

Legal Review



CONVEYANCING COMPARISON GUERNSEY/UK

by Graeme Mercer,
Collas Day

Introduction

There are a number of differences of varying degrees of significance. This article highlights some and should be of use in particular to those coming from the UK and other countries to Guernsey and looking to purchase property on the Island.

Legal Commitment

Guernsey

No binding agreement until both parties have signed the Conditions of Sale and paid the deposit. Conditions can be signed at an early stage subject to the purchaser being satisfied as to one or more of the following by a certain date in the future ("the Operative Date"):-

- Finance
- Title
- Survey
- Licence (see "Types of Home")

The Operative Date is normally set for 2 weeks' time. If the purchaser is not satisfied with any of the conditional matters by this date, he can extend the Operative Date or withdraw without penalty if the vendor does not agree to extend.

When the Conditions are signed, the purchaser pays a deposit of 10% or 5% to the agent. A completion date will be set out. Interest on the deposit belongs to the purchaser and is paid after completion.

UK

Legal commitment only when contracts have been exchanged and the deposit paid, once the purchaser is satisfied with survey, finance and title, approximately 4-6 weeks from offer. On exchange a completion date is fixed and the deposit is paid. Interest on the deposit belongs to the vendor.

Completion

Guernsey

The completion date will always be a Tuesday or Thursday, when the Conveyancing Court sits. Both parties need to attend Court (unless represented by Powers of Attorney) to give consent. If the purchaser is unable to complete and the vendor is unwilling to extend the date, the vendor can forfeit the deposit as settlement for breach of contract. If the vendor fails to complete, the purchaser can sue for return of the deposit plus a further sum amounting to 10% of the price. There is no remedy of specific performance so the Court will not order either party to proceed to completion.

UK

The completion date can be any working day of the week. If the purchaser fails to complete, the vendor can keep the deposit and sue for out of pocket expenses (legal and other costs) plus loss of the bargain. If the vendor fails to complete, the purchaser can sue for return of the deposit, plus out of pocket expenses and loss of the bargain. As an alternative, either party may choose to sue for specific performance, to ask the Court to force the other party to complete.

Types of Home

Guernsey

The majority of properties are local market ("LM") with 8-10% being open market ("OM"). LM are

normally 2/3rds of the cost of OM and can only be occupied by residents or people who hold a housing licence granted by the States of Guernsey linked to their employment. Licences are for a set number of years, e.g. 2 or 5 years and are not automatically renewed.

OM can be occupied by local or non-local residents, but normally non-locals as they are generally more expensive.

Anybody can purchase either LM or OM, the restrictions in LM cases are on who occupies the home.

UK

No distinction exists.

Costs

Guernsey

Advocates fees on a purchase are on a scale of 0.75% of the price of the realty. The price is normally broken down as to 95% for realty (the property) and 5% for the personalty (the contents).

Document duty on the realty:

Up to £150,000	2.0%
£150,000 - £250,000	2.5%
Above £250,000	3.0%

Court fees are £130.00.

If the property does not contain a dwelling (such as a plot of land or a field) document duty will be 3%.

On a sale, advocates fees circa. £650.00, but often these fees are waived if you purchase a property simultaneously or within a few months of the sale.

Some OM houses are owned in the name of a company, set up specifically to hold the property. If you purchase by acquiring the shares of the company, then you pay no document duty, as in effect you purchase the whole company. This is obviously a considerable saving. However buying a company requires due diligence which may result in additional costs which a normal purchase does not incur.

No VAT is charged on fees.

UK

Solicitor's costs on a purchase are around £600-£700 plus VAT at 17.5% together with fees for various searches (£200-£250), and land registry fees (£300-£500).

Stamp duty fees:

Up to £125,000	0%
£125,000 - £250,000	1%
£250,000 - £500,000	3%
Over £500,000	4%

On a sale, costs are £450 plus VAT. They charge separately for sales and purchases even if the transactions are linked.