

Practical guide to Jersey property law

Service area / [Property Law](#)

Location / [Jersey](#)

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Jersey is the largest of the Channel Islands and is a self-governing British Crown Dependency with its own financial and legal systems and its own courts of law.

Jersey property law is derived from a mixture of local statute and customary (common) law. Jersey's customary law has evolved from Norman-French law and is primarily contained in the judgments of the Royal Court of Jersey and the writings of local and French jurists.

In Jersey law property is either "movable" or "immovable". These classifications are broadly similar to the English classifications as "personal" or "real" property.

Land in Jersey, together with any buildings or dwellings that may be constructed on the land, constitute immovable property. There are also certain other interests in land such as leases for a term in excess of nine years that are also deemed by law to be immovable property.

Types of property ownership

Main sources of laws that govern immovable (real) property in Jersey

The principal local statute in relation to immovable property is the Loi (1880) sur la propriété foncière (the "1880 Law"), as amended.

Types of ownership

This guide is principally concerned with the following common types of property ownership, or tenure.

- **Freehold** – Whilst the term "freehold" is frequently used, it has no technical meaning under Jersey law. It is used to describe ownership in perpetuity (propriété a fin d'héritage) being the most comprehensive real right that a person can have in immovable property. It gives the holder the ownership or "title" to the land as well as everything above and below, subject to certain practical limitations and statutory exceptions.

All contracts relating to immovable property (whether transferring title, amending boundaries or creating specific rights) must be passed before the Royal Court of Jersey.

- **Flying Freehold** – The laws governing private ownership of immovable property in Jersey were supplemented in 1991 by the "Loi (1991) sur la co-propriété des immeubles bâtis", commonly referred to as the Flying-Freehold Law. This law provided for the division of multiple dwelling properties, such as purpose built blocks of apartments, in order for distinct units to be sold to private owners.

In each case a bespoke and comprehensive document describing the subdivision of a development into private units and common parts is registered before the Royal Court. This document (known as the Declaration of Co-ownership) provides for the establishment of an Association of the various co-owners and includes certain rules and regulations governing the use and administration of the collective property.

An owner of a flying freehold unit (or "Lot") has exclusive ownership and title to that unit together with a percentage interest in the collective property forming the development and the land on which it is established.

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As with freehold property, flying-freehold property is transacted by way of contract passed before the Royal Court.

- **Share Transfer** – While not technically a right of tenure in immovable property, many properties are subject to “share transfer” structures. Typically (although not exclusively) such structures apply to properties comprising a number of apartments or flats. Unlike freehold and flying freehold ownership, the freehold title of the property is owned by a Jersey company and purchasers acquire shares in that company which have attached to them certain express rights to use and enjoy a specific private unit.

The property holding company will have bespoke Articles of Association which create specific rights of exclusive use and occupation over particular apartments or units forming part of the company’s property. The Articles of Association will also set out the rights and obligations of the shareholders, both with regard to the private unit and the common or shared areas.

The transfer of shares is not required to be recorded by a contract passed before the Royal Court (although the company’s acquisition contract for the property will be a registered contract). The transacting parties enter into an agreement which sets out the conditions of the sale, and the transfer of shares is detailed in the company’s records.

- **Leasehold** – There are two principal types of leases in Jersey. The length of the Term of the lease in question is important, as it affects the way in which the agreement between the parties needs to be documented.

Leases for more than 9 years (known as “Contract Leases”) must be passed before the Royal Court in order to be enforceable. Shorter leases, (known as “paper leases”) do not need to be passed before Court and are agreements which can simply be signed and exchanged by the parties.

Long term leases (for a term of greater than 99 years) have long been used as a method of creating interests in multiple dwelling properties, before the process of share transfer ownership became common and prior to the enactment of the Flying Freehold Law. Typically granted in return for a one-off payment (or premium) such leases do not ordinarily require the tenant to pay annual rent, and therefore they are treated as an asset, in much the same way as freehold property is considered to be an asset.

