

An analysis of insolvency involving Guernsey and Jersey property

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In a further analysis of the differences and similarities between Guernsey and Jersey property law, this guide takes a look at the main insolvency procedures in each jurisdiction.

In **Guernsey**, if lending is secured against real property and a borrower defaults but does not sell a property to repay the debt, the lender will usually be obliged to institute '*saisie*' proceedings in the Royal Court.

The basic procedure begins with the lender suing the borrower to recover all sums plus interest due. Judgment is then taken for the sum due with the power to levy execution against the borrower's real property (a preliminary vesting order (**PVO**)). From this stage in proceedings, the lender would be able to evict the borrower, with any stay of eviction being up to a maximum of six months, and has the power to let or repair the property. If a PVO is sought, the creditor cannot then pursue the debtor's personalty to recover the debt.

A Commissioner of the Court is appointed at the lender's request to establish their account concerning the judgment, which would include interest, receipt and expenses, including legal costs. The borrower is then actioned again to pay that sum plus interest. If the borrower fails to pay, the Court will make an interim vesting order (**IVO**), under which the lender becomes trustee of the borrower's real property for the creditors.

The lender, as trustee, is then responsible for letting, insuring and repairing the property and evicting the borrower if this has not already been done. Also, it must account to the other creditors for any monies received and notify them that the process is ongoing by publishing a notice in the Gazette Official for two successive weeks. This notifies all creditors of the borrower that a Register of Claims will be open at the Greffe (Guernsey Public Registry) for 28 days and that if they wish to make a claim against the real property they must register their claim.

A Commissioner is appointed to marshal all registered claims in order of priority (based on whether each creditor's debts are secured or unsecured, time of registration etc.) and to set a final vesting order (**FVO**) date. Engaging in the *saisie* process risks any creditor's right to enforce his debt in the future against the borrower through other means.

On the FVO date each claimant, starting with the claimant with the lowest priority, must decide whether he wishes to have the borrower's real property vested in him subject to paying off prior registered creditors within 15 days. It will be the amount of likely equity, if any, in the property which will dictate whether any other creditor other than the first in priority takes the property. On the declaration of the FVO the creditor becomes the owner of the property.

Guernsey also has a procedure where a debtor is declared '*en désastre*', but this only relates to personalty.

There are two main insolvency procedures in **Jersey** involving Jersey real property: '*désastre*' and '*dégrévement*'.

Désastre: A creditor may make an application under the Bankruptcy (*Désastre*) Jersey Law 1990 for a declaration that the debtor is *en désastre*, a process that can also be initiated by the debtor themselves.

The creditor will need to obtain judgment in its favour for the outstanding amount which remains unpaid. If a *désastre* application is granted, all of the debtor's Jersey property automatically vests in the Viscount – the Royal Court's executive and enforcement officer - who, having gathered in the assets and liquidated the estate in Jersey, will distribute it in a set order to the creditors who have proved their claims.

A key point is that the conduct of the *désastre* is taken out of the creditor's hands and placed into the sole control of the Viscount, who will usually require an indemnity for his costs from the creditor applicant so as to cover his costs should the estate prove to be insufficient to meet them.

This procedure can be both prolonged and costly.

Dégrévement: This is a procedure by which each property owned by the debtor is freed from the charges over it. The creditor must first obtain judgment against the debtor for the outstanding debt and then, after a certain period of time, the creditor applies to the Royal Court to obtain an order that the Viscount writes to the debtor informing them that if the judgment is not satisfied within one month, the debtor will be judged to have renounced his property.

The process then proceeds to a hearing which the secured creditors and any unsecured creditors who have lodged their claims may attend. Each creditor, when called, has the option to 'take' the property subject to the discharge of all prior charges and priority claims. Once one creditor agrees to 'take', that creditor effectively becomes the owner of the property and the Viscount will be authorised to put him in possession of the property. If a creditor does not 'take', he loses his security over the property. The creditor which 'takes' the property retains any excess equity in the property over and above its own secured sum and after payment of all higher ranking secured creditors.

The process is favoured by some creditors because it remains largely within the control of the creditor that initiated it and focuses on immovable property, usually the main asset of the debtor.

Contacts

A full list of contacts can be found [here](#).

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