



VOISIN LAW

A Legal Guide

# Buying and selling property in Jersey

[www.voisinlaw.com](http://www.voisinlaw.com)



# First steps

When you agree to buy or sell a property:

- Always obtain a quotation for legal costs
- You should advise the estate agent which law firm will be acting on your behalf
- Obtain your Registration Card from the Social Security Department (see 'Registration Cards' on page 6)
- The estate agent will prepare an inventory of contents to be included in the sale of the property
- It is advisable to obtain a survey of the property. If you are borrowing money, your lender will usually arrange a basic survey
- Any loan offer letter that you receive from your bank should be signed and returned as soon as possible
- You should complete and return any proposal forms for life insurance
- You should arrange insurance cover for the property to be effective from the day you purchase

## A Legal Guide

# Buying and selling property in Jersey

## Taking the stress out of buying and selling property

It's widely acknowledged that buying and selling property can be a stressful experience, even if you've already been through the process many times before. It can be complex and confusing which is why, here at Voisin, we are committed to making life as easy as possible for you.

Our experienced team will guide you through the whole process safely and efficiently, leaving you to contemplate the other aspects of your purchase or sale.

From our experience, we know our clients want to know what is happening and when. This is why we have produced this guide which explains what needs to be done on a step-by-step basis.

We hope you find it useful. That said, these pages cannot replace personal contact and we encourage you to contact us at any stage if you require any clarification or further information.

In Jersey, conveyancing is undertaken by a lawyer. As soon as you have found a property to purchase and agreed a price you should instruct your lawyer before making any further commitment.

If you would like to speak to one of our team on any aspect of purchasing or selling property, please don't hesitate to get in touch.

# Property Ownership

## Freehold

In Jersey, if you own land you also own everything in, on, above and below that land and anything built on that land, be it a house, block of flats, hotel or just a small shed. You own it in perpetuity. This is called freehold ownership and it is transferred by a conveyance or contract passed before the Royal Court.

While freehold ownership gives clear title to the land and everything built on the land, it is not possible to convey the freehold ownership of part of a building.

## Flying Freehold

This is a relatively new concept of property ownership in Jersey. In 1991 the States passed a law relating to the co-ownership of buildings, popularly referred to as the flying freehold law. The person or company who has the freehold title to a block of flats (or any other multi-use property) can register with the Royal Court a Declaration of Co-Ownership which will contain a detailed description of the freehold property to which it relates.

The Declaration effectively divides the property into various individual parts, known as lots, as well as those parts of the property which are for common use and maintenance, known as the Common Parts. An Association of Co-Owners is also created by the Declaration, which sets out the rights and obligations of the individual lot owners and the Association, which owns the Common Parts.

The flying freehold law enables the sale of an individual flat (or other part of a building) by a conveyance of the particular lot (as well as an interest in the Common Parts) passed before the Royal Court in just the same way as a freehold conveyance.

It is a requirement of the flying freehold law that the Association of Co-Owners appoints a Representative (usually a professional property manager) to manage the property and to ensure that the Association carries out its obligations particularly in relation to repairs and to insurance of the building.

## Share Transfer

Before the flying freehold law, the commonest method, still widely used today, of acquiring a flat was by what has come to be known as share transfer. Under this method the freehold of the whole of the land and block of flats is owned by a company.

The articles of association, or rules, of the Company have very much the same effect as the Declaration under the flying freehold law. They identify the various units and give the holder of a specified number of shares the rights of exclusive occupation of a designated apartment as well as setting out which parts of the property the company is responsible for and which are the responsibility of the individual shareholders.

There is, however, an essential difference between flying freehold and share transfer. Unlike freehold or flying freehold, a share transfer purchaser does not acquire any direct ownership of any part of the property. This remains wholly vested in the company.

In addition, if you are borrowing money your lender will require a security interest (like a mortgage) on the shares because you cannot give a mortgage on the property.

## Agricultural Consent

In the case of property with a large amount of land, consent to the sale or lease may be necessary from the Department of the Environment.

# Registration Cards

Under new law, you will need a registration card if you move house, change job or if you move to Jersey.

