



Guide to
Guernsey
Property

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At Carey Olsen, we always look at the bigger picture. In the face of opportunities or challenges, our clients know that the advice and guidance they receive from us will be based on a complete understanding of their goals and objectives combined with outstanding client service, technical excellence and commercial insight.

BIGGER PICTURE

Introduction

Carey Olsen's guide to property will help you answer some of the frequently asked questions about property law and process on the island. It includes advice on both residential and commercial property and outlines the major decisions you will face, whether you are buying or selling, leasing or renting, developing, maintaining or even demolishing property in Guernsey.

Guernsey's laws are now increasingly being shaped by international legislation and in the context of the approaches taken by other commonwealth jurisdictions. However, there are certain areas where customary Norman French law either still applies or still exerts a strong influence. Nowhere is this influence felt more strongly than in relation to land ownership and property law where many legal phrases and some documents are still in French.

We advise that you take legal and financial advice before you proceed with any property transaction or planning application. Along with any professional agents and financial advisers, our property team will endeavour to make the process run as smoothly as possible and provide you with the most comprehensive advice and the best possible service.

Our property team

As one of the largest and most experienced property teams in Guernsey, we combine an in-depth knowledge of the peculiarities and pitfalls of local property law with a pragmatic and straightforward approach.

We advise on all aspects of residential and commercial property work, including sales and purchases, leases, building contracts and option agreements. We also have specialist expertise in planning, housing, relocation and regulatory advice.

Carey Olsen's team has strong links with Guernsey and Jersey estate agents as well as to fellow industry advisers in each island. We are part of a broad network of support, which is especially useful to individuals and families who are new to the islands.

When necessary, we can also draw upon the resource and expertise of our other practice areas, including banking, contentious disputes and insolvency.

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Property in Guernsey

What is considered property in Guernsey?

Property in Guernsey is divided into movable property and immovable property. Immovable property is defined as that property which cannot be moved from one place to another and which follows or is associated with the land. Parcels of land are immovable, as well as all things incorporated in the earth such as houses and other buildings, trees, shrubs.

As Guernsey law does not recognise a lease of immovable property as creating any interest in real estate and a lease is classified as movable property, long leases at a premium are almost unheard of and the concept of leasehold has never developed. Accordingly it is not possible to take security in Guernsey over a lease, irrespective of the length of the term.

Notwithstanding that leases do not create an interest in real estate nor are capable of being charged, the growth of the finance sector in the last few decades has resulted in the development of a significant amount of commercial property with lettings to tenants up to 21 years with rent payable annually.

While many principles applicable to the letting of commercial property in Guernsey are similar to those in the UK, the absence of any landlord and tenant legislation means that it is the law of contract alone that regulates the relationship that exists between landlords and tenants. Careful negotiation of lease terms is therefore very important and specialist advice should be sought.

How is land in Guernsey owned?

Guernsey law does not have the concepts of freehold and leasehold but has one form of ownership of land - '*enfin et de perpétuité d'heritage*' ie. absolute title in perpetuity. There is a more limited enjoyment for life that can be created but these are a rarity and invariably reflect close familial or relationship ties.

Can I buy an apartment in Guernsey?

Yes, and it will be absolute title in perpetuity as Guernsey law has long recognised that land could be severed horizontally. The position was further clarified and owners of property given enhanced powers to enforce covenants in 1987, which permitted the development of purpose built apartments across the island.

How is the use of land determined?

The use and development of land (planning) in Guernsey is controlled by the Land Planning and Development (Guernsey) Law, 2005 and written policies that are enacted into law for a 10 year period (subject to extension by resolution on a vote of the States of Guernsey).

The current policies and plan are titled the "Island Development Plan 2016" and came into force on 2nd November 2016. An integral part of the written policies is an island wide proposals map that identifies certain location-specific policy areas in which certain policies apply in addition to the general policies.

The plan directs how land in Guernsey can be used or developed in order to meet the housing requirements of the population and the commercial needs of businesses while maintaining the natural beauty of the island.

For more information visit www.gov.gg/planningpolicy

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Population control

The States of Guernsey Committee for Home Affairs oversees the control of who can reside on Guernsey and the type of accommodation they are able to occupy.

Who can reside on Guernsey?

The island's two housing markets, the 'Open Market' and the 'Local Market', each have different residential statuses associated with them.

Open Market

Open Market accommodation in Guernsey is available for residency by anyone with the right of abode in the UK. There are only a limited number of Open Market properties available on the island and these are often more substantial and attract a premium because of their open availability for occupation.

