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Changes to the Guernsey Inheritance Law – April 2012

by Rachel Donaldson

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On 2 April 2012, new legislation will come into force which makes fundamental changes to the laws of inheritance in Guernsey. The new law brings about two key changes, firstly, the removal of the restrictions on leaving property by Will, and secondly the rules on intestacy (how your property will pass if you do not make a Will). It is hoped that the new law will help to alleviate problems that arise under the current law, in particular with regard to unmarried couples.

The current law imposes restrictions on how a person can dispose of both their Guernsey real property (land and buildings) and their personal property (money, stocks and shares, furniture, wheresoever situate) in their Will. The new law will remove these restrictions in their entirety and allow the person making a Will to leave their property to whomsoever they wish. If the testator owns real property outside of Guernsey, then it is advisable to make a separate will. Real property is subject to the 'lex situs', ie the law of where it is situate.

Despite this new testamentary freedom, the new law allows certain members of the deceased's family and dependents to apply to the Royal Court for a share of the deceased's estate to be made available to them if they have not been reasonably provided for financially. When making a Will after 2 April 2012, a person should have consideration for any potential applications that could be made to challenge their Will.

The new Law also changes the way in which property is inherited through intestacy (i.e. without a Will). The law no longer distinguishes between property which has been inherited through intestacy known as 'propres', and real property acquired by other means, known as 'acquêts', thus removing further restrictions on the inheritance of real property.

If a person dies without leaving a Will:

- If there are no descendants, the spouse/civil partner (although Guernsey law does not currently have any laws relating to civil partnerships) will inherit the whole of the deceased's real property.
- If there is no surviving spouse/civil partner the descendants inherit the whole of the deceased's real property.
- If they leave descendants and a spouse/civil partner, a one-half share of their real property will pass to their spouse/civil partner and the remaining one-half share will pass to their descendants, subject to the rights of inheritance and enjoyment of the surviving spouse/civil partner, the heirs to the real property are the descendants.
- If they do not have a spouse/civil partner or children, both their real and personal property will pass to their heirs at law (normally their brothers and sisters or their respective children).

In relation to personal property, if a person dies without leaving a Will:

- If there are no descendants, the surviving spouse/civil partner inherits the whole of the deceased's personal estate.
- If there is no surviving spouse/civil partner, the descendants inherit the whole of the personal estate of the deceased.
- If there are descendants and a spouse/civil partner, their spouse/civil partner will inherit a one-half share of their personal property, and the remaining one-half will be inherited by their descendants, to be shared equally.
- If they die without leaving a spouse/civil partner or descendants, their personal property will pass to their heirs at law.

The new law will only apply to Wills made on or after 2 April 2012 (unless the testator has incorporated provision for the new law to apply if the Will was made after 29 June 2011). Those Wills made before such date remain valid and do not need to be amended unless the testator wishes to take advantage of the removal of the testamentary restrictions.

For Wills made prior to 2 April 2012, the new law is disregarded, property will pass according to the Will and law prior to 2 April 2012, and family members of the deceased will not be able to apply against the estate for reasonable provisions.

The new law will apply to Guernsey only, Sark and Alderney have different inheritance laws which are not affected.

Rachel Donaldson
Associate
AFR Advocates