

STATES OF JERSEY



DRAFT WILLS AND SUCCESSIONS (AMENDMENT) (JERSEY) LAW 201- (P.7/2010): AMENDMENT

**Lodged au Greffe on 8th March 2010
by the Chief Minister**

STATES GREFFE

PAGE 16, NEW ARTICLE –

After Article 4 insert the following Article and renumber the remaining Articles accordingly –

“5 Article 20A inserted

After Article 20 of the principal Law there shall be inserted the following Article –

‘20A Sale or donation of immovable property

(1) Where –

- (a) immovable estate has devolved, whether on an intestacy or under a will registered in the Public Registry, on more than one heir at law;
- (b) one or more, but not all, of the heirs at law join in a contract of sale or donation of the estate, or any part of it or any interest in it; and
- (c) the purchaser or donee joins in the contract in good faith, in ignorance of the existence of any heir at law who has not joined in the contract,

title in the estate or part or interest shall pass to the purchaser or donee, as the case may be, as if the contract had been joined in by all of the heirs at law.

(2) Where title in any immovable estate or interest passes to a purchaser or donee in the circumstances described in paragraph (1), an heir at law who did not join in the contract by virtue of which title passed to the purchaser or donee, shall be entitled to claim his or her proportionate share of the proceeds of sale or, in the case of a donation, of the value of the estate or interest conveyed, from the heir or heirs at law who joined in the contract and any heir at law who has previously made a successful claim under this paragraph.

(3) A claim under paragraph (2) must be made within the period of 10 years following the date the contract was passed.

(4) For the purposes of this Article “heir at law” means –

- (a) a person on whom immovable estate has devolved on an intestacy, in accordance with Article 4; or
- (b) a person on whom immovable estate has devolved, under a will registered in the Public Registry, by virtue of being a person of a class described in the will.”

CHIEF MINISTER

REPORT

Background

The Wills and Successions (Amendment) (Jersey) Law 201- (the “Amendment Law”) seeks to open succession rights to illegitimate children. Such children will, under the Amendment Law, be placed on the same footing as legitimate children for the purposes of succession. The Amendment Law represents Phase 1 of the review by the Legislation Advisory Panel of Jersey Inheritance Law. Phase 2 will deal with the wider issues surrounding Inheritance Law in Jersey as noted in the main report.

One risk which already exists under present Law is the possibility of previously unknown heirs coming forward after an estate has been distributed, to claim a share of it. This can arise where a person dies without making a will, or leaves property under a will to his or her children without identifying them by name. Examples of such occurrences might be where, for example, previously unknown adopted children, or children from a previous marriage, come forward to claim a share of the estate.

The extension of succession rights as proposed under the Amendment Law, will naturally increase this possibility.

This could, in particular, be problematical where succession to land (immovable estate) is concerned. The purpose of this amendment is to address this matter so as to protect the title of persons who transact with the known heirs in good faith in relation to immovable estate. It is considered that there is already adequate protection offered in respect of personal estate.

This matter was raised by members of the Panel in their deliberations, and it was felt that as the problem already existed, it might be better dealt with during the wider piece of work to be performed under Phase 2 as already scheduled on this subject. The matter was then again raised by Senator Le Marquand directly with the Assistant Minister after the proposed Law was lodged, and after further deliberation it was agreed that it would be preferable to resolve this matter under Phase 1, hence this amendment is being presented to the States for consideration.

It is also useful to note that when a person dies intestate, the immovable estate automatically devolves in equal undivided shares between the heirs at law by virtue of Article 4 of the Wills and Successions (Jersey) Law 1993. In these circumstances, an unknown heir is not required to take any steps in order to secure his or her share.

Purchasers and Donees of Immovable Estate

Under the law as it stands, where a purchaser or donee has acquired an interest in the immovable estate by transacting with some, but not all, of the heirs, an unknown heir may be able to follow the property into the hands of the purchaser or donee. This therefore means that there can theoretically be a risk (for the purchaser) associated with purchasing land / property from an estate.

This amendment would protect the title of the purchaser or donee in these circumstances, so long as he or she acted in good faith.

If the purchaser or donee acted in bad faith *e.g.* in collusion with the known heirs to deprive the other heirs of their share of the estate, he or she would not benefit from the

statutory protection provided by this provision, and the unknown heir would still be able to follow the property into the hands of the purchaser or donee.

Protecting the Heirs

Where protection had been afforded to a purchaser or donee by virtue of this provision, the heirs disposing of the property would still be liable to account to an unknown heir for the value of the latter's share. However, this liability would come to an end after 10 years had elapsed from the date of disposal of the property. The 10 year period is consistent with the prescription period in Jersey contract law.

The Legislation Advisory Panel is grateful to Senator Ian Le Marquand for raising the matters dealt with above in relation to the Amendment Law, and for his assistance in working with the Assistant Minister and the Legislation Advisory Panel to formulate this amendment.

Financial and manpower implication

There are no financial or manpower implications arising from this amendment.