



Solving that penthouse poser

Peter Bertram, property team partner at Bedell Cristin, explains the evolution of laws covering the sale of flats

FOR many years, Jersey property law was tied to its old traditional habits and little changed. Old maxims or rules of law were little short of sacrosanct and lawyers struggled to adopt existing legal concepts to the

demands of a changing world. A classic example of this struggle revolved around the maxim: 'He who owns the soil owns everything above and beneath it'. In the early 1960s, the island started to see more

flats constructed and, not unnaturally, people wanted to buy and sell them. The problem faced by lawyers was that Jersey law could not countenance the notion of someone who owned an apartment above the ground floor actually owning it, because the owner of the ground floor apartment was deemed to be the owner of all above that apartment.

Jersey lawyers responded to the problem by adopting two different conveying devices.

Share transfers

One device was that of share transfer, whereby the relevant block of apartments is transferred into the name of a holding company and the shares in that company are divided up into as many parcels as there are apartments in the block, with the holder of each parcel of shares being entitled, under the company's constitution, to the effective ownership of the apartment allocated to his shares.

The problem with share transfer was that it was not until the Security Interests (Jersey) Law, 1983, became law that Jersey law clearly recognised the ability to create a charge or 'mortgage' over shares in a company.

In the early 1960s, the States of Jersey started constructing first-time buyer homes in the form of apartment blocks, most particularly at Les Quennevais on land it had acquired in 1963 from the Jersey Sports Ground Ltd, which in part formed the old race-course.

The States wished to sell these new apartments to would be occupiers, who would purchase with the assistance of a States loan on favourable terms. But the inability to create a mortgage over shares led the States to adopt the second method of conveying blocks of apartments, being the granting of long leases.

Lease mortgages

The adoption of leases itself posed problems, because the ability to create mortgages over leases did not become law until 1996. The States, however, as both landlord and lender, got around this further difficulty by providing that the purchase price for a 99-year-lease of an apartment in 1966 would be £3,400, the repayment of which, with

interest at 6.5% over 30 years, resulted in monthly repayments of £21 and 15 shillings.

The ability to create mortgages over leases from 1996 led to several clearing banks lending against the Les Quennevais leases when the apartments changed hands.

But in recent years, concerns that the leases had only some 50 or so years to run started to have an adverse effect on the value of the apartments. This was compounded by the growing reluctance of banks to lend against what was seen as an asset that was falling in value, and the flats started to become difficult to sell.

Much credit for sorting out this bleak situation must go to the Treasury and Resources department of the States, which took the initiative by offering the owners of the apartments an effective solution to the predicament of being faced with an inevitable continuous fall in the value of their homes.

Flying freeholds

What the States did from 2010 was make the various apartment blocks and designated surrounding land the subject of Declarations of Co-Ownership, in accordance with a 1991 law which enabled buildings to be divided up into multiple flying-freeholds that could be made the subject of a mortgage like any other freehold property. The majority of the owners of the Les Quennevais apartments have been able to take advantage of the States' offer and acquire the flying freehold ownership of their apartments. Their existing leases have been cancelled in exchange for payment to the States of a sum corresponding to the value of the interest disposed of by the States and the uplift in value of their apartment resulting from the change in tenure to flying freehold. Those who have not taken up the States' offer remain as the tenants of the States on the basis of the balance of their 99-year-leases.

The recent story of the Les Quennevais apartments provides a heartening illustration of how the adoption of a much-needed reform of our ancient legal principles can result in our laws being reshaped to meet the changing aspirations of our modern society and positively enhance people's lives.



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