

Legal Review



OPTIONS FOR HOUSE PURCHASE

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About the author

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Introduction

The housing market in Guernsey is divided into two sectors, generally known as "open" and "local" market. The right to occupy Local Market properties is strictly controlled, whereas Open Market properties can be bought and lived in by anyone who has permission to reside in the UK and Channel Islands.

The Open Market is effectively divided into four categories. Parts B, C and D respectively deal with hotels, nursing homes and lodging houses. Part A deals with private dwellings: that is where our attention is focused.

There are 1,700 dwellings in Guernsey which fall into category A and a significant number of these properties are owned by companies. Owning property this way implies that a different kind of transfer has taken place from a 'normal' house sale. There are advantages and disadvantages to acquiring a dwelling by purchasing a company as opposed to acquiring by conveyance.

Acquisition by share transfer

Given that so many "Part A" Open Market dwellings are owned by a company, it is fairly likely that a purchaser will have the option to acquire an Open Market property by share transfer. A key benefit of acquiring by share transfer is that the property itself is not conveyed: it is the share capital of the company which is acquired, and no stamp duty is payable on the acquisition of shares. To see why that matters, consider the conveyance of a property with a realty value of £1,000,000, on which the stamp duty will amount to just over £30,000.

The transfer of property by share transfer also offers the purchaser greater discretion by not publicly divulging the ultimate ownership of the property. No conveyance is registered at the Greffe (Guernsey's document registry) and nominee shareholders may also be appointed.

Ironically although the only asset of the company is likely to be a dwelling (real property), the shares in the company are classed as personal property. In practical terms this can offer the purchaser greater freedom in inheritance and estate planning.

While the title research carried out by your advocate will be the same whether acquiring property by share transfer or conveyance, you will not get the same guarantee of 'good health' in respect of the company you buy if you take that option. A share purchase agreement will provide comprehensive warranties on the part of the person selling the property ('the vendor'); however these are only as good as the depth of their pocket and your ability to enforce the warranties, particularly if the vendor has left Guernsey. The other matter to bear in mind is that, when purchasing a company, one is acquiring its liabilities as well as its assets. There are also the ongoing costs and administrative responsibilities of running a company to consider.

Conveyance of Property

The main benefit of acquiring property by conveyance is the guarantee of good title, as the vendor is conveying the title in the property to you rather than selling you a company which owns the property.

The main detriment, as we have seen above, is the cost, particularly in terms of stamp duty.

Although the work involved in a share transfer is more extensive than that involved in a conveyance, any increase in legal fees is more than offset by the potential savings.

Conclusion

From a financial perspective it is clearly more appealing to acquire a property by share transfer but this route involves certain risks and obligations, and your choice may have implications for inheritance. As with all transactions of a high value, you should involve your legal and tax advisers and consider the issues raised by this article in the light of your personal circumstances before deciding on how to purchase your future property.

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