Local Market

Local Market accommodation is primarily reserved for people with an automatic right to live in Guernsey. This right is gained through a long period of lawful residence in Local Market accommodation or, for some, it is gained at birth. There are greater numbers of these properties and generally they are less expensive than those available on the Open Market.

Can anybody live and work in Guernsey?

You need to have a permit or certificate in place before you come to Guernsey to live and/or work. In some circumstances, permits can be refused if you have previously lived in Guernsey, especially if your previous residency was under the terms of a permit limited to a specified number of years and you have not had a recognised break in residence. Permits and certificates can also be refused if you have a serious criminal record.

Certificates are issued to a person who is entitled to live in Guernsey indefinitely and who is able to undertake any employment in the island, but may restrict the holder to living in Open Market accommodation.

Permits are issued to a person whose ability to live and/or work in Guernsey is conditional. The permit will explain what the conditions of residence are but these can include things like working in a specific job or living with a specific person. If the conditions of a permit are broken, it becomes invalid.

Other than a permanent resident certificate, all certificates and permits become invalid if the holder leaves Guernsey.

How many Open Market properties are there?

In total there are some 1,700 Open Market dwellings on Guernsey's Open Market Housing Register. Properties can only be added to the register by the Committee for Home Affairs if the inscription would be in accordance with States of Guernsey population policies.

The current strategic policy is that Guernsey's population should, in the long-term, be kept to the lowest level possible to achieve "The Statement of Aims" in the States of Guernsey Strategic Plan 2013-2017. Properties may be removed from the register either at the election of the owner or by the Committee for Home Affairs for legal reasons.

What categories of property are on the housing register?

The housing register is segmented into four categories: dwellings, lodging houses, hotels and nursing and residential homes.

- Private Open Market dwellings are listed in Part A;
- Open Market hotels are listed in Part B;
- Nursing and residential homes are listed in Part C; and
- Lodging houses are listed in Part D.

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As an Open Market home owner, what do I need to be aware of?

- Only one person can be the holder of an Open Market Resident Certificate for a particular Open Market home, all other immediate or extended family members will have to apply for an Open Market Family Member Resident Permit (Part A).
- The Committee for Home Affairs can transfer a property from Part A to Part D if it considers that a letting or subletting of the property has created a “house in multiple occupation” (HMO) situation. A transfer to Part D would mean that occupiers other than the owner and their family would only be entitled to an Open Market HMO Resident Permit, which is renewable only up to maximum of five years continuous residence. Once an aggregate of five years living in Guernsey has accumulated no further Open Market HMO Resident Permit can be issued to such an occupier who will be expected to leave the Island.
- If the property ceases to be used wholly for purposes other than human habitation or if the accommodation is sub-divided or otherwise made usable as more than one unit of accommodation (eg. into flats or bedsits), then the Committee for Home Affairs has the right to remove the property from the housing register. Once a property has been removed from the register it may only be reinstated under specific circumstances or at the discretion of the Committee for Home Affairs.

If I own an Open Market hotel or guest house, can others live with me?

Staff exclusively employed in the hotel, can be accommodated in the hotel or guest house under an Open Market Employment Permit (Part B) but once an aggregate of five years living in Guernsey has accumulated no further Open Market Employment Permit (Part B) can be issued and the occupier will be expected to leave the island. Bona fide tourists do not need any certificate or permit.

If in doubt, please contact our property team who can advise you on all relevant provisions in this area.

Can I request any amendments to the housing register?

The law allows some changes to be made to a property that contains both Open and Local Market dwelling units (eg. a block of residential flats). The provisions are complex and you should seek advice before embarking on any such alterations.

An owner or any person authorised by the owner is entitled to check with the Committee for Home Affairs whether a property is correctly inscribed on the housing register. This is a service that Carey Olsen provides to all prospective buyers of Open Market properties as part of the acquisition process.

“Their advice is delivered in simple, easy-to-understand language and always within a broader commercial context.”

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Buying a property in Guernsey

The buying process

The process begins once an offer for the property has been accepted, with the issue of a contract setting out the terms for the sale ("conditions of sale"). These are in a standard form approved by the Guernsey Bar and are typically issued by estate agents. The conditions of sale contain the price agreed by the parties, the general conditions expected in all property transactions, any special conditions (eg. the settlement of issues prior to completion) and any other matters specific to the transaction.

