

● **QUESTIONS TO ASK YOUR CONVEYANCER**

As conveyancers we are contacted on a day-to-day basis by clients with queries on a variety of concerns. These queries can be as wide ranging as an existing homeowner whose boundary fence has blown down and who wants to know whether they or their neighbour need to put it back up, to a developer looking for advice prior to embarking on a large scale project.

Some queries can be answered relatively quickly but others can be more complicated. An astute conveyancer will always, as a matter of course, advise a client of their rights, obligations, boundaries and more, prior to the purchase of their property. However, to ensure a good service is being provided it would be beneficial and comforting from a client's perspective to know what questions to ask of their conveyancer and what to expect of them at the time of purchase.

The following are some of the most common things clients need to know to avoid boundary problems and other issues.

BOUNDARIES/ENCLOSURES

Who owns the enclosures surrounding the property to be purchased? Are they shared with the neighbour, so that there is joint liability for them, or are they exclusively owned by you? If the boundary structure is a granite wall or an enclosure that is in poor condition, it could potentially be an expensive future liability. Moreover, are the existing enclosures in the correct place (if not, is there a dispute to be nipped in the bud), are there restrictions on what they can be replaced with and is there a height restriction thereon? These two latter things might circumscribe what you can do with the property you are buying.

ENCROACHMENTS, RELIEFS AND OPENINGS

Do any parts of the property encroach/overhang the neighbouring properties without there being a contractual right to do so? Should this be the case, it can often be an expensive situation to remedy. In certain instances where this is the scenario, lending

banks/companies are likely to refuse to loan monies and provide mortgages as their security could be affected.

Though contract will contain the clauses and servitudes created in the title affecting the property, the property must also comply with Jersey customary law. For example if your neighbour owns a boundary structure with "relief" or offset (16 and a half inches), any enclosure you may wish to establish ought in theory to be set back a further 16 and a half inches, though sometimes people will take a risk and erect it at the edge of the relief, so still losing 16 and a half inches. Either way this creates a "no man's land" for maintenance purposes and the "reliefs" or offsets can not be used for any other purpose. Under customary law it is also not permissible to create an opening (window or door, vent and the like) within 2 feet 9 inches from the boundary line. It is now regarded as good practice that, should you construct a building near a boundary line, and you do not enjoy the benefit of a "relief" yourself, you should leave at least a scaffold's width so that you can maintain it from your own property without having to require access on to your neighbour's property.

ACCESS RIGHTS/RIGHTS OF WAY

These are commonly misinterpreted as one and the same but are in actual fact quite separate things. Access rights are about establishing whether the property has sufficient rights to enable the maintenance of its buildings, parts of buildings and enclosures, etc as described above. In so far as rights of way are concerned, the question is whether the property has sufficient contractual rights to enable the owner and his visitors to get to and from the public road, whether those rights be pedestrian and/or vehicular?

COMMUNAL/SHARED AREAS

In estates particularly there are often areas which have a shared use with neighbouring owners, known as "common areas". These may include roads, courtyards, gardens and

visitor parking. Are there any of these and if so, what are your rights/obligations relating thereto? There is normally a shared cost in keeping these areas maintained for the benefit of all who utilise them.

SERVICES

Present practice amongst law firms is to send out search letters to the various utility companies and Parochial bodies who provide information in respect of the property. A client should always be aware of how their property is served in terms of its drainage, water supply, electric and gas (if there is any) and moreover whether the property has all sufficient contractual rights for the utility-related appurtenances, apparatus, pipes and conduits to be lawfully used – particularly because it is often the case that such pipes and conduits run under a neighbour's land. Again, if there are not sufficient rights in these concerns, how can this be put right and is there a cost implication in doing so?

FOR MORE INFORMATION, PLEASE CONTACT:



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