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### **September 2020**

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## **GUIDE 1**

### **General Overview**

The following is a general guide for buyers and sellers of properties in Guernsey. These briefing sheets should be read in conjunction with the conditions of sale and other documentation that you may receive from us during the course of this transaction.

#### **Conditions of Sale**

Sales of properties in Guernsey are concluded by the signing of a written agreement (generally styled "conditions of sale") by the buyer and the seller. In order to be binding, an agreement must be in writing, and signed by both parties. There are standard conditions of sale, which are prepared by the estate agent or advocate acting on behalf of the seller. It is extremely important to take the advice of an advocate prior to signing conditions of sale.

Conditions of sale set down the terms upon which the parties have agreed to sell/buy a property and stipulate the date on which the sale is to be completed in the conveyancing court in Guernsey. At that time, the conveyance is presented to the court and the parties appear either in person or by a third party (under power of attorney) formally to agree to the conveyance.

Normally, the conditions of sale are agreed upon by the advocates acting on behalf of the seller and the buyer respectively. The parties (usually the buyer first) will then sign the conditions of sale and the buyer will pay the deposit to a "stakeholder", usually the estate agent.

#### **Share Transfers**

A seller may offer to sell the whole of the issued share capital of a company which owns a property. Such transactions were relatively common when there was an associated saving of document duty. This was especially so with regard to open market properties. However, since October 2017, document duty is now charged on the transfer of shares in a property holding company at the same rate as the document duty levied on purchases by way of conveyance.

A share sale agreement is fundamentally different from standard conditions of sale. The document is longer because fundamentally it has to consider due diligence and warranties in relation to the company as well as the property. It is important to note that the purchase of a company means acquiring any liabilities as well as any property asset. It is not advisable to sign conditions of sale with an option to purchase the company. If you are considering a company purchase we would advise that you contact to discuss the process in more detail.

## **GUIDE 2 Guernsey Bar Conditions of Sale**

The following notes relate to the standard printed conditions of sale which you will have either received from the estate agent or from Torode Advocates.

Please be aware that the concept of "buyer beware" applies in Guernsey. In the context of a property purchase, it is for the buyer to raise enquiries, carry out searches (and a survey) and be satisfied as to the property which is being bought. The risk of defects lies with the buyer, unless the seller makes express promises (intended to be relied upon). In the absence of special conditions, the seller is not under any obligation to let the buyer know of any problems which may affect the property. Practical examples might include the state and condition of a boiler or white goods, and the provision and arrangements for utility supplies.

Notes on the key sections of the standard printed conditions of sale:

#### **1 Particulars of the Property/the Parties (page 1)**

The conditions of sale will describe the property and the contents which are to be sold and will also give the names and addresses of the seller and the buyer.

#### **2 The Purchase Price (page 2)**

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The purchase price is apportioned into two amounts. One figure represents the realty (being the sum payable in respect of the bricks and mortar and also the land) and the other figure represents the personalty (being the sum payable in respect of the contents within any buildings or moveable items on the land). Document Duty (payable by the buyer to the States of Guernsey) is charged on the sum payable in respect of the realty and not the personalty.

Every conveyance of a property is required, by law, to contain a declaration on the part of both the seller and the buyer with regard to the consideration payable which in turn determines the amount of Document Duty payable. HM Greffier administers the payment of Document Duty on behalf of the States of Guernsey. He has the right pursuant to The Document Duty (Guernsey) Law, 2017 to investigate any declarations made.

HM Greffier will expect the amount of the purchase price attributed to personalty to be no more than 2.5% of the total purchase price, save in exceptional circumstances. Where there is less personalty, or it has little value, then you should expect a lower attribution. If you require clarification or have any concerns in this regard you should contact the estate agent or us for further advice.

### **3 Completion (page 2)**

Completion will take place on a stipulated completion date.

Conveyancing in Guernsey takes place in public in the Royal Court, sitting as a conveyancing court. It normally sits for this purpose at 9:30 am on Tuesdays and Thursdays throughout most of the year and at that time both the seller and the buyer must appear in person or by attorney.