The Control of Housing and Work Law came into effect on the 1st July 2013.

Under the Control of Housing and Work Law, the system for residential qualifications has changed.

Four new categories – explained in the table below – will determine where you can work and live.

Your residential status will be printed on your registration card which can be obtained at the Social Security Department, La Motte Street, St Helier.

Residential Status	Definition	Housing	Work
<b>Entitled</b>	Someone who has lived in Jersey for 10 years (please see the section beneath this table for more details)	Can buy, sell or lease any property	Can work anywhere and do not need a licence to be employed
<b>Licensed</b>	Someone who is an "essential employee"	Can buy, sell or lease any property in their own name if they keep their Licensed status	Employer needs a licence to employ a Licensed person
<b>Entitled to Work</b>	Someone who has lived in Jersey for five consecutive years immediately before the date the card is issued, or is married to someone who is Entitled, Licensed or Entitled to Work	Can buy property jointly with an Entitled spouse/ civil partner. Can lease "registered" (previous "unqualified" property as a main place of residence)	Can work anywhere and do not need a licence to be employed
<b>Registered</b>	Someone who does not qualify under the other categories	Can lease "registered" property as a main place of residence	Employer needs a licence to employ a Registered person

## Entitled status: how you can qualify and the requirements to gain and keep your status.

There are different types of entitlement and it can be gained and lost in different ways. The table on the next page gives more information.

## Housing Categories

All previous “A-H” and “A-K” properties have become “qualified” property. In general, all other properties are now “registered” (previously “unqualified”).

If you have questions about the status of your property, you should contact the Population Office.

### Gaining Entitled Status    Losing Entitled Status

<b>I was born in Jersey</b>	You must live in Jersey for a combined period of 10 years	Once you have gained your status, it is permanent
<b>I was not born in Jersey</b>	You must live in Jersey for a continuous period of 10 years	You will keep your status as long as the total amount of time you spend living away from Jersey does not exceed five years. Once you have lived in Jersey continuously for 30 years, your status is permanent
<b>I was not born in Jersey, but moved here before I was 20 and have an Entitled parent</b>	You must live in Jersey for a combined period of 10 years before you are 40	Once you gain your status, it is permanent
<b>I was not born in Jersey, but moved here before I was 16</b>	You must live in Jersey for a combined period of 10 years before you are 40	Once you gain your status, it is permanent

#### **Qualifying for Entitled status on social, economic or hardship grounds.**

Some people may qualify for Entitled status on social economic or hardship grounds. These are exceptional cases which are decided by the Minister for Housing.

# Our role in your purchase

Once you have decided to purchase a property, there are a number of steps which must be taken before you make a binding commitment to buy the property.

## Title check

In the UK, the Land Registry provides a certificate of title, or ownership, of a property. No similar system operates in Jersey and so it's your lawyer's job to carry out what is called a title investigation in respect of the property.

The purposes are to:

- **ensure that the seller actually owns the property;**
- **ensure that the property is not affected by any onerous restrictions or conditions, for example, rights of way or building restrictions;**
- **examine what rights attach to the property and check that all necessary rights are possessed;**
- **check if there are any outstanding mortgages and charges which may be due by the seller or his**

**predecessors and secured on the property;**

- **make sure that the boundaries are correctly described; and**
- **make sure that the property does not encroach upon any neighbouring property.**

In addition, if the purchase is a flying freehold, we will examine the Declaration of Co-Ownership so that we can fully advise you of the terms and any aspects which may give concern.

The title check involves researching the title to the property as recorded in the Public Registry and also carrying out a site visit to the property to examine the boundaries and the external aspects of the buildings on the property. We do not usually examine the interior of the property. If you believe that any recent alterations have been undertaken at the property, then you should inform us so that we can make further specific enquiry on your behalf.

It can be a time consuming process, although less so now that the Public Registry has been computerised. It is a specialised task which should only be undertaken by a lawyer or an experienced conveyancer.



