

## • THE LANGUAGE OF JERSEY PROPERTY MADE SIMPLE

**To the layman the jargon used within the Property Legal Sector in Jersey can be difficult to comprehend and at times bemusing.**

Even though contracts are now (since 2006) in English rather than French the terminology used can still be difficult to understand. This article will hopefully assist would be purchasers in understanding their contract of purchase.

### **FREEHOLD**

The conveyance of free standing properties following the principle that the owner must own everything above and below ground level.

### **SHARE TRANSFER**

Prior to 1991 this was the only method of owning flats due to the above freehold principle. This was achieved by a company owning the freehold property/flats and for the shares in the company to give exclusive rights of occupation of the individual flats. Therefore in share transfer transactions it is not the flat which is being conveyed but the shares in the company attached to the relevant flat.

### **FLYING FREEHOLD**

Subsequent to 1991 due to the enactment of the Flying Freehold Law it became possible to convey flats by way of freehold transactions. A Declaration of Co-Ownership is registered through the Royal Court whereby an Association is formed to own and hold the property. The Declaration describes the relevant property, the boundaries, rights, servitudes, restrictive covenants and also subdivides the Association into various "lots" or "shares" which relate to each flat or unit. It is the "lots" or "shares" which are conveyed and which give the Purchaser outright freehold ownership of the relevant flat. Flying freehold flats are treated as "realty" rather than share transfer flats which are treated as "personal".

### **JUDICIAL HYPOTHEC**

This is the most common means for a Bank or Mortgagee to secure its/his lending to a Purchaser over the property to be acquired. A "Judicial hypothec" only has a 10 year life span after which it loses the property as its security. The Bank or Mortgagee will therefore require re-registration of the loan every 10 years.

### **SIMPLE CONVENTIONAL HYPOTHEC**

This is a contractual mortgage which has a life-span of and retains security for 40 years but is now seldom used.

### **JOINTLY FOR THE SURVIVOR**

This is the common method of a couple owning a property whereby the property immediately passes to the survivor on the death of one of the couple.

### **TENANTS IN COMMON/UNDIVIDED SHARES**

A method whereby a couple can each own a specific share in a freehold property which can be conveyed or bequeathed to any third party without the consent of the other.

### **VICES CACHÉS (HIDDEN DEFECTS)**

Every contract of purchase includes a condition that the property is conveyed with all and any defects, hidden or apparent ("purchaser beware"). Therefore every purchaser should have the property surveyed by a competent Surveyor as there would be no recourse to the vendor should there be any defects. This is contrary to the UK where a vendor has to provide certain guarantees and warranties. With new builds it is common practice to request the developer or vendor to provide a 6 months warranty whereby any defects are remedied by the developer/vendor within that defects period at its/his cost.

### **SERVITUDE**

A servitude grants an owner a contractual right over the property of another owner, such as a right of way or rights for services, drainage and the like. The property having the benefit of the rights is referred to as the "dominant tenement" and that being subject thereto the "servient tenement".

### **RESTRICTIVE COVENANT**

A restriction over a property in favour of another property (or properties) which prevents the use of the property other than for the intended purpose or the building of constructions in certain areas thereof. Again the "dominant tenement" means the property having the benefit of the restriction and "servient tenement" means the property subject thereto.

### **MOIETY (MITOYENNETÉ)**

If the contract for the conveyance of a property claims the moiety of a wall or enclosure then this is party owned between the relevant adjoining owners to be maintained, repaired or replaced at common cost. Nothing can be done to such a wall/ enclosure without the co-operation of the neighbour.

### **OFFSET (RELIEF)**

This is a strip of land appertaining to a bank, wall or enclosure owned by the owner of a property of a width of 16 ½ inches which enables its maintenance. Should the neighbour wish to enclose his own property he would have to set back a further 16 ½ inches creating a no-mans land between the two properties of two feet nine inches to enable each owner to maintain his own enclosure. A "relief" does not constitute outright ownership thereof and the owner of the property having a "relief" cannot use it other than for maintenance.

#### **STAMP DUTY**

An effective tax payable in respect of freehold property by the purchaser upon their purchase and any borrower upon the registration of their loan.

#### **LAND TAX**

This has recently been introduced and has given the Income Tax Authority the right to levy a property tax on purchasers and borrowers (similar to stamp duty on freehold/flying freehold properties) on share transfer properties/flats.

#### **EQUITY AGREEMENTS**

When buying property jointly clients may wish to agree in advance how the equity in the property is to be dealt with on a sale, particularly if one person is paying more towards the property than another.

#### **COHABITATION AGREEMENT**

This covers situations where both partners borrow jointly to purchase a property, but the property is acquired in a sole name of one of the partners as the other may not have Housing Qualifications.

#### **PRELIMINARY AGREEMENT OF SALE**

An agreement binding the seller and the buyer to complete the transaction on an agreed date under penalty if they do not do so. A deposit of 10% is usually required.

#### **ADVERSE POSSESSION (POSSESSION QUADRAGINAIRE)**

40 years undisturbed and unchallenged claim of title and exclusive possession.

#### **SUBJECT TO CONTRACT**

The Transaction is not legally binding until completion.

#### **WITHOUT PREJUDICE**

Proposals made and not accepted and not later to be admissible in evidence.

#### **FOR MORE INFORMATION, PLEASE CONTACT:**



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