

Vacant Possession

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What is Vacant Possession? When is it relevant? How do you satisfy the requirement, and what are the consequences if you don't?

Vacant possession is a term used to describe the condition of property, usually when it is sold or at the end of the term of a lease. As with many areas of law in Guernsey, there is no local legislation or case law which deals with the matter and so we turn to English common law for interpretative assistance.

An English case from 2011 remains authoritative as the current test for vacant possession. This means that the property should be:

- **empty of people** – so that the purchaser/landlord can enjoy immediate and exclusive possession, occupation and control; and
- **empty of chattels** – so as not to substantially prevent or interfere with the enjoyment of the right of possession of a substantial part of the property.

In the context of a sale, vacant possession is commonly the condition required when a property is sold (the requirement is included in the Guernsey Bar Conditions of Sale). A list of fixtures to remain at the property is agreed in advance so that there can be no doubt as to what needs to be removed. Failure to comply with those requirements may require the seller to compensate the purchaser, or potentially invalidate the sale altogether.

In the context of a lease, vacant possession is required when a tenant yields up premises at the end of a lease. It is also of particular significance where listed as a condition for the successful operation of a tenant's option to break the lease term early. Break conditions are strictly construed and are therefore of great importance to a tenant, who could otherwise risk making all arrangements to leave premises (and possibly commit to new premises) only to then find that its option to break is ineffective. If that happens the tenant will remain liable under the lease, either until the next break date or the expiry of the term.

A tenant may need to take legal and surveyor's advice to ascertain the extent of what needs to be removed in order to achieve vacant possession. The cost of stripping out items and making good any damage can be significant so a tenant would not want to undertake works unnecessarily, however failing to meet the requirements could be equally costly if the tenant is then prevented from exercising the break or required to indemnify the landlord for its costs and losses in undertaking the works itself following the end of the term.

To understand the kinds of works that might be required in order to achieve vacant possession we look to English common law as Guernsey law is silent. So, for example, a tenant failing to remove demountable partitioning equated to a failure to give vacant possession (where that partitioning was of benefit to the tenant rather than the premises) as did leaving a security guard in the premises together with two workmen finishing off outstanding repairs.

In summary, whilst vacant possession might be a familiar term to many, it can be particularly important to understand its requirements in order to avoid costly mistakes.

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