Ogier

Do You Own a Property? Do You Have a Will?

There have been some fairly recent changes to the laws of inheritance which mean it is possibly more important now than ever to make a Will dealing with your houses and land –referred to as "realty".

There are two dates which are important and they are 7 May, 2008 and 2 April, 2012.

Prior to 7 May, 2008 if a married person with legitimate children died without having made a Will his, or her, house would pass automatically to his legitimate children upon death. In those circumstances the deceased person's house could not, by law, pass to any illegitimate children. Also, back then, Wills of realty had to be witnessed by Jurats of the Royal Court and some people found this inconvenient and costly. As a result it was often the case that home owners chose not to have a Will of realty - because the law gave effect to their wishes they wondered why they should incur the costs of preparing a Will.

After the law changed in 2008 illegitimate children were put into the same position as legitimate children. This change in the law caused some problems for those who had inherited property and were trying to sell it. The problem arose because a purchaser could not be sure that the person from which the vendor had inherited had no other children. Of course if there were other children who were not party to the sale then a purchaser would not own all of the house.

It is almost impossible to prove that someone who has died had no illegitimate children, so sales of a deceased person's property were often delayed until one of the heirs or an Advocate had been appointed as Administrator of all of the real property of the deceased by the Royal Court (called an Administration Order). Upon the grant of an Administration Order all of the deceased's real property was transferred into the ownership of the Administrator, who could then sell it with good title.

The process of obtaining an Administration Order is rarely seen as a pleasant experience for the applicant who must swear an affidavit setting out the life history of the deceased. The affidavit is intended to show, as far as is reasonably possible, that the deceased had no children other than the presumed heirs. In such cases an applicant must appear in Court when the application is made. The application itself is usually straightforward, but has cost implications.

If there is any uncertainty as to the identity of an heir, or heirs, the Court may require the Administrator to hold the proceeds of sale for 6 years before they can be distributed.

The change made in 2008 did not alter the fact that a person with a child could only leave his realty by Will to his spouse or a descendant (or step-child).

However in 2012 the law changed again, this time introducing freedom of testamentary disposition. The new law applied only in cases where the Wills had been made after the law changed. Freedom of testamentary disposition means simply that you can leave all of your property to anyone you choose. Certain "dependants" – generally a live-in partner or minor child - can make a claim against your estate if they feel reasonable financial provision has not been made for them.

The new law did not allay the fears of a prospective purchaser of realty from an heir on an intestacy and Administration Orders are still generally required in such circumstances.

The solution is to make a Will dealing with your real estate.

Contact Us

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