New Guernsey law will mean fewer conveyancing delays

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At its recent sitting in June 2016 the States of Guernsey approved a slightly amended Projet de Loi entitled "The Access to Neighbouring Land (Guernsey) Law, 2016" following on from the States resolution in 2014 to introduce such legislation.

Access to Neighbouring Land – Boundary Walls Owned by One Party

For some years home owners, estate agents and practitioners have been acutely aware of a problem that existed in respect of some Guernsey properties. Where a property (which we will call "Property A") has been built on, or close to, a boundary, the owner of that property will need access on to the neighbour's land ("Property B") in order to carry out maintenance. In most cases the owner of Property A will have a formal right of access in title (set out in the title deeds of their property) on to Property B in order to carry out those works.

In some cases no such right exists. There may be a number of reasons for this; perhaps an extension has been built on the boundary, or perhaps it was thought that a formal right was not necessary because neighbours had always got on well and there was never any question of not being allowed access. In more recent times banks, once made aware of the issue, might have refused to lend against a property that needed a right of access, but did not have it. This forced the seller into approaching his neighbour to seek a formal agreement whereby the neighbour granted such a right. On a few occasions neighbours, sometimes for good reason, refused to grant such rights and the sale of a property fell through – and even became unsellable. In a very few instances the neighbour demanded significant sums of money in consideration of the grant.

The new law, once it is in force, will allow the owner of Property A (who has been denied access) to make an application to the Magistrate's Court - previously this was going to be the Royal Court - seeking an "access order" over Property B. If the court is satisfied that the work is necessary and

cannot be carried out without such access being granted then it will make the order. The court may not make an order where it is satisfied that entry would cause hardship to the owner of Property B that would outweigh the benefit to the owner of Property A. The type of work that might be permitted by an access order will include all normal maintenance activities.

The court will specify in the order the type of work that can be carried out, the area of land over which access may be exercised and the period during which the order is effectively. This is a change from the 2014 proposals - no order will now be of unlimited duration. The court may attach conditions to the order, including times when work may be carried out, precautions that may need to be taken and, possibly, compensation where there is "substantial loss of privacy" or "substantial inconvenience suffered". It is thought that compensation will be awarded only on very rare occasions.

It is also thought that on most occasions it will be unnecessary to make an application for an access order because neighbours, knowing that an application can be made easily and will almost certainly be granted, will negotiate the terms for such access between themselves without the inconvenience of a court hearing.

Access to Neighbouring Land – Services and Party Owned Boundary Features

The new law also makes provision for access on to neighbouring land to carry out works to services (sewers, drains, gutters, pipes, cables, wires, etc.) that run under or over neighbouring land, and boundary features that are party owned. The process is slightly different and involves the service of a notice called a "*servitude tacite*", and only applies to services that were in place before the coming into force of the new law. A landowner aggrieved by the service of a *servitude tacite* notice will be able to apply to the court for a declaration or order varying the terms of the notice, or seeking compensation for any "significant financial loss", "substantial loss of privacy" or "substantial inconvenience suffered".

The draft law also states that where services have been laid, then they shall not be subject to unreasonable interference.

What does this mean?

It is hoped that the new law will be in force later this year or early next year. In the meantime it is likely that a properly advised purchaser or lending bank will take a pragmatic view when considering purchasing or lending against a property which lacks such rights in title. As a result there will be fewer delays on conveyancing transactions while a purchaser waits for a vendor to complete an agreement with the neighbour for a right of access. It should also mean that an owner who had previously been unable to sell his or her property because of such issues my now find buyers more willing, and able, to proceed.

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