

## Relationships and housing ( 8.28.0. )

Sunday, 08 April 2007

### LOCAL INFORMATION

#### 8.28.0

#### Relationships and housing

Extent: Jersey

Updated 14 May 2009

#### ----- The Housing Regulations

1. Most purchases, or leases of property in Jersey are subject to conditions set down in the Housing Regulations. The Regulations require the consent of the Housing Minister as to who may purchase, lease, and occupy property subject to the person's length of residence, occupation, or certain other qualifications. These Regulations sometimes have an effect on the housing situation of couples planning to live together, or to separate. This item gives general guidance on what the Regulations require, but more detailed information can be obtained from the Population Office at the Housing Department. Telephone 448905

#### Types of Tenancy

2. Lodgers are generally people who do not have housing qualifications, and therefore cannot lease property under the Housing Regulations. The accommodation they occupy must be serviced, and the landlord must hold a key to the accommodation. There is no security of tenure, and couples living in this type of accommodation together may find space at a premium and lack privacy.

3. Joint tenancy. Both parties to a joint tenancy have a right to occupy the home as long as both have housing qualifications, however both are liable for the whole of the rent if one person leaves or doesn't pay. If either of the couple wanted to get the other out, they cannot. Both have equal rights, and any change must be made by agreement between the couple and landlord. Only if one party was violent to the other might there be grounds for an injunction to remove the violent party, or in the case of a married couple, grounds such as adultery, cruelty or desertion can require the offending spouse to leave under the Separation and Maintenance Order Law.

4. Sole tenants. In this case only one partner has a right to occupy the home, and the other partner occupies the accommodation with the permission of the tenant. This situation often occurs when only one partner in a couple has housing qualifications or when one partner occupied the accommodation before the relationship became co-habiting. It is possible for the tenant to evict her/his partner at any time without an eviction order, however if there were children involved this might not be straight-forward.

5. Problems can arise if the tenant wishes the other partner to leave and s/he doesn't want to go, if the tenant leaves the home, or the tenant dies.

6. Sometimes a landlord may be willing to transfer the tenancy to the remaining partner, but if s/he has no qualifications this will not be possible, and the person would have to leave straight away.

#### Housing and co-habitation

##### Private rental accommodation - qualified

7. Either partner or both partners, should have housing qualifications to rent a private flat or house, but the tenancy must be in the name(s) of the qualified partner(s). This may result in a sole tenancy (see para 4 ). See also 8.28.10 Ending a cohabitation para 5 -10.

##### Private rental accommodation - non qualified

8. If neither partner has housing qualifications, the couple will only be able to occupy serviced accommodation or lodgings. Such accommodation can be occupied as lodgings in single or joint names, but there is no protection from the law against summary eviction by the landlord or agent.

##### States rental accommodation

9. It is unusual for the Housing Department to offer rental accommodation to couples unless they have children, are disabled or are pensioners. The Department do not discriminate against unmarried couples with a child or children, but

will require the mother of the children to be the tenant as long as she has housing qualifications. An unmarried couple with a child or children where only the father has housing qualifications would not normally be housed, as only the father could be the tenant, and in the event of a separation, there would be the unacceptable situation of a single man with a States tenancy. The mother could not continue to be housed by the States. If neither partner has housing qualifications, then the couple would not be given States Housing.

10. An existing States Housing tenant may only move a partner in to live with her/him after seeking and being granted permission. After the partner has moved in, the tenant could apply to the Housing Department for the sole tenancy to become a joint tenancy if both parties have housing qualifications. This would be permitted at the discretion of the Housing Minister.

#### Owner occupied accommodation

11. If a person wishes to move into her/his partner's home and they both agree that ownership of the property should be shared, then the person and her/his partner must seek legal advice about changing the legal title of the property to joint ownership or ownership in common.

12. However, in Jersey, it is not possible for an unmarried couple to own property jointly unless they both have housing qualifications. Owning a property jointly gives equal rights and some security to both owners, and equal responsibility. But it is possible for the sale of the property to be forced by an owner in common even if the other disagrees. See 11.1.54 Joint ownership of property.

Couples sometimes purchase property in the name of one qualified partner only, planning to transfer the property into joint names upon marriage. Such couples should be warned that they will have to pay stamp duty on the transactions twice, once upon initial purchase, and again on the transfer into joint names although this will be at a fee £5 per page (minimum of £10) and not calculated on the property value. See 11.1.50 Stamp Duty

#### Share transfer property

13. As properties bought by share transfer do not come under the control of the Housing Department it is possible for unmarried couples, where one partner does not possess housing qualifications, to purchase property together in this way, however they should take legal advice, as only the qualified partner would have received Housing consent to occupy the property. The unqualified partner has to occupy the accommodation as 'lodger' of her/his partner, and if there should be a separation or death of the partner with qualifications, the unqualified partner could not stay in the property without consent from the Housing Department. A legal agreement could be made to cover such an eventuality providing for the unqualified partner to recover their costs incurred in the purchase of the shares.

