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## Briefing Note

### Enforcing security over real property in Guernsey – an unusual system

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*The system of enforcing security over buildings and land in Guernsey is quite odd, and can take anyone not used to it by surprise.*

Taking security over real property involves the debtor consenting to a “Bond” in favour of the creditor. The Bond is then registered at the registry, known as the Greffe, and this process, once completed, creates security over the real property of the debtor. The creditor has priority over other creditors of the debtor, other than creditors who have prior registries.

Things get weird if the debtor doesn't pay what is due and a secured creditor wants to realise its security. This involves taking “saisie” proceedings, which have been around for hundreds of years. Whilst they were simplified in 1952, saisie proceedings remain complex and long-winded, taking about six months from start to finish.

At the end of saisie proceedings, if more than one creditor is claiming against the debtor's real property, the claims of the creditors are ranked in order of priority, based on the date each claim was registered at the Greffe. The lowest ranking creditor is offered the property, but if it accepts it must pay all higher ranking creditors in full. If it doesn't accept, it loses its right to recover its debt. The property is then offered to the next lowest ranking creditor until someone accepts the property.

That's fine from the point of view of a creditor with a “first charge” over the debtor's property. However, this system makes life difficult for lower ranking creditors. For example, where property worth roughly £750,000 has a first charge against it for £700,000 and a second charge of £50,000, in order to realise its security, the holder of the second charge, who is

offered the property first, will have to find £700,000 (plus, potentially, the first charge holder's costs and some accrued interest) to pay to the holder of the first charge so as to get the debtor's property vested in it. It can then sell the property to recoup the amount paid out to the first charge holder as well as the debt due to it by the debtor. Given the vagaries of property valuation, the second charge holder might very well come to the conclusion that this was all a bit speculative.

A final surprising aspect of the saisie system is that, when a creditor takes the debtor's property as part of the process, it isn't under any obligation to sell it and, if it does, and sells it for more than was due to it in the first place, it isn't under any obligation to pay the surplus either to the debtor or to any other creditor of the debtor.

The system of “retrograde offer” in saisie proceedings has been much criticised. Its replacement with a system whereby the debtor's property is simply sold with the proceeds being distributed to creditors in order of priority, was suggested by Royal Commissioners sent by the British Government to review Guernsey's laws in 1816. Things move slowly.

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