

## Guide Sheets

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This guide is only intended to give a summary and general overview of the subject matter as at September 2020. 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.

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# GUIDE 1

## General Overview

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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 us to discuss the process in more detail.

# GUIDE 2

## Guernsey Bar Conditions of Sale

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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 Purchase Price (page 2)**

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 personality (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 personality.

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 personality to be no more than 2.5% of the total purchase price, save in exceptional circumstances. Where there is less personality, 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)**

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 5 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 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 7<sup>th</sup> 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

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### **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.

# GUIDE 4

## Housing Considerations

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### Local Market and Open Market Houses

In Guernsey, there are two categories of property - those on the "Local Market" and those on the "Open Market". Any buyer intending to buy and live in a local market property should satisfy himself/herself that he/she possesses the necessary residential qualifications to do so. Residential qualification usually arises as a result of a person having been born in Guernsey or having lived here for a certain number of years.

People who do not have residential qualifications must live in either open market properties (without restriction save for any immigration requirements) or in local market properties if they have been given a licence by the States of Guernsey Committee for Home Affairs.

Permits are normally only granted to persons who are considered to be essential to the community, usually because of the type of jobs they do, but there are some permits issued on compassionate grounds.

If a buyer neither complies with local market qualifications nor obtains a permit, he/she can only occupy an open market property. It is therefore important to ensure that the property is inscribed on the Open Market Housing Register and the seller will normally give a warranty that the property is on the register and that the seller is not aware of any reason as to why it should no longer be so registered.

We also carry out a search to check that the property is on the register, and it is also normal to request a representative of the States of Guernsey Committee for the Environment & Infrastructure to confirm the inscription. A States of Guernsey fee applies in respect of this service. The amount of such fee will be detailed in our welcome pack.

You should note that occupation of an open market property by you must be in accordance with The Open Market Housing (Guernsey) Law, 2016 (the Law) and in respect of Part A dwellings, you should note that the property must not become used or usable as more than one dwelling.

For further information concerning the open market, please refer to the Open Market Commentary from the Committee for the Environment & Infrastructure available online.

### Houses - Part A

The owner of any registered open market Part A dwelling who wishes to alter it in any way, whether structurally or by change of use, is required by law to inform the Committee for the Environment & Infrastructure in writing of the nature and extent of any such alterations at least seven days before such alterations are effected. The Committee for the Environment & Infrastructure will require sight of any relevant plans to clarify the proposals.

This is in the interests of the owner as it is possible that the works proposed are such that the Open Market status of the dwelling could be jeopardised.

One of the most far-reaching provisions of the Law is that, if a dwelling is inscribed in Part A of the Open Market Register (je it is used as one residential dwelling) and is used or made usable as more than one dwelling, the Committee for the Environment & Infrastructure then has to delete the entry relating to that dwelling from the Register. Another important provision is that if any registered dwelling is combined, whether by alteration or

otherwise, with a "local market" dwelling so as to be used or made usable as a single dwelling, then the single dwelling is no longer eligible to be on the Open Market Register.

### **Hotels/Guest Houses - Part B**

There are slightly different provisions made in the Law as regards those registered dwellings which are inscribed in Part B of the Register, because they are being used as hotels or guest houses under a permit issued by the States of Guernsey Commerce & Employment Department.

Many hotels and guest houses are not eligible for inscription in Part A of the Register if they cease to be used as accommodation for tourists.

Under the Law only qualified residents, the owner, principal tenant, manager and their immediate families and full-time staff of the hotel and tourists are now able to occupy without a licence. All other occupants require licences, which are subject to the Commerce & Employment Department's policies. The Commerce & Employment Department considers all applications for licences on their merits, in the light of circumstances and policies prevailing at the time of application.

### **Residential and Nursing Homes - Part C**

An "open market" dwelling which is registered as a nursing or residential home by the States of Guernsey Committee for Health & Social Care under the Nursing Homes and Residential Homes (Guernsey) Law, 1976 is inscribed in Part C of the Register.

With the exception of its owners, and the manager and full-time staff of the home, persons who are not qualified residents require housing licences to occupy any dwelling on Part C of the Register.

### **Houses of Multiple Occupation - Part D**

Open Market properties on Part D of the Register may be occupied by unrelated individuals as Houses of Multiple Occupation.

Owners of registered dwellings are advised to make themselves aware of the provisions of the Law as it affects their dwelling. If in doubt owners should consult their legal advisers. These notes are not to be taken as an authoritative statement of all the provisions which apply to registered dwellings.

Copies of the Laws may be obtained from: Her Majesty's Greffier, The Greffe, Royal Court House, St Peter Port, Guernsey, GYM 2PB, tel: +44 1481 225 277.

The States of Guernsey Committee for the Environment & Infrastructure can be contacted on +44 1481 227000.

# GUIDE 5

## Planning and Development

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### An Overview of Planning Considerations in Guernsey

The Land Planning and Development (Guernsey) Law, 2005 (as amended) (the Law) came into force on the 6 April 2009. The Law gave new enforcement powers to the Development & Planning Authority and allows the Development & Planning Authority to take enforcement action against an owner of a property irrespective of whether it was that owner, or a previous owner, who was responsible for a breach of the Law.