Some commercial properties, particularly for land at St Helier’s waterfront estate area and the Esplanade Quarter, are held on a long-leasehold basis.

- **Individuals** – Ownership of residential property in Jersey is highly regulated, in order to preserve the limited housing resources for the inhabitants of the Island. In order to purchase and occupy residential property, an individual must qualify under the Control of Housing and Work Law (please see the section below for more information).

Where a property is owned by two or more individuals, there are two types of joint ownership in Jersey.

- **Joint Tenants** – When purchasing as joint tenants, the co-owners have an indivisible interest in the whole of the property which cannot be alienated or otherwise disposed of independently of the others’ interest.

The property is said to be owned by the co-owners jointly, for the survivor of them, and then for the heirs of such survivor. Accordingly, in the event of death of one joint owner their interest in the property automatically passes to the surviving joint owner. The surviving co-owner would then own all the property and upon their death it would form part of their estate. This is known as the “right of survivorship”.

- **Tenants in Common** – When purchasing as tenants in common, each co-owner will have a specified share in the property which is distinct and can be alienated separately. The respective shares may be equal but they do not have to be, and the contract of purchase can specify the proportional interest of each co-owner.

In contrast to owning as joint tenants, a tenant in common is at liberty to sell or transfer their share in a property without the participation, knowledge or agreement of the other co-owner, although in practice this rarely happens.

Whether joint owners choose to purchase as joint tenants or tenants in common may depend on their circumstances at that time, and therefore it may be necessary to review this position at a later date. It is possible to change the mode of ownership at any time if the parties agree by passing a further contract before the Royal Court.

When a property is purchased jointly it is possible for either co-owner to compel the other to bring an end to the co-ownership. The enforced sale is brought about by an action en licitation, by which the Royal Court may order the property to be sold by auction and at which any member of the public (including each of the co-owners) are free to bid.

- **Companies** – There are only limited circumstances whereby a company will be permitted to acquire residential property in Jersey. These will commonly be where the property is to be redeveloped, or where the property comprises more than one self-contained unit of dwelling accommodation. Occupation of the property, once acquired by a company, will be restricted to individuals who have residential qualifications and such occupancy conditions as may be attached to any Control of Housing and Work Law Consent issued for the company’s purchase of the property.
- **Trusts** – Jersey law does not recognise a trust of Jersey immovable property. As such, a trust (whether a Jersey trust or a foreign trust) is unenforceable in Jersey to the extent that it purports to apply directly to immovable property in Jersey. It is possible, however, for the shares in a Jersey company which owns immovable property to be held on trust.

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- **Inherited Property** – Any individual or corporate body can inherit immovable property in Jersey. Where a property is inherited by one or more individuals, such persons are each entitled to occupy the inherited property regardless of their residential status.
- In the case of testate succession the property of the deceased vests with the devisees specified under their Will of immovable estate, and a copy of the Will is registered before the Royal Court so as to evidence the transfer of title and ownership to the heirs. In the case of intestate succession the property automatically vests with the deceased's heirs at law in accordance with Jersey's succession laws.
- **Share Transfer** – As the transfer of shares in a company is not regulated by the Control of Housing and Work Law, there is no restriction on individuals or companies acquiring the shares in a share transfer property holding company. The occupation of the unit in question will, however, be subject to certain restrictions.
- **Agricultural Land** – The sale or transfer of agricultural land in Jersey is governed by the Agricultural Land (Control of Sales and Leases) (Jersey) Law 1974. The law is administered by the Land Controls section of the Department of Environment, with the key aim of controlling the occupation and use of agricultural land to ensure a stable and viable land bank is retained for the use of the local farming industry.

Must land be registered?

There is no system of registered title in Jersey, although all hereditary contracts relating to the sale and purchase of property must be passed before the Royal Court of Jersey to be legally valid and binding. Once passed, such contracts are registered and available for inspection in the Jersey Public Registry.

