Ogier

Why all Guernsey homeowners need to make a will

Buying a house in Guernsey? It's time to make a will.

Over the last ten years significant changes have been made to Guernsey's laws of succession, the effects of which may be overlooked by some homeowners.

Prior to 2008 if you were married with 'legitimate' children (children born during your marriage) and died without having made a will then your houses and land, what is known under the law as your 'realty', would pass automatically to your legitimate children. In those circumstances your house could not, by law, pass to any 'illegitimate' children. Also, wills of realty had to be signed before Jurats in the contracts court which some found inconvenient and costly.

In 2008 a change in the law meant that children born to unmarried parents had the same inheritance rights as children born to married parents. This caused problems for heirs of property inherited when the deceased didn't make a will – known as inheriting on an intestacy. The problem was that prospective purchasers of property inherited on an intestacy could not be sure that the deceased had no other children, in which case the heirs would be unable to give good title to the property. Why was that? If, in addition to the heirs who were selling the property, there was another child (who the sellers may not have even known about), then the purchasers would not have bought all of the property. It is almost impossible to prove that there are no 'illegitimate' children, so sales of the deceased'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 looked upon 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 possible, that the deceased had no children other than the presumed heirs. The applicant must appear in Court at the time the application is made. The application itself is usually straightforward, but has cost implications and can delay a sale.

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 their realty by Will to a spouse or a descendant (or stepchild).

Fast forward to 2012 and the law changed again introducing, in the case of wills made after the date of the new law, freedom of testamentary disposition, meaning you can now leave all of your property, including realty, to anyone you choose. Certain dependants can make a claim against your estate however if they feel reasonable 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 often required in such circumstances. It is therefore absolutely essential that all Guernsey homeowners make a will.

If you would like to find out more about property law and/or making a Guernsey will, contact Ogier's property and conveyancing team at gsy@ogierproperty.com or call +44 1481 721672.

Contact Us

For a friendly chat call the residential property team on +44 1481 721672 or email gsy@ogierproperty.com