



In depth: Share Transfer

Rather than being a traditional property transaction, buying by Share Transfer means that you actually buy shares in a company. The property itself forms the assets of that company.

When you buy the shares, you receive the exclusive right to occupy and use the property or apartment that you are 'purchasing'. As the transaction actually involves the sales and purchase of shares rather than the deeds to a property, there is no need to attend the Royal Court in order to finalise the sale. However, your lawyers will need to make extra checks to ensure that the company is in good order and administered properly.

Things to look out for

Make sure you always begin any discussions or correspondence with the statement, "subject to conditions". It's important to do this because you can make both a verbal and written commitment for the purchase of a share transfer property.

The conditions that need to be fulfilled before you make a final verbal or written commitment include: receiving a satisfactory survey, arranging financing, possibly selling your own property and ensuring that title to the property is in good order.

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.



The company

As share transfer transactions involve the purchase of shares in a company, it is important that your lawyer scrutinises the company's records to ensure that it is in good order.

A company is constituted via its **Memorandum and Articles of Association** and your lawyer will ensure that these have been drawn up properly and meet with your expectations.

The Memorandum describes the company's aims and powers whilst the Articles of Association describe the rights and obligations of the shareholders and the company as a whole. It is in the Articles of Association that you will find restrictions such as 'no pets' as well as the description of each individual property. This should be properly checked to ensure you are buying exactly what you expect to buy.

Your lawyer will also check the **company records**. These include minute books, share register, share certificate book, the register of directors and secretaries and the accounts. Your lawyer will inform you of any deficiencies or discrepancies in the records.

As well as the company's own records your lawyer will check the public records of the company, held at the Jersey Financial Services Commission, to ensure that all legally required documents have been completed and filed as necessary.

In addition to checking the company records, your lawyer will check **title** of the property. This is to make sure that the company you are buying shares in has proper title to the property. 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.

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.

If you're buying an apartment, it's important that the surveyor looks at the structure and exterior of the whole building and should confirm that the services and drains are all in good condition.



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.

Completing the sale

In principal, signing the **share vending agreement** completes the sale, therefore you should have your financing and all other obligations in place before signing this document. However, it is possible to come to an agreement with the vendor whereby there is a delay scheduled between the signing of the agreement and the completion of the transaction. This flexibility is one of the attractive aspects of share transfer transactions.

The share vending agreement is usually drafted by the vendor's lawyer and your lawyer will ensure that the appropriate warranties relating to the property and the company are included in the agreement. Before signing, make sure your lawyer has talked you through the detail of the agreement.

You should never sign a share vending agreement until your lawyer has completed all of the searches and is happy that all is in order. This is because it is normal to 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 share vending agreement by your lawyer.

You should also agree the possession date in advance of signing the agreement. If there is to be a delay of more than a few days between signing the agreement and taking possession, this should be written into the terms of the share vending agreement.



Insuring your property

In the case of share transfer properties, you will only need to insure the contents of the flat. The company will insure the property itself. You should insure all internal wall, ceiling and floor finishes, kitchen and bathroom fittings, appliances, windows and doors.

With regard to the property insurance, you may need to have your bank's interest noted on the policy. This should be arranged via the company secretary.

Stamp duty

Currently, there is no stamp duty to pay on the acquisition of share transfer properties, however, the States of Jersey are reviewing this and it is expected that a form of stamp duty will be brought in the near future.