If a property is acquired by way of an acquisition of shares in a company which owns Jersey immovable property, there is no requirement to register the details of the transfer in the Jersey Public Registry (although in the usual way the transfer must be registered in the company's register of shareholders).

The property market

In addition to the purchaser and seller and the purchaser's finance provider, there are a number of other parties who would normally be involved in a property transaction in Jersey.

Estate agents

Most sales in Jersey involve the services of a real estate agent, who advertises the seller's property to prospective purchasers. There is no statutory regulation of real estate agents in Jersey, although there is a professional association, the membership of which is voluntary.

Lawyers

Lawyers play an important role in property transactions, and are responsible for drafting the contracts and undertaking all the due diligence in respect of the property. The lawyer acting for the purchaser is also responsible for ensuring that the purchaser receives good and marketable title to the property, and for freehold and flying freehold properties is responsible for engrossing the sale contract and presenting it to the Royal Court for registration.

Notaries

There is no requirement under Jersey law for a hereditary contract to be notarised, either in respect of a freehold / flying freehold contract or a contract lease.

Other parties

Other parties' involvement in property transactions depends on the nature of the transaction. For example, a surveyor will ordinarily be required to produce a valuation or condition report for the purchaser (or the purchaser's funder), and insurance brokers may be required to arrange for buildings or title indemnity policies if issues are found during the due diligence process.

Liabilities of purchasers and sellers

When are the parties bound?

For freehold and flying freehold transactions, the parties are only bound once the contract has been passed before the Royal Court. For share transfer transactions, the parties are contractually bound once the share purchase agreement has been duly executed by the parties. The share purchase agreement is a private document and does not need to be registered.

Guarantee of title?

There is no state guarantee of title in Jersey. It is the responsibility of the purchaser's lawyer to correctly research the seller's title to a property, in order to ensure that the purchaser will get good title on completion of the purchase.

Most hereditary contracts in Jersey will contain a clause which confirms that the purchaser takes the property in the state in which it is found, with all defects whether hidden or apparent. Therefore, on completion, the seller is usually released from all and any responsibility for the property or its condition unless the parties have agreed otherwise.

Share transfer purchase agreements will ordinarily contain some warranties given by the seller, primarily in connection with the affairs of the company rather than in respect of the property. These will usually be limited to matters which would not be identifiable from a review of publicly available documentation.

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What are the minimum formalities for the sale and purchase of immovable property?

For freehold, flying freehold and long leasehold transactions, a hereditary contract must be passed before the Royal Court. There is a designated Court sitting for property transactions, which takes place on a Friday afternoon.

The procedure of passing contracts (“la passation des contrats”) has remained relatively unchanged for over 300 years. Historically contracts were written in French, being the official language of the Court, and before the advent of typewriters and computers they were written in long hand in the pages of the books kept by the Public Registry. From the 1st November 2006 it became compulsory for contracts to be written in English and typed in a format specified under the Royal Court Rules.

Whilst the content of a hereditary contract of conveyance may vary significantly from property to property, most contracts will adopt a consistent layout to cover the required formalities which will include the following:

- **Introduction** – Contracts open with general greetings of the Court by the Bailiff acting under the Sovereign authority. Whilst the passing of contracts takes place in a formal Court sitting it is not a judicial procedure and the Court is acting as a place of record.
- **Parties** – The names of the transacting parties are set out at the beginning of the contract. To pass contract a party must either appear personally or by attorney, their legal guardian (tuteur), or in the case of interdiction, by their curator.
- **Recitals** – In some instances reference may be made to existing registered contracts which have a bearing on the transaction at hand.
- **Description** – The contract names the property and describes what goes with it (e.g. a certain house and garage, with dependant garden, lands and appurtenances), and includes a Unique Property Reference Number.
- **Boundaries** – The position and status of the various boundary enclosures (gables, walls, fences, or even banks and hedges) are recited. Boundaries not enclosed may be described with reference to boundary stones or imaginary points and intersecting boundary lines.
- **Jointures** – The property is defined by its limits towards the neighbouring properties that adjoin and surround it. The contract describes where and how the property joins neighbouring lands and who owns them so that boundary claims can be checked against one another.
- **Rights and Servitudes** – Positive rights may include rights way and access, and the right to bring mains and other services to the property. The clauses set out how such rights may be exercised and any associated conditions or limitations. Building restrictions may limit future development of the property and there may also be restrictions that limit its use, e.g. commercial uses or keeping animals.