Conditions of sale will normally require a deposit of 10% of the purchase price to be paid on signing as security for the buyer's promise to buy and part payment of the purchase price on completion. It is, however, open to the parties to agree a lesser deposit, albeit that the quantum of damages for a default in completing, once the conditions of sale have been signed, will always be 10% of the purchase price.

It is normal practice for estate agents to hold the deposit and release the same, less their commission, to the seller on completion.

Occasionally properties in the island are sold at auction. The process for completing a property purchase at auction is fairly straightforward but, as it differs from the guidance above, our property team will be very happy to help.

To what extent are the parties bound by the conditions of sale once they have been signed?

Since 1996 a contract for the sale of immovable property can only be made in writing and signed between the parties. Care must be taken to agree all aspects of the contract before signing conditions of sale, particularly the completion date, as once signed it is not possible to make amendments without the signed written consent of all parties.

A significant feature of the buying process is that the sole remedy of the contracting party's lie in damages for breach of contract, not for specific performance in seeing the contract performed. This is the reason for the payment of the deposit by the buyer as security for failure to complete on the stipulated date.

What happens if the buyer is not ready to sign the conditions of sale?

Before signing the conditions of sale, a buyer should ensure that arrangements relating to finances and their right to reside in the property are in place and that a satisfactory survey report is completed, if required.

Sometimes time constraints may press a buyer to sign conditions of sale before they are ready, eg. when they might not yet have received a written offer of finance. It is best to obtain legal advice at this stage so that the conditions of sale can stipulate a future date by which the conditions of sale (if then signed) become binding, giving the buyer until that date to satisfy themselves regarding the pre-completion issue. Carey Olsen regularly provides advice in this respect.

How is land ownership transferred from one party to another?

The final transfer of land from one owner to another (other than by inheritance) must be in writing and must be concluded before the Royal Court of Guernsey. The Royal Court sits as a contract court every Tuesday and Thursday at 09:30, subject to public holidays. The most common instrument transferring ownership is now styled as a 'conveyance'.

What is a conveyance?

Prior to November 1969 contracts transferring Guernsey land had to be in French but following legislative change were then permitted to be expressed in English and to be styled as a conveyance. The conveyance must be presented to the court signed by an Advocate of the Royal Court or will be refused execution.

Neither the seller nor the buyer sign the conveyance, it is their appearance before the Court and consent (to what is essentially a contract) that is attested to a Jurat of the Royal Court, who then records the giving of that consent by signing the conveyance.

Is there registered land in Guernsey?

Not in the manner of the UK land registry system although the Royal Court has maintained a registry of land contracts since at least the 16th century and since 1631 enacted legislation has given priority to claims of ownership based on a registered contract (conveyance).

It is unheard of in modern times for a buyer not to protect his ownership by registration of his conveyance, no creditor will lend in its absence and it is unlikely that any person would accept a claim of ownership from a person who had not registered without a substantial discount on the value of the property. Registration will almost always occur (in the absence of some serious problem) on the same day as completion of the transfer.

Cost of the buying process

The principal cost associated with buying property in Guernsey is in respect of a duty, payable to the States of Guernsey, and known as "document duty". This is payable on a sliding scale calculated as a percentage within incremental bands of the declared purchase price of the immovable property. The scale starts at 2% up to £250,000 and rises to 4% above £1,000,000. The duty must be paid before registration.

More modest costs will be incurred by the buyer in respect of legal fees, which are negotiable according to the size, nature and complexity of the transaction and court and registration fees amounting to a few hundred pounds.

If a buyer is financing the purchase with a loan the creditor will invariably require a charge secured by registration against the buyer and the property with all the creditors costs being borne by the buyer.

Duty is also payable to the States of Guernsey on a secured loan before registration at a rate of 0.5% of the sum secured by the charge. In addition to any arrangement fees and survey costs levied by the creditor, the buyer will also settle the creditor's legal costs (typically calculated at 0.2% of the loan secured) and court and registration fees amounting to a few hundred pounds.

When are the costs payable in the buying process?

Contractually, the buyer is required to have all the money available to buy the property on the day of completion.

In order that the buyer's advocate may present the conveyance to the court, that advocate must be satisfied before they attend court that all the monies needed to conclude the purchase are in their possession or will be released to them by the buyer's loan provider upon their request.

The monies required to complete the purchase will be the total of:

- The purchase price. This may have been part paid by the payment of the deposit on the signing of conditions of sale, in which case the balance of the purchase price will be payable.
- Document Duty as referred to above.
- The advocate's fees, court and registration costs as referred to above.
- Duty, costs and fees for any charge securing a loan against the buyer and the property as referred to above.
- Any apportionment of rates, taxes, rent, service charges (as applicable) due under the terms of the conditions of sale.

