

BUYING A PROPERTY – THE MANY FACES OF GOVERNMENT

by Tim Hart

At its heart the purchase of a property is a transaction between two parties. In exchange for the payment of the agreed price the vendor sells the property to the purchaser. However, this does not mean that it is a private affair involving only the parties and their lawyers. In addition to the public nature of freehold transactions, which are concluded by the passing of a contract in open Court with the contract then being registered in the Public Registry, property purchases require interaction with a range of governmental bodies. This article summarises these from the perspective of a purchaser of residential property. References to freehold property include flying freehold.

STATUTORY SEARCHES

As part of investigating the title to a property, the purchaser's lawyer sends out standard form enquiry letters to the utility companies, the Parish in which the property is located, the Transport and Technical Services Department and the Planning and Building Services Department. The replies to these enquiries assist in the lawyer's understanding of the location of main services, matters relating to the highway(s) bordering the property and compliance or otherwise with planning and building control legislation.

CONTROL OF HOUSING AND WORK (JERSEY) LAW 2012 (CHW LAW) – REGISTRATION CARDS

Any individual purchasing a freehold or flying freehold property must be in possession of a valid and appropriate registration card issued by the Social Security Department.

The purchase of a share transfer property does not of itself require the purchaser to have a registration card. However, the intended occupier of the property will need to have a registration card in order to be able to prove his or her entitlement to occupy the property.

Any purchase of freehold property by a company requires the consent of the Chief Minister under the CHW Law.

AGRICULTURAL LAND (CONTROL OF SALES AND LEASES) (JERSEY) LAW 1974 (AGRICULTURAL LAND LAW)

The Agricultural Land Law requires the Planning and Environment Minister's consent to be obtained to all sales, transfers and leases of "agricultural land". This term is defined to mean "land, including land under glass, used or capable of being used for any purpose of agriculture or horticulture", although established gardens measuring not more than one vergée situated within the curtilage of a dwelling house are exempt.

Where the land in question is considered viable for commercial agriculture, the norm is for conditions to be imposed which include a requirement for the land to be occupied only by a 'bona fide agriculturalist'. The use of agricultural land for the grazing of horses is tightly controlled.

STAMP DUTY/LAND TRANSACTION TAX

All freehold purchases require the payment by the purchaser of stamp duty, which is calculated according to the price (or, if higher, the current market value) of the property. Stamp duty is also payable on mortgages, based on the amount charged against the property.

Share transfer property purchases and mortgages require the payment of Land Transaction Tax (**LTT**), which is calculated on the same basis as stamp duty. LTT only applies to shares the ownership of which, by virtue of the articles of association of the company in which the share is held, confer a right of occupation of a unit of dwelling accommodation in Jersey. Accordingly, no LTT is payable in relation to shares which relate only to ancillary property assets such as parking spaces or stores.

GOODS AND SERVICES TAX (GST)

In general a purchaser of residential property will not have to pay GST in addition to the agreed purchase price. The sale of freehold residential property is zero-rated for GST purposes and the sale of shares is exempt from GST. However, there may be cases in which GST is payable, for example if there is a commercial element of the transaction and the vendor is registered for GST.

RATES (JERSEY) LAW 2005

Within 7 days of a change of ownership of freehold property, the vendor and the purchaser are legally required to notify the Connétable of the Parish concerned of the change of ownership. In practice, this notification is effected by the transacting parties' lawyers.

CHW LAW – CHANGE OF ADDRESS NOTIFICATION

The CHW Law provides that any person who moves to an address in Jersey and is, or expects to be, ordinarily resident at that address for a continuous period of three months or more must notify the Minister. This notification is effected by way of completing a prescribed form (which can be downloaded from www.gov.je) and submitting it to the Population Office.

Dealing with the many faces of government is part and parcel of purchasing a property and the legislative framework is constantly evolving. Purchasers need to be confident that they instruct experienced lawyers who

are up-to-date with the legal requirements and able to liaise with governmental bodies in a practical and efficient manner.

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