- **Defects** – Most purchase contracts will contain a standard “vices cachés” or “hidden defects” clause. Save as may otherwise be agreed between the parties, the purchaser takes the property in the condition that it is found at the time of passing contract.
- **Title** – Towards the end of the contract there is a clause that transfers all charges, conditions and restrictions to the purchaser. It sets out the title to the property for at least 40 years so that it is possible to track back through the history of ownership of the property.
- **Consideration** – The purchaser undertakes to pay the purchase price, typically within two working days of passing contract. This clause may provide for certain deductions (such as a deposit already paid) and a certain proportion of the consideration may be attributed to certain contents to be included in the sale.
- **Warranty** – The seller warrants that the property is sold free of all rentes (an historic form of annual payment), hypothecs (charges secured against the property) and other encumbrances.
- **Possession** – Most contracts provide for immediate vacant possession of the property to be given upon passing contract. It is possible to delay taking possession for an agreed period or to acquire the property subject to the continuance of an existing lease.
- **The Oath** – All contracts recite the sworn oath taken by the parties when passing contract. Both parties (or their chosen representative) need to be present in Court when the purchase contract is registered.

There is no equivalent to the concept of exchange and completion, and the parties are not bound until the contract has been passed before the Royal Court. Typically, all negotiations up to the passing of contracts are “subject to contract” and there is limited recourse available to enforce a contract if either party withdraws from the transaction prior to completion.

In order to protect the interests of the parties, it is sometimes agreed to enter into a “preliminary agreement” under which the parties bind themselves to complete a transaction. Because there is no remedy of specific performance for property contracts in Jersey (that is, you cannot compel someone to pass contract if they fail to do so) such agreements will usually include a liquidated damages clause, setting out what damages will be paid by the defaulting party if they do not complete.

For share transfer and “paper lease” transactions, the agreement will ordinarily need to be signed by the parties (or their authorised representatives) in order to be legally valid and binding. Such agreements are private agreements between the parties, and do not need to be registered in the Public Registry.

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Tax

Stamp duty

Stamp duty in Jersey is governed by the Stamp Duties and Fees (Jersey) Law 1998 administered by an officer of the Royal Court known as the Judicial Greffier.

Stamp Duty is payable on all acquisitions or transfer of all freehold and flying freehold property, unless the transaction benefits in question benefits from specific relief. Unless otherwise agreed between the contracting parties, stamp duty is ordinarily payable by the purchaser. It must be paid in full prior to the passing of contract, with the stamps or a corresponding treasury receipt being affixed to the contract.

Freehold/Flying freehold

The amount of stamp duty payable on a transaction varies according to the purchase price, or the market value of the property in the case of a gift or other reduced or non-monetary consideration

Please refer to our stamp duty calculator in order to obtain an estimate of the stamp duty payable on a specific transaction. Please note that concessionary rates may apply to your transaction, so please call us to clarify what rate will be applicable.

The current standard stamp duty rates payable (in the absence of any concessions, for example for first time buyers) are as follows:

Residential property

Consideration/Value of the property	Stamp duty (as at 1 January 2019)
£50,000 or less	0.5% per £100 or part thereof (subject to a minimum of £10)
£50,000 to £300,000	£250 in respect of the first £50,000 plus 1.5% per £100 or part thereof in excess of £50,000
£300,000 to £500,000	£4,000 in respect of the first £300,000 then 2% per £100 or part thereof in excess of £300,000
£500,000 to £700,000	£8,000 in respect of the first £500,000 then 3% per £100 or part thereof in excess of £500,000
£700,000 to £1,000,000	£14,000 in respect of the first £700,000 then 3.5% per £100 or part thereof in excess of £700,000
£1,000,000 to £1,500,000	£24,500 in respect of the first £1,000,000 then 4.5% per £100 or part thereof in excess of £1,000,000