## Enquiries of local authorities & utility companies

In addition to the title investigation and site visit we make a number of enquiries on your behalf including enquiries of:

- **the Planning & Environment Department, to satisfy ourselves that any buildings on the land being purchased have been constructed in accordance with the necessary consents from the Planning Authorities; (you should note that this enquiry of the Planning Authority does not provide us with any information concerning proposed development of neighbouring properties);**
- **the Utility Companies, including Water, Electricity and Gas as well as Transport and Technical Services in respect of drains to obtain a guide as to the availability and location of these services; and**
- **the Parish, to obtain information as to any Parish proposals.**

We are not able to advise you whether any services are in working condition or have been correctly installed; therefore you are best advised to obtain confirmation of the same from your surveyor prior to purchase.

## Keeping you informed

We will keep you informed of the progress of, and any matters affecting, the purchase and you are, of course, welcome to call our property team if you have any queries. When we have completed all our investigations and enquiries on your behalf we will meet with you to:

- **explain the contents of the contract of purchase of the property;**
- **discuss any matters of concern in respect of the title;**
- **discuss any matters you may wish to raise such as plans you may have for the property; and**
- **discuss all financial aspects of the transaction.**

We will provide you with a buyer's pack which includes the contract of purchase, site location plan, copies of the replies to our enquiries, an inventory if applicable and again, if applicable, copies of your loan documentation.

## If you are borrowing...

We will also deal with any formalities in respect of any borrowing that you may have in connection with your purchase, including

- **explaining the mortgage documentation to you;**
- **advising you on the completion and execution of all banking and security documentation; and**
- **liaising with and where required, providing a certificate of title to the lender's lawyer.**

## Survey

Although your Bank may require a basic valuation-based survey before agreeing to give you a loan, this survey is undertaken on behalf of the Bank and you will not be able to rely on the survey if the information supplied is incorrect. Therefore, when purchasing a property you should seriously consider obtaining your own independent survey of the property. Every contract of purchase contains a provision that the property is acquired "in the state in which it is found with all defects, hidden or apparent, if they exist", and following completion, you will have no recourse against the seller in respect of any defect with any part of the property. You will need to keep us informed in relation to your borrowing arrangements and provide us with a copy of your bank's offer letter as soon as it is to hand.

## A Note on Share Transfer transactions

In addition to carrying out the full title investigation into the company's title to the block of flats, further work is required before you buy the shares. This involves satisfying ourselves that:

- **the company in which you will purchase shares actually exists;**
- **it does not have any pre-existing liabilities;**
- **the seller owns the block of shares;**
- **which relate to the flat or property; and**
- **there are no existing loans secured on the shares.**

To do this we examine the Company's records and accounts (where available) and carry out a search at the Companies Registry. It is sometimes the case that the company's records are not as good as they ought to be and this can lead to delays. Again we will keep you informed of any pertinent matters.

In addition we will have to settle the terms of the share purchase agreement to ensure that the seller is giving proper and appropriate warranties to you in respect of the company.



# Our role in your sale

Where you are selling a property, the checks referred to previously will or ought already to have been undertaken at the time of your purchase of the property.

We will liaise with the purchasers' lawyers in order to assist them with any problems that may arise concerning boundaries, the location of services and other matters. This will be easier if we acted as your lawyers when you purchased but in any event we will always do whatever we can to ensure that the sale proceeds as smoothly and swiftly as possible.

If you are selling a freehold or flying freehold then we will prepare the deed of sale and submit it to the purchasers' lawyers. If you are selling by share transfer, then we will prepare a share sale agreement. We will need access to the company's records and you should be aware that, under the share sale agreement (and unlike a freehold conveyance) you will be required to give warranties in respect of the company.

# Finalising the transaction

## Completion

A freehold or flying freehold conveyance has to be passed before the Royal Court on a Friday afternoon. The parties must either be present personally or represented by an Attorney. We can of course arrange for you to be represented by an Attorney if you do not wish to go to Court personally.

A share transfer transaction does not have to be completed on a Friday although because they are often part of a chain involving a conveyance as one of the links, completion on a Friday is often the only answer.

When the purchase is completed we will obtain any loan from the bank and arrange to send the funds to the sellers' lawyers.

