

Property inheritance: are you prepared?

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We are often asked what the process is with regard to the sale of an inherited property, including how to register the will and how and when to market and sell the property.

The inheritance

Many people inherit property at some time in their lives. Often it is the family home, but an inheritance may also come from other family members or sources.

Freehold (also known as “real” or “immovable”) property in Jersey passes either directly through a will or intestacy, no executor is involved.

Where there is a will, the original of the will along with the death certificate must be taken to the Judicial Greffe for registration. Some choose to deal with this themselves, but your lawyer can do this for you. The Judicial Greffe will require the names and addresses of all heirs and, unless the spouse or partner is inheriting the marital home, a valuation of the property will be required in order to assess the stamp duty payable on registering the will.

Where a person dies without leaving a will (there is an intestacy) the heirs will need to be identified. This may be obvious in some cases but in others legal advice will be required. No documentation needs to be registered to establish ownership although it is encouraged in order to ensure that title is fully traceable through the records of the Public Registry; only nominal stamp is payable.

It is normal nowadays to make separate wills of moveable and immovable property, but if the will combines them, then a Grant of Probate should be applied for before registering in relation to the freehold aspect. An application for a Grant of Probate can be made through a law firm or directly with the Judicial Greffe. Most law firms have regular appointments, and the Grant is usually issued within five working days after the appointment. Where the application is made directly with the Judicial Greffe, an initial meeting takes place to establish the value of the estate, and a second

meeting is required to make the application for the Grant of Probate; the time scale varies, but the process usually takes more time to conclude.

When can the property be sold?

Under Jersey law, a will can be set aside within a year and a day of registration if, for example, a later will is found, the will was not witnessed properly or the deceased did not have sufficient mental capacity. This does not mean that a year and a day must pass before the property can be sold, and often it is the case that people prefer to conclude the sale quickly to obtain closure and organise the distribution of funds.

A seller who wants to sell before the year and a day has passed must either agree to the sale proceeds being held by their lawyer until the time has passed or take out an insurance policy to protect the buyer from risk, the premium is linked to the value of the property but it is usually quite reasonable. The latter is what usually happens.

Achieving the sale

The estate agent plays a pivotal role in achieving the sale by marketing the property and meeting potential buyers. Cost is often a factor when choosing an estate agent or a lawyer and we would advise that you seek recommendations. It is essential to obtain the best advice which may involve your estate agent or lawyer telling you what you need to know rather than what you wish to hear.

The estate agent works with the heirs to agree a sale price, to produce an inventory of contents and to suggest an achievable completion date. If negotiations reach a stalemate the agent can directly address both the heirs and the buyer to encourage a solution.

Once the estate agent has found a buyer, then the heirs' lawyers will provide the buyers' lawyers with a sale contract. The sale process usually takes 3-4 weeks, often depending upon any mortgage arrangements being made by the buyers. Particularly when inherited properties have not been conveyed for a while, the buyers' lawyers may highlight boundary problems or other defects (for example encroachments or inadequate legal rights for access or main services) which need to be remedied. This can lead to delays unless efficiently and effectively handled as early as possible in the process.

All parties must be personally present or represented to pass a freehold contract before the Royal Court. If any are unavailable, off island, or simply prefer not to go to Court, powers of attorney must be signed enabling someone, usually from the party's lawyer's offices, to represent them. A power of attorney must be witnessed by an authorised person (usually a lawyer practising in the jurisdiction where the heirs live) before being registered in the Public Registry, thus paving the way for the sale.

The above is a “thumbnail” sketch of the sale process for an inherited property and highlights the importance of obtaining sound advice from lawyers and estate agents in order to ensure that matters run as smoothly as possible.

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