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Our guide to conveyancing.

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Look at any ‘most stressful life events’ list and buying or selling a house always ranks highly.

It can be a quick and easy process but equally it can be longer than you were expecting. Our aim with putting together our guide to conveyancing, is to take you through all the different stages of the conveyancing process. Using simple language and an at-a-glance flow chart, our guide should give you a clear understanding of what to expect, prepare you for the unexpected and hopefully answer any questions you might have.

Our guide to your conveyancing is printed on paper manufactured sustainably with 100% recycled fibres in a chlorine-free process.

What is conveyancing?

Conveyancing is the term used to describe the process of either buying or selling a property/piece of land or part thereof.

The process begins when you have had an offer accepted on a property you wish to buy (or you have accepted an offer if you are selling) and ends at the point where you meet the Vendor (the person selling the property)/Purchaser in court to consent to buy/sell the property.

In the intervening time, work is undertaken by a conveyancer within a firm of advocates overseen by a property advocate. What is involved in the conveyancing process varies greatly between that which is needed for a purchase and that which is needed for a sale and depends on whether any discrepancies are found.

Starting the conveyancing journey

Do you have adequate funds to purchase the property?

Before you start looking for a property, you will need to speak to a lender or mortgage broker to ascertain how much you will be able to borrow. Please bear in mind that Document Duty is payable on most property transactions although there are some exemptions.

The amount you can borrow, in addition to any savings you may have, will guide you when looking at which properties you will be able to afford.

Finding your dream home

Once you have found the house you want to buy, it's time to put in an offer. The estate agent acting for the Vendor of the property will be able to assist with this and will liaise with the Vendor.

If your offer is accepted, the estate agent will produce conditions of sale. This is a contract of your purchase and sets out the basic information about the property. The conditions of sale do not become binding until all parties have signed unconditionally and the deposit (which is usually 10% of the purchase price) has been paid.

It is now time to appoint a firm of advocates to act for you.

You will also need to contact your lender to inform them that you have found a property. It is likely that your lender will then appoint a surveyor to visit the property.

The amount you can borrow, in addition to any savings you may have, will guide you when looking at which properties you will be able to afford.

The conveyancing process

1 Beginning

Once you have chosen a firm of advocates to act for you, a conveyancer within the firm will contact you, in order to start the process. They will send an engagement letter for you to sign and return which sets out the process and constitutes formal engagement of that firm. You will also be sent an information form which will need to be completed.

What is a conveyancer?

A conveyancer is a person within a firm of advocates whose job it is to help guide you through the process of buying or selling a property.

They will also liaise with your lending bank, the estate agent and the conveyancer who acts for the Vendor/ Purchaser on the other side of the conveyance.

The conveyancer's main tasks, when their client is purchasing a property, are:

1. Gather copies of title deeds for the property.
2. Gather copies of title deeds for all of the neighbouring properties.
3. Check that the boundary positions and descriptions stated in the property deeds and the neighbouring property deeds agree.
4. Visit the property to check that what appears on site matches the descriptions in the title deeds.
5. Liaise with the estate agent and the Vendor's conveyancer should any problems arise.
6. Draft the new title deed.
7. Liaise with the firm of advocates acting on behalf of the lender.
8. Present the title deed to the Jurat in court with all parties present and consenting.
9. Ensure conveyance funds are paid on time.
10. Register the title deed.

Client Due Diligence (CDD)

Your advocates are required to obtain proof of identity and proof of address. This will necessitate your attending their office in order to have your passport/photo id and utility bill (or other acceptable form of proof of address) copied.

Immunity Certificate

You will almost certainly need to apply for an Immunity Certificate for the property if you are borrowing.

If you are not borrowing we would still recommend that you apply for an Immunity Certificate.

An Immunity Certificate is issued by the States of Guernsey and costs £250. It prevents any action being taken against the new owner for any works carried out to the property by a previous owner which may have breached planning rules.

However, Immunity Certificates are not a warranty against any works that may have been done to the property without permission prior to its date of issue.

If you want to satisfy yourself that all of the alterations to the property have been done with the correct permissions, it is possible to request a planning search from the Planning Department of the States of Guernsey. This can then be given to your surveyor to check against. Searches will incur a charge.

2 Title research

When all of the necessary documentation has been received, the conveyancer is then able to liaise with the conveyancer in the firm of advocates appointed by the Vendor. They will also be in contact with the estate agent. Your conveyancer will gather all of the relevant title for the property and will carefully read through these documents and the title deeds for all of the neighbouring properties, to ascertain if they agree on both the position of the boundaries and the physical features which mark the boundaries on site.

