

In Depth: Freehold

Instructing your lawyer

As soon as you have come to agreement with the vendor, you should instruct your lawyer so that they can start preparing the legal side of the transaction. When you do so, it is best if you have the following information:

- the name of the property confirmed
- the price of the property
- details of funding, including the name of the bank (if a loan is involved), contact details of the person at the bank in charge of your case, size of the loan
- suggested dates of completion
- whether you need an equity agreement with another party
- any plans you may have to alter the property
- plans on how you intend to use the property (particularly if not for residential purposes)

Although you may not want your lawyer to act immediately, it is worth asking them to begin the searches as any delays with these could extend the time until completion.

If you are selling

Your lawyer will prepare a deed of sale which lays out exactly what you are selling. This draft deed is then sent to the purchaser's lawyer so he can check it on behalf of his client.

If the purchaser's lawyer raises any queries with regard to the deed of sale, your lawyer will ensure that they are dealt with. This may include having to conduct research in order to answer the queries or attend on site. Your lawyer will ensure that the necessary steps are taken to answer these queries and amend the deed accordingly.

If you are buying

As with all property transactions, your lawyer will start the transaction process by checking that you have the appropriate **housing qualifications** to permit you to reside in the property.

Your lawyer will conduct all of the relevant **searches** to ensure title of the property as well as writing to parochial and statutory bodies asking for any information which may be relevant to the property. Search letters should be sent to the Planning & Environment Minister, Transport &



Technical Services, the parish, utility companies and public health. Your lawyer may send additional search letters to other bodies and organisations.

In addition, your lawyer will check **title** of the property. This is to make sure that the vendor has proper title to the property and that the deed of sale has been properly drafted. Your lawyer should check back at least 40 years to ensure this. At the same time, they should check for any restrictions and that the property has rights of access and services, as well as ensuring that neighbouring properties' claims to boundaries etc. are properly set out in the draft deed of sale.

As well as 'desk-based' checks, your lawyer will visit the property in question. He will do so to ensure that the property details match those in the deed of sale. Over time, demolitions and extensions can affect the boundaries and will need to be reflected in the deed.

In the event that any defects are discovered, your lawyer will detail these in a report along with advice as to what course of action to take. If the problems involve a neighbouring property, it may be necessary to join the owner of that property as party to the deed of sale in order to agree remedial action.

It is also possible to buy defective title insurance cover. It would normally be expected that the vendor pays for this.

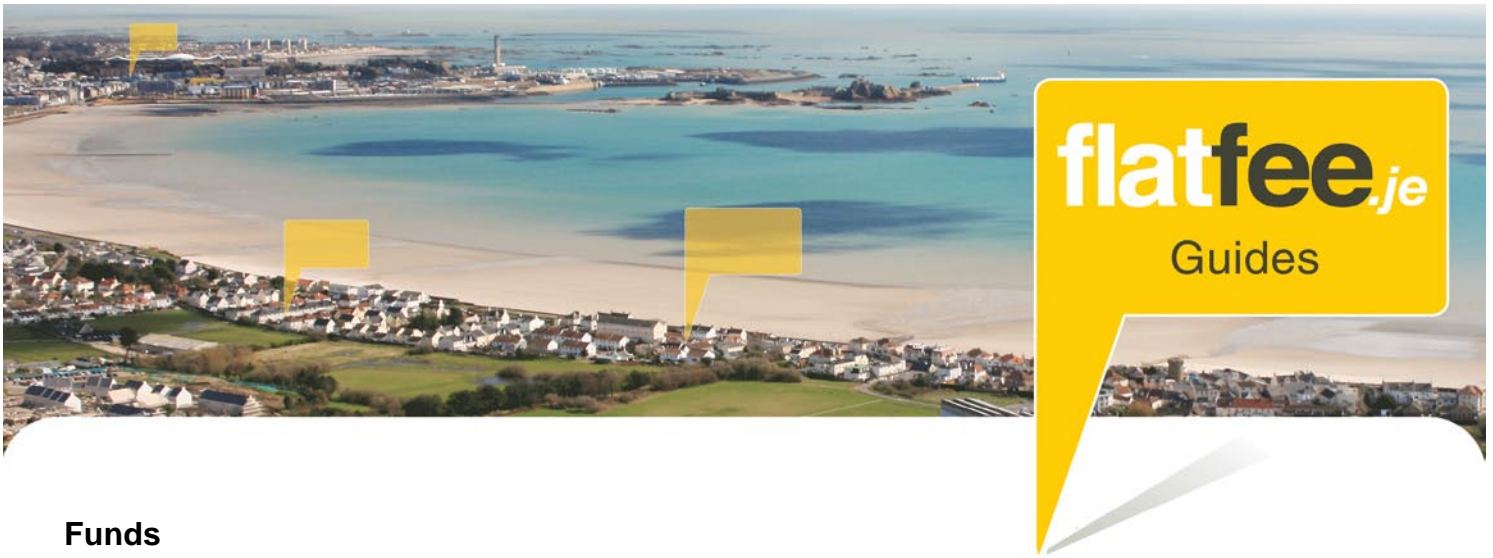
If there is some dispute as to whether appropriate building permits have been granted for construction by the vendor, it may be necessary for your lawyer to request that building inspectors from the Planning and Environment Department attend the site.

Surveys

If you're buying the property with a bank loan, your bank will require that a valuation and survey be carried out by a professionally qualified surveyor. The bank will provide you with a list of their approved surveyors.

It is important that you are happy with the structural integrity of the building you are purchasing as you will be buying the property in its present condition with all apparent and hidden defects, so you need to be aware of these before choosing to go ahead with the transaction.

It is also worth asking your surveyor to inspect the files on the property at the Planning Department. This is because the responses the department will have given to your lawyer's search enquiries come with a disclaimer which means they do not guarantee the accuracy or completeness of the information. It is wise to ask your surveyor to double check the files in case something has been missed.



Funds

You should tell your lawyer the name of the bank you are borrowing from as soon as you have agreed upon a mortgage. Your lawyer will be able to help if there are any delays with the loan.

When you borrow money to fund the purchase of a property, it will be necessary for the cleared funds to be in the possession of your lawyer before the contract is passed in the Royal Court. Your lawyer can be sued if he has not passed those funds onto the vendor's lawyer within four days of the contract being passed.

Completing the sale

Once all concerns with regard to the deed of sale have been dealt with, your lawyer will go through the terms of the deed of purchase with you. As soon as you are satisfied that all is in order you will be able to pass the contract before court. This is a simple procedure and your legal representative will be with you in the court to give you advice, should you need it.

You may have entered into a **preliminary agreement** with the vendor because circumstances prevented either of you going directly to court to finalise the transaction. Normally, the purchaser will pay a 10% deposit upon signing and, in the event that you fail to complete the transaction, a penalty of 25% or 30% of the value of the property is usually required by the terms of the agreement.

If you would like to sign the agreement whilst there are still some items outstanding, then it is important to make completion of the transaction conditional on these items being dealt with. Such conditions will be written into the agreement by your lawyer.

As well as passing the contract in court, you should agree a possession date with the vendor. If this is to be longer than three or four days after completion of the transaction, you should make sure that this delay is written into the terms of the conveyance.

You should consider changing all of the locks to the property, especially if the house has been on the open market and keys circulated for viewings.