An Immunity Certificate allows a buyer of a property to be given immunity from prosecution resulting from a breach of the planning laws occurring since the 6 April 2009 to the date of issue of the Immunity Certificate. However, an Immunity Certificate will not act as any guarantee that:

1. any development has been authorised by the Development & Planning Authority;
2. any works undertaken to the property have received Building Control approval; and
3. any works undertaken to a property listed on the Registers for Protected Trees, Buildings and Monuments have received the approval of the Heritage division of the Development & Planning Authority.

An Immunity Certificate will not prevent the Development & Planning Authority from taking action under the previous planning laws in respect of breaches of planning which occurred before the 6 April 2009. However, under the previous planning laws action could not be taken against new owners in respect of breaches committed by previous owners.

In order to benefit from such immunity, a buyer would have to prove that the breach occurred prior to the issue of the Immunity Certificate. Furthermore, previous breaches in planning are assumed, by the Development & Planning Authority, to have occurred under the new planning laws unless it can be proved otherwise.

Please be aware that should you make a planning application once you become the owner of the property, this will require the Development & Planning Authority to review the case file. An Immunity Certificate does not act as a warranty against illegal development and therefore as a precondition of any planning consent, the Development & Planning Authority may require the rectification of an earlier breach of the planning laws by and at the cost of the buyer.

In the circumstances, you (or your surveyor on your behalf) should be satisfied (through a paid planning search) that all works, additions, alterations and changes of use carried out to the property have been carried out with the consent of the relevant authorities and in compliance with all building regulations. Below are two examples provided by the Development & Planning Authority as to why a paid planning search can be so important:

**Example 1:** A house is advertised with a large garden and is sold. However, when the buyer applies for planning permission to carry out works in the garden, it transpires that the 'garden' is agricultural land and domestic development would be contrary to planning policy. A property search prior to purchase would have revealed the permitted use of the land.

**Example 2:** A house is advertised and sold with bedrooms in the roof space. The buyer would like to further alter and extend the property. However, when planning permission is sought, it becomes apparent that no approval has been granted for the loft conversion, which contravenes several Building Control and fire safety requirements. In order to rectify these problems, it costs the buyer a considerable sum of money which was not anticipated when the buyer purchased the property. A property search prior to purchase would have revealed that the loft conversion was illegal development.

You may also wish to seek confirmation from the Development & Planning Authority that the current zoning and use class of the property will not in any way restrict your intended use or development of the property.

If you (or your surveyor on your behalf) wish to carry out a paid planning search at the Development & Planning Authority, you will require an appropriate letter of authorisation from the estate agent or the seller. In most cases, a letter of authorisation will have already been included with the Immunity Certificate application which we will make on your behalf, however, should you require a copy of that letter please advise us. It is prudent to make an appointment with the Development & Planning Authority should you wish to carry out such a search.

We strongly advise you to obtain an Immunity Certificate in respect of the proposed purchase of the property (and/or if you are acquiring an interest in a property by way of any transfer of interest). If you are financing the purchase of the property with a mortgage, your lending Bank will almost certainly make such loan conditional upon you obtaining an Immunity Certificate. We are able to apply for an Immunity Certificate on your behalf, an application form in respect of which is enclosed with the Torode Advocates Welcome pack. The application will need to be made as soon as possible so as not to delay your purchase and you will need to complete the form including the following sections:

1. Section 13: Delete the applicable declaration stating if you have or have not been, in the last four years, an owner, occupier or person with an interest in the land in question, and
2. Section 14: Sign and date the enclosed form (in the case of more than one buyer, the form should be signed by each buyer)

Once completed, please return the form to US together with a cheque made payable to 'States of Guernsey' as the Development & Planning Authority levies a fee in respect of such applications. The amount of such fee will be detailed in our welcome pack.

The Immunity Certificate will be handed to you on completion and should be kept in a safe place for future reference.

Due to the complexities of the planning procedures, it is advisable in the circumstances to instruct a surveyor. On that basis, please note that we do not carry out any Development & Planning Authority searches whether in respect of the planning history, the use class or otherwise of the property, nor in respect of the planning history or current applications relating to neighbouring or nearby properties. You should therefore make your own enquiries in relation to the use or intended use of neighbouring or nearby properties and how such use might impact upon your personal enjoyment of the property.

If you have a general query you may contact the Development & Planning Authority (Telephone number 01481 226 200). Current planning and/or building control applications made since 6 April 2009 can be found at: [gov.gg/planning](http://gov.gg/planning)

This planning portal for the States of Guernsey is user friendly and contains a wealth of helpful information.

Please be aware that we also do not carry out any searches or other investigations in respect of (nor do we advise on):

1. the existence or future siting of communication/mobile telephone masts in the vicinity of the property information regarding such masts can be found at: [maps.digimap.gg](http://maps.digimap.gg) or by contacting your surveyor, or
2. the existence (or previous existence) of Japanese Knotweed or other noxious weeds either on the property or in the vicinity of the property; or
3. any embargo or other restriction which may now or in the future be enforced by the States of Guernsey or other relevant authority in relation to the excavation of any road adjacent to the property.

Information regarding road embargos can be found at [iris.gov.gg/website/roads/embargo/cutembargos.asp](http://iris.gov.gg/website/roads/embargo/cutembargos.asp) or by

contacting the Development & Planning Authority.

# GUIDE 6

## Do I need Planning Permission?

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Not all development will require formal planning consent. Minor alterations to your home and/or surrounding garden amenity areas do not necessarily require planning consent as they may be covered under the Exemptions Ordinance (2007).

