

Legal Review



GAZUMPING - IS IT A PROBLEM IN GUERNSEY?

by Richard Ogier,
Partner, Collas Day -
Property Department

I was recently asked why Guernsey, unlike the UK, does not have a problem with gazumping, i.e. where the sale price of a property is agreed orally but before a contract is signed a higher offer is received and the seller effectively breaks the oral agreement in order to take up the higher offer.

My response was that whilst gazumping is comparatively rare in Guernsey, it does happen from time to time. As far as the circumstances which would need to exist to enable gazumping to take place are concerned, there is no difference between Guernsey and the UK. I will explain further.

Gazumping has been a potential problem in the UK for many years because of a law passed in 1925 which effectively provides that an agreement for the sale of land and buildings is not legally binding unless it is recorded in writing and signed by the parties to it. Therefore a seller of property is perfectly able to break his oral promise to sell at a particular price if he is offered a greater price. During periods of stability in the housing market, when prices are not rising quickly, the possibility of gazumping is comparatively rare. However, once market activity heats up, with a consequent increase in prices, the market conditions are far more suitable for gazumping to occur.

In Guernsey, until 1996, it was possible to create a binding contract for the sale of land and buildings by oral agreement. Because of this, a seller who had agreed a price was wary of breaking his word to accept a higher offer, for fear that the original purchaser may make a claim against him for breach of the oral agreement. However, it was often impossible to determine whether a binding oral agreement had been reached because of the uncertainty of knowing who said what to whom and what the other terms of the agreement were. Because of this, and the need for greater certainty, the Conveyancing (Guernsey) Law 1996 was passed, one of the provisions of which states that:

“An agreement for the sale or other disposition of real property can be made only in writing only by incorporating all the terms which the parties have expressly agreed in one or more documents or, where Conditions of Sale are exchanged, in each.”

The Law also specified that the documents incorporating the terms must be signed by or on behalf of each party to the agreement.

We therefore have the same legal background as the UK and, as such, in a rapidly rising market, gazumping does take place. However, it is still comparatively rare. I like to think that this is because Guernsey residents still attach importance to the expression “my word is my bond”.