They will perform searches in the Strong Room of the Greffe where all of the property records are kept. These include records of borrowing against property and sales and purchases for all properties.

It is necessary to ascertain what mortgages or other financial obligations (bonds) have been registered against the property. The conveyancer will obtain a commitment from the Vendor's firm of advocates that any charges against the property will be cancelled when the property is sold or that the relevant lender appears in court at completion to release the property being sold from their charge.

A check against sales/purchases for the property will show if the property has grown/shrunk from its original purchase size (ie. has any additional land been bought or any sold off). It will also show if any agreements have been entered into by the current owner (allowing others to have rights over the property or reserving rights for the benefit of the property itself).

When the conveyancer has familiarised themselves with the property, it will be time to attend on site in order to check that the boundaries in the title deeds match the features marking the boundaries on site.

They will also be looking to check that any rights of way enjoyed by the property (and those enjoyed by neighbours/others) are still exercisable. This means checking that gateways have not been blocked and that buildings have not been constructed over areas where access is necessary.

They will also be looking to see if the property has any rights of access if these are required. This means that if it is necessary to enter onto neighbouring land in order to maintain the property, the relevant formal rights of access are in place to allow this.

It is at this point that your conveyancer will pick up boundary discrepancies, problems with rights of way and access issues.

The conveyancer will then create a comprehensive title report for you, detailing all of the aspects of title and they will inform you of any issues that have been found with the property. Once you have read the title report, you will discuss the contents with them.

Your conveyancer will explain all of the findings from the title report and will help you to take the matter forward, should it be necessary to ask the Vendor to rectify any issues with title.

3 Borrowing

Once you have signed your lender's offer letter, the advocate acting for them will commence their title research and will request documentation from your conveyancer.

At the point at which the lender and their advocate are satisfied and have approved the lending, your conveyancer will receive confirmation from them. It is not safe to assume that lending is approved prior to this confirmation.

The lender's advocate will then draft the bond. This is the legal document which will be consented to in court at completion and secures the borrowing (also referred to as a charge) against the property. They will then pass this document to your conveyancer and you will consent to it in court immediately after you have consented to your purchase.

The lender's advocate will confirm to their client after court that the bond has been consented to and the lender will then transfer the funds to their advocate. A cheque for the funds minus the bond fee will then be given to your conveyancer.

Title deed

What is a title deed?

A title deed is the document which is created by the conveyancer acting on behalf of the Purchaser of a property.

The title deed will generally contain the following information:

1. The names and addresses of the Vendor and the Purchaser.
2. A description of how the property will be owned by the Purchaser (the vesting, see below).
3. A description of the property being purchased.
4. The description of the physical boundaries, their positions and who owns them.
5. Any rights of way or rights of access that affect the property.
6. A clause describing how the Vendor obtained the property.
7. The price of the property. This will be for the realty only (ie. excluding carpets, curtains, light fittings and appliances (the personalty)).
8. A statement describing when the Purchaser gains possession of the property.
9. A declaration by the Purchaser and the Vendor that they are complying with the Document Duty laws.
10. The signature of an advocate from the firm acting for the Purchaser (this shows that it has been seen and approved by an advocate).
11. The signature of two Jurats and the Lieutenant Bailiff, the first of whom to sign will have had the conveyance presented to them and they will have witnessed the parties' consent to buy/sell.

Vesting

Vesting is the way in which the property is owned:

Survivorship

If you purchase a property in survivorship interests then upon the death of the first of you, the survivor will automatically become the sole owner. This is the more usual way for a husband and wife to buy property.

Survivorship provides great security because you can be safe in the knowledge that the survivor of you will have absolute control over the property (especially if you have not borrowed against the property or have life insurance).

However, in some scenarios it is not the best way to buy. For instance, if you want to be certain that a share in the property will pass to someone other than your co-owner upon your death, this method is not for you. This is important if you have children by a previous relationship or wish brothers and sisters or parents to benefit from what will be a very sizeable asset.

Although we cannot guarantee that the laws of the island will uphold such an agreement at the time that you seek to enforce it, under the law as it stands today you will each be entitled to one half of the net value of the property without an agreement.

Survivorship cannot be overridden by the provisions of a will. However, it is important to consider making a will of real property that reflects your wishes should you survive your partner. Such a will may also take into account the wishes of the first of you to die, but these are in no way binding upon the survivor.

Undivided shares

If you purchase a property in undivided shares (which can be whatever shares you choose) then upon the death of either of you, that person's share will pass to their heirs. The heirs may be named in a will or, if you die without a will, then the property will pass in accordance with the law.

You should consider this method of ownership if you want to be certain that a share in the property will pass to someone other than your co-owner upon your death. However, it will mean that usually the survivor of you will end up sharing ownership with the heirs of the first of you to die.

