

# Enforcing security over Guernsey real property

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In Guernsey, proceedings to enforce a general bond, judgment debt or other security registered against a property are known as 'saisie proceedings'. By a saisie, the creditor (the Principal Creditor) seeks that the Debtor's real property be vested in the Principal Creditor in satisfaction of the debt due and owing to that creditor. The procedure is governed in Guernsey by the Saisie Procedure (Simplification) (Bailiwick) Order, 1952. The procedure is as follows:

## 1 Judgment debt and Preliminary Vesting Order (PVO)

The Principal Creditor must first consider whether the Debtor has any significant assets other than realty, and if so, seek judgment to enforce the debt on such assets first. This is because 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 and once a nomination for proceeding against real property is made (by seeking a PVO), personal property cannot be pursued. Enforcement is therefore sought first against the Debtor's personal assets, if any, and the charged property will later be seized to recover the balance. This is particularly relevant for commercial premises (eg where the Debtor has commercial goods which can be sold).

The saisie begins with the Principal Creditor obtaining a PVO from the Royal Court, normally at the same time as the initial summons issued against the Debtor if they have not responded to the letter before action or proposed an acceptable repayment plan.

Where the Debtor no longer resides in Guernsey, the Principal Creditor will be required to seek permission from the Royal Court to serve the summons by sending this, for example, by registered post or equivalent to the Debtor's current address abroad.

Once the Judgment Debt and PVO are granted, the Debtor still owns the property but has lost rights to make use of it (other than to continue living in it), eg the Debtor cannot rent the property if it is empty, collect rents from any tenant etc. The grant of the PVO assigned such rights to the Principal Creditor. But the Debtor can still sell the property at this stage and use the proceeds of sale to repay any charge secured on their property.

It should be noted that the limitation on a judgment obtained by consent is six years and without consent is three years (although application can be made to extend this); therefore any extended period of post judgment arrangements should be monitored.

## 2 First Commissioner's hearing: presenting the accounts

Before it will be allowed to take possession of the Debtor's property, the Principal Creditor is required to present accounts of all sums due to it and have such sums certified by a Commissioner (being a Jurat of the Royal Court).

Before the hearing, the Principal Creditor must provide its receipts, expenditures and costs to the Debtor and a statement of account explaining how the sum owed was calculated. The Debtor is given the opportunity to examine the accounts and make its representations. Subject to the determination by the

Court of any dispute concerning such account as cannot be determined before the Commissioner, the Commissioner must certify the amount due to the Principal Creditor in the Commissioner's Report.

### **3 Interim Vesting Order (IVO) and eviction**

The Principal Creditor must summon the Debtor to appear before the Royal Court sitting En Plaids d'Héritage (generally on the first Tuesday of each month). At this point the Debtor must either pay the Principal Creditor the debt owed (as certified by the Commissioner) or the Debtor will, through the making of the IVO by the Court, renounce ownership in the charged property.

If the IVO is granted, the Debtor loses ownership of the charged property which passes to the Principal Creditor as trustee for all of the Debtor's creditors. This means that the Principal Creditor is entitled to obtain vacant possession of the premises and it will usually seek that an Eviction Order be granted. Generally, this will be granted as of right when an IVO is granted however the Court will exercise its discretion on the length of stay (it must be noted that the Debtor is entitled to apply for up to six months stay of the Eviction Order).

In *HSBC Bank plc v Doyle*<sup>1</sup>, the Royal Court examined whether the saisie procedure infringed the debtor's rights under the European Convention on Human Rights, specifically the right to peaceful enjoyment of property. The Court concluded the process did not violate these rights and the factors influencing this decision included that the Court has discretion to postpone the granting of an IVO, providing the debtor additional time to arrange for repayment.

It is important to note that following the granting of the IVO, the Principal Creditor must act in the general interest of all the creditors of the Debtor eg it can let the property and collect rents (note that rents should be put into a separate account until a final vesting order is made), it can terminate any existing lease (with the permission of the Court) or sue for unpaid rents etc. This duty falls upon the Principal Creditor whether or not the Debtor has obtained a stay of eviction and still lives in the charged property.

In its capacity as trustee, the Principal Creditor also has a duty to maintain the value of the charged property and must therefore ensure that the property is adequately insured against fire or other risks. The Principal Creditor may also have to carry out reparations to the property. Various other costs and expenses should also be considered eg security alarm, cleaning, property tax, utilities rates, local constables rates etc. In the final stage of the saisie proceedings, the Principal Creditor will be entitled to recover such expenditures.

Where an IVO is granted in respect of the real property of joint owners (the most common scenario being a couple with a mortgage over their home), the making of the IVO severs the ownership so that the property vests in the Principal Creditor in equal undivided shares. However, there is only one IVO, in respect of the whole of the real property of the debtors.<sup>2</sup>

### **4 The register of claims: calling all creditors**

The Principal Creditor must now seek to ascertain the existence and identity of all the Debtor's creditors who wish to enforce their own debt against the charged property. An application is made to the Greffe for the opening of a Register of Claims.

