

Jersey Property

Insights - 22/02/2013

1. Property Law

Jersey lawyers classify property as being either "immovable" or "movable".

2. Immovables

Immovable property is, generally speaking, land and everything that is attached to it. It falls into one of the following categories :-

(a) "Freehold"

This is the most common manner of owning land in Jersey whereby land is held "in perpetuity". Freehold property can be owned subject to burdens which have been secured against it, including hypothecs (encumbrances/"mortgages" known to Jersey law), leases and tenancies, and servitudes such as rights of way and life-interests or usufructs.

(b) "Leasehold"

Much commercial and a small amount of residential property is held under contract leases, being leases granted for a period of more than 9 years. Until the passing of a law in 1996 neither paper leases (leases granted for 9 years or less) nor contract leases could be encumbered to secure a loan. Contract leases can now be charged where the lease expressly so permits or where the landlord is party to the creation of the hypothec to consent to its creation.

(c) "Flying freehold"

This usually applies to flats but is also occasionally used for commercial property, principally in mixed developments. When a flying freehold sale takes place, the property conveyed is described as a "lot" or "share" comprising both the flat/unit itself and an undivided interest in the building, the land and all appurtenances. In order to cater for the fact that the only Jersey immovable

property that can be hypothecated is a "corpus fundi" (a separate and distinct parcel of land) the 1991 flying freehold law creates a statutory fiction that flying freehold lots are "corpus fundi").

(d) Other - some rights are also classified as immovable property i.e:-

(i) Fiefs: a kind of feudal lordship;

(ii) Rentes: an ancient form of charge or "mortgage" against land;

(iii) Simple conventional hypothecs: a charge secured against land.

3. Title

The system of interests ("estates") in land known to Jersey Law is different to that known to English lawyers. Immovable Property contracts are passed by means of the swearing of an oath publicly before the Royal Court on a Friday afternoon and since 1602 all conveyances have had to be registered in the Public Registry. They used to be in French but are all now written in English.

Whilst limited exceptions exist in respect of fidei-commis (akin to a trust and intended principally to hold immovable property for charitable/public benefit purposes), created in accordance with a law of 1862, Jersey, immovable property cannot be owned directly by a trust.

4. The Public Registry

The conveyance of immovable property in Jersey is a matter of court record and the purchaser's claim to title is demonstrated by the copy of the conveyance kept in the Public Registry. The "original" of the contract passed before court is of no value thereafter.

The Public Registry used to consist of books containing copies of all conveyances in date order with separate books comprising the indices of those conveyances. These records are now accessible electronically through the PRIDE registry system and the original books are held in public archives. Indexation is by reference to the name of the owner of the property, although it is also possible to search by reference to particular properties in respect of more recent years.

The Public Registry simply holds copies of "as passed" deeds and there is no notion of the States of Jersey guaranteeing title to property in the Island in the manner of the UK Land Registry. It is therefore always necessary for a buyer/lender to check title to ensure the seller/ borrower does in fact own the property and that there are no prior hypothecs or other burdens.

5. Co-Ownership

There are two forms of co-ownership known to the Island, namely the tenancy in common and the

joint tenancy. If land is owned by persons as tenants in common then they each own a specified fraction of the right to the relevant property, i.e. the right to the specified fraction of the total proceeds of sale and not the right to a particular area of the property. The interest of a tenant in common passes on his death to his estate and does not accrue to the benefit of the surviving tenant(s) in common. On the other hand the interest of a joint tenant does not pass to his estate and accrues on death to the surviving joint tenant(s). Property owned by spouses is almost always held by them as joint tenants. Express words are required to create a joint tenancy in default of which it is presumed that the parties intended to create a tenancy in common.

From a securitisation point of view it is important to appreciate that neither the interest of a tenant in common or of a joint tenant can be separately hypothecated. This is because (save for leases) a hypothec over land can only be taken against a corpus fundi and neither interest is a corpus fundi but rather is an interest in a corpus fundi. Therefore where immovable property is owned jointly, security must be taken over the interests of all joint owners whether they are joint tenants or tenants in common.

6. Movable

Movable property comprises anything which is not immovable property and includes things such as money, insurance policies, stocks and shares, paintings, clothing, cars and intangible things such as rights enforceable at law.

Many flats in Jersey are occupied pursuant to rights allocated through the ownership of shares and are therefore movable property. The concept of "share transfer" ownership stems from the 1960s, and involves immovable property being conveyed to a holding company, the articles of association of which allocate exclusive occupation of specific areas within the property, along with rights and obligations to the holders of blocks of shares in that company.

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