The Exemptions Ordinance (2007) covers minor developments such as small extensions to dwelling houses, the erection of garden structures, sheds and/or glasshouses, the erection of gates, fences, walls and/or earthbanks and so on. There are 22 such exemptions. However, all such exemptions are subject to a number of important considerations as follows:

1. Any such exemption request has to be in relation to your recognised domestic curtilage only.
2. The Exemptions Ordinance does not apply to protected monuments and/or protected buildings.
3. The total area for exempt development for residential properties is limited to 50% of the area of the domestic curtilage (excluding the ground floor of the dwelling as originally constructed).
4. All of the conditions of the exemption must be satisfied for the exemption to apply.
5. These exemptions do not apply to Building Regulations.

For more extensive development proposals, planning permission would be required. For example, the knocking down and rebuilding of domestic dwellings, significant extensions and/or alteration works, any change of use request etc. These types of works would need more significant application details and would constitute development under the Planning Law.

In relation to any such application, the applicant needs to be aware of the context of the application, especially if the site is a protected monument or protected building (or would affect the setting of a protected monument or building). Any such application affecting either protected monuments or protected buildings would require the advice of the States of Guernsey Development & Planning Authority from an early stage.

Further issues affecting planning requests could be in relation to the impact of the following:

1. Any tree that is protected on site by a Tree Protection Order and/or is protected by a previous condition, and/or
2. Whether or not the site is located within a designated Conservation Area, a Site of Special Significance and/or an Area of High Landscape Quality. If this is the case, then certain sensitive aspects of such development would need to be considered carefully before submitting any application to the Development & Planning Authority.

Furthermore, it must be noted that any exemption request and/or application request may still require a Building Regulations application (and this is most important in relation to applications for development of listed buildings). The reason being is that the policies which protect listed buildings refer to issues such as the "fabric" and/or "setting" of the listed building. On this basis, any significant building control condition could adversely affect a previous planning permission, and this is a key point of note when dealing with listed buildings as one application could affect the basis of the other if not dealt with simultaneously.

If such an historic issue arises with any prospective planning application, then the records at the Development & Planning Authority can be researched with the relevant owner's authorisation. A detailed file search will provide a full history of the site and/or give the applicant a full record to be able to check any site concerns. For example, a certain site may well be protected by certain conditions and these conditions may have to be adhered to and/or removed if any new planning application is to be made.

As stated above, it must be remembered that all applications for planning permission will be considered in the context of where the site is located, either within the UAP or the RAP which are the two current development plans for the island.

The majority of development works in Guernsey are carried out with the relevant planning permissions and building regulation licences in place and implemented in accordance with their terms. In cases where this has not occurred, we would recommend, prior to making any application in relation to a property and/or prior to acquiring any property, the utilisation of two of the mechanisms provided by the Development & Planning Authority which are in place to help protect residents and/or future owners from acquiring realty which has been the subject of possible unlawful development.

Firstly, there exists the Immunity Certificate process referred to in Guide Sheet 5.

The concern for new owners and/or leaseholders may be that although action could not be taken against them as prospective new owners, action could be taken against previous owners. Moreover, the premises might not meet the expectations, aspirations or development proposals of such new owners.

Nevertheless, this process helps facilitate peace of mind for any prospective new owner and any lending bank, which, in Guernsey will not generally release funds for property transactions in residential trade without an Immunity Certificate.

The second mechanism designed to protect property owners and buyers is the process of conducting property searches, whereby for a fixed fee the Development & Planning Authority will undertake a full property search which will provide prospective buyers and any other interested party with a full planning history in relation to approvals, refusals and/or recognised Use Classes. This may well assist the owner/buyer with identifying the development opportunities of the site and/or any limitations or problems of which they may need to be aware.

Should you have any queries relating to the issues raised in this briefing, or should you require planning or property law advice generally, please do not hesitate to contact us.

## GUIDE 7

# Population Management/Immigration, Work Permits & Tax Position

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### **Right to Work/Immigration**

Under The Population Management (Guernsey) Law, 2016 a person may only work in the Island if he or she holds an appropriate Permit or Certificate.

Providing that you do hold the appropriate qualification and have a right of abode in the United Kingdom and the Channel Islands under the relevant provisions of the United Kingdom immigration legislation, such a document should be granted to you (but please see below).

If you do not have such a right of abode, the position should be clarified with the Passports and Immigration Office, White Rock, St Peter Port, Guernsey. (Telephone number: +44 1481 741 420) prior to a commitment to purchase, to ensure that you and your family can live and work in Guernsey on a permanent basis.

### **Tax Position**

If you are moving to the Island, it is important to obtain full advice concerning your tax position from an accountant both here in Guernsey and in the country of your previous residence.

# GUIDE 8

## Holding property in Guernsey: A note on Co-Ownership

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### Co-ownership

The way in which real property is owned is known as "vesting". When a property is to be owned by more than one person, it is important to consider how it will be vested in the owners. There are two types of co-ownership in Guernsey, joint ownership ("survivorship") and ownership in common ("undivided shares").

You will need to let us know which form of ownership you have chosen in advance of completion.

### Joint Ownership ("Survivorship")

If you purchase a property on a survivorship basis, upon the death of the first of you, the surviving owner (presuming that there are only two such owners) will automatically become the sole owner. This is the more common way for a husband and wife to buy property.

Survivorship provides the security of knowing that if something were to happen to the other owner, you have absolute control over the property (especially if you have life assurance or have not borrowed). In some cases, this form of vesting may not suit. For instance, you may wish to leave a share in the property to someone other than the person with whom you are buying upon your death. This is important where you have children by a previous marriage or relationship, or you wish to benefit other family members from what is likely to be your most valuable asset.

