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Selling inherited property in Jersey

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Under Jersey law, if a person has no Will of Jersey immovable estate (the Will), as soon as they die, their freehold property automatically passes to their heirs at law, being their natural beneficiaries. If the deceased left no Will then nothing more can be done. This method of property passing by inheritance means that there is no public record of the 'transfer' of ownership.

If there is a Will, but the Will devises the property to the heirs at law (and in the same proportions as the law states), then the Will does not necessarily need to be registered. It is, however, always beneficial to register the Will as the Public Registry shall then hold the registered will confirming the heirs' ownership of the property which will potentially avoid delay of the sale of the property. The stamp duty payable on such a registration would be nil, only the registration fee (currently £90) would be payable.

If the Will devises the property to individuals other than the heirs at law, or in different proportions to that provided by the law, then it is advisable to register the Will as soon as possible. It is only upon the registration of the Will that the ownership passes to those named in the Will (for a brief period the property will vest in the heirs at law). Stamp duty is payable for the registration of the Will and it is advisable to speak to your lawyer regarding your circumstances so that they can advise upon the level of stamp duty payable.

Steps to consider when selling an inherited property

When selling your inherited property, if there is no Will in existence or registered, you will need to ensure you provide your lawyer with the deceased's death certificate, a copy of the unregistered Will (if applicable) and you will be asked to swear a legal document known as an affidavit confirming information regarding the heirs at law and your family tree.

If there is a registered Will but it does not refer to you specifically and uses terminology such as 'my children', an affidavit may still be required to state who the children are.

Finally, under Jersey law, if a property is sold within a year and a day from the date of registration of the Will, the Will is open to challenge by an interested party if a later valid Will can be produced or the current Will can be proved to be invalid ie for not being executed in accordance with law. For clarity, Wills of Jersey immovable estate need to meet formal validity requirements, for example, one requirement is that the Will needs to be read aloud and witnessed by a Jersey qualified lawyer and a further second witness.

Likewise, if there is no Will, the year and a day period (which in this instance runs from the date of death) is open for another heir at law to come forward or make a claim.

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1. No matter how slim the chance of any of the above occurring, no purchaser or lending institution will be prepared to take on this potential risk. There are, therefore, two options to sell within the said period: The first option is for the vendor's lawyer to hold the proceeds of sale for the remainder of the year and a day and only release the funds to the vendor(s) once the period has expired (this however may not be an option for you if there are charges secured against the property or the funds are required for other purposes).
2. The second is for defective title insurance to be obtained. Such insurance is something that your lawyer can obtain on your behalf, however your co-operation will most often be required and there are cost implications. The cost is based on both the value of the property and the term of the year and a day remaining can also be a factor. The insurance can range from £500 to £3,000, and, is in most cases paid for by the vendor(s) from the proceeds of sale.

Collas Crill has one of the largest property teams in Jersey together with a vastly experienced probate and wills team. Should you require any advice or guidance on buying or selling property in, please contact the team on 01534 601700.

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For more information please contact:



Anna Carter

Conveyancing Manager | Jersey

t: +44 (0) 1534 601645 | **e:** anna.carter@collascrill.com



Martin Le Boutillier

Partner | Jersey

t: +44 (0) 1534 601773 | **e:** martin.leboutillier@collascrill.com



Pamela Doherty

Jersey Managing Partner (Advocate) | Jersey

t: +44 (0) 1534 601655 | **e:** pamela.doherty@collascrill.com

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