

## Reaching the finish line

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Take a stroll across the Royal Square at 3 o'clock on a Friday afternoon and you will see gatherings of people who have just passed contract in the Royal Court, often accompanied by relieved conveyancers.

Most property transactions end up this way, much to the delight of buyers, sellers and everyone else involved, so why do some "fall through"?

The conveyancing system in Jersey has operated in its current form for centuries. It has largely served the Island very well and continues to do so, with transactions completing in a shorter time frame, averaging at 4 weeks, than almost anywhere else. Compressed time frames can, however, result in issues cropping up close to the target completion date, and adding to the pressure upon buyers and sellers.

Transactions can flounder or fall through for a myriad of different reasons ranging from adverse survey or valuation, to title or boundary issues, to people simply changing their mind.

Survey and valuation issues have become more prominent in recent years due to banks applying stricter lending criteria and wanting to be sure that a borrower can cope with the cost of remedial work and are often addressed by a price adjustment, or by a seller arranging for work to be completed. There is a view that in the current market, buyers are more inclined to take advantage of their stronger position and that, left with the choice of dropping the price or starting all over again, a seller can feel pressured to take a hit on the price.

Title to property in Jersey is "unregistered" i.e. there is no States guaranteed title. Each time a property changes hands a conveyancer researches past contracts for the property, sometimes going back over 100 years, inspects the title of neighbouring properties, gathers information from Planning and the utility companies, and checks on site that the boundaries are as described and that there are no covenant breaches.

This takes time and skill, and sometimes the conveyancer isn't given the "all clear" to start work until quite late in the day. If issues crop up, neighbouring property owners will often need to become involved to address them. Sometimes the neighbour won't help, or will only do so on unacceptable terms. Even if the buyer will accept an issue, if there is a mortgage the bank may not and the buyer will have to withdraw.

Parties cannot make an unconditional commitment to each other from the outset because of the work that needs to be done before a buyer can be confident that a seller has good title. On the very rare occasion when a buyer or seller simply changes their mind and withdraws, there is no claim for fees and other losses that may result.

### **How can we avoid these scenarios arising?**

First of all, most problems can be fixed and the majority of sales do complete, which is what we all want to happen. It is possible that if parties allowed themselves time to be sure that the valuation comes up to scratch before then giving their lawyer 3-4 weeks to complete their work, things could go more smoothly. However we do understand that many people want to get over the line as quickly as possible and that chains can be more prone to complications if there is more time for things to go wrong.

Parties can enter into an exclusivity agreement, or commit to a purchase agreement, but the latter only works if title and survey issues have been addressed, by which time most parties are ready to complete. Buyers are often reluctant to commit to agreements and pay deposits, and negotiating the agreement can distract from focussing upon the main event i.e. the purchase itself. Also we should be wary of pressing parties to agree to cost and damages exposure which might put them off transacting at all.

Under a system of registered title, making a binding commitment at an early stage is more achievable and we could see something along the lines of an exchange and completion structure as in the UK. However the reality is that no system can fully protect all buyers and sellers, and gazumping and other problems crop up even where there is registered title. Also, it is a very expensive system [to establish and operate] which we think the States would be unlikely to fund, and which would take years to start making a difference.

Our conveyancing system does depend upon the honourable intentions of the parties, but it is an important part of Jersey's tradition and history which overall works well. Thankfully, collapses and abortive fees are rare as a proportion of the completions that happen every week, although we do understand that for those who are unfortunate it is an upsetting experience.

Our homes and our confidence in the value of the bricks and mortar are an essential cornerstone of our society and economy and the Jersey property market is showing positive signs after several years of stagnation and decline. Buyers and sellers should work closely with

the estate agent and their bank, and have realistic expectations. Buyers should always involve their lawyer at an early stage to benefit from their experience and guidance - with today's fixed fees this should not cost them any more and it will maximise their chances of achieving a happy ending!

## About Ogier

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