If you are not married and wish to buy on a survivorship basis, but have contributed different amounts to the purchase, it is important that you bring this to our attention. This point is addressed in our "Client Details and Finance Form".

### Ownership in Common ("Undivided shares")

This means that the owners of a property each own a separate (but not physically) and distinct share, which will pass to their heirs upon their respective deaths, as opposed to the remaining owner or owners. This form of ownership should be considered if you want to be certain that a share in the property will pass upon your death to someone other than those with whom you own it. This is especially common in the case of those who have a child by a previous relationship, and young buyers who wish to benefit their family.

You must be aware that this form of ownership does not provide the security of survivorship. The survivor of you may end up sharing ownership of the property with the heirs of the first of you to die. Those heirs could then force a sale of the property, unless it is agreed at the outset that the survivor of you should have a right of enjoyment over the property for life or for a shorter period of time.

If one of you is paying a greater proportion of any mortgage repayments, that imbalance can be reflected in the division of shares, which can be in any proportions.

## **Disparity in Initial Contributions**

Any initial disparity in your contributions to the purchase price should be brought to our attention. It may be that we can prepare a side agreement, which will seek to preserve the value of an initial investment in the event of the property being sold. Without any agreement, it is likely (in the case of dispute) that you will each be entitled to an equal share of the net value of the property.

These documents, often termed "co-habitation agreements", have not been tested before the Royal Court, but this is perhaps testament to the fact that the parties tend to respect their terms. Such agreements have less effect in the case of married couples, or indeed couples who subsequently marry. Each party may wish to seek independent advice on the terms of any agreement.

# GUIDE 9

## Inheritance in Guernsey

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Please be aware that Guernsey has some unusual inheritance laws relating to both realty and personalty.

You should seek legal advice in Guernsey prior to signing conditions of sale as to the inheritance implications of purchasing property in the Island.

The Inheritance (Guernsey) Law, 2011 ("the Law") was introduced on 2 April 2012. The Law removed the previous régime of forced heirship and means that after that date you could leave your Guernsey real estate, and if you are domiciled in Guernsey, your worldwide personal estate, to whomever you choose. This freedom is, however, subject to potential claims by any person who believes that reasonable financial provision has not been made for them under your Will.

Those who believe that reasonable financial provision has not been made for them are entitled to apply to court to change how an estate is distributed. Such a claim can be made in respect of a Will executed after the Law came into force or where no Will has been made. The following people can make such an application:

1. A spouse or civil partner;
2. A former spouse or civil partner that has not remarried or formed a new civil partnership;
3. Any person living as if spouse or civil partner for at least two years before death;
4. A child of the deceased;
5. A person treated by the deceased as a child of the family; and
6. Any person who was being maintained by the deceased.

A claim made by a spouse or civil partner can be for such financial provision as it would be reasonable in all the circumstances for a spouse or civil partner to receive, irrespective of whether it is not needed for that person's maintenance. Any other applicant is limited to applying for reasonable financial provision for such person's maintenance.

When the court is deciding if the person making the claim has not received reasonable financial provision, they will have regard to the following:

1. The current and future financial resources and needs of:
  - 1.1. the applicant;
  - 1.2. any other applicant; and
  - 1.3. any beneficiary of the estate;
2. Any obligations and responsibilities that the deceased had towards any person making a claim or any beneficiary of the estate;
3. The size and nature of the estate;
4. Any disability of any person making a claim or any beneficiary of the estate; and
5. Any other matter which the court considers relevant.

Any claim against the deceased's estate must be commenced within six months of the date of death.

The Law reflects the system that has been in place in England and Wales since 1975. We can look to the decisions of the courts in England and Wales for guidance and there have been several cases where claims have been made by heirs. If you were thinking about removing any beneficiary from your current Will or excluding anybody from a Will that you are going to make, please contact us to discuss the matter in more detail.

If you wish to make a Will or discuss any aspects of inheritance or estate planning, whether your estate is simple or complex, please contact our experts who can assist with preparing a Will tailored to your specific circumstances.

# GUIDE 10

## Costs

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In addition to our professional fees, Document Duty, Court fees, Jurats' fees and Registration fees are payable to the States of Guernsey.

Please note that:

1. we have a minimum legal fee - details will be provided on request;
2. where a plot of land is being purchased with a builder-tied contract, our fee will be based on the cost of the plot and on the aggregate of the building contract stage payments;
3. an additional fee will be payable for advice on building contracts;
4. we do not advise on building specifications;
5. we reserve the right to charge an abortive fee for the time we spend on a transaction which does not proceed to completion. In those circumstances, we would discuss our fee proposals with you.

Details of our costs and payments to third parties are set out in the attached Letter of Engagement.

For ease of reference, before completion, we will provide you with a statement of account which sets out all financial aspects relating to your matter.

In the event that borrowing is required, all banks stipulate that any borrowing is secured by a charge on the property, which is called a bond. That will normally be consented to by you at the same time as the conveyance is completed in the conveyancing court.

Besides the bank costs, which will be incurred in obtaining the loan facility, there will be further charges in respect of the registration of the bond at the Greffe (the States of Guernsey Records Office).

If a loan is to be secured on Guernsey realty by way of a bond, the fee is generally £2 per £1,000 borrowed plus £338.50 and a further £56 per each additional debtor. Please kindly note that these fees are payable to the States of Guernsey and to the Advocates for your bank.