Consideration/Value of the property	Stamp duty (as at 1 January 2019)
£1,500,000 to £2,000,000	£47,000 in respect of the first £1,500,000 then 5.5% per £100 or part thereof in excess of £1,500,000
£2,000,000 to £3,000,000	£74,500 in respect of the first £2,000,000 then 6.5% per £100 or part thereof in excess of £2,000,000
£3,000,000 to £6,000,000	£139,500 in respect of the first £3,000,000 then 8.5% per £100 or part thereof in excess of £3,000,000
In excess of £6,000,000	£394,500 in respect of the first £6,000,000 then 9.5% per £100 or part thereof in excess of £6,000,000

Commercial property

Consideration/Value of the property	Stamp duty (as at 1 January 2019)
£50,000 or less	0.5% per £100 or part thereof (subject to a minimum of £10)
£50,000 to £300,000	£250 in respect of the first £50,000 plus 1.5% per £100 or part thereof in excess of £50,000
£300,000 to £500,000	£4,000 in respect of the first £300,000 then 2% per £100 or part thereof in excess of £300,000
£500,000 to £700,000	£8,000 in respect of the first £500,000 then 2.5% per £100 or part thereof in excess of £500,000
£700,000 to £1,000,000	£13,000 in respect of the first £700,000 then 3% per £100 or part thereof in excess of £700,000
£1,000,000 to £1,500,000	£22,000 in respect of the first £1,000,000 then 3.5% per £100 or part thereof in excess of £1,000,000
£1,500,000 to £2,000,000	£39,500 in respect of the first £1,500,000 then 4% per £100 or part thereof in excess of £1,500,000
In excess of £2,000,000	£59,500 in respect of the first £2,000,000 then 5% per £100 or part thereof in excess of £2,000,000

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Contract leases

Stamp duty is also payable on the registration of contract leases. The amount payable is calculated by multiplying the annual rent by the number of years of the term (subject to a maximum of 21 years). The stamp duty is payable on the result of this calculation, currently at the rate of 0.5% for the first £100,000 and 0.75% of the remainder.

If a premium (an up-front payment) is paid for a lease, the stamp duty is calculated at the same rate as for freehold / flying freehold properties.

Land Transactions Tax

Land Transaction Tax ("LTT") is governed by the Taxation (Land Transactions) (Jersey) Law 2009. This law came into force on the 1st January 2010 and was designed to bring the tax treatment of share transfer properties in line with freehold acquisitions. Previously no tax was paid on transactions involving share transfer property.

The amount of LTT payable on a transaction is broadly equivalent to the amount of stamp payable by a purchaser of freehold residential property, and the law provides for similar concessions and relief in certain circumstances.

LTT is payable only on share transfer transactions where the shares to be acquired confer specific rights of use and occupation of a residential unit. The tax is paid to the Treasurer of the States and it is a legal requirement to provide a receipt of payment to the company secretary charged with administering the company.

LTT is generally not payable on the acquisition or transfer of shares in a corporate entity which owns or leases commercial property.

First time buyers

Stamp duty and LTT is reduced for first time buyers acquiring residential property, provided that the purchase price does not exceed the relevant threshold (£500,000 as at 1 January 2019).

In order to qualify as a first time buyer an individual must never have previously owned an interest in any dwelling accommodation, whether in Jersey or elsewhere, including having held such accommodation by contract lease or by way of ownership of shares entitling occupation.

Those who qualify for a concession on their purchase will also qualify for a concession on any mortgage or loan security, which will be charged at a nominal rate.

Loan/Mortgage security

In relation to both residential and commercial loans, in the majority of cases the lender will require loan security. Stamp duty is payable on the registration of security over immovable property, and in the case of share transfer properties, LTT is payable when security is taken over the shares in question.