If you have contributed different amounts to the purchase, it is important that you bring this to our attention. It may be that a side agreement should be prepared.

Because it would be possible for those heirs to force a sale, you may wish to include in the title deeds a clause saying that the survivor of you will have a right of enjoyment over the property for a period of time. This is commonly until death, marriage or for a certain period of years.

However, if you take unequal shares then you must consider whether the owner of the greater share should be paying a greater proportion of the bond repayments, repairs, and so on – because they will be directly benefiting from any increase in value of the property.

4 Conditions of Sale

It is common practice that it is only once the parties are satisfied with all of the aspects of the transaction that conditions of sale are signed and the deposit is paid.

It is, however, possible to sign conditions of sale earlier and have the conditions binding subject to finance, licence, title matters or survey. An operative date will be included in the conditions which is the date by which all of the matters to which the conditions of sale are subject must have been arranged and approved.

If any of the matters have not yet been finalised, or if any of the findings make continuing with the transaction impossible, then written notice must be given to the Vendor's advocates (or the Vendor if they are not using a firm of advocates) before 5pm on the operative date that the Purchaser is withdrawing. The conditions then become null and void and the deposit must be refunded to the Purchaser.

If you are selling and buying on the same day, it is imperative that the conditions of sale for the sale and purchase are signed at the same time and that the conditions of sale for the sale have been signed by the Purchaser and the conditions of sale for the purchase have been signed by the Vendor at the point at which you sign. Failure to do this could result in you having to continue with a sale without having a property to move to or having to continue with a purchase without having funds from the sale to put towards it.

It is common practice that it is only once the parties are satisfied with all of the aspects of the transaction that conditions of sale are signed and the deposit is paid.

5 Court

On the day of completion, all parties attend the court building to consent to the sale/purchase/bond in front of a Jurat. Conveyancing Court sits between 9.30am and 10am on Tuesdays and Thursdays.

If you are selling, it is at this point that all of the contents which do not form part of the inventory detailed in the conditions of sale should have been removed from the property.

The conveyancer (or advocate) acting for the Purchaser will ask the parties to join them in front of one of the Jurats in the court and will introduce the parties and describe the nature of the conveyance and the price at which the property is being sold (this will be the realty only and will not include the price of the contents).

The conveyancer/advocate will ask the parties if they agree to sell/buy and once they have all agreed, the Jurat will sign the document.

At this point, you will hand over/receive the keys to the property and the Vendor is free to leave the court building.

If you are also borrowing, this is the point at which the bond is consented to. Again, the conveyancer/advocate will inform the Jurat of the lender and the amount being borrowed.

They will then ask if you understand the terms of the borrowing and the risks should repayments be missed. Once this has been consented to, the Jurat will sign the document.

You are now free to go to your new property. If you see any problems when you get to your property, it is important to let your advocate/conveyancer know as soon as possible.

Your documents will be signed by one more Jurat and the Lieutenant Bailiff as three signatures are required on each document (one of which must be a Lieutenant Bailiff). They will then be taken to the Greffe office for checking. At 4pm on the day of completion all of the documents that have been consented to in court are registered.

They then stay with the Greffe for copying and adding to the records held there which can take six to eight weeks and will be sent to you by your firm of advocates when this process has been completed.

And that is it! We hope this has helped to demystify the process of conveyancing. Do get in touch if you'd like to speak to one of our partner-led conveyancing team.

The conveyancing journey

Lender

If borrowing, speak to your lender/ broker about how much you can borrow.

Tell your lender/ broker that your offer has been accepted.

The formal mortgage application process will begin.

Lender/broker will arrange the valuation of the property.

Advocate

We receive Conditions of Sale.

We will write to you enclosing a data collection form and an Immunity Certificate application form and request identification and proof of address.

Once we have received the necessary documentation, we will start title searches for the property and perform a site visit to check the physical boundaries while your finance and survey are being arranged.

If boundary discrepancies are found, these will need to be dealt with to ensure good title and to satisfy your lender. These could potentially delay completion of your purchase.

Agent

Start looking for a property. Put in an offer. If the offer is accepted…

Inform the Estate Agent you would like us to represent you.

Draft Conditions of Sale will be prepared by the Estate Agent and sent to you, us and the Vendor.

If the valuation is acceptable to the lender, they will issue you with the Offer Letter.

Lender will instruct their Advocate to investigate title and prepare a Bond.

Lender's Advocate will request property documentation from us to satisfy themselves that title is correct.

Lender's advocate will ensure mortgage funds are available for the court day.

