



Jersey

## SOCIAL SECURITY HYPOTHECS (JERSEY) LAW 2014

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Jersey

## **SOCIAL SECURITY HYPOTHECS (JERSEY) LAW 2014**

**A LAW** to make provision for debts arising under the Long-Term Care (Jersey) Law 2012 and the Income Support (Jersey) Law 2007 to be secured by hypothecs and for related purposes.

*Adopted by the States*

*11th December 2013*

*Sanctioned by Order of Her Majesty in Council*

*5th March 2014*

*Registered by the Royal Court*

*14th March 2014*

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **1 Interpretation**

(1) In this Law, unless the context otherwise requires –

“1880 Loi” means the Loi (1880) sur la propriété foncière<sup>1</sup>;

“2007 Law” means the Income Support (Jersey) Law 2007<sup>2</sup>;

“2012 Law” means the Long-Term Care (Jersey) Law 2012<sup>3</sup>;

“Article 4(1)(b) benefit” means a benefit under Article 4(1)(b) of the 2012 Law to meet all or part of the cost of a payment by an individual towards the costs of long-term care, such payment being required by virtue of an Order under Article 3(2)(c) of the 2012 Law;

“debt” means the amount that a debtor is liable to repay the Minister by way of final settlement by reason of an income support debt or pursuant to a long-term care loan;

“debtor” means a person who is liable to pay one or more amounts to the Minister as accrue from time to time pursuant to an income support debt or a long-term care loan;

“income support debt” means an amount that a claimant is liable to pay by reason of any of the circumstances referred to in Article 14(1)(a), (b) or (c) of the 2007 Law;

“long-term care loan” means an arrangement entered into by an individual pursuant to which an Article 4(1)(b) benefit provided to the individual takes the form of a loan to the individual (however such loan is expressed and in whatever form);

“Minister” means the Minister for Social Security;

“partner” means the debtor’s spouse or civil partner or any individual living in a similar relationship with the debtor (whether or not of different sexes);

“social security hypothec” means a legal hypothec arising under Article 2(1);

“third party” means a person other than the debtor and his or her partner.

- (2) Words and expressions used in this Law shall, except where indicated otherwise, have the same meaning as such words and expressions have in French in the 1880 Loi.

## **2 Creation of social security hypothec**

- (1) A debt may be secured by a hypothec in accordance with the provisions of this Law.
- (2) Subject to paragraph (6), the Minister shall have a legal hypothec on all the immovable property of a debtor and the debtor’s partner (whether owned separately, jointly or in common) if, following an application by the Minister, the hypothec is registered in the Public Registry.
- (3) In the case of a long-term care loan or income support debt, a hypothec is created under paragraph (1) whether or not the immovable property is owned jointly with a third party.
- (4) Where a hypothec has been created in circumstances where the property is owned jointly (whether or not with a third party) and a *dégrèvement* is ordered under Article 2(b) of the Loi (1904) (Amendement No. 2) sur la Propriété Foncière<sup>4</sup>, the title to the property shall, as from the date of the order, be taken to have been converted into ownership in common in equal shares (“*en indivis en parts égales*”) and the hypothec shall, with the debt secured by it, be apportioned accordingly.
- (5) Where paragraph (4) applies and the *dégrèvement* is discontinued, or for any other reason, the court may make such order as it thinks fit for restoring the position to what it would have been had the order for the *dégrèvement* not been made or as nearly thereto as the court thinks practicable.
- (6) Immovable property which is subject to any other form of hypothec in favour of the Minister for a debt cannot be subject to a social security hypothec in respect of the same debt.
- (7) A social security hypothec may be registered at any time.
- (8) A social security hypothec shall date from the date it is registered in the Public Registry and shall rank in priority to other hypothecs from that date.

- (9) The Minister shall give notice of the registration of a social security hypothec to the debtor as soon as reasonably practicable following its registration.

### **3 Amount secured by a social security hypothec**

- (1) A social security hypothec shall secure such amount as accrues from time to time that a debtor is liable to pay pursuant to an income support debt or a long-term care loan, as the case may be.
- (2) In the case of an order of *dégrèvement* under Article 2(b) of the Loi (1904) (Amendement No. 2) sur la Propriété Foncière<sup>5</sup> or a declaration under Article 6 of the Bankruptcy (Désastre) (Jersey) Law 1990<sup>6</sup>, a social security hypothec shall secure such amount that the debtor is liable to pay pursuant to the income support debt or long-term care loan at the time of the order or declaration, as the case may be.

