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Guernsey Inheritance Laws - Potential changes coming

For the majority of us, buying a house is probably one of the biggest investments we make in our lifetime. Certainly when you are a first time buyer, probably the last thing you are thinking of is planning what will happen to your property after your death. It is, however, important to consider how you might wish your assets to be disposed of upon your death, no matter how far in the future that might appear to be, and with the proposed changes to Guernsey's inheritance laws, there may be fewer restrictions in the future on how you may dispose of your property.

The current Guernsey inheritance law was drafted in 1954 and is based on Norman customary law, which held the traditional view that only those within the family should inherit. In today's social climate such provisions are now clearly out of date. There have been significant changes in society since the original law was drafted - an increasing number of cohabiting couples and a higher divorce rate to name a couple. The current proposed reforms quite clearly recognise these trends and set out to address them, whilst also protecting the interests of vulnerable dependants.

The first part of the review process is now complete and awaiting approval from the Privy Council. The main changes relate to the treatment of illegitimate children in respect of inheritance issues. Within the new legislative framework any discrimination against illegitimate children with regard to the inheritance of both real estate and personal property has been removed.

Whilst the first phase of reform was being considered it also became clear that a review of the more general issues relating to our inheritance law would need to be addressed. Subsequently there has been a comprehensive

process of public consultation on other issues relating to inheritance legislation, much of which revolves around forced heirship - the automatic right of a spouse or descendant to inherit, this is common in other jurisdictions (e.g. Scotland and France) but not in England and Wales, where a person can leave his property to whom he wishes.

Guernsey's legislative structure has always been very strict regarding disposition of immoveable property (i.e. land, houses and buildings) on death and the principle still remains that a person cannot will his real estate outside the family. The Law of Inheritance, 1954, states that if a person leaves descendants then he must leave his property to one or more of the persons falling within certain categories, namely his spouse, children and their descendants. Further, whatever the terms of the will, a surviving spouse is entitled to a life interest in (at least) one-half of any immoveable property held in the sole name of the deceased. The heirs would thus take their share subject to the life interest of the spouse.

Where a deceased has left no will, the property held in his sole name will pass to his children, (now including illegitimate children), and if more than one in equal shares between them. Any property held with another person will become the sole property of the survivor on the death of the first-deceased. However, where the deceased is the joint owner of property with another person in undivided shares, his share will pass to his heirs, and the share or shares of the other owners will pass to that owner's heirs.

The consultation process asked whether Guernsey should introduce complete testamentary freedom, without any person having any legal entitlement to a share of another's estate by virtue of their relationship with that person. In a social environment where second marriages and consequently second families are becoming the norm, such issues are inevitably worthy of consideration and there is no doubt that the local legislation is ripe for reform in order that it meets the requirements of society today.

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