#### 'J' Category residents

14. Residents holding a 'J' category licence have a right to occupy specified types of accommodation - leased or purchased by their employers - in their own right for the time period of the licence (States employees and nurses are usually able to rent property in their own name). They are permitted to be accompanied by a partner or spouse and any family. Licences may be restricted in time or open ended. The spouse of the holder of a 'J' category licence will qualify in her/his own right to rent or purchase after ten years ordinary residence in the island with the spouse. Spouses of 'J' category residents are therefore in a more secure position after a period of ten years than cohabitants who cannot gain qualifications in their own right in this way.

#### 'K' Category residents

14a 'K' Category licences are granted to the individuals applying in their own right who may then occupy the property purchased with partners/spouses and family. The partner or spouse does not acquire any housing qualifications in her/his own right, and cannot gain such qualifications except after the usual eleven years residence 1(1)(f).

#### Housing and marriage - The Matrimonial home

There are no statutory provisions in Jersey, to give couples rights and responsibilities to the Matrimonial Home as in the UK.

#### Private rental accommodation - qualified

15. A married couple where only one partner has housing qualifications will not be able to obtain a joint tenancy on private rental accommodation which requires qualifications. The unqualified partner becomes the lodger of the partner who is the tenant. The exception to this is where the couple wish to take on a 'contract lease' ie nine years or more, when a unqualified spouse may join in the transaction.

### Private rental accommodation - unqualified

16. A married couple may only live in lodgings or serviced accommodation where neither has housing qualifications. It may also be possible to share a property with a person or persons who has/have qualifications thus becoming lodgers. There is no security of tenure with this type of accommodation, which is also usually unsuitable for children.

### Owner occupied accommodation

17. The rights of each partner to the marital home depend on whether or not it is jointly owned, and to some extent, whether there are children of the marriage.

18. In terms of housing qualifications, it does not matter whether a couple choose to purchase property in joint or sole names, as the spouse of a person with qualifications is permitted to join in the purchase and occupy the property, even though s/he may not have their own qualifications. An unqualified married person gains qualifications after living ten years in Jersey with her/his spouse, either in rented or purchased property. An unqualified spouse who purchased property jointly with their qualified spouse prior to 12 October 1995 automatically gained housing qualifications in their own right provided they remain ordinarily resident in Jersey.

19. There is no para 19

### Sole ownership

20. Sole ownership means that only one partner's name appears on the title to the property and s/he is solely responsible for that property. It has the following implications:-

- The owner has a right of occupation unless a court order prohibits this, for example if there has been violence.
- The marriage partner has a right to occupy the home if it is their main marital home, but this right could be removed during separation or divorce proceedings. There is no automatic right to a share of the proceeds if the property is sold following separation or divorce.
- The non-owning partner can prevent the owner from selling or re-mortgaging the property as part of divorce proceedings.
- The owner has sole responsibility for mortgage repayments, but the other partner may make payments which should be accepted by the mortgagor.
- If the owner dies, the spouse has a right to a share of the property whether the owner has made a will or not, but does not automatically become the owner.
- A home in sole ownership can be transferred into joint names, for example, where one partner owns the property before marriage, stamp duty will be charged at £5 per page (minimum of £10) regardless of the value of the property. See 11.1.50 Stamp Duty.

### Joint ownership

21. A couple who jointly own their property have the following rights or responsibilities:

- Both partners are equally responsible for the whole of the mortgage repayments. If one partner does not pay towards the repayments, the other partner is responsible for the whole of the payments.
- Both partners have rights of occupation, and neither partner can be forced to leave after the marriage has ended, even if s/he does not have Housing Qualifications in their own right, without a court order.
- A jointly owned home can only be transferred into one person's name with the permission of partners, or by order of the court in cases of separation and divorce, subject to the transfer being approved by the Housing Department.

See also 11.1.54 Joint ownership of property

### States housing

22. A married couple where either, or both partners have housing qualifications may apply to the Housing Department to be allocated a States flat or house, but the Department only has a responsibility to house persons over pension age, the disabled, or couples with a child or children. In addition applicants are means-tested and therefore those persons with incomes above a certain level will be ineligible for assistance.

23. Married couples are normally given a joint tenancy, and there is equal responsibility on both partners to pay the rent due.

24. Sometimes the Housing Department will prefer the wife to be the tenant if the husband has no housing qualifications.

This gives her more security if the husband leaves or tries to get her to leave.

#### 'J' Categories

25. Residents holding a 'J' category licence have a right to occupy specified types of accommodation - leased or purchased by their employers - in their own right for the time period of the licence (States employees and nurses are usually able to rent property in their own name) . They are permitted to be accompanied by a partner or spouse and any family. Licences may be restricted in time or open ended. The spouse of the holder of a 'J' category licence will qualify in her/his own right to rent or purchase after ten years ordinary residence in the island with the spouse. Spouses of 'J' category residents are therefore in a more secure position after a period of ten years than cohabittees who cannot gain qualifications in their own right in this way.

#### 'K' Categories

26. 'K' Category licences are granted to the individuals applying in their own right who may then occupy the property purchased with partners/spouses and family. The partner or spouse does not acquire any housing qualifications in her/his own right, and cannot gain such qualifications except after qualifying under 1(1)(f).

#### Share Transfer Property

27. A spouse who has Housing Qualifications is the only person entitled to live in the property as he/she will have received Housing consent to occupy. In the event of separation or death a non-qualified spouse would need to apply for Housing consent to remain in the property.