### **4 Deposit (Condition B)**

Unless otherwise agreed, the buyer will be obliged to lodge a 10 per cent deposit with the seller's agent or Advocate (the stakeholder), pending completion. Any interest on that figure will accrue to the buyer and will be paid over to the buyer on completion. If the buyer requires the deposit to be placed with a particular bank, arrangements should be made prior to the signing of conditions of sale.

The parties may agree a deposit of less than 10 per cent. Although not unusual, this creates a greater risk for sellers and we would recommend taking legal advice should that scenario present itself.

### **5 Purchase Price (Condition C)**

In normal circumstances, cleared funds representing the balance of the purchase price and all purchase costs must be paid into the buyer's advocate's account no later than 48 hours before the completion date.

Our account details will be provided separately.

Please note that the seller of a property should not necessarily expect to receive cleared funds. This is because the purchase price is paid through the account of the new buyer's advocate and funds will not normally clear through the banking system for three to five working days. In the majority of cases, a seller should expect to receive the sale proceeds on completion in the form of a cheque.

### **6 Vacant Possession/Tenancies (Condition D)**

The conditions of sale stipulate that vacant possession will be given to the buyer on completion. Normally the seller will have physically vacated the property before the sitting of the conveyancing court at 9:30 am, and it is customary for keys to the property to be handed over at completion. Any departure from this should be agreed between the parties prior to the signing of conditions of sale.

If you are the seller, and the property is sold with vacant possession, you should ensure that all personal items (other than those listed on conditions of sale) are removed from the property on completion as failure to do so could constitute a default on your part.

Exceptionally, the seller will negotiate with the buyer for written permission to continue to occupy the property for a stipulated period. A property may also be sold subject to existing tenancies.

### **7 Risk (Condition E)**

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It is very important to ensure that the property and the contents are insured. Such insurance should be effective as from midnight before the completion date in the case of a purchase. A seller should continue to insure the property until midnight following the completion date.

### **8 Rent, Rates and Taxes (Condition F)**

On the completion date, there will be an apportionment of rent, rates, taxes and service charges affecting the property, to take account of monies paid and/or received in advance by the seller or due by the seller in arrears.

As part of the apportionments, the seller is required to pay the Tax on Real Property for the current year.

The seller is also required to pay any parochial rates and management service fees outstanding as at the date of completion.

However, no provision is made in the conditions of sale for apportionment of the value of domestic oil.

Although it is not commonly requested, if the property is served by an oil tank and the seller requires an apportionment to be made in respect of the oil, the seller should advise us prior to the signing of the conditions of sale.

A seller should arrange for all meters at the property to be read prior to completion. Both the seller and the buyer should contact their service providers in advance of completion to complete all necessary formalities. A seller should also ensure that any outstanding accounts are paid in full as these accounts will not be apportioned on completion.

### **9 Right, subject to certain circumstances, to Withdraw (Condition G)**

The buyer may have a right to withdraw until pm on the operative date (found on the back page of the conditions of sale) if the buyer is not satisfied in respect of finance, survey, property matters and housing licence requirements. The buyer will normally be given 10-14 days to deal with these matters. We strongly recommend that a buyer has a survey carried out at the earliest opportunity.

The conditions of sale can be either signed conditionally or unconditionally.

#### **9.1 Conditionally**

If the seller of the property agrees, the buyer may be able to sign and pay the deposit immediately. This will bind the seller into the conditions of sale, but will allow the buyer to withdraw for the nominated reasons set out above, up to the "operative date". If the buyer withdraws before the operative date for any of the nominated reasons, the buyer's deposit and any interest accrued will be returned to the buyer.

#### **9.2 Unconditionally**

If the seller does not agree to sign conditional conditions of sale (for instance, because the seller does not wish to commit to the sale until the seller is certain of the seller's onward purchase) or if the buyer chooses not to sign conditionally, the operative date should be considered by the buyer to be the guide date by which time the buyer should be in a position to sign the conditions of sale unconditionally.

### **10 Covenants and Warranties (Condition H)**

The seller will give covenants (legally binding obligations) in respect of:

- disputes relating to the property/contents,
- ownership of the contents,
- the carrying out of development in accordance with the relevant permissions;
- the current usage of the property; and
- the property being inscribed on the Housing Control Register (if an open market property).