Borrowing 3

Conditions of sale 4

Court 5

We will prepare a title report and liaise with you regarding all of the relevant information relating to the property. We will draft the conveyance document.

We liaise with the bank's Advocate to inform them of all the relevant property information and provide documentation.

If all parties are satisfied with title matters, finance, survey and licence we will arrange a meeting for you to sign conditions of sale at our offices and pay your deposit.

On completion day, we will attend court with you at 9.30am where you will purchase your property and receive the keys.

Our aim with putting together our guide to conveyancing, is to give you a clear understanding of what to expect, prepare you for the unexpected and hopefully answer any questions you might have.

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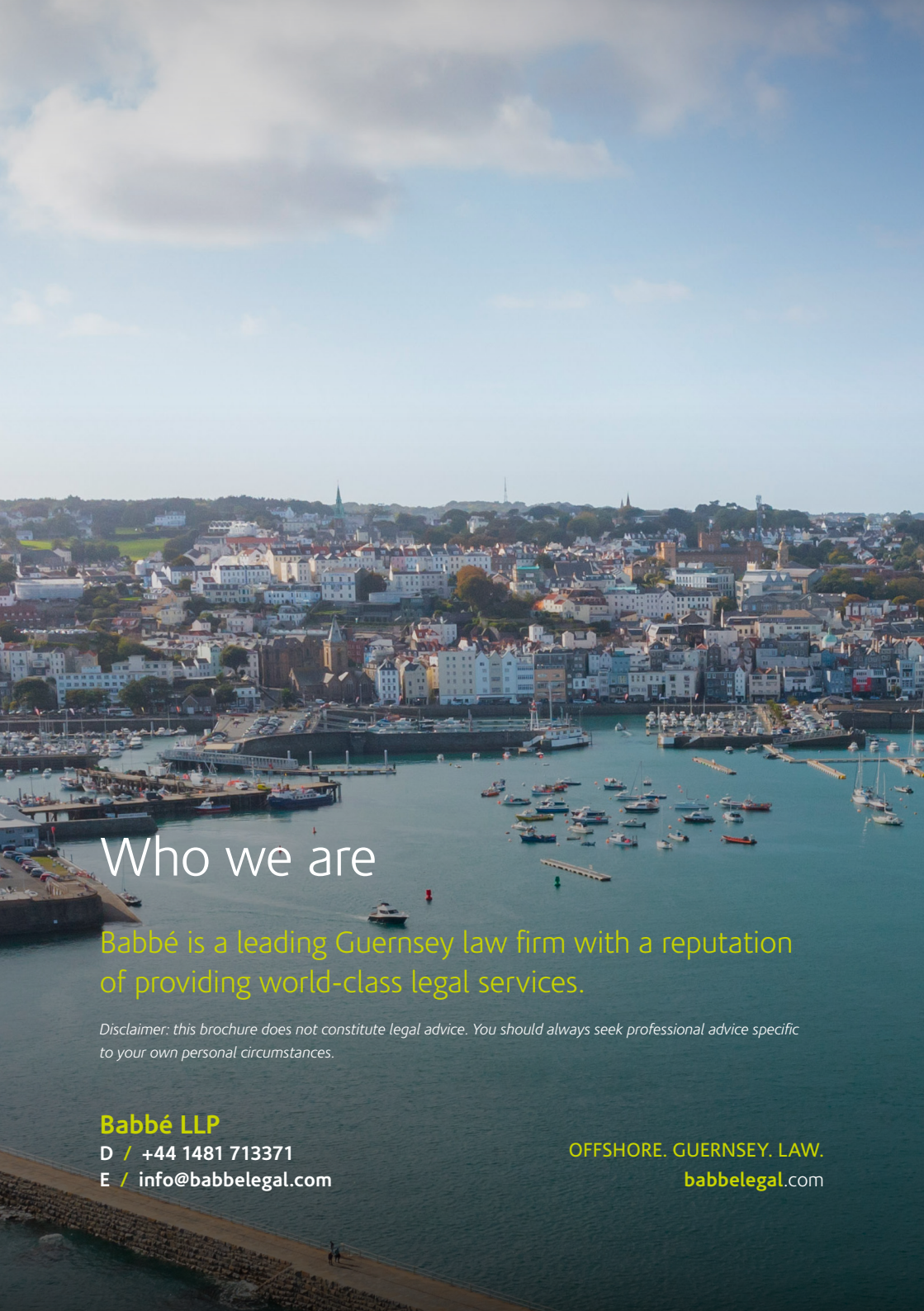

Who we are

Babbé is a leading Guernsey law firm with a reputation of providing world-class legal services.

Disclaimer: this brochure does not constitute legal advice. You should always seek professional advice specific to your own personal circumstances.

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