All the secured and unsecured creditors of the Debtor, including the Principal Creditor, are then invited to give details of their claim against the Debtor on the Register. The Register of Claims is opened by the Greffe for 28 working days following the publication of the required notice in the local press (two notices, once in each of two successive weeks).

### **5 Second commissioners hearing: marshalling of claims**

When the Register closes, the Principal Creditor must summon those creditors who have registered a claim in the Register to appear before a Commissioner. The claims will then be 'marshalled' by the Commissioner, ie verified and placed in order of priority.

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<sup>1</sup> 2018 GLR 563. For more information, see our Guide: [Security in security - court dismisses challenge to Guernsey Saisie procedure in landmark judgment \(10 October 2018\)](#).

<sup>2</sup> In the matter of *Saisie Proceedings against Gallienne and Galienne* [2020] GLR 205 (*Gallienne*), applying earlier authority.

The priority of the claims is established by first looking at whether a creditor holds a charge against the Debtor's property. Secured creditors (ie bondholders and any creditor having registered a Judgment Debt) have priority over unsecured creditors. As between secured creditors, bonds and registered judgments rank in priority according to their date of registration unless a prior chargeholder waives this right. If there are two or more unsecured creditors, their claims are ranked equally between themselves.

The Principal Creditor must also present the costs and expenses it has incurred since the IVO was granted. The outcome of the marshalling of the claims and the priority of each claim is certified by the Commissioner in a further Commissioner's Report.

In the joint ownership scenario mentioned above, the marshalling is in respect of the whole of the real property owned by the debtors.<sup>3</sup>

## **6 Final Vesting Order (FVO)**

The FVO transfers the ownership of the property from the Principal Creditor (as trustee for all creditors of the Debtor) to whichever creditor elects to become the owner. The Principal Creditor must summon the registered creditors who participated to the marshalling of the claims to appear before the Royal Court sitting en Plaids d'Héritage.

At the hearing, the registered creditors are called in reverse order of priority (which has been set in the Commissioner's Report) and each creditor is asked whether they elect to have the property vested in them or whether they wish to renounce their claim against the Debtor completely.

Whichever creditor elects to become the owner effectively replaces the Debtor as owner and therefore takes on all of the Debtor's obligations in relation to the property, including the obligation to pay off all higher ranking registered claims within 15 working days of the FVO. Minor claimants usually renounce their claims as they are rarely in a position to repay a secured creditor within 15 days. It is normally only the secured creditors that will consider election to become the owner.

In the case of joint ownership, where the electing creditor has registered a claim against both owners, it may take both owners' former shares in the property through an FVO. In the rare scenario where the electing creditor only has a claim against one owner, it may only take that owner's former interest.<sup>4</sup>

## **7 Selling the property: the proceeds of sale**

The Act of Court recording the FVO acts as conveyance of the realty. Having satisfied any higher ranking claim, the electing creditor receives good title free from any encumbrances. The electing creditor must register the FVO at the Greffe against the property and promptly notify the Cadastre of the change of ownership.

The electing creditor can dispose of the property as it pleases (subject to the rights of any co-owner). Previously there was no specific duty on the electing creditor to ensure that the sale price was the best that could reasonably be obtained, nor was the electing creditor under any obligation to pay any surplus proceeds of sale to the Debtor or its other creditors.

However, it is worth noting that the Royal Court did on occasion request that the electing creditor give an undertaking to repay any surplus following the sale of the property to the debtor.

Now, where the electing creditor is regulated by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, Rule 7.10 of the associated Rules and Guidance (2023) requires that any surplus realised from the sale of the property must be returned to the debtor and the sale must be on an arms-length basis, taking reasonable steps to realise market value.

### **Preliminary considerations:**

Saisie proceedings typically take six to 12 months to conclude. Before commencing a saisie, creditors should always consider the following elements:

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<sup>3</sup> Gallienne.

<sup>4</sup> Gallienne.

1. whether the Debtor has any personal assets which can be seized before taking any steps in respect of real property as once a PVO is obtained, personal property cannot be pursued;
2. the terms of the document which provides for the security: bond (mortgage contract), facility letter or loan agreement, judgment debt etc, and whether there is sufficient equity in the charged property to satisfy the Principal Creditor's debt, including interest and costs;
3. the current ownership of the charge property, ie if it is jointly owned, did both co-owners provide the security? Is there any guarantor? and
4. the Principal Creditor's position with regard to priority and the consequences of the saisie; the date of registration of bonds/judgments will determine the priority between the various creditors.

## Contacts

A full list of contacts specialising in enforcement proceedings can be found [here](#).