Most development work will need planning permission from the States of Guernsey Development & Planning Authority. Building consent (under the building regulations) will be required from the

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Development & Planning Authority's Building Control section. You should note, however, that Condition H (iii) (the covenant concerning development) covers only the period of ownership of the seller. It does not cover the period before the seller's purchase of the property.

If you are the seller, it is important that you inform US prior to the signing of conditions of sale if you are unable to provide such warranties.

#### **11 Title/Rights/Servitudes (Condition I)**

The seller is obliged to give good title to the property, subject to the existing rights and servitudes (burdens affecting the use and enjoyment). When acting for you as a buyer we will carry out the necessary checks concerning previous title, rights and servitudes and will visit the site to check the boundaries. You will be advised promptly of the results of our searches.

#### **12 Retrait Lignager (Condition J)**

The doctrine of Retrait Lignager was abolished on 7th May 2008 and this condition is no longer relevant.

#### **13 Rentes (Condition K)**

The property will be sold free of rentes unless otherwise stated in the conditions of sale. The payment of rentes is now a relatively rare old Guernsey device. If the property is sold subject to rentes, the buyer will be obliged to continue to pay the annual charge or alternatively to redeem the rentes (which with inflation, will generally be at a modest cost).

#### **14 Acknowledgement (Condition L)**

Under this Condition the buyer acknowledges that the buyer is not relying on any statement made by the seller or the seller's agents unless such statement is in writing.

#### **15 Default (Condition M)**

Once the conditions of sale have been signed, if either party fails to complete on the completion date, then, in the case of the seller, the deposit must be returned to the buyer together with an equivalent sum as liquidated damages. In the case of the buyer, the deposit is forfeited. No other liability will accrue to either party. You should note that there is no remedy of forced completion of contract under Guernsey law in respect of house purchases and that stipulated dates cannot be missed.

#### **16 Authority (Condition N)**

With this Condition the seller gives the buyer authority to inspect the records held at all States' departments in relation to the property and also to have reasonable access to the property before completion to inspect it.

#### **17 Variation (Condition O)**

There can be no variation of the conditions of sale unless it is in writing and signed by both parties.

#### **18 Miscellaneous (Condition P)**

There is no binding contract until both parties have signed and the deposit has been paid. The property and the contents are sold subject to the printed standard conditions of sale, unless varied by any special conditions referred to in the signed conditions of sale.

## **GUIDE 3 Completion formalities in Guernsey**

### **Completion by Conveyance**

Conveyancing in Guernsey takes place in public in the Royal Court, sitting as a conveyancing court. It normally sits for this purpose at 9:30 am on Tuesdays and Thursdays throughout most of the year and at that time both the seller and the buyer must appear in person or by attorney.

If you are unable to be in Court, you must either have executed a power of attorney for use at completion or have consented in an earlier sitting of the conveyancing court. A power of attorney can be prepared quickly by us.

If you are appearing in person, we will tend to meet you in the foyer of the Court Complex at about 9:00 am on the completion date.

Failure by you to complete the transaction after entering into conditions of sale unconditionally will result in you being liable to pay damages (normally 10 per cent of the purchase price). If you are unable to attend the conveyancing court for any reason, please let us know.

It is also advisable to execute a power of attorney if you intend to travel to or from the Island in the days immediately prior to completion, as no allowance is made for delays resulting from bad weather or otherwise.

### **Completion by Share Transfer**

If the transaction is to complete by transfer of the issued shares of the seller company rather than by conveyance, a meeting of the Board of Directors will need to be held on the day of completion.

Any bond to secure borrowing against the property will have to be consented to before the conveyancing court in the usual way.

### **Dress Code for the conveyancing court**

The conveyancing court has issued guidelines for the benefit of those people attending. In particular, dress should be smart with no shorts, flip flops or beachwear. There are also security checks (similar to airports) at the Royal Court entrance and you should not bring anything that might cause an issue.

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. ©2020 TORODE ADVOCATES ALL RIGHTS RESERVED

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