COLLAS CRILL

Inheritance of Guernsey property

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The loss of a loved one can be a deeply emotional time. Alongside the grief, families often face the practical challenges of dealing with property and other assets left behind. Decisions taken in advance about inheritance can therefore bring welcome certainty, particularly when it comes to navigating the law around Guernsey property.

Here, Collas Crill Partner Paul Nettleship explores the key legal implications of making, or not making, a will when it comes to the inheritance of real property under Guernsey law.

The legal principle

Under Guernsey law, as soon as a person dies, their freehold (real) property (actually *'immeubles'* or immoveable property) automatically vests in the heirs by operation of law and they become the legal owners of the property. This is a principle known as *'le mort saisie le vif'* ('the dead seizes the living').

How is the Guernsey property owned?

If the property is owned jointly between two or more people on a 'survivorship' basis, then it passes to those survivors automatically, and the below rules do not apply (until the last survivor).

Will or no will?

Will

Assuming the deceased owns the property in their sole name, if they leave a will, the named beneficiaries will inherit, with nothing more to be done to effect the transfer of legal title.

However, from an administrative point of view, the will will need to be registered at the Greffe, Guernsey's local deeds registry, so that there is a public record of the new ownership.

Under Guernsey law, a person is free to leave their real property to whomever they wish, subject to certain safeguards for those who may be financially dependent on them. For example, if a person with a spouse and children decided to leave their house to a charity, a lover, or a second cousin, the spouse and children would have a good claim to the property through the Guernsey Courts, all else being equal.

No will

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If a person dies without leaving a will then they are considered 'intestate'.

The rules of inheritance under intestacy were helpfully set out in statute in 2012. In summary:

- If there are no descendants, the surviving spouse/civil partner shall inherit the whole of the real property;
- If there are descendants:
  - the surviving spouse/civil partner shall inherit:
    - one-half of the matrimonial home (with a right of enjoyment over the remaining half); and
    - one-half of any other real property; and
  - the descendants shall inherit the other half of the deceased's real property in equal shares between them.

The law sets out further rules, for circumstances where there are no surviving spouse or children or remoter descendants, and other scenarios.

Issues from intestacy

Prior to the law changing in 2008, there was a distinction made between 'legitimate' children (those born in marriage) and 'illegitimate' children (those born outside of marriage), where legitimate children were favoured.

The States of Guernsey recognised that this was discriminatory in today's society and so abolished any such distinction to the effect that if a person died intestate, their children (born in or out of wedlock) would be the heirs.

Unfortunately, this created ambiguity. A child of a deceased who inherits real property cannot prove categorically that there are no other children.

If that child wants to sell the property, then a buyer (and that buyer's bank) will want to ensure that they are buying/taking security from the proper legal owner.

In such a case an application to the Royal Court must be made, presenting sufficient evidence, such as affidavits and gazette notices, to show that they are the only heir. If successful, an administrator will be appointed, who will have legal authority to sell the property. If ambiguity remains, then the administrator has the legal power to hold the sale proceeds for up to six years, until any such claim would have prescribed. However, this is rare in practice, and proceeds are usually distributed immediately.

Such applications can cost thousands of pounds, take time, and add additional upset to an already emotional time.

Conclusion

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Guernsey wills and inheritance can be a complex area and so specific advice should always be sought. However, as a general rule, if you own real property and want to avoid the above issues, the simple solution is to make a will.

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