If we are acting on a sale we will:

- **repay any charges registered over the property;**
- **pay the estate agent out of the sale proceeds, if we are instructed by you to do this; and**
- **deal with any apportionments of, for example, parish rates and any service charge if the transaction is a share transfer sale.**

## Possible delays

The average time scale for a transaction to complete is approximately four weeks. However, this will depend on the property and the amount of research that is necessary. Delays may also occur:

- **if the transaction is part of a 'chain' of transactions and therefore any one sale may depend upon a number of other transactions being completed; or**
- **because of delays in the loan arrangements; banks will require surveys and life assurance arrangements to be made prior to advancing loan monies and delays can arise whilst these matters are arranged.**

It is advisable to ensure that you have your finance arranged at the earliest possible opportunity to avoid any delay.

# The cost

## Legal fees

Since the abolition of scale fees at the end of 2006 a lawyer can agree fees direct with a client. At Voisin our aim is to provide an excellent service which is also value for money. Any member of our Property Law Team will be happy to get back to you very quickly with a quote.

## Stamp duty

In addition to the legal costs there is stamp duty payable by the Purchaser on conveyances and borrowings. Stamp duty payable on conveyancing is computed on various bands of the consideration as follows:

- **0.5% for the first £50,000 + £100**
- **between £50,000 and £300,000: £250 plus 1.5% on the balance over £50,000 + £100**
- **between £300,000 and £500,000: £4,000 plus 2% on the balance over £300,000 + £100**
- **between £500,000 and £700,000: £8,000 plus 2.5% on the balance over £500,000 + £100**
- **between £700k and £1m: £13,000 plus 3% on balance over £700k + £100**

- **between £1m and £1.5m: £22,000 plus 4% on balance over £1m + £100**
- **between £1.5m and £2m: £42,000 plus 5% on balance over £1.5m + £100**
- **between £2m and £3m: £67,000 plus 6% on balance over £2m + £100**
- **over £3m: £127,000 plus 7% on any balance over £3m + £100**

There are reductions for first time buyers where the stamp duty is reduced on properties not exceeding a valuation of £450,000.00. To qualify as a first time buyer, in addition to the property falling within the relevant price range, the purchaser has to be able to prove that he has never owned any residential property anywhere in the world either in his own name or in that of a Company.

The mortgage stamp duty is calculated at 0.5% of the amount of money borrowed plus £80. Should you qualify as a first time buyer however, the stamp duty will be reduced accordingly.

When you contact us we will be able to give you an accurate estimate of the stamp duty required.

## Who to tell you're moving...

- |   |  |  |   |
|---|--|--|---|
| <input type="checkbox"/> Bank                       | <input type="checkbox"/> Jersey Water        | <input type="checkbox"/> Medical Insurance | <input type="checkbox"/> Television Licence |
| <input type="checkbox"/> Employer                   | <input type="checkbox"/> Jersey Electricity  | <input type="checkbox"/> Pension Provider  | <input type="checkbox"/> Parish Hall        |
| <input type="checkbox"/> Income Tax Department      | <input type="checkbox"/> Jersey Post         | <input type="checkbox"/> Insurance         | <input type="checkbox"/> Garage             |
| <input type="checkbox"/> Internet Service Provider  | <input type="checkbox"/> Telecom Provider    | <input type="checkbox"/> School            | <input type="checkbox"/> Store Cards        |
| <input type="checkbox"/> Social Security Department | <input type="checkbox"/> Credit Card Company | <input type="checkbox"/> Doctor            |   |
| <input type="checkbox"/> Jersey Gas                 | <input type="checkbox"/> Loan Companies      | <input type="checkbox"/> Dentist           |   |

# Making a Will of Immovable (Real) Estate in Jersey

## **Voisin offers a full Will drafting service.**

It is important to make a Will so that, with certain exceptions, your money and property will pass to the people you would like to benefit. If you do not make a Will then the law stipulates who should inherit your assets upon your death under the rules on intestacy. These may not be the same people that you would wish to benefit!

General practice in Jersey is to have two separate Wills: one for your personal or movable estate (i.e. your bank accounts, investments and jewellery) and the other Will for your real or immovable estate (i.e. your freehold property including leases over 9 years). This is because the rules of execution are different as is the way in which those Wills are dealt with on your death.