The standard rate of stamp duty and LTT is calculated as 0.5% of the amount of the loan being secured, plus some nominal administration or Court fees.

GST

The Goods and Services Tax (Jersey) Law 2007 was introduced in 2008. The current standard rate of GST in Jersey is 5%.

GST on freehold acquisitions

Whether a particular freehold acquisition attracts a GST charge will depend on the nature of the property in question and the GST status of the parties to the transaction.

Jersey residential property transactions are generally zero rated for GST purposes, which means that no GST is payable. There are limited exceptions to this, such as the supply of accommodation at registered guest houses or lodging houses.

The sale of Jersey commercial property is deemed to be a taxable supply for the purposes of GST, and is chargeable at the standard rate, and it is the responsibility of the seller to account for and recover from the purchaser the GST payable. Whether or not GST is chargeable will depend on a number of factors, such as the value of taxable supplies made by the seller, the GST status of the seller and/or the purchaser, and whether or not the transaction may be treated as a transfer of a going concern, or otherwise as being beyond the scope of GST.

GST is not chargeable on the transfer of shares in a company, whether or not that company owns commercial or residential property.

GST on commercial rent

The grant of a lease for commercial property is considered a taxable supply for the purposes of GST. It is the responsibility of the Landlord (as supplier) to account for and recover GST, which is payable on the consideration for the supply – i.e. the rent.

Whether or not GST is payable will depend on the specific circumstances of each case, and the GST status of both the landlord and the tenant.

Housing control

Control of Housing and Work (Jersey) Law 2012

The Control of Housing and Work (Jersey) Law 2012, (the "CHWL") came into force on 1st July 2013. The "CHWL" replaces the Housing (Jersey) Law and Regulations as well as the Regulation of Undertakings and Development (Jersey) Law 1973.

The "CHWL" sought to streamline the old cumbersome systems relating to housing and employment in Jersey. Each person is provided with a single status that determines access to both work and housing within the Island, and all properties fall into one of two categories being either "Qualified" or Registered".

Continued

The previous fourteen categories of residential qualifications applicable under the old Housing (Jersey) Law Regulations have been reduced to four principal categories as follows:

- **“Entitled”** – This category effectively replaced 1(1)(a)–(h) qualifications, and will also include those qualifying on economic or social grounds. In contrast to the previous regulations, non-Jersey born individuals will receive permanent Entitled status after 30 years of continuous residence
- **“Licensed”** – This category is broadly equivalent to the previous 1(1)(j) category for essential employees, however in contrast to the previous regulations such persons will have the right to lease or purchase property in their own name.
- **“Entitled for Work Only”** – A person will be Entitled for Work only once they have attained 5 year’s continuous residency in the Island, or if they are a spouse of a Licensed or Entitled individual.
- **“Registered”** – Those residents not falling within one of the above categories will have registered status and have limited access to housing and employment.

Register of properties

All properties will fall into one of two categories – “Qualified” or “Registered”. A register of accommodation will be maintained and made available to the public, which will identify the housing category of the relevant unit, and any conditions or concessions that apply.

In contrast to the previous system there is no requirement to obtain consent prior to purchasing or leasing accommodation as a persons Entitled or Licensed status is evidenced by a registration card (with such status being subject to confirmation by the Minister). In the case of rental accommodation, the owner of the property will be obliged to provide the Minister with information as to the occupier of the property in question.

Qualified housing

Any property that was previously controlled under the old Housing (Jersey) Law became Qualified, as will all new residential properties. This will mean that (subject to certain exceptions for first time buyers etc.) only Entitled and Licensed individuals may rent or buy such properties.

Registered housing

Properties that are currently “unqualified” (principally lodging houses or properties that have not been transacted since the old Housing (Jersey) Law was enacted in 1949) are classified as Registered under Control of Housing and Work Law. An occupier of Registered property will be able to gain tenancy rights, addressing one of the principal inequities in the local housing market.



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