



What is a pre-sale agreement and do I need one to buy property in Jersey?

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In March 2020 there was significant uncertainty about how the Jersey property market would react as we entered lockdown as a result of the pandemic. While there was an initial slowdown of instructions as the professional sector grappled with the practicalities of not being able to see clients face to face, that slowdown was short lived and since the summer of 2020 there has been a sustained surge in demand for properties across all price brackets.

The Jersey property market is booming and as a result purchasers are nervous. This nervousness is borne out of the fact that in Jersey it is the norm, when purchasing property, to undertake property due diligence 'at risk'. This is because there is no enforceable commitment between the parties to perform what has been agreed until a contract has been passed before the Royal Court. Each year there are a number of transactions that fall through, some becoming abortive as late as the day of completion with expectant purchasers being left high and dry at the door of the Court.

The pace of the property market has created an increased demand for pre-sale agreements as they provide the parties with an extra level of comfort that the transaction will complete. While it has been commonplace for some time to have such agreements in respect of off plan/new build purchases, it has been less common to see them being used for purchases of existing stock.

This leads to questions such as 'what is a pre-sale agreement?' and, 'do I need one?'

In a booming property market, purchasers face the risk of being 'gazumped' by a higher offer while conducting their property due diligence. A pre-sale agreement addresses this by setting out the terms of the deal (including an agreed completion date). Pre-sale agreements can contain conditions to be satisfied prior to completion, for example receipt of a mortgage offer. They will also stipulate the consequences for non-performance. Having a contract agreeing the main terms of the deal gives peace of mind and allows the parties to plan their move, including practical aspects such as booking a removal company, with more certainty.

Unfortunately, pre-sale agreements do not guarantee that a transaction will complete. Unlike in other jurisdictions, purchasing freehold property in Jersey requires both the seller and purchaser to swear an oath before the Royal Court but as an individual cannot be forced to give an oath in such circumstances they cannot therefore be compelled to specifically perform the contract (they cannot be forced to sell/buy). To address this, pre-sale agreements set out an agreed level of damages which becomes payable by either party should they fail to perform. The damages figure is generally between 10% and 30% of the purchase price (and bearing in mind house prices in Jersey, this figure will likely be hundreds of thousands). The intention is to make it sufficiently financially detrimental so as to avoid either party walking away.

While pre-sale agreements do not guarantee completion of a property purchase, they do provide an extra level of comfort in such a fast-paced property market.

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