

Legal Review



LAND IN UNCERTAIN OWNERSHIP - NEW PROPOSALS

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In some cases, difficulty in tracing the owners of property arises from the fact that it has been inherited through successive generations, leading to a situation where the heirs can be both numerous and geographically far flung. Often it is necessary to enlist the help of specialist investigators to trace all of the heirs. This can be an expensive and time consuming process.

Where ownership of land is uncertain, it has been common for defective title indemnity insurance (“DTI”) to be taken out by the persons seeking to transfer ownership of the land to cover the possibility of the true owners establishing their title and claiming the land in question or a share of the proceeds of sale. A single premium is paid, the amount of which fluctuates according to the level of cover required. Payment of the premium is, in effect, easy money for the insurers as I have never known a claim to be made under a policy taken out in respect of Guernsey land.

This procedure will be affected by the introduction of legislation which is due to be brought into force by the end of May 2006.

It is proposed that in respect of any Guernsey property, if uncertainty as to current ownership exists, the Royal Court may grant an administration order to an administrator appointed in respect of that property.

The administrator (who can be a Law Officer or one of the identified heirs where others cannot be identified) would be able to give good title to the land to enable it to be sold and the title of the purchaser would be incapable of challenge at the instance of an heir who had previously been unidentified. The heir would, however, be able to claim his share of the proceeds of sale during the relevant limitation period, which is proposed to be reduced to 6 years from the present 20 years.

Until the property is sold, the administrator would have full powers to lease the property

and could apply to the Royal Court for permission to borrow on the security of it.

The administrator would be obliged to hold the proceeds of sale for 6 years, during which investigations would be undertaken to establish the heirs entitled. Once the enquiries have been exhausted, the administrator can apply to the Court authorising distribution of the proceeds which, when granted, would amount to a complete discharge to the administrator even if an heir was subsequently identified.

At first glance, it appeared that the proposals might have proved to be the death knell for DTI in Guernsey. After all, an insurer would not wish to offer cover only to find that an administration order is taken out and the property concerned sold, leading to a claim by the insured.

However, whilst this may well be the case where ownership is uncertain because of the lack of certainty as regards the owners of the property due to inheritance through several generations, it would appear that DTI still has a part to play where ownership is uncertain due to deficiencies in the drafting of conveyances i.e. where the uncertainty as to ownership arises because it is not clear if the land in question was or was not included in a conveyance.

The legislation referred to above will also change Guernsey laws of succession to enable illegitimate children and remoter descendants to have equal status with legitimate children and remoter descendants for inheritance purposes. It is therefore quite possible that the administration procedure will be used in cases where there is some doubt as to whether or not a deceased owner of property had illegitimate children.

These measures will increase the importance of making Wills and anyone in doubt on this subject should contact their advocate for clarification of their position.

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