

# STATES OF JERSEY



## **CONSULTATION AND REPORT ON PRE-SALE AGREEMENTS FOR LAND AND PROPERTY TRANSACTIONS (P.34/2025): COMMENTS**

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**Presented to the States on 29th May 2025  
by the Council of Ministers**

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**STATES GREFFE**

## **COMMENTS**

### **Introduction**

Buying and selling a home is an important life event, which often involves a significant financial, logistical and emotional commitment by the vendor and the purchaser. The Council of Ministers recognise that the transaction process for residential properties must, therefore, be efficient, robust and provide all parties with certainty.

Ministers are mindful of the financial cost and stress that the failure of a property transaction can cause a vendor or purchaser. Thankfully, the majority of residential property transactions do proceed without any problems, and many of the risks associated with the transaction process can be addressed through the provision of timely and honest information between parties, including from estate agents and the legal profession, and by the parties taking action well in advance of completion.

It is recognised that the existing process is far from infallible and, as a result, some transactions do fall through. Modernising the property transaction process to reduce this risk is something that ought to be carefully considered in the round, and therefore ministers do not believe that it would be a constructive prioritisation of resources to undertake a specific consultation on pre-sale agreements, particularly as the Deputy's proposition is unclear on the purpose or anticipated outcomes of a consultation. It would not be appropriate for this Assembly to make a decision that will have the effect of binding the next government to undertaking an activity which has not been properly thought through.

How and when a proper review of the property transaction process is undertaken is something that will need to be considered in the next political term, in light of the priorities and resources available to the next government.

In the meantime, ministers are of the view that voluntary measures – such as a decision to enter into a pre-sale agreement – are available to vendors and purchasers which can help them mitigate the risk of a transaction falling through. Estate agents and property lawyers should also recognise their role in providing a level of service that helps to protect against a transaction failing, and should feel empowered to seek continual improvements to the services they provide, without the immediate need for Government intervention.

### **The use of pre-sale agreements**

Pre-sale agreements can be used as part of a property transaction process to protect vendors and purchasers against the risk that the transaction might fail, and to provide compensation for the costs incurred by the parties if a transaction does not complete. The use of pre-sale agreements cannot bind the parties to a transaction, although may be used to temper poor behaviour and prevent transactional failures, particularly cases of gazumping and gazundering.

The use of pre-sale agreements, whilst helping to provide certainty to the parties, comes with a level complexity and resulting cost, and they often lead to an extended transactional timescale. This may cause unnecessary delay where the majority of transactions take place without any issues, and the benefit of pre-sale agreements may, therefore, be limited to a small number of residential property transactions.

It is important to note that the housing market is fundamentally different to when the Residential Property Transactions Review Panel published their report in 2018. Despite the positive signs of a correction in the market, there is still much uncertainty as the market continues to recover from a previous period of unsustainable growth. Ministers believe that a consultation risks sending poorly timed and unconsidered signals to the market, and the Government must prioritise its limited time and resources in supporting the delivery of its priorities, which includes providing more affordable homes for Islanders and making improvements to the rental sector.

### **The use of consultations**

The Government of Jersey makes careful use of consultations during the policy development process. Consultations usually sit at the point where a policy has been given proper consideration, where feasible policy options can be tested with relevant stakeholders and the public. The correct timing and structure of a consultation is essential for government to retain transparency and build and maintain trust, particularly as there is an expectation that a consultation may well result in policy change.

It is unclear what the proposed consultation would achieve in practice. The Deputy requests a consultation to establish data on pre-sale agreements, yet further states his view that the consultation would result in guidance or legislation. It makes an assumption that this is the right information to be asking for, aiming for a policy intent where we can have some confidence, whereas no work has yet been undertaken to establish this.

The Deputy also suggests that he would not wish to see pre-sale agreements used in all residential property transactions, but only where there is a delayed completion. Notwithstanding the difficulty of determining what would constitute a 'delayed' transaction, this approach would risk creating a two-tier transaction process. If the proposed outcome is to generate behavioural change and prevent practices such as gazumping and gazundering, then in this context, pre-sale agreements would need to be applied to all transactions.

Ministers are, therefore, concerned that a consultation on these uncertain terms would be detrimental and require the diversion of time and resources when ministers are focusing on delivering policy priorities to help more Islanders with the cost of renting or purchasing a home.

### **Conclusion**

Ministers consider that good practice is of the upmost importance throughout the residential property transaction process, and that due diligence is undertaken at each stage of the process to ensure successful completion.

Clearly, there may be merit in considering the wider use of pre-sale agreements, and in reviewing the property transaction process generally. However, given the complexity of the issues and availability of resources for the remaining term of government, it would be a more prudent approach for the next Government to give this issue consideration in a more comprehensive and planned way, rather than being bound to undertake a consultation with unclear objectives.

Ministers ask States Members to reject this Proposition.