# GUIDE 11

## Cadastre and Rent Control

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### Cadastre

All real property in Guernsey is recorded in the States Cadastre Department. The same comprises a basic description of the property, its category, approximate area (based on information taken from the dig-map) and Tax on Real Property (TRP).

The TRP Units and the Category of the property are used to calculate rates payable thereon. There are two forms of rates levied against properties:

- Parish Rates which are payable to the Constables of the parish. These are generally payable in June of each year. The amount paid can vary from year to year depending on parish expenditure. These consist of an Owner's Rate and a separate Refuse Rate.
- TRP which is payable to the States of Guernsey (Cadastre Department). This tax is payable in February of each year by the owner of the property as at the 1st January of that year. The rate of payment is set by the States of Guernsey.

### Rent Control

Certain properties in Guernsey are rent controlled, details of which are held on a register lodged at the Cadastre Department (the Register).

The Rent Control Law exists to allow a fair rent to be determined for both the tenant and the landlord in the event of a dispute between them. If you are buying one of these properties and if you intend to lease out the property you need to be aware of the provisions of the Rent Control Law.

Below are notes issued by the States of Guernsey concerning such Law.

#### States of Guernsey Notes:

The Rent Control Law exists to ensure rents are fair for both tenants and landlords in the event of a disagreement. The Rent Officer's role is to give an independent and impartial judgement and set a fair rent on private properties. Housing can then act as an Independent Rent Tribunal when necessary. The Rent Control Law does not apply to property owned by the States of Guernsey or the Guernsey Housing Association.

#### Applications to the Rent Officer

In general, the following premises can be subject to rent control:

- A dwelling house occupied by one household, if its Rateable Value is £50 or less,
- Premises used or intended to be used as a dwelling by more than one household, regardless of the Rateable Value;
- Any part of a premises which is used or intended to be used for some other purpose (e.g. a shop), regardless of Rateable Value.

A tenant, who has been in lawful occupation for at least three months, or a landlord, may apply to the Rent Officer for assessment of the fair and reasonable rent, whether the premises are furnished or unfurnished. Please contact the Rent Officer on 717000 for an application form.

## **Matters on which the Rent Officer may be asked to decide**

If the landlord and the tenant are unable to agree on the amount which should be paid for other items connected with the tenancy - such as services provided by the landlord, or the hire of furniture - the Rent Officer may also be asked to decide on these matters.

## **What the Rent Officer will do**

When an application has been received, the Rent Officer will visit and inspect the property. Before a decision is made, both parties will have the opportunity to give their views in person or in writing. Rent Control applies for 5 years after the decision has been made.

## **If you are not satisfied with the Rent Officer's decision**

If you are not satisfied with the Rent Officer's decision, you can apply to Housing for that decision to be reviewed. You should bear in mind that Housing could confirm the Rent Officer's decision or fix an amount higher or lower. An application must be made within 1 month on a special form which will be provided on request. The landlord and tenant will be given the opportunity to speak or write to Housing. In some circumstances, a further appeal can be made to the Royal Court within the next 3 months.

## **When circumstances change**

If circumstances relating to a controlled dwelling change after a rent has been fixed, an application can be made to the Rent Officer for re-assessment of the rent payable in the new circumstances.

## **Notice and registration of decisions**

Any decision made by the Rent Officer or Housing will be notified in writing to both the landlord and the tenant, and details will also be kept by the Rent Officer in a Register of Rents which may be inspected at any time during office hours.

A notice indicating that a dwelling is rent controlled should be displayed in a conspicuous place in the dwelling.

## **Annual Review**

Housing reviews all controlled rents annually. If Housing decides to alter the rents, it will make a Variation Order setting out what alteration may be made to controlled rents. This order will be published in La Gazette Officielle and a copy will be sent to the landlord and tenant of every controlled dwelling to which it applies.

## **Rent Book**

If the rent is paid in cash, or if either the landlord or the tenant wishes, a rent book must be provided free of charge by the landlord in a form approved by Housing.

## **Eviction**

A landlord may not begin Court proceedings for the eviction of a tenant of a controlled dwelling within twelve months of the date of the Rent Officer's decision, or of a subsequent decision by Housing or the Royal Court in the event of an appeal. In order to take such proceedings within that period, they will have to satisfy the Court that the proceedings are wholly unrelated to the operation of this Law.

## **Deposits**

At the start of a tenancy, the landlord may require the tenant to pay a deposit of up to one calendar month's rent in addition to the rent payable in advance.

## **Other payments**

It is an offence to offer, solicit, demand, make or accept any premium, deposit or other payment (by whatever name called) in respect of the occupation of a controlled dwelling in excess of the amount specified in the Register of Rents.

# GUIDE 12

## Boundaries, Services, Future Buildings/ Extensions, Registers for Protected Trees, Buildings and Monuments and Fire Regulations

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### Boundaries

1. The Boundary features of a property are used to demarcate the extent of the property. It is important, therefore, not to remove, replace or reposition the boundary features, as the replacement, removal or repositioning of boundary features could cause a dispute to arise. Should you wish to replace, remove or reposition a boundary feature, the agreement of the owner of the neighbouring premises should be sought and the new boundary formalised by a conveyance and/or an agreement entered into with the neighbour before the conveyancing court.
2. The owner of a property is responsible for keeping all roadside hedges tidy and cut back so as not to obstruct the public road. There is a legal requirement to cut roadside hedges in the first 15 days of June and in the last 15 days of September in each year. A similar requirement relates to the maintenance of ditches (streams) located within the property.

