

Snapshot: enforcement against real property in Guernsey - Saisie

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Saisie (meaning "to seize") is a court-driven, Guernsey customary law process, governed by the Saisie Procedure (Simplification) (Bailiwick) Order, 1952. It is a three-stage, post-judgment process which enables a creditor to enforce their rights against the debtor's realty in Guernsey.

Creditors who utilise the saisie process can only recover debts by enforcement exclusively against realty. There is no further remedy against the debtor, meaning the right to enforce against the debtor's personalty is lost. If the value of real property is not sufficient to satisfy the debt, then a creditor is best advised to proceed against the debtor's personalty first by way of désastre proceedings

The effect of saisie is to vest all of the debtor's realty in Guernsey into the name of the creditor. The entire proceedings can take six to 12 months and place certain burdens on the creditor who initiates them.

Before pursuing saisie proceedings it is advisable to:

- ensure there is enough equity in the realty to cover the debt, interest and legal costs to date (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 unless there are contractual terms to the contrary)
- carry out a cadastre search to check the ownership of the debtor and if the property is owned outright
- carry out a bond search for other bonds, creditors or apportioning shares registered against the property

First stage: Preliminary Vesting Order (PVO)

The creditor needs a PVO in order to obtain the court's permission to enforce the judgment against the debtor's real property.

Once a PVO has been granted the creditor becomes the "saisi mobilier". The debtor still owns the title to the property but has lost the right to make use of it. The sais mobilier has the authority to let out the property and receive rent, institute repairs and to initiate eviction proceedings against the debtor if he occupies it. They are entitled to revenue the property produces to satisfy or reduce the debt owed to them. The debtor is still allowed to repay the sais mobilier at any time or sell the property and use those proceeds as repayment.

Once a PVO is granted, the debtor is summonsed to a hearing before a Commissioner (typically a Jurat of the Royal Court) where the creditor tables a statement of account recording formalities and showing the amount of the debt, interest and recoverable costs less any rent or other payments received. If there is any dispute over the accounts which cannot be determined by the Commissioner, the Court will determine the amount.

Second stage: Interim Vesting Order (IVO)

The sais mobilier is then entitled to issue a summons to the debtor, with three clear business days' notice, seeking payment of the certified amount set out in the Commissioner's report. The summons states that in the event of a failure to pay the sums owing, the creditor will apply for an IVO, which will have the effect that the whole of the debtor's realty in Guernsey is vested in the sais mobilier (now the "saisi héréditaire") as trustee for the claimants and extinguishes any right in or title to the realty the debtor had.

The sais héréditaire must act in the general interest of all creditors and has a duty to maintain the value of the charged property. It is advisable to insure the property and make any repairs.

The sais héréditaire must open a register for 28 days at the Greffe (courthouse) for any claims against the realty of the debtor, and must publish notices in La Gazette Officielle for two successive weeks. Whenever another creditor enters their name on the register, they will also lose their right to enforce their claim against the debtor's personalty. Once the 28 days end, the register is closed and the sais héréditaire issues a summons to all creditors who have registered a claim, to attend a meeting before the Commissioner for the claims to be marshalled (assessed). The Commissioner will then verify the amount of the claims and place them in order of priority in a further Commissioner's report.

Third stage: Final Vesting Order (FVO)

The sais héréditaire will then summons each of the registered creditors to a hearing.

The names of all creditors are called in reverse priority order (lowest priority first) and each is

asked if they wish to elect to have the realty vested in themselves or to renounce their claim. Any election to have the real property vested in their own name is made on the condition that they pay in full the claims of all higher priority creditors within 15 days. If they renounce, they irrevocably renounce their claim against the debtor.

The FVO is granted to the creditor who elects to take the realty and they becomes the 'saisi propriétaire'. Absolute title is then vested in the sais propriétaire and the FVO is treated as the conveyance of the realty to the sais propriétaire who will receive good title free from any encumbrances. If the property is owned jointly, the FVO gives the sais propriétaire ownership in the debtor's share only.

Historically, there was no obligation for the sais propriétaire to pay any surplus to the debt back to the debtor, though the Royal Court did, on occasion request an undertaking to repay the same. However, regulated entities are now subject to a regulatory requirement to repay any surplus as a result of Part 7.10 of the Lending, Credit and Finance Rules 2023.

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