

Snapshot: enforcement against real property in Guernsey - saisie

Publication - 17/05/2021

Saisie (meaning "to seize") is a court-driven, Guernsey customary law process, governed by the Saisie Procedure (Simplification) (Bailiwick) Order, 1952. It is a three-stage, post-judgment process which enables a creditor to enforce their rights against the debtor's realty in Guernsey.

Creditors who utilise the saisie process can only recover debts by enforcement exclusively against realty. There is no further remedy against the debtor meaning the right to enforce against the debtor's personalty is lost. If the value of real property is not sufficient to satisfy the debt, then a creditor is best advised to proceed against the debtor's personalty first by way of désastre proceedings

The effect of saisie is to vest all of the debtor's realty in Guernsey into the name of the creditor. The entire proceedings can take 6-12 months and places certain burdens on the creditor who initiates it.

Before pursuing saisie proceedings it is advisable to:

- ensure there is enough equity in the realty to cover the debt, interest and legal costs to date (Guernsey law does not allow the principal creditor to seek payment from the debtor for any shortfall incurred from the sale of the charged property unless there are contractual terms to the contrary)
- carry out a cadastre search to check the ownership of the debtor and if the property is owned outright; and
- carry out a bond search for other bonds, creditors or apportioning shares registered against the property

First stage: Preliminary Vesting Order (PVO)

The creditor needs a PVO in order to obtain the court's permission to enforce the judgment against the debtor's real property.

Once a PVO has been granted the creditor becomes the 'saisi mobilier'. The debtor still owns the title to the property but has lost the right to make use of it. The saisie mobilier has the authority to let out the property and receive rent, institute repairs and to initiate eviction proceedings against the debtor if he occupies it. They are entitled to revenue the property produces to satisfy or reduce the debt owed to them. The debtor is still allowed to repay the saisie mobilier at any time or sell the property and use those proceeds as repayment.

Once a PVO is granted, the debtor is summonsed to a hearing before a Commissioner (typically a Jurat of the Royal Court) where the creditor tables a statement of account recording formalities and showing the amount of the debt, interest and recoverable costs less any rent or other payments received. If there is any dispute over the accounts which cannot be determined by the Commissioner, the Court will determine the amount.

Second stage: Interim Vesting Order (IVO)

The *saisi mobilier* is then entitled to issue a summons to the debtor, with three clear business days' notice, seeking payment of the certified amount set out in the Commissioner's report. The summons states that in the event of a failure to pay the sums owing, the creditor will apply for an IVO, which will have the effect that the whole of the debtor's realty in Guernsey is vested in the *saisi mobilier* (now the '*saisi héréditaire*') as trustee for the claimants and extinguishes any right in or title to the realty the debtor had.

The *saisi héréditaire* must act in the general interest of all creditors and has a duty to maintain the value of the charged property. It is advisable to insure the property and make any repairs.

The *saisi héréditaire* must open a register for twenty-eight days at the Greffe (courthouse) for any claims against the realty of the debtor, and must publish notices in *La Gazette Officielle* for two successive weeks. Whenever another creditor enters their name on the Register, they will also lose their right to enforce their claim against the debtor's personalty. Once the twenty-eight days end, the register is closed and the *saisi héréditaire* issues a summons to all creditors who have registered a claim, to attend a meeting before the Commissioner for the claims to be marshalled (e.g. assessed). The Commissioner will then verify the amount of the claims and place them in order of priority in a further Commissioner's report.

Third stage: Final Vesting Order (FVO)

The *saisi héréditaire* will then summons each of the registered creditors to a hearing.

The names of all creditors are called in reverse priority order (i.e. lowest priority first) and each is asked if they wish to elect to have the realty vested in themselves or to renounce their claim. Any election to have the real property vested in their own name is made on the condition that they pay in full the claims of all higher priority creditors within 15 days. If they renounce, they irrevocably renounce their claim against the debtor.

The FVO is granted to the creditor who elects to take the realty and they becomes the '*saisi propriétaire*'. Absolute title is then vested in the *saisi propriétaire* and the FVO is treated as the conveyance of the realty to the *saisi propriétaire* who will receive good title free from any encumbrances. If the property is owned jointly, the FVO gives the *saisi propriétaire* ownership in the debtor's share only.

There is no obligation for the *saisi propriétaire* to pay any surplus to the debt back to the debtor. The Royal Court has on occasions requested that the *saisi propriétaire* gives an undertaking to repay any surplus from the proceeds of sale to the debtor.

About Ogier

Ogier provides practical advice on BVI, Cayman Islands, Guernsey, Jersey and Luxembourg law through its global network of offices. Ours is the only firm to advise on these five laws. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found at www.ogier.com



ogier.com

Meet the Authors



Sandie Lyne
Partner
Guernsey
sandie.lyne@ogier.com
T+44 1481 752224



Chloe Gill
Trainee Solicitor
Guernsey
chloe.gill@ogier.com
T+44 1481 752355
M+44 7797 770812

Related services

Dispute Resolution
Enforcement of Judgments and Awards