

• INHERITANCE LAW REFORM PROPOSALS

Further to the introduction of the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law 2006, the States of Guernsey Inheritance Law Review Committee have sought to further reform Guernsey's laws of inheritance by abolishing Guernsey's rules of forced heirship (stringent rules which dictate who, and in what proportions, will benefit from a deceased's estate) and replacing them with the concept of testamentary freedom, (a system which will allow an individual, by making a will, to leave what they want to who they want).

These proposals have caused much debate within the legal community and members of the public.

Some traditionalists have seen the proposed reforms as a further and unnecessary dilution of Guernsey's laws of succession (the basis of which are firmly rooted in Norman customary law) however, in today's society, a society in which the make up of the modern family varies in many instances from a traditional model, surely a system which dictates what an individual can or cannot do with their own assets is outdated and the concept of testamentary freedom should be welcomed.

We have regularly met with clients who are frustrated that they cannot distribute assets they have worked so hard for as they would wish. Concerns have been expressed that bitterness will be created if parents can leave everything to one child or favour some over others although in reality this can already happen under the current law in relation to real property and the freely disposable portion of a testator's personal estate can also be gifted in this way.

In an attempt to provide some comfort in relation to such issues, it has been proposed that, as in England and Wales, testamentary freedom will be accompanied by a concept of "family provision". Such family provision will allow certain classes of individuals to apply to the Royal Court of Guernsey for provision to be made for them out of the deceased's estate if the Court is satisfied that sufficient provision has not been made for them in the deceased's Will and it is appropriate in all the circumstances of the case to make such provision.

On 27 January 2010, the States of Guernsey voted in favour of these proposals with a significant majority meaning that in future Islanders will have the right to choose how to dispose of their real and personal estates. Our experience is that when people wish to deviate from the norm of benefiting children and those automatically entitled under current law there is generally a very good reason for doing so and it seems curious for some to assume that individuals will not provide for their spouses and children just because they will no longer have to do so by law. To the vast majority these proposals will be welcomed and, in the relatively rare cases where people wish to deviate from the norm, individuals will be given a greater, and important, element of discretion.

(For those concerned that they have recently updated their Wills after the introduction of the 2006 law, it has been proposed that the effect of any Wills drawn up prior to the introduction of any legislation introducing testamentary freedom will be preserved.)

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**FOR MORE INFORMATION,
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