

Legal Review



FRIENDS DE-UNITED

by Emma Carter, Collas Day

About the author

Emma Carter is a member of Collas Day's property team. She is experienced in both residential and commercial conveyancing but currently focuses on high value local market and open market conveyancing. She can advise on the sale of jointly held property and the costs that are likely to be incurred.

You have bought a property with a friend or partner and now want to go your separate ways. The question is, how?

With high house prices in Guernsey it has become increasingly popular for people other than married couples to buy property jointly, for example with friends, family members or partners. This has been a logical option for many people - from first time buyers, as it allows them to pool their savings and get their foot on the property ladder, to established property owners looking to increase their investment in property.

Eventually the parties to such an arrangement may decide to go their separate ways. The question then is, how best to do that. People may have entered a joint purchasing arrangement without being sure what their options are for getting out.

Let's assume just two joint purchasers.

Do you both want to sell the Property?

If you both agree to sell the property to a third party and split the proceeds then you will need to consider the following points:

- **Who gets what?**

When you purchased the property together you would have decided how the property was to be "vested". It is common for unmarried people to buy in "undivided shares". If both paid equal amounts for the purchase and contribute equally to the mortgage, the ownership would probably be split 50/50, with the net proceeds of sale being split in the same proportion. However, it may be that one person contributed more money than the other when purchasing, or is contributing more to the mortgage, in which case you may have agreed a different split or share in the property. This may have been recorded in the conveyance or a separate agreement. If you are unsure then your advocate can advise you on how you acquired the property and how the proceeds of sale will need to be divided.

- **Did you borrow any money to buy the property?**

If you borrowed money from a bank it is likely that you consented to a bond over the property in the bank's favour. If so, this debt will need to be repaid and the bond cancelled in order for the sale to proceed. Your advocates can arrange this. But be aware, there may be penalties for early redemption.

- **How long have you lived in or owned the property?**

You may have heard of Dwellings Profits Tax or "DPT". This is a 100% tax on any profit made from the sale of the property, unless the sale falls under one of the exemptions under the law. The main exemptions are that you have occupied the property for the 12 months immediately preceding the sale, or that you have owned the property for 5 years. If you decide to go your separate ways within 12 months of buying, then you should take advice.

Does one person want to buy out the other person?

One person may decide they want to keep the property and buy the other person's interest. The simple way of doing this is by way of a Délaissance (which means "abandonment"). In order to do this you will need to consider the following:

- **Can you afford it on your own?**

If one person wishes to own the whole of the property they will need to buy out the other party and a fair price will need to be agreed. It is advisable to obtain a property valuation from an Estate Agent to gauge the current value of the property. You will also need to contact your bank. They will require a new bond to be taken out in the name of the person remaining.

- **Dwellings Profits Tax?**

Again, there may be a liability for DPT. If you are not sure, you should check with your advocate.

- **Document Duty?**

When you purchased the property together you will probably have paid between 2%-3% of the purchase price to the States of Guernsey for Document Duty. The good news is that if you are buying the share of your joint owner then you don't have to pay this amount again; Document Duty for a Délaissance is fixed at £5. This can be a good incentive for one party to keep the existing property rather than both having to buy new properties and paying Document Duty at full rate all over again.

- **Contents**

If you are buying your partner out, you will need to agree on the division of jointly-purchased items such as furniture. It may be that a cost adjustment is required.

Next Move

After you have made the decision on the best course of action for you, your advocate can move things along with a view to getting to court as soon as possible to finalise the transaction, usually within a few weeks. After this, you will both be free to go your separate ways!



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