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Sark Land Law Reform

Sark's Land legislation has been the subject of ongoing debate for the past few years culminating in recent legal reform.

One must take a look at Sark's history to understand the importance of the changes at stake.

The island of Sark was granted by "The Letters Patent of 1565" by the Crown to Helier de Carteret. The Crown wished that a permanent population should establish itself in Sark to protect it. The island was therefore divided into 40 original landholdings called "tenements" in order to ensure its sustainability.

However, because a number of new landholdings (freeholds) were being created and amid fears that further division of the land and the continued creation of charges upon it would make each smaller landholding less economically viable and sustainable, the Crown issued Letters Patent in 1611 to prohibit any further division of the existing landholdings as well as the creation of further charges over them.

That situation has remained unchanged until very recently. The tenements and freeholds in Sark are the most secure land tenure, providing the owner full control of the land and the certainty of ownership "for an estate of inheritance" (ie, indefinitely). They are also "real property" (immoveable property).

The interdiction to divide real property and create charges upon it (secured by way of "bonds") meant that new properties had to be carved out by way of "long-leaseholds". Unlike real property, leaseholds do not provide full and indefinite ownership. Leasehold properties also did not qualify as real property but instead as "personalty" (moveables such as cash and shares). The leaseholder typically owns a house (or other building) but not the land upon which it is built as that land belongs to the landowner called freeholder or *tenant* (owner of a *tenement*). A leasehold is limited in time (eg: 100 years) and at the end of the term, there is a reversion of the property leased back to the landowner.

Presently, a majority of the inhabitants of Sark own long-leaseholds rather than freehold properties. The system of indivisibility and restrictions on charging created to ensure the sustainability of the island seemed outdated and potentially unfair to leaseholders whose tenure was both inherently unstable (reversion of the property at the end of term, threat of "forfeiture" of property back to landowner if breach of the lease) and difficult to fund (impossibility to have a loan secured over the property, limiting purchases to cash buyers).

After much debate in Sark, on the 11th April 2018, the Chief Pleas of Sark resolved to approve propositions on land reform brought forward by the Policy and Performance Committee and on the 3rd July 2019, approved for submission to the Privy Council legislation (the Land Reform (Sark) Law, 2019) to allow:-

- (1) the division & charging of real property (freeholds & tenements) and;
- (2) to provide rights and protection to leaseholders (mitigating threats of evictions, forfeiture of their leasehold and protection against landlords unreasonably withholding consent to sub-letting, assignment of lease...).

However, legal reform did not stop there and following further debate in Sark, the Chief Pleas approved on the 19th November, 2020 legislation (the Land Reform (Miscellaneous Provisions) (Sark) Ordinance, 2020) to allow the charging of “long-leasehold” properties.

In practice, those changes mean that since the 1st February, 2021, when both pieces of legislation came into force, owners of freeholds and tenements can decide to divide and sell parts of their land which can then become new freeholds and be purchased with a loan secured against them (as they can now be charged). The same applies for existing leasehold properties which can now also be purchased with funding provided by secured lending.

A current leaseholder may therefore now seek to obtain security and longevity of tenure by purchasing the freehold of their property and they can apply for a secured loan in order to fund this purchase. This is assuming that the freeholder wishes to sell as there is no right for the leaseholder to buy the freehold of their property (this is known as the “right of enfranchisement”, and exists under certain conditions in England & Wales). Freeholders and leaseholders must also agree on a mutually acceptable price which is likely to be influenced by the remaining term of the lease and the market value of the property.

Should landowners refuse to sell freeholds and/or should the negotiation of such sales become problematic, it will be interesting to see if further future reform brings Sark land law closer to English law by introducing a right for leaseholders to purchase the freehold of their property or be given an automatic right to extend the term of a lease at the end of its term, and setting detailed mechanisms and rules for the valuation and purchase of a freehold or extension of a lease.

Leasehold properties can now also (in theory) be purchased with a secured loan and should no longer be reserved to cash buyers. Although there are hopes that this change will boost the stagnant Sark property market, it still remains to be seen whether buyers will be attracted to leasehold properties if more freeholds become available and whether lenders will be willing to take long-leaseholds as security.

Perhaps the beautiful island of Sark will attract “remote” workers wishing to move away from cities as a result of the pandemic.

When considering the sale or purchase of properties whether freehold or leasehold, get in touch with Babbé’s Property team to accompany you every step of the way.

Property Team

Amélie Boudra – Associate
+44 1481 746 190
a.boudra@babbelegal.com

Emily Priaux – Conveyancing Clerk
+44 1481 746 101
e.priaux@babbelegal.com

Andrew Laws – Managing Partner
+44 1481 746 175
a.laws@babbelegal.com

Michael Riddiford – Partner
+44 1481 746 170
m.riddiford@babbelegal.com