What about owning property through an incorporated company or trustees?

There are no restrictions on property in Guernsey being held by legal corporations or by trustees although such ownership inevitably requires specialist advice and consideration of other related issues of control and succession rights. Carey Olsen with its depth of skilled practitioners is particularly well placed to advise on such transactions.

Historically a benefit of acquisition by a legal corporation was the lawful avoidance of document duty, which cannot be levied on the transfer of shares. However that taxation gap is shortly to be closed with an equivalence duty regime that will capture changes in ownership between unrelated persons. There will be exemptions for certain familial or re-structuring transactions where a buyer has legitimate privacy or estate planning requirements. Carey Olsen has all the necessary expertise in place to provide advice on such matters.

Buying elsewhere in the Bailiwick

Our team can assist you in relation to the specifics of purchasing property in Alderney and Sark.

Building and renovations

What is planning permission?

It is possible to develop an existing property and build new property on the island as long as you have the relevant permissions from the States of Guernsey Development and Planning Authority ("Authority"). All applications for development are submitted to the Authority for approval under The Land Planning and Development (Guernsey) Law, 2005 ("2005 Law").

In addition to administering all planning applications the Authority issues development plans that identify the applicable planning policies for each part of the island to be applied in the consideration of any planning application and applies the technical standards for all construction in the island.

In certain circumstances it is necessary to obtain permission from the Constables of the Parish and from the Royal Court before any development may be carried out.

What about historical property development?

The introduction of the 2005 Law has fundamentally changed the nature of planning legislation in Guernsey. For the first time, subsequent owners of a property are liable for any breaches of planning law committed by a previous owner.

To protect against the strictness of that new liability, the 2005 Law has provided for more information to be made available to the prospective buyer of a property and for immunity against prosecution to be granted in certain circumstances. This immunity is obtained by a buyer applying for an Immunity Certificate from the Authority prior to committing to the purchase of a property. The making of this application is a service that Carey Olsen provides to all prospective buyers of immovable property as part of the acquisition process.

If required, a buyer's surveyor or architect will investigate whether all structures on the property comply with planning regulations before the buyer goes ahead with the purchase or redevelopment.

Are there listed buildings in Guernsey?

The Authority has powers under the 2005 Law to protect any building structure or object which, in their opinion, is of historical, traditional, archaeological or other special interest in Guernsey on registers of protected buildings and monuments. These registers are open for public inspection at Sir Charles Frossard House and HM Greffe.

The owner, occupier or any other person with an interest in the land on which the structure or object stands has a limited right of appeal within 28 days of notice of the initial inscription but otherwise inscription is absolute.

The Authority also has similar powers to issue tree protection orders applicable to either single trees or woodlands and which are either for six months only with no appeal or, if to be permanent, a limited right of appeal within 28 days of notice of the permanent inscription.

How does having a protected building, monument or tree on property affect property?

In addition to all the usual planning policies and any building regulations, the Authority must apply the special provisions laid down in the law in relation to protected buildings, monuments or trees. One of those provisions has defined pruning a protected tree or even operating heavy machinery close to the tree as constituting development requiring a planning application. Applications to carry out works in the vicinity of the protected feature generally require the Authority to take into consideration the preservation of the feature protected within the context of its setting.

If a protected building or monument urgently requires preservation works, the Authority may issue a preservation notice. This notice will request that the owner of the building or monument carry out only the works outlined in the notice.

The Authority also has the authority to undertake works to ensure the restoration of the building or monument and to recover the cost of such works from the owner.

Does changing the use of a building require planning permission?

Yes, change of use of a building or even land requires an application to be made to the Authority for permission unless it falls within an exemption prescribed by the 2005 Law.

Taxation on property

The only taxes that apply to the ownership of real property in the island are tax on real property payable to the States of Guernsey and owner rates (for local services, including domestic refuse collection) payable to the parish in which the property is located.

Tax on rental income derived from property is always subject to Guernsey income tax being income arising in Guernsey.

There are otherwise currently no taxes due on disposal of property following the suspension of the Dwellings Profits Tax (Guernsey) Law, 1975 in 2009. The aim of the law was to prevent speculation in non-owner occupied domestic property by taxing profit at 100%. It is questionable whether it was of any effect in that aim but beyond doubt that as a tax raising measure it was futile. There are no current proposals for its suspension to be ended.