### **4 Application of the 1880 Loi**

- (1) Instead of Article 16 of the 1880 Loi paragraphs (2) and (3) shall apply.
- (2) When a debt secured by a social security hypothec is extinguished by any reason whatsoever, the Minister shall cause the hypothec to be cancelled within one month of the day on which the debt was extinguished.
- (3) For the purposes of paragraph (2), the Minister shall provide the Judicial Greffier with evidence of extinguishment of the debt and, upon receiving such evidence, the Judicial Greffier shall cancel the social security hypothec.
- (4) Article 29 of the 1880 Loi shall apply to a social security hypothec except that the right of recourse to a third holder of the property (*le droit de suite*) shall not be barred by prescription.
- (5) The relevant provisions of the 1880 Loi are set out in translation in the Schedule, however these translations are by way of information only and in the event of any conflict between a translation and the 1880 Loi, the latter shall prevail.

### **5 Rules of Court**

Rules of Court may be made under the Royal Court (Jersey) Law 1948<sup>7</sup> to give effect to this Law.

### **6 Stamp Duties and Fees (Jersey) Law 1998 amended**

In Part 1 of the Schedule to the Stamp Duties and Fees (Jersey) Law 1998<sup>8</sup> after item 49 there shall be added the following item and entries –

"50.	<b>APPLICATION FOR REGISTRATION OF SOCIAL SECURITY HYPOTHEC</b>			
	For an application under Article 2(2) of the Social Security Hypothecs (Jersey) Law 2014 <sup>9</sup>	rate F	Application	Greffier"

**7 Citation and commencement**

This Law may be cited as the Social Security Hypothecs (Jersey) Law 2014 and shall come into force 7 days after it is registered.

**M.N. DE LA HAYE**

*Greffier of the States*

**SCHEDULE**

(Article 4)

**ENGLISH TRANSLATION OF RELEVANT PROVISIONS OF THE 1880 LOI****1 Article 2**

A hypothec, for the purposes of this Law, is a real right attached to a *rente* or other claim by virtue of which one or more *biens-fonds* belonging to the debtor are rendered specially subject to the payment of such *rente* or claim and which confers on the holder of the hypothec the advantages as follows.

In the case of a *décret* or *dégrévement* of the hypothecated property (except in the case where the property of the debtor has been declared *en désastre*): the right, according to the rank of the hypothec, of becoming *tenant* to the property thus undergoing the *décret* or *dégrévement* or of being paid off by any *tenant* who shall have become such by virtue of a contract or hypothec subsequent in date;

In the case of an insufficiency in the debtor's assets: the right to follow any part of the hypothecated property into the hands of a third holder of the property and although the third holder shall not have been directly charged with the payment of the *rente* or claim so hypothecated, to compel the third holder to pay off whatever balance remains due thereon, or to give up the property held.

The renunciation by default or otherwise in a *décret* or *dégrévement* of a *rente* or of an hypothecated claim shall have the effect of freeing the properties undergoing these different procedures from the *rente* or claim itself as well as from the hypothec attached thereto but shall not deprive the creditor of any right of recourse with respect to any other hypothecated property, if there be any.

**2 Article 6**

A legal hypothec is that which results from operation of law.

**3 Article 26**

The holder of a legal, judicial or contractual hypothec, charged on a *bien-fonds* in the hands of a third holder shall not have the right, unless the third holder is bound expressly by his or her title to the property to discharge the liability of the principal debtor, to take any proceedings against the third holder for payment of the sum of money or the *rente* so hypothecated except after the assets of the principal debtor shall have been exhausted.

**4 Article 29**

Legal, judicial or contractual hypothecs constituted under the present Law shall remain in force until the debts or obligations which are the subject of them become extinct, not only as regards every part of the hypothecated property for

the proportion of the *rente* or hypothecated claim with which such part is specially charged, but also as against every debtor of the property charged, for such portion of the *rente* or claim in respect of which the debtor is personally liable; but such hypothecs, except a contractual hypothec, whether landed or simple, may be barred by prescription in so far as the right of following the hypothecated property into the hands of a third holder of the property is concerned, notwithstanding that the debt or hypothecated claim may not be extinct.

As regards the right of recourse to third holders, judicial and legal hypothecs with the exception of the legal hypothec for dower shall be barred by prescription by the lapse of 10 years or more from their date.

With regard to the hypothec for dower, such right of recourse is extinguished only by the death of the widow.



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- 1 *chapter 18.495*
  - 2 *chapter 26.550*
  - 3 *L.21/2012*
  - 4 *chapter 18.530*
  - 5 *chapter 18.530*
  - 6 *chapter 04.160*
  - 7 *chapter 07.770*
  - 8 *chapter 24.960*
  - 9 *L.4/2014*