Collas Crill explains... Saisie: enforcement in Guernsey

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Saisie is the customary procedure in Guernsey whereby a creditor can enforce against the real property of their debtor and ultimately have the realty vested in them in order to satisfy the debt. This enforcement process relates to all of the debtor's realty in Guernsey.

Saisie has come under some criticism from the Royal Court because the creditor may receive a windfall should they sell the property for more than the debt is worth, however, until this is reformed by legislation the position will remain unchanged.

Below is a creditor's guide to the saisie process.

Stage 1 - Judgment and preliminary vesting order

It is important for the creditor to first consider whether the debtor holds any significant assets (known as personalty), other than realty, that may be initially enforced against.

In order to start saisie proceedings the creditor needs to obtain a judgment debt and obtain a preliminary vesting order ("**PVO**"). It is permissible for the PVO to be obtained at the same time as judgment and can be pleaded in the Cause. However,once a PVO is granted, the saisie proceedings have begun and the creditor will lose their right to pursue the personalty of the debtor.

Therefore, we would usually advise that upon judgment being obtained, the creditor should instruct HM Sheriff to enforce the judgment against the personalty of the debtor and then to seek a PVO based on the balance, where the judgment debt could not be otherwise satisfied by the debtor's personalty.

Once the creditor has obtained the PVO, the debtor loses their rights to make use of the realty but remains as owner of the realty. Accordingly, the debtor may still sell the realty but the creditor has the right to let the realty collect the rents and evict the debtor.

Stage 2 – Commissioner's hearing

The creditor must apply to the Court for a Commissioner to be appointed, before the debtor is summoned to appear before the Commissioner.

The creditor must provide the Commissioner and the debtor with a copy of their account of the debt, inclusive of all costs and expenses. The debtor is then given the opportunity to examine and make representations in respect of the account.

Following this, the Commissioner will certify an amount due to the creditor in their report. The Commissioner's Report will state:

- whether the debtor attended;

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- whether the debtor examined the accounts and agreed them or made representations;
- a declaration of the sums that the Commissioner considers are payable to the principal creditor.

Stage 3 - Interim vesting order ("IVO")

At this stage of the saisie procedure the creditor will request that the debtor either repay the debt owed to them or renounce their ownership of and vacate the realty.

If the IVO is granted, the debtor will lose their ownership of the property which will pass to the creditor as trustee for all of the debtor's creditors. This means that the creditor is entitled to obtain vacant possession of the property and it is usual at this stage for the creditor to evict the debtor from the premises if they have not done so already.

Following the granting of the IVO, it is key to note that the creditor must act in the general interest of all of the creditors (where there are more than one) and will be able to let out the property and collect rent in respect of it. The creditor also has a duty to maintain the value of the property and is therefore able to carry out reparations to the property.

Stage 4 - The Register of Claims

After the IVO is granted the creditor may request that the Greffe opens the Register in order that the debtor's creditors may come forward to register their claim.

The creditor must publish on two occasions, notifying other creditors that the Register is open. The Register remains open for 28 working days from the date of the second notice.

Once a creditor has entered their name on the Register they will lose their right to enforce their claim against the debtor's personalty.

The creditor who opened the Register can elect to pay all of the registered creditors' claims.

Stage 5 - Marshalling of claims

The principal creditor must summon all other registered creditors to appear before the Commissioner, who will then verify and order the claims. The claims are ordered in date of registration and then by date entered on the Register of Claims. The Commissioner will set a date for the Final Vesting Order ("**FVO**") and confirm the amounts owed to the principal creditor inclusive of the principal sum, interest, costs and expenses.

Stage 6 - Final vesting order

Any creditors that have maintained their interest are summoned before the Court.

The creditors are called in reverse order of priority, in accordance with the Commissioner's report from the Marshalling, and are asked if they elect to have the realty vested in them or to renounce their claim. If they elect to take the realty they must pay off all the higher ranking claims within 15 working days. If they renounce,their claim ceases to have effect. The creditor that elects to take the property is granted the FVO.

Once the FVO has been registered at the Greffe against the realty, the creditor that elected to take the realty is then the sole owner of the property and can dispose of it,or not, as they please. They do not have to inform the debtor of any 'equity' realised after retirement

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of debt and costs. This can result in a significant windfall for the creditor who obtains the FVO.

Conclusion

The saisie procedure generally takes six months for the process to be completed and therefore is not the quickest way of enforcing a judgment.

Careful consideration needs to be taken whether a creditor should enter into the saisie proceedings and legal advice should be taken, particularly where the creditor is unsecured or has lesser ranking security, or where the property is of doubtful value and/or hard to realise. The procedure was simplified in 1952; it could arguably be further streamlined and is in the process of statutory reform.

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About this guide

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