COLLAS CRILL

Lasting legacy? Disclaiming a gift of immovable property in Jersey

FEBRUARY 2023

In January 2023, Collas Crill's International Private Client and Trusts team successfully applied to the Royal Court of Jersey (the Court) for an order confirming that our clients could disclaim a gift of immovable property that had been left to them under their son's will of immovable estate.

The basis for this application was that our clients, both in their 90s, financially secure and with property of their own, did not wish to inherit the property left to them by their son, who sadly and unexpectedly predeceased them, preferring instead for it to pass to their surviving son, the brother of the deceased.

In order for a will covering Jersey immovable property to take effect, it must be registered in the Public Registry. Once registered, the recipient of the property (the legatee) becomes the legal owner of the property.

What then would happen if a legatee does not need or want immovable property that has been left to them? They may have their own property and already be financially secure, or it may make better financial sense for the property to pass to an alternative beneficiary.

Until very recently, the law in Jersey was not clear on how to deal with the disclaimer of a gift of immovable property as the Loi (1851) sur les testaments d'immeubles (Law of Wills of Immovables) is silent on this point. By contrast, the ability to disclaim a gift of movable property is very clear as it is codified in Article 26 of the Probate (Jersey) Law 1998 which states that:

"Disclaimer of interest

(1) A person beneficially entitled to an interest in the movable estate of a deceased person may, at any time before the interest is distributed to him or her, disclaim the interest.

(2) A disclaimer shall be made by giving notice, in such form as may be prescribed, to the Judicial Greffier and to the executor or administrator, as the case may be.

(3) Where notice is given in accordance with paragraph (2), the person making the disclaimer shall be treated as having died before the deceased person for all purposes relating to the movable estate of the deceased person."

However, in July 2022, in the Representation of Peter John Yves Howard [2022] JRC145 (**Howard**) the question about disclaiming an interest in an immovable property, devised under the terms of a will, was brought before the Court.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

In this matter, the testatrix had devised her immovable property in two equal shares, on to each of her sons, P and S, and their respective spouses. The spouse of S had predeceased the testatrix, so that 50% share passed to S in its entirety. P had separated from his wife, J, who had gone back to live in England, and they were in the process of divorce negotiations. From the outset, it was envisaged that J would give up any interest in the 50% share of the immovable property devised to her and her husband, P, and this formed part of their ultimate financial agreement.

In this matter, Counsel for the Attorney General drew on Le Gros, citing Traité du Droit Coutumier de L'ile de Jersey where Le Gros stated (in French):

"No one is a legatee who does not want to be so. It is permissible for any person to renounce a legacy that has been made to his or her benefit"

The Court considered that there were three questions to be determined before concluding that a disclaimer of an interest in immovable property could be accepted, namely:

- Does the conduct of the legatee amount to acceptance of the legacy?
- If not, must the legatee renounce their interest under the will within a certain period of the registration of the same?
- If the disclaimer is ordered, from when does it take effect?

In Howard, the Court ultimately ordered, under its inherent jurisdiction, that it was possible for a person to disclaim such a legacy, and that a person does not have to be a legatee when they do not want to be.

This landmark decision in Howard was followed earlier this month in our own application where our clients, the parents of the deceased, provided affidavit evidence, setting out their full reasons for not wanting to accept the legacy of immovable property left to them by their son.

The Court granted their request and the disclaimer was successful – the result being that the will could be registered in the Public Registry, together with a copy of the Order from the Court, and the property devised thereunder would pass to the deceased's brother.

Should you be in such a position, or wish to receive advice in this regard, please get in touch with any member of the team and we would be delighted to assist.

For more information about our wills, probate and estate planning services, click here.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Arcadius Gregory

Senior Associate* | Jersey

t: +44 (0) 1534 601612 | **e:** arcadius.gregory@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.