick box' valuation, nothing more.



# What should buyers be aware of?

Whilst a buyer will probably have paid for the bank's valuation it may not be of any use to the buyer because it is addressed to (and prepared for) the bank. A buyer is unlikely to be able to use the report to bring a claim against a seller.

In order to have certainty over the condition of a property a buyer should consider having one of the reports offered by the Royal Institution of Chartered Surveyors (RICS) carried out for their benefit, such as the Condition Report, Homebuyer Report or Building Survey. The detail and cost of each report varies depending upon the work involved.



# How does this benefit buyers?

RICS Surveys are for property buyers who wish to understand their property and the costs associated with the repair, maintenance, and upkeep, in addition to how the property is likely to perform in a future market resale. It is possible to use these reports as a tool to renegotiate the purchase price or agree that a seller will make good on any repairs as part of the sale contract. All of these reports will give a buyer information needed to make informed decisions about a purchase. The surveyor is acting for the buyer and not the lender and so is available to discuss their findings and offer advice if necessary.

Anyone buying their new home wants to be able to enjoy it and spend their money making it into a home they love. A buyer does not want to have to spend money on expensive repairs which they could have found out about before they bought and made a decision whether to buy with the information they needed.



# Residential Tenancy Agreements

## What is a Residential Tenancy Agreement (RTA)?

An RTA is an agreement which permits one or more people (the tenants) to exclusive occupation of a residential unit as a dwelling, for a specified rent for a period of nine years, or less. The key requirements are: ① exclusive possession; ② of a residential unit; ③ for a term; ④ at a rent.

All RTAs are subject to the rights and protections afforded by the terms of the Residential (Tenancy) (Jersey) Law 2011 (the “2011 Law”).

An RTA must be in writing, signed by (or on behalf of) the landlord and the tenant, and sets out the specific details and provisions required in the schedules to the 2011 Law. Although the 2011 Law is clear that an RTA must be in writing, it also makes it clear that an RTA will not fail just because it was made orally, whether partly or wholly. It is, of course, more difficult to establish conclusively the terms of an oral agreement, where recollections of the terms of the agreement may vary



# Residential Tenancy Agreements

## Exclusive Possession

In order for there to be a lease the tenant must have a right to enjoy exclusive occupation of the property. This means that the tenant has the right to exclude other people (including the landlord) from the property. The tenant is, in effect, exercising the right as if they were the absolute owner of the property.

Landlords may reserve a right of entry in certain circumstances under the terms of the RTA, such as a right, on reasonable notice and at a reasonable time, to enter the property to inspect its condition, or to make repairs.

If the essential requirements for a tenancy are not met, the tenant will occupy the property under a licence. Licences do not attract the same statutory protections afforded to an RTA. When considering whether an agreement amounts to an RTA or a licence, the Court will look at the substance of the relationship between landlord and tenant rather than the name that they have given to it.

A landlord cannot avoid the statutory protections provided by the 2011 Law by describing the agreement as a “licence” – if the agreement fulfils the essential requirements of a lease it will be a lease.



# Residential Tenancy Agreements

## Residential Unit

A residential unit is a self-contained dwelling which has, as a minimum, the following amenities for the exclusive use of those occupying the unit: a shower or bath; a washbasin; a kitchen; a sleeping space; and a lavatory.

## Fixed term or periodic tenancy

An RTA can be granted on a fixed term basis (for example, for a term of one year). It can equally be granted on the basis of a periodic term, which is where the tenancy runs on the basis of a recurrent interval (for example, on a month-by-month basis with no minimum or maximum number of months). In either case, an RTA cannot be granted for a period in excess of nine years (this is because a lease of nine years or more can only be created by a contract passed before the Royal Court).



# Residential Tenancy Agreements

## What an RTA must specify

The 2011 Law states that, as a minimum, an RTA must include certain key information including:

- A sufficient description of the property being leased;
- The date on which the RTA commences;
- The date, or term, by which the RTA will come to an end, or any conditions which, if fulfilled, will bring the tenancy to an end;
- The name and address of the landlord and/or their managing agent;
- The rent payable and the frequency of the payments;
- The name of the person to whom rent must be paid;
- The amount of any deposit held and how and when that might be returned;
- When rent might be reviewed and the basis of that review; and
- An inventory of any movable property which will remain the property of the landlord.

In addition to this, the 2011 Law provides that certain provisions which are automatically included within an RTA, regardless of whether or not the parties include them within the terms of their agreement. In the event that the RTA contains provisions which are inconsistent with the terms of the 2011 Law, such provisions are void and of no effect.



# Residential tenancy agreements

## Landlord's obligations

A prospective landlord must give their prospective tenant one working day to consider the terms of the RTA before requiring the tenant to sign it.

A landlord must provide a copy of the RTA to their tenant as soon as possible after it is first made, or otherwise varied. The landlord must also provide a receipt for any deposit monies paid (although landlords are now required to register any deposits through the mydeposit scheme). Failure to do either could result in the landlord receiving a fine of up to £10,000.00.

In addition to this there are statutory requirements for landlords to ensure that fire and electrical certificates are provide to the tenant or visible within the dwelling.

## Summary

Both landlords and tenants should consider the terms of any agreement in relation to residential property before they enter into it to ensure it meets their specific needs and requirements and complies with the provisions of the 2011 Law. Our specialist residential property and tenancy management teams are able to assist both landlords and tenants in relation to all aspects of residential tenancy law.



# Tenancy management legal Services

Breaches of a residential lease can occur for any number of reasons including rent arrears, anti-social behaviour or because the tenancy has caused the property to fall into a state of disrepair.

