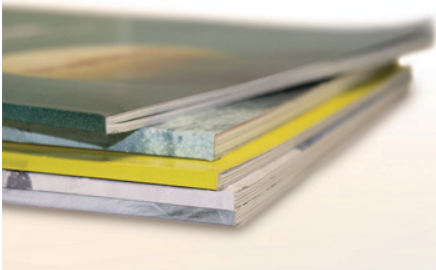


The Occupation of Inherited Property

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BY TIM HART

The vast majority of houses and apartments in the Island can only be occupied by persons with residential qualifications under the **Housing (Jersey) Law 1949**. However, there is a small pool of residential properties which for various reasons (loopholes is the rather pejorative term which tends to be used) can be occupied by persons without qualifications.

One such category of properties is those which were inherited by individuals, by will or intestacy, on or before 10 March 2006. All residential properties, whether inherited before that cut-off date, can be occupied by the inheritor whether or not he or she has residential qualifications. But only those inherited on or before the cut-off date continue to be able to be occupied by third parties without qualifications, subject to the limitations explained later in this article.

The Report which accompanied the draft **Housing (Amendment No.12) (Jersey) Law 2006**, which

introduced the 10 March 2006 cut-off date, contained the following passage:

“Generally, as there is no opportunity for the Committee [for which read ‘Minister’ since the change to ministerial government] to impose occupancy conditions on inherited properties, it is possible for the owner to enter into a licence agreement which enables an occupant, irrespective of residential status, to be able to occupy the property in return for an agreed payment. Any such individual does not have security of tenure, nor exclusive right of occupation, but this arrangement is utilised to in effect evade the controls contained in the Housing Regulations.”

That ability to licence the occupation of inherited property continues to apply in relation to property inherited on or before 10 March 2006. Clearly, therefore, the pool of relevant properties will steadily diminish, and eventually disappear, as the relevant owners themselves die (or transfer ownership whilst still alive). Nevertheless, there remain for the time

being a certain number of these special status properties. And, despite the rather negative terminology used in the Report cited above, these properties can be seen as providing a useful function in terms of providing accommodation for persons who make a valuable economic contribution to the Island but do not have not been able to acquire residential qualifications by either long residence or essentially employed ('J category') housing status.

What then is a licence as opposed to a lease or tenancy? The question is of fundamental importance since leases and tenancies are transactions requiring the consent of the Minister under the **Housing Law**, which would not be granted where the tenant did not have residential qualifications.

The crux of the matter, as the Royal Court has made clear, is whether or not the occupier enjoys rights of exclusive occupation. As the Royal Court said in the leading case:

“A tenant armed with exclusive possession can keep out strangers and keep out the landlord unless the landlord is exercising limited rights reserved to him by the tenancy agreement to enter and view and repair.”

By contrast, in a true licence, the owner must retain control and possession of the property occupied by the licensee.

Furthermore, what is important is the substance of the arrangement rather than the form of the legal documentation. So, it is not just a question of

drafting the licence agreement to make clear that the owner can enter the premises whenever he or she wishes; the owner should also actively exercise that right. The occupier simply cannot have vis-à-vis the owner the same degree of privacy to which he or she would be entitled if he or she were a tenant.

In order to reinforce the nature of the arrangements, the owner should provide services to the occupier, thereby requiring the owner to exercise regular access onto the licensed property.

A licence should be terminable by either party on minimal notice, so as to make it as clear as possible that the arrangement is a personal one between the parties with no '*security of tenure*' for the occupier. Clearly this presents some risk for both parties – the owner in terms of his or her ongoing income and the occupier in terms of his or her ongoing occupation – but this is something which the parties must accept if they wish to enjoy the benefits available to each of them under such an arrangement.

Care in agreeing and implementing licences of inherited property is therefore vital and owners and occupiers need to appreciate that licences are not simply leases or tenancies by another name. If proper care is taken, however, such arrangements provide useful benefits to the parties directly concerned and, arguably, to the wider community.

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