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Estate Schedules for small Developments and Conversions

Following the introduction of the Real Property (Reform) (Guernsey) Law, 1987 ("the 1987 Law"), the construction of small developments of flats and the conversion of larger buildings to flats has escalated.

The 1987 Law removed any doubts as to whether it was possible, in Guernsey, to convey property horizontally. Prior to that time the legal position was not clear regarding buildings which were not themselves built on the ground but were supported by other buildings.

The 1987 Law also created what are known as "charged covenants". The system of charged covenants was designed to support and give a means to enforcing covenants between owners of horizontally divided properties.

Under the system of charged covenants, if the owner of one flat breaks a covenant given to another flat owner the 1987 Law provides a procedure for enforcing such covenant.

The document which sets up the rights and obligations of each owner, is normally referred to as an "Estate Schedule". The early Estate Schedules, following the passing of the 1987 Law, were fairly short and basic. Over time the Schedules have become more detailed and lengthy, as it has become clear that the considerations of owners relate to every part of the property.

One of the most important considerations when preparing a draft Schedule relates to ownership. Some parts of the property will be owned in common - i.e. all owners will own an undivided share. This will most usually be the roof, foundations and external walls. A number of the parts of the development may not be used by all of the owners. For example, there may be a staircase which is only used by the upper flats. Where this is the case, it will need to be decided who is to own the relevant part of the Development and who is to be responsible for its maintenance.

Another consideration will relate to lighting and/or heating. Quite often we find situations where the electricity meter metering electricity used in common areas (such as hallways) also meters areas which are only used by a few owners. For example, there may be the same meter for external lighting which is used by all the owners and the lighting of the staircase which is used by only two or three owners. In such situations we need to apportion the charges as fairly as possible and it may be more appropriate if such areas could be separately metered.

An area which recently has increasingly been a problem is that related to planning permission. In numerous incidences we have come across developments which vary, when constructed, from the planning approvals granted by the Environment Department. Purchaser's Advocates now expect to inspect all planning approvals when undertaking their title researches regarding the development. In some cases, the differences have been fairly minor and some Purchaser's Advocates have been inclined to not regard them as a problem. However, in other

cases, the differences have been quite marked and a retrospective application has had to be made to the Environment Department, thereby delaying any sale of the flats. It is therefore important, when departing from the planning approvals, to ensure that the necessary planning applications have also been made.

Another difficulty we have come across is when, during the development of the site, there is removal of some of the boundary markers referred to in title. In one case the title to the property referred to a building as providing the measurements for one of the boundaries. In order to undertake the development, this building was demolished with the result that the line of the boundary could not be verified. It was necessary to enter into a conveyance by way of exchange with the adjoining owner to the boundary in question before any sale could proceed. Fortunately, the adjoining owner was accommodating and willing to enter into the conveyance. This might not necessarily always be the case and it is therefore important to seek an Advocate's advice in relation to title before removing or demolishing anything which might be a boundary marker.

In small developments, it is important to set out and define who is to be responsible for any exterior areas used in common. This may include areas such as planters and car parking spaces and it is important to set out the rights and obligations of each owner regarding such spaces. In particular, it should be specified that car parking spaces should only be used for parking and not for the carrying out of extensive motor repairs or hobbies.

It is also important for the Schedule to cover such matters as noise or inconvenience. Schedules usually provide that radios, CD players or televisions are not to be heard externally and that when wheeling motorbikes, the engines should be switched off.

Any Estate Schedule requires plans to go with it. It is therefore important that clear plans are provided, both on a floor by floor basis and showing external areas. These plans need to be in A4 size to be registered at the Greffe.

Lastly, developers should be aware that changes made to approved plans during the development could also affect the drafting of the Schedule, sometimes quite dramatically.

It is therefore important to inform your Advocates immediately that these changes have been made, in order that the necessary work and time spent incorporating these changes into the Schedule can be commenced.

It is in everybody's interest for the Schedule to be prepared in a manner which will not cause delays by many questions and queries being raised by the Purchaser's Advocate. It is therefore important to make sure that your own lawyers are provided at the outset with all the information they require in order to prepare the Schedule.

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