We understand the stress, expense and time spent on these issues. As part of our Tenancy Management Legal Services, our role is to resolve matters quickly and cost effectively, providing as much certainty as possible when it comes to the steps to be taken and the costs involved.

## Service Details

We are the only firm in the island with a dedicated team dealing with residential tenancy disputes.

We assist landlords with:

- General landlord and tenant advice
- Recovery of rental arrears
- Reviewing existing and template leases
- Eviction proceedings
- Drafting leases
- Anti-social behaviour
- Dilapidations



# FAQ's - Buying a house in Jersey

## Can I do the work myself?

No. Jersey law requires that all contracts concerning houses, flying freehold flats and land (“immovable property”) are presented to the Court by either a Jersey Advocate or a Jersey Solicitor.

## When do I need to instruct a lawyer?

As soon as you have made an offer on a property, which has been accepted. You usually make the offer to the Estate Agent who will ask you for lawyer’s details so that they can write to them in order to confirm the details of the transaction.

If you were to instruct us, it would be helpful for you to make contact with us either by telephone or in writing, to inform us of your proposed purchase and so that we can arrange an appointment to meet with you.

## Do I have to go to court?

No. If you wish, you can sign a Power of Attorney, which will authorise another person (often your lawyer) to attend Court on your behalf.



# FAQ's - Buying a house in Jersey

## Do I need a survey?

Yes. Even if the property is new it is advisable to obtain a survey in order to ensure the property is structurally sound and to identify any defects. If there are any defects then you will need to consider whether you wish to withdraw from the purchase of the property or alternatively, renegotiate the price.

If you are borrowing money by way of a mortgage, your lender will usually require a satisfactory survey before loaning money. More often than not, this takes the form of a valuation rather than a survey. If there are any doubts about the structure of the property you are buying, you should obtain a structural survey; you should first discuss the costs with your surveyor.

Do try to ensure that the survey is addressed to you as the purchaser, rather than to the bank as the lender, since this will give you greater rights against the surveyor if they make a mistake.



# FAQ's - Buying a house in Jersey

## How does the purchase actually happen?

You can buy freehold property in Jersey without signing any paperwork. The purchase and sale of such property is dealt with on Friday afternoons in the Royal Court. The seller and the buyer attend Court, either personally or represented by an Attorney, and swear an oath to uphold the contents of the contract.

## Who keeps my house deeds?

There are no house deeds as such. We will normally have a copy of your contract. However, the important document is the copy which is kept in the Public Registry of the Island. Do not worry therefore, if you lose your own copy.

Upon completion you will be provided with final copies of the purchase contract, your search enquiry letters and any loan documentation.



# FAQ's - Buying a house in Jersey

## How long will it take?

Much depends on whether or not difficulties are encountered. If there are no difficulties you should allow at least one month between first instructing us and the contract being passed before the Royal Court. If there are problems then matters can take longer. If the transaction needs to be completed within a shorter timeframe then this can be achieved.

## What happens if difficulties arise?

Generally speaking we will advise you of any such difficulties and try to sort them out. For example, if there is a boundary problem it may mean that the neighbour may have to be brought in as a party to the contract, usually at the cost of the seller. Sometimes insurance can be taken out against a problem. If the difficulties cannot be rectified we will advise you of the consequences of proceeding with the purchase and of acquiring a property which is blighted with those difficulties.



# What can BCR do for you?

- Check the title to the property to ensure that the seller actually owns the property and has the right to sell it.
- Ensure that there are no existing mortgages on the property or other charges registered against it. If there are any, we will ensure that when you acquire the property, all those mortgages and charges will be repaid in full and cancelled.
- Visit the property to check that the boundaries are as described in the contract.
- Check to see that your property does not encroach on the neighbour's property and vice versa.
- Ensure that your property has all rights to enable you to enjoy it as a private residence. For example, we will ensure you have any necessary rights of way to get to and from the property and that it has any required service rights so that, if the drains, water pipes or electricity cables go under any other property, there are contractual rights for them to do so.



# What can BCR do for you?

- Advise you in relation to any restrictions the property may have which might impact on your enjoyment of the property. For example, whether there are any building restrictions which your neighbour may be able to exercise over the property.
- Ensure that both you and the seller have the right to enter into the transaction pursuant to the Contract of Housing and Work (Jersey) Law.
- Ensure that you agree with the inventory of the contents that you will be purchasing with the property.
- Write to a number of States and Parochial authorities to ensure that they know of no matters which could prejudice your enjoyment of the property. For example, we will ascertain that there are no road widening schemes in the vicinity.
- One of our team will meet with you and take you through your contract of purchase, explaining it to you in detail and explaining to you all the rights you have. If you are borrowing money they will also explain the mortgage documentation.



# What is the cost?

There are two areas of cost to consider. Firstly, there are legal fees. We will give you a quotation prior to instructing us to act in your sale or purchase. There will also be certain expenses such as the enquiries made with the local authorities, who charge a fee to respond. In addition, if you are purchasing, there is stamp duty which is payable to the States of Jersey which is calculated on a sliding scale. If you are borrowing money further stamp duty will be payable. We will advise you in more detail as to the precise costs of the transaction.

Instructing a lawyer is not something most of us do regularly, but our team is approachable and easy to talk to. Clients benefit from our many years of experience, the highest level of professionalism and a very personal service.

We will clearly outline the timeline for proceeding and set reasonable deadlines with you. We will meet these deadlines and work hard to achieve the desired end result.



# Meet the Property team



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