

Momentous changes coming soon to Sark property law

January 2021

1 February 2021 is set to be a massive day for Sark and its people with the coming into force of the long-awaited Land Reform (Sark) Law, 2019, (the "**Law**"). The Law will bring sweeping changes to the principles of land ownership in Sark – principles which have stood for over 400 years.

The Law will provide the framework by which Sark's forty tenements can be subdivided into smaller parcels which can be conveyed, disposed of in a will and/or mortgaged. It will also allow leasehold interests in land within a tenement of twenty or more years to be mortgaged.

What is a tenement?

In 1565, Sark was made a noble fief by Elizabeth I. Jerseyman Helier de Carteret was appointed as its Seigneur in return for maintaining the island's defence.

To satisfy this requirement, de Carteret divided the majority of the island into forty parcels of land, known as tenements, reserving a small parcel of land for himself. He rented these tenements to forty families, on the condition that each family built and maintained a house on their tenement and ensured it was protected by a man armed with a musket.

Why can't tenements be divided?

Over time, the tenements became fragmented. Several families divided their tenement between children and land was sold or mortgaged to neighbours.

Amid fears that the tenements would be subdivided into parcels too small to live on, Seigneur Philippe II petitioned James I to intervene.

James I obliged, issuing the 1611 Letters Patent, which restored the original forty parcels and confirmed that tenements were incapable of being lawfully subdivided or mortgaged. Instead, a tenement was to be either sold or left to its owner's eldest son in its entirety.

How do Sark residents own property currently?

To this day, the forty tenements cannot be subdivided into smaller parcels of land and real property in Sark cannot be mortgaged.

Owners of property in Sark are only able to lease all or a part of such property from the tenement owner, or purchase one of the few freehold properties lying outside a tenement.

Without the ability to mortgage Sark real property, anyone wishing to purchase property on the island must be a cash buyer or have borrowed funds secured on assets elsewhere.

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What will the Law change?

The Law makes it lawful for tenements to be subdivided, disposed of and mortgaged – effectively overturning the 1611 Letters Patent – and provides a framework under which these new principles of land ownership will operate.

Under the Law, for a subdivision of a tenement to be conveyed, the conveyancing document must:

1. clearly identify the boundaries of the property;
2. have annexed a plan showing the boundaries, with measurements and/or GPS co-ordinates; and
3. be consented to by the seller and buyer in the Sark Court.

It also establishes a Charges Register (called the "Livre des Obligations et Actes Enregistrés"), on which all charges against Sark property will be recorded by the Greffier.

In addition to providing the framework for charges to be registered against tenements (or subdivisions thereof), the Law also makes it possible to charge leasehold interests in Sark real property if (i) the term of the lease is twenty years or more or (ii) if less than twenty years, the lease is renewable so that the overall term over two successive terms is over 20 years. These mortgages will be recorded on a separate register maintained by the Greffier.

Is the Law good for Sark?

These changes are very much to be welcomed as they will give would-be land owners in Sark more options in terms of land ownership and will mean that acquiring Sark property is more doable for more people.

The ability to mortgage property on the island opens up lots of opportunities and allows those already residing there to raise capital to buy further land or improve their current property, while the ability for some Sarkees to be able to negotiate the purchase of the freehold title to their current leasehold property with their tenement owner gives them the potential to secure their position.

As such, the changes are likely to attract more newcomers to the island, which has remained untouched by the COVID-19 pandemic, and shows that Sark is very much open for business.

The status quo of land ownership in Sark has stood the test of time – some four hundred years – and is an enduring example of feudal law on the island. While some may lament the imminent reforms as further erosion of feudal Sark, the changes will feel well overdue for many of the island's residents today.

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