### Services

We advise you to seek advice from your surveyor with regard to the location of the services (gas, water, electricity, telephone and drains etc) serving the property. It is important to ensure that the services route directly to the property from the public road and not via any neighbouring properties. If your surveyor establishes that the services do run through neighbouring properties, please advise us so that we can establish whether there are necessary rights in place to allow for such services to be so located.

Unfortunately, the service providers are often unable to provide us with information concerning the location of services in private land and therefore we are unable to provide you with definitive information on the location of such services.

Should you wish to install additional services you should, prior to installing services in a neighbouring property, ensure that there are necessary rights in place permitting you to do so or, if no such rights exist, you should enter into a formal agreement with your neighbour allowing you to undertake such installation. The latter will require both you and your neighbour to appear before the conveyancing court to formalise the agreement. Failure to have the necessary rights in place is likely to delay any future sale of the property while negotiations take place. A neighbour could seek compensation for the granting of rights, so it is very important to ensure that sufficient rights are in place before commencing work.

### Future Buildings/Extensions

If you intend to erect a new building (and/ or an extension to an existing building) on your property you should ensure that such building is constructed in such a manner so as to ensure that maintenance can be carried out to it without the need to enter upon any neighbouring premises. You should also ensure that no part of such building overhangs the adjoining premises. Failure to allow sufficient room to carry out maintenance to any building on your

property without a legal right to do so might delay the sale of the property. Furthermore, it is likely that you will have to negotiate with your neighbour over the granting of legal rights of access which will necessitate the appearance in the conveyancing court by both you and your neighbour. A neighbour could seek compensation for the granting of rights, so it is very important to ensure that sufficient rights are in place before undertaking works to your property. In some cases, it might be possible to rely on the provisions of The Access to Neighbouring Land (Guernsey) Law, 2016, details of which are set out in Guide 13. Where a neighbour has the benefit of a right of access or a right of way over the property it is important not to obstruct such access or right of way nor build upon the part of the property over which the neighbour has such rights.

## **Registers for Protected Trees, Buildings and Monuments**

Certain properties in Guernsey are listed on the Registers for Protected Trees, Buildings and Monuments and therefore any works carried out to such properties will require the prior permission of the Heritage division of the Development & Planning Authority in addition to the usual States Committees.

Section 7 of the Land Planning and Development (Special Controls) Ordinance, 2007 gives the Development & Planning Authority the power to serve a notice on an owner of a protected tree, building or monument if it appears to the Development & Planning Authority that any works are urgently necessary to:

- Preserve or protect a protected tree, building or monument, or
- prevent the deterioration of a protected building or monument.

The notice served will indicate the works the Development & Planning Authority requires the owner to carry out to preserve or protect the protected tree, building or monument and specify a period within which the works must be undertaken.

It should be noted that persons failing to comply with such a notice are liable on conviction to a fine of up to £10,000.

If you are purchasing a property listed on the Registers for Protected Trees, Buildings and Monuments, you are advised to instruct a surveyor, who should ensure that all or any works carried out to the property have been undertaken in accordance with the requirements of the Heritage division of the Development & Planning Authority.

## **Fire Regulations**

You should be aware of the provisions of the Fire Services (Guernsey) Law, 1989 (as amended). Under the terms of such law certain properties are controlled (for example, premises comprising sleeping accommodation for at least 10 persons (particularly relevant to the buyer of an apartment), premises used for entertainment, recreation, club meetings, teaching, the sale of food and drink and other premises accessed by members of the public).

A buyer of a controlled property should check to ensure that the property complies with all fire regulations and codes of practice and that any proposed alterations the buyer may wish to make to the property will not breach such regulations and codes of practice.

The owner of a controlled property is required by law to notify the Fire Service in writing as soon as is reasonably practicable of the fact that they have either become or have ceased to be the occupier of such property.

# GUIDE 13

## The Access to Neighbouring Land (Guernsey) Law, 2016

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### Introduction

This Law came into force on 1 May 2017. The Law sought to address the position under Guernsey law where there is no legal right to access neighbouring land in order to repair or maintain a structure which is on or near a boundary. It also sought to address the position of services and jointly owned walls, structures or growing things which form a boundary which were in neighbouring land, again in relation to repair and maintenance.

### Access Orders

Where access is required for works but consent has been denied, the party requiring access can apply to the Magistrate's Court for an order permitting access ("an Access Order"). The Court needs to be satisfied that access is necessary because the work is necessary for the preservation, repair or maintenance of the neighbour's land or would be substantially more difficult or expensive without such access.

The Magistrate's Court also needs to be satisfied that granting an Access Order will not cause hardship to or prejudice the adjoining owner.

The work which an Access Order can cover is wide-ranging including demolition and improvement where the Court is satisfied that this is justified. It can also cover cutting back and felling of hedges, trees and shrubs or clearance of douts. There are detailed provisions setting out what an Access Order must specify including the work, the area of land which may be accessed and the dates of such access. The Magistrate's Court can also impose any conditions which it considers necessary such as the days of work, insurance cover, payment of fees and compensation.

The effect of an Access Order is that it allows the person applying for it to access the neighbour's land without their consent for the purposes specified in the order including such equipment as may be necessary which can be left there during the period authorised by the order.