## **Jersey Immovable (Real) Estate**

Where immovable estate is owned in your sole name then you may leave your property by Will to whom you wish. However, if you die leaving a spouse or civil partner then that person is entitled to

a right of dower which is life enjoyment of one third of the immovable estate.

The position is different where there is no Will, in which case the surviving spouse or civil partner enjoys life enjoyment of the matrimonial/civil partnership home and an equal share of the actual ownership of the matrimonial home/civil partnership ('the reversion') with the children of the deceased. If there is any other immovable estate then that is shared equally between the surviving spouse/civil partner and the children.

## **How do you own your immovable estate?**

How you own your immovable estate impacts on what you can do with it in your Will. There are two ways that you can jointly own immovable property: either 'jointly and for the survivor' or 'jointly as tenants in common'.

Where property is owned jointly and for the survivor with another person it will automatically pass to the survivor on the death of the first joint owner. Where property is owned as tenants in common

with another person then the property would not automatically pass to that other person upon the death of the first co-owner. Therefore, if you wish to leave your 'half' of your property to the other person, you must name them as beneficiary in a Will or the result will be that your 'half' of the property will pass to your heirs and not the co-owner.

Couples who are not married or not in a civil partnership (unless owning the property on a joint survivorship basis) cannot inherit from each other unless they have both executed a Will naming each other as beneficiaries.

In order for a Will of Jersey Immovable Estate to be valid in Jersey it must be read aloud to the testator (the person making the Will) by an Advocate or Solicitor of the Royal Court of Jersey or Notary Public who must also act as one of the two independent witnesses. The Will of Immovable Estate is valid from the date it is signed and no appointment of Executor is needed because the title to any property passes to the persons who inherit under the terms of the Will upon registration of that Will.

A professionally drafted Will will set out in clear terms the way in which your property is to be dealt with upon your death. Your Will can be changed at any time and will take effect until you die. Your Will should be reviewed periodically but in particular when circumstances change such as upon marriage, separation or divorce and on the birth of children or grandchildren to ensure that the Will continues to reflect your wishes.

If you would like to contact us regarding your Wills then we would be pleased to hear from you.

To make an appointment please contact:

**Tel:** +44 (0)1534 500300

**Clare Nicolle**

**E:** [clarenicolle@voisinlaw.com](mailto:clarenicolle@voisinlaw.com)

**Sarah Hope**

**E:** [sarahhope@voisinlaw.com](mailto:sarahhope@voisinlaw.com)

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Please remember that the best time to seek legal advice in connection with the purchase or sale of a property is BEFORE you agree to either buy or sell. Providing us with early and full instructions accordingly helps us to help you. When providing us with instructions feel free to contact the lawyer within this firm with whom you have previously dealt or contact one of our Property Law team who are dedicated to dealing with property related issues.

## CONTACTS



**Natalie Harris**

T: +44 (0)1534 500324 (via secretary)

E: [natalieharris@voisinlaw.com](mailto:natalieharris@voisinlaw.com)

**or Samantha Martin**

T: +44 (0)1534 500324

E: [samanthamartin@voisinlaw.com](mailto:samanthamartin@voisinlaw.com)



**Angela Roscouet**

T: +44 (0)1534 500300

E: [angelaroscouet@voisinlaw.com](mailto:angelaroscouet@voisinlaw.com)



**Eric Salaun**

T: +44 (0)1534 500334

E: [ericsalaun@voisinlaw.com](mailto:ericsalaun@voisinlaw.com)

**or Veronique Manning**

T: +44 (0)1534 500394

E: [veroniquemanning@voisinlaw.com](mailto:veroniquemanning@voisinlaw.com)



VOISIN LAW

37 Esplanade, St. Helier, Jersey JE1 1AW

Tel: +44 (0)1534 500300 Email: [mail@voisinlaw.com](mailto:mail@voisinlaw.com)

[www.voisinlaw.com](http://www.voisinlaw.com)

Voisin Law is a law firm regulated by the Law Society of Jersey