

No-one knows who's paying for Trump's wall – do you know who's paying for yours?

Insights - 28/09/2016

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This article first appeared in Places, September 2016 edition.

Many of us will have heard the recent claim by Donald Trump in the US presidential election that, if elected, he will ensure that a 1,000 mile border wall is constructed between the US and Mexico for an estimated cost of \$5-10 billion to prevent immigration.

“And who will pay for the wall ?” (*Trump*)

“Mexico !!” (*Crowd*).

In fact the construction of walls and associated maintenance costs can be an issue in any jurisdiction and Jersey is certainly no exception.

Status of the wall.

A wall is either party owned (jointly owned by both neighbouring owners) or wholly owned by one neighbour or the other. In the former case maintenance and its associated costs is shared but in the latter case maintenance is the entire responsibility of the owner.

Many feel there is “power” in ownership but actually ownership of a wall is accompanied by responsibility. If there are structural issues these have to be remedied at the owner’s expense and in the event of collapse the neighbour would not share any responsibility towards the rebuilding cost, unless the neighbour has caused or contributed towards the collapse.

It is important that any claim to outright ownership is accompanied by an access right onto the neighbour’s property in order to maintain, repair or replace the wall (together with the right to

take workmen, materials and, if necessary, ladders). Ownership often includes a claim to the adjacent “*relief*” or offset which is a strip of land of sixteen and a half inches in width on the “neighbour’s” side of the wall which actually forms part of the property of the claimant. An “offset” provides a natural maintenance area but conveyancers prefer to see formal access rights because of its’ limited width.

Joint ownership is more straightforward. In law the boundary between the respective properties is the centre line of the wall and each party contributes equally to the cost of its maintenance. No access rights are required and, for that reason, some find shared ownership preferable.

Any wall may be subject to a contractual height restriction.

Retaining walls

If your property has a retaining wall (a supporting wall) or is adjacent to a neighbour’s retaining wall, ownership is likely to be claimed by the owner of the land it is supporting. Clearly, retaining walls have to be robust (often buttressed) and should be assessed with reasonable regularity in accordance with a surveyor’s advice.

Landslip can be devastating and for that reason (a) the owner should ensure stability and that insurance protection is in place and (b) the neighbouring owner should take advice and also check the position with regard to insurance at the time of purchase.

Sea walls

For properties that border the sea shore, the adjacent sea wall is owned by the Public of the Island, as the sea walls were transferred to the Public by the Crown last year.

The Public owns the sea wall itself together with a “*relief*” or offset. Given that the footings of the sea wall are likely to extend underground for a greater width than the visible top part of the wall this tends to mean that a conservative view has to be taken as to where the boundary wall line may lie. The Public is now likely to decline to sanction the annexation of land up to the sea wall without a substantial payment being made, or for encroachments to be ratified at no cost.

Roadside walls

If the road side wall borders a parish road or a main road then the property owner will have ownership of that wall and be responsible for its upkeep and maintenance. If the wall falls into disrepair and requires replacement (or there is no wall and one is required) then the Parish or the relevant States department should be duly notified and matters progressed accordingly.

If the wall borders a privately owned road then its status (if not already defined) should be contractually agreed with the owner of the road and the access rights for maintenance purposes should be established.

The sale process.

Once a sale is under way, the seller's lawyers will provide the buyers' lawyers with a sale contract. The sale process usually takes 3-4 weeks, with the timeline often depending upon the buyer's mortgage arrangements. A buyer may decide await the survey result before proceeding (to save costs should the transaction fail) and, once the survey is received, should ascertain whether any issues are noted, structurally or otherwise, in connection with the boundary walls. If there are issues the buyer may elect to re-negotiate the price or seek advice about their legal status and any accompanying responsibility.

If boundary clarification is required the seller's lawyer will ask the relevant neighbours to be party to the sale contract in order to define matters to the buyer's satisfaction.

And finally

Matters in practice are rarely as straightforward as they may appear to Donald Trump. The above is only a brief summary of some of the issues relating to boundary walls in Jersey but we would highlight the importance of obtaining sound advice from lawyers, estate agents and surveyors in order to ensure that you are fully and properly advised, particularly during a purchase process.

If you already own your property and issues arises in connection with boundary walls then you should ask your lawyer to confirm the contractual position and, if necessary, point you in the direction of a recommended surveyor or other specialist.

Walls form a natural boundary and we should celebrate many of the splendid granite walls we have in Jersey, which greatly enhance the local landscape.

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