### Access without an Access Order

The Law also allows for access without applying to the Magistrate's Court for an order in relation to the repair or maintenance of:

1. Services serving other land, and
2. A jointly owned wall structure or growing thing which forms a boundary.

There are two conditions which need to be satisfied before exercising such right of access.

The first is the service of a "servitude tacite notice". This notice must specify the nature and location of the work as well as other matters such as the persons carrying out the work. The second condition, which is in relation to services only, is that the services must have been installed in the land in question before 1 May 2017.

There are certain provisions which must be included in the notice and please contact us if you should consider that you need to serve such a notice as it is important that it complies with the Law. A person receiving a notice can apply to the Magistrate's Court either to object to the notice, argue certain conditions should apply or ask for

compensation.

## **Services**

The Law also provides that where services are in adjoining land, they shall not be subject to "unreasonable interference". This phrase is not defined in the Law but would include damage or destruction. If such services are damaged or destroyed, then the Magistrate's Court can order compensation including repair and replacement of such services.

## **General Provisions**

Orders made by the Magistrate's Court have to be registered at the Greffe and will be binding on successors in title. The Orders can be discharged or varied by the Magistrate's Court on the application of any party to the proceedings and can also make an order for payment of damages where any person fails to comply or contravenes any order. The Magistrate's Court can also refer an application to the Royal Court. Generally, Advocates' fees will not be recoverable where proceedings are referred to the Royal Court unless there are special circumstances. There is the ability to apply for leave to appeal any declaration of the Magistrate's or Royal Court.

The right of "Clameur de Haro" is not affected by the Law.

## **Summary/Points to Note**

The Law is designed to redress the position under Guernsey law where there were no legal rights for accessing neighbouring land unless they were granted by the neighbours. Before the Law came into force, if the neighbour would not grant access, there was no way to force the issue. There were also instances of neighbours asking for large sums of money before granting access. Going forward it is hoped that as the Law provides a mechanism for ordering or allowing access such instances will be rare as the possibility of an application for an Access Order will be sufficient deterrent for access to be granted and agreed. In addition, the procedure of serving a "servitude tacite notice" should also permit access even where consent is not given in the circumstances outlined above.

# GUIDE 14

## The High Hedges (Guernsey) Law, 2016 (the Law)

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### Introduction

This Law came into force on 2 October 2017. It is designed to provide a means of addressing the situation where there are significant adverse effects on the enjoyment of properties caused by light being blocked by high hedges.

The Law applies:

- where a hedge is formed mostly or completely by evergreens;
- rises to a height of more than 2 metres above ground level; and
- forms a barrier to light.

### The Test for making a Complaint

The test for making a complaint is whether reasonable enjoyment of the property for domestic purposes is being adversely affected by the height of a high hedge which is situated on land owned or occupied by another person. The person making the complaint must also show that they have taken all reasonable steps to resolve the issue in relation to the high hedge.

### Complaints

Complaints are made to the Development & Planning Authority who will decide whether the complaint is justified, following which they will serve notice on all parties. In making its decision the Development & Planning Authority must have regard to the extent to which the hedge in question contributes to the privacy and enjoyment of neighbouring land, the amenity of the area and whether the hedge is in a Conservation Area or the subject of a Tree Protection Order.

A "High Hedge Notice" issued by the Development & Planning Authority will set out the remedial measures which must be taken. Failure to comply will result in the Development & Planning Authority undertaking such measures and charging that cost to the relevant owner. It is also a criminal offence.

### Right of Appeal

There is a right of appeal against the decision of the Development & Planning Authority to the Planning Tribunal, but this must be made within 28 days of the decision of the Development & Planning Authority.

### Fees

The fee charged by the Development & Planning Authority for lodging a complaint is currently £350 although where several neighbours complain about the same hedge, the fee may be £150.

# GUIDE 15

## Schedules

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A schedule is a legal document which is incorporated in the title of a property where there is an element of shared amenities and/or communal areas. Typically, schedules are incorporated in the title to apartment buildings (where ownership is subdivided), private housing estates or sometimes in small developments of maybe only two or three properties.

Schedules are used to determine the extent of the ownership of all parts of a development including all communally owned parts. It also sets out the rights and obligations of all owners as respects such owner's premises and also as respects all communally owned areas.

A schedule incorporates covenants setting out tasks that each owner is legally required to undertake, requirements on making contributions towards shared amenities and/or communal areas and covenants which legally prevent an owner from undertaking certain activities.

Schedules therefore establish a legally binding relationship between owners that is capable of being enforced by each owner on the other owners in the future. Commonly this is enforced by way of "charged covenants". Charged covenants were introduced by The Real Property (Reform) (Guernsey) Law, 1987. This Law provided an owner whose property is in some way reliant upon another property with a form of redress should the owner of that other property fail to discharge such other owner's obligations.

If you are buying a property where the title contains a schedule, we will provide you with a copy of the schedule. It is very important that you read the schedule in detail in order to obtain a clear understanding of your duties and obligations prior to entering into an unconditional contract for the purchase of the property. In this way you will be able to ensure that the conditions do not restrict your intended use of the property.

In certain instances, there are secondary schedules dealing with only part or parts of a development. This would usually be in the case of a mixed development of dwellings and apartments or perhaps where there are apartments and also shops and/or offices. In these situations, there is an overall schedule covering the whole development and a further schedule detailing the division of the apartments and the rights and covenants attaching to the apartments. Each schedule will identify the part or parts of the development to which it relates.