For more details on local taxation, please contact our property team.

Inheritance of property

Guernsey's new succession law, The Inheritance (Guernsey) Law, 2011 ("2011 Law"), came into force on 2 April 2012.

The 2011 Law creates a new regime for succession that will apply to those individuals whose wills are executed after 2 April 2012 or who die domiciled in Guernsey intestate after that date. The 2011 Law abandons much of Guernsey's historic laws in favour of English-style freedom of testamentary disposition. The 2011 Law does operate a system that preserves the pre-2011 Law regime for wills executed before the commencement date.

Abolition of forced heirship

A key change in the 2011 Law is the abolition of forced heirship. According to the 2011 Law a person can now leave their immovable or movable property to anyone they choose. This is, however, subject to new provisions (or greater provisions) that permit certain people to apply to court if they feel they have not been adequately provided for.

The use of testamentary trusts are now unrestricted. However, this revision to the law does not affect any contracts, settlements or deeds made before 2 April 2012.

It is important to bear in mind that a person who has executed a will before 2 April 2012 does not automatically become subject to the 2011 Law regime if the will is amended by a codicil dated after 2 April 2012 unless the codicil provides for the new laws to apply (a codicil is a document that amends rather than replaces a previously executed will). This permits people, unless they choose otherwise, to be bound by the pre-2011 Law.

Provision for family and dependants

Part II of the 2011 Law allows certain family members and persons in other specified categories to apply to the court for a share (or an increased share) of the deceased person's estate if they do not consider the will to have made "reasonable financial provision". This application can only be made if the deceased died domiciled in Guernsey and if the application is made within six months after the date of death (subject to certain court approved extensions in time).

The possible applicants are a surviving spouse, former spouses who have not remarried, civil partners (even though Guernsey law does not currently recognise such relationships it will recognise those civil partners married in other jurisdictions), former civil partners, co-habitees, children, people treated as a child of the family and other persons being "maintained" by the deceased.

It is important to note that property held jointly by survivorship may now be subject to such a claim.

Commorientes and survivorship

The new law also introduces the concept that if two or more people die in circumstances where one cannot tell who dies first the eldest is presumed to have died first. While the presumption is assumed by the court it can be countered by including a special provision in one's will.

If property is left by a will subject to a condition that the successor or heir survives for a certain period of time, the property vests in the recipient or heir upon death but if the recipient fails to survive for the period of time stated the property then re-vests in accordance with the will or intestacy of the first to die. The same rule also applies for the prescribed period of 28 days where on an intestacy the spouse (including a civil partner) survives the deceased.

If I don't have a will what will happen to my property?

When this happens the law will step in and determine what happens to the estate in question. The rules that govern estates on an intestacy (dying without a will) are complicated and are only briefly dealt with below.

Intestacy provisions for immovable property in Guernsey

These apply to any intestate succession of a Guernsey domiciled person dying after 2 April 2012.

If the deceased leaves only a spouse (including a civil partner), the spouse takes the whole absolutely (if they survive for 28 days after the deceased).

If the deceased leaves a spouse and descendants (ie. children or remoter descendants), the spouse would take half absolutely and the descendants would take the other half subject to the spouse's right of use, until death or remarriage, over the other half of the matrimonial home.

If a deceased leaves descendants but no spouse, the descendants share the property equally.

Where there is no surviving spouse or descendants the property will pass to family members in the following order:

1. Privileged collaterals – in other words brothers and sisters, nephews and nieces and their issue, the closest in parity of degree taking equally if more than one and with representation allowed up to the sixth degree.
2. Ascendants, the closest in parity of degree taking equally if there are more than one.
3. The closest in parity of degree taking and sharing equally if more than one.

Intestacy provisions for movable property

If the deceased leaves only a spouse, the spouse takes the whole personal estate (if they survive for 28 days after the deceased).

If the deceased leaves a spouse and descendants, the spouse would take half, and the descendants would take the other half equally in parity of degree with representation per stirpes.

If a deceased leaves descendants but no spouse, the descendants share the property equally.

If there is no surviving spouse or any descendants, the same order of inheritance will apply as for realty.

Making a will

Care should be taken to receive advice from an advocate to ensure that your wishes are observed in relation to your estate. Particularly if you own property or land, a will should be drawn up reflecting your wishes to ensure that your estate passes on to the people whom you wish it to go to.

If you require more information on creating a will please contact the property team.

 **Key contacts**

For further information or professional advice please contact our lawyers below:



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Please note that this guide is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2017

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