



ISSUES RELATING TO FINANCE

CHANNEL ISLANDS, JERSEY Mourant Ozannes

CONTACT INFORMATION

Mark Harris

Mourant Ozannes

22 Grenville Street

St Helier

Jersey

JE4 8PX

Tel: +44 (0)1534 609932

mark.harris@mourant.com

www.mourant.com

1. **What instruments are used to create a lien on real estate to secure an indebtedness (e.g., a mortgage or deed of trust)?**

Securing an indebtedness over real estate in Jersey is by way of registering a charge ("*hypothèque*" or "*hypothec*") in the Public Registry of the Island of Jersey.

2. **Describe [national] [state] [territorial] [provincial] or local mortgage recording or other similar taxes payable on making a loan secured by real estate or perfecting a lien on real property.**

Stamp Duty is payable on the registration of a charge on real property in Jersey.

3. **Describe manner in which a lien secured by real property is foreclosed.**

The holders of a hypothec over Jersey real property can enforce their security by application to the Royal Court of Jersey for (i) a *désastre* or (ii) a *dégrévement*. The procedure for these applications is mainly Jersey statute based, but common law does play a part.

- (i) *Désastre*

This is a form of bankruptcy proceeding in Jersey. Application is made to the court and can be made ex-parte (not requiring all the parties to be present) by the debtor, a creditor or the Jersey Financial Services Commission (the regulator of financial services in Jersey). There is a requirement to give the Viscount's Department (the Viscount is the Royal Court of Jersey's executive officer) 48 hours' notice of the intention to make the application to the court. Once the application is granted by the court, the estate of the insolvent debtor is vested in the Viscount whose duty is then to liquidate that estate for the benefit of the creditors who prove their claims.

(ii) *Dégrévement*

This application is usually made by a creditor (but can also be made by a debtor making voluntary cession of his property). The property of the debtor is liquidated for the benefit of certain creditors. The aim, unlike in a *désastre* where the aim is settle debts amongst the creditors equitably, is to disencumber the property.

If a creditor has obtained a judgment against the debtor and that judgment remains unsatisfied after one month, then the creditor can apply to the court for an order that the Viscount give notice to the debtor (*Acte Vicomte chargé d'écrire*) to satisfy the judgment (within two months for Royal Court judgments), failing which the debtor's property will be adjudged to be renounced. The creditor then applies to the court again for judgment that the debtor's property is renounced. The court will then appoint an *attourné* (but usually appoints two) to administer the *dégrévement*. Creditors and other interested parties are notified. The claims are listed. A *dégrévement* hearing will take place at which first the unsecured creditors (as a body) and then each secured creditor (in the reverse order of the date of their security). Each creditor is then offered the debtor's property but if they accept they take the property subject to all the other charges and claims. Once a creditor has agreed to take the debtor's property in this way, their tenure is confirmed by further application to the court.

4. Describe any significant costs of or impediments to foreclosing a lien on real property.

In an application for a *désastre*, the applicant may be requested to undertake to cover the Viscount's costs of the *désastre*. A debtor may seek to recall the *désastre* or apply for a stay of the proceedings. There is a protection provision in the *désastre* law if the property is the matrimonial home. There may be competing or superior claims by other debtors.

In *dégrévement* proceedings, the debtor can apply to the Court for a "*remise de biens*" which is a indulgence to the debtor whereby the debtor's property is realised under the supervision of the Court appointed Jurats of the Royal Court. A *remise de biens* is usually granted for a period of 6 months and effectively suspends the *dégrévement* proceeding during that time. The cost of the administration of the *dégrévement* is usually taken out of the realised estate of the debtor.

5. What is the customary time period for foreclosing a lien on real property?

Désastre application to the court may be made upon 48 hours' notice to the Viscount's Department of the intention to make the application. The actual bankruptcy may take several months to years to administer and complete.



Dégrèvement proceedings take 3 to 4 months to initiate (see notice periods in response to question 3 above) and again can take several months to years to administer, particularly if the debtor is granted the indulgence of a *remise de biens* (described above), which is usually for an initial period of 6 months

6. Are there [national] [state] [territorial] [provincial] or other local governmental permissions, approvals or licenses required for foreign banks or other foreign lenders to make real estate loans secured by real property? If so, please describe.

No, there are no restrictions on foreign lenders securing their advances over real estate in Jersey. However there would be Stamp Duty payable on registration of the loan secured on the real property in Jersey.

7. What legal limits are imposed on the amount of interest which may be charged on a loan secured by real property?

None. The amount of interest on the loan is a matter to be agreed between the parties.

8. Describe any laws that restrict the ability to make a borrower or guarantor personally liable for indebtedness secured by real property.

Guarantors may be able to restrict liability by relying on the customary law defences of:

- i) "droit de discussion" - whereby a creditor must have recourse to the assets of the principal debtor before the creditor has recourse to the property of the guarantor.
- ii) "droit de division" - a creditor must divide the demand for the debt amongst the co-guarantors in just proportions.

It is usual for a creditor to require a guarantor or guarantors to waive or abandon these "droits" when entering into a guarantee arrangement.