A schedule will often commence with a series of defined expressions which are used on multiple occasions throughout the document. These expressions are usually identified throughout the schedule by the use of an upper-case letter at the beginning of the defined expression. For example, a schedule might include the definition of a "Right of Access" and in the definition of such it will set out the conditions which must be observed when exercising a right of access. Often these conditions will stipulate that an owner must carry out works quickly and efficiently, reinstate any damage caused in a prompt and an efficient manner and make good any damage caused. The expression "Right of Access" can then be used throughout the document without the need to repeat the right of access conditions in the remainder of the document.

The use of definitions helps to reduce repetition and in turn reduce the length of a schedule. In the case of a small development or a housing estate the rights and obligations in the schedule may simply stipulate who may use the communally owned estate road or driveway, who has to maintain it and who has to contribute towards its maintenance and in what proportions. A voting system may also be in place requiring a certain number of owners to agree before works (such as resurfacing works) can be undertaken to the estate road or driveway. One would also expect to see similar obligations in relation to the use and maintenance of shared services. As an example, there might be a shared cesspit, so it is important for all owners to know who is responsible for maintaining and emptying it and how those costs are to be split between the owners making use of it.

Schedules relating to apartments are more complex. In the case of apartment buildings, the structural parts (most notably the foundations, the structural walls and the roof) may be owned individually by the apartment owner whose apartment is adjacent to the relevant structural part.

However more often than not the structural parts are owned by all of the apartment owners (in undivided shares) or alternatively by a management company. In the case where there is a management company each owner has a share in the management company and can vote on various aspects relating to the day to day management of the development.

In some instances, the management company may contract out its duties to a managing agent. A managing agent will, of course, levy a fee for undertaking the service it provides and those fees are then passed on to the owners by way of a service charge, usually paid on a monthly basis. The service charge would also include contributions towards the owners' obligations set out in the schedule. In developments where there is no management company there may not be a requirement on owners to make regular service charge payments whilst in other developments owners are required to make contributions into a residents' association. These can take the form of either an official residents' association set in the schedule to the property or an unofficial association set up by the owners themselves. It is therefore important for you to ascertain whether you will be required to make regular service charge payments or otherwise, what those charges relate to, the amount levied and whether the current owner has made all required payments to date.

We would recommend that you enquire as to the level of monies held in the management company or association account. You should also consider the condition of the development in general, likely future expenditure and how that might impact on the level of service charge payments in the future. You should also note that, in the case of a management company or an association, you might be asked to serve a term of office to deal with the day to day running of the management company or the association. Please be aware that, if there is no management company or association, there is a possibility that at some point during your ownership you might be required to make a lump sum payment towards the repair of an item (such as the roof of an apartment building) for which you have a legal obligation to maintain if that item requires repair at that time.

When reviewing the schedule, you may wish to consider (but not limited to) the following:

1. What are my liabilities in respect of the maintenance of the shared amenities and/or communal areas?
2. Do neighbouring owners have access rights on to my property? (in most cases they will have access rights). Will those rights prevent me from extending my property? For example, would the construction of an extension or a conservatory on my property prevent another owner from exercising their legal rights?
3. What rights do I have as a property owner in relation to the roads and other communal areas and to which services can my property be connected?
4. Is there any restriction as to how I might use my property? There may be a prohibition from using it for business purposes.
5. Will I have ownership of the car parking space allocated to my property or will I only have the exclusive right to use the car parking space? If I own the car parking space, will I be able to sell or rent it to a third party? This is often prohibited. If you do not have outright ownership of the car parking space then the renting out of such space to a third party would not be permitted in any circumstance.
6. Where will my visitors park? Will I be permitted to park on the estate road, service road or driveway? Parking is usually prohibited on estate roads, service roads or on shared driveways.
7. Am I able to make structural alterations to my property and in particular, in the case of an apartment, am I able to install additional windows or doors? Often this will not be permitted.
8. In the case of a ground-floor apartment, am I able to erect an extension on adjacent land? This will depend on the wording of the schedule and whether you have sole ownership of the adjacent land.
9. Am I able to install an aerial or satellite dish on the walls or roof of the apartment building?

10. What restrictions are there in relation to the amount of weight that can be placed on the floors of my apartment?
11. Are there any restrictions stipulating the type of floor covering that can be laid on the floor of my apartment? In some cases, the laying of wooden floors might not be permitted. Schedules relating to apartments frequently stipulate the type of flooring to be used in order to help mitigate the transmission of sound within apartment buildings. You are, however, advised to carry out a physical check of your apartment to establish the level of noise emanating from neighbouring apartments.
12. Am I able to attach fixtures to the interior or exterior sides of the walls of my apartment?
13. What restrictions are there concerning the use of audio equipment?
14. Am I permitted to hang out washing on the exterior of the property?
15. Am I able to place a sign within the window of my property to advertise my business?
16. In the case of an apartment, what are my obligations as regards the painting/redecoration of the exterior and interior communal areas of the property? The exterior and any communal areas will often require repainting/redecoration every 5 years.
17. Is there a restriction on the colour that I may paint the exterior of my property?
18. Are there any restrictions on keeping animals, birds or other pets? Often there are restrictions, particularly in relation to apartments.
19. Where can I place refuse to await collection?
20. What are my obligations in respect of fire prevention?
21. Are there any provisions regarding night-time lighting?
22. Can I insure my property with an insurer of my choosing? This may not be possible and will definitely not be possible in the case of an apartment.