



The Jersey Court Service

Judicial Greffe and Viscount's Department

Remise de Biens: Information for the Litigant in Person

This document outlines in general the remedy of *remise*, and the relevant legal proceedings, setting out the options available to a debtor at each stage of the process. Much has been simplified or omitted, and the laws governing the procedures mentioned must be read, and appropriate professional advice obtained, to obtain an accurate picture of what the law is.

You are advised to obtain legal advice in relation to your particular circumstances.

Legal Aid in Jersey is administered by the Acting Bâtonnier, through the office of The Law Society of Jersey, at 5 Britannia Place, St Helier, Jersey.

Tel: +44 (0)845 8001066

Website: www.legalaid.je

Email: email@legalaid.je

Before applying for Legal Aid you should make sure that you have read and understood the form headed Notes for Legal Aid Applicants, available at www.legalaid.je as a download.



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1. Key terminology

A **debtor** is a person or company who owes a sum of money to another person or company, who is known as a **creditor**. In legal proceedings, the debtor is called the **defendant** and the creditor is called the **plaintiff**.

A **litigant in person** is an individual (or a company acting by its Director), who is either bringing or defending legal proceedings without a legal representative (a solicitor or advocate, usually referred to as a lawyer) giving them advice and acting on their behalf. In the context of *remise* proceedings, a litigant in person will usually be the debtor, or one of the debtor's unsecured creditors (for example a small business that provided services to the debtor, or friend or family member who has lent the debtor money).

There are two types of property:

- **Immovable** property: houses or other buildings and land
- **Movable** property: any other property, including stocks and shares, money in bank accounts, antiques, jewellery, clothing, cars and motorbikes

There are three categories of debts: secured, priority and unsecured.

- **Secured** debts:
 - those which have been registered in the Public Registry against a debtor's immovable property, either with their consent (for example a loan to purchase property, often referred to as a mortgage) or after a judgment has been ordered against them in court and registered against their property.
 - those created by Security Interest Agreements, either under the Security Interests (Jersey) Law 1983 or under the new 2012 Law and registered in the Security Interests Register at the Jersey Financial Services Commission
- **Priority** debts: unsecured debts which a law says must be paid before others, and include parish rates, social security and tax payments, and GST where the debtor is GST registered.
- **Unsecured** or **ordinary** debts: every day liabilities including utilities and phone bills, credit cards and overdrafts, and also where a judgment has been made against a debtor, but that judgment has not been registered in the Public Registry.

The Court system:

- The **Royal Court**, based in the Royal Square, deals with civil claims exceeding £10,000 and sits in public at 2.30pm every Friday afternoon, except at Christmas and Easter, in what is known as the **Samedi Court** (this is because historically the court would sit on a Saturday).
- Jersey's Judiciary is made up of three full time judges, the **Bailiff**, who is the Chief Justice of the Royal Court, the **Deputy Bailiff**, and the **Lieutenant Bailiff** and also by several part time judges known as **Commissioners**. They are the arbiters of law, and have the casting vote where the Jurats are divided on a matter.
- **Jurats** are a distinctive feature of the Jersey legal system and they are the people who decide questions of fact. Jurats are lay members of the Royal Court, as they do not have specialised or professional knowledge of the law.

- **The Viscount** is the Chief Executive Officer of the Island's Courts and the States of Jersey. The Viscount's Department is the executive arm of the Island's Courts and of the States. The Department is therefore principally required to execute orders of the Courts and fulfils the duties of Coroner, administers Désastre and similar proceedings (insolvency administration and investigation), assists the Jurats of the Royal Court, appointed *Autorisé* for the purpose of a Remise, serves legal process and enforces fines and judgments (Court enforcement duties). The Department in its present form was established in 1930.

There are three types of legal documents which start proceedings:

- **Summons:** a short straightforward document, often just one page in length, suitable for only the simplest of claims. A summons is usually posted to a debtor and informs them that they must attend a hearing before the Samedi Division of the Royal Court of Jersey at 2.30pm on a specified Friday.
- **Order of Justice:** most proceedings are started in this way, as it is suitable for all cases (apart from very simple ones). This is a more detailed and lengthy document, which sets out the plaintiff's case in full. It is addressed to the defendant, and if they defend the claim, is the document that they then reply to, point by point.
- **Representation:** this is a document that is addressed to the Court rather than the defendant, and it sets out the details of a situation that exists and asks for the Royal Court's intervention.

There are three types of insolvency procedure which may be relevant to a person with debts:

- **Désastre** (bankruptcy): *A modern procedure governed by the Bankruptcy (Désastre)(Jersey) Law 1990 and the procedure preferred by the Court. The debtor's property (movable and immovable) vests in the Viscount who has the duty to gather in and sell an insolvent debtor's assets and to distribute the proceeds. The debtor is discharged from any outstanding debts at the end of the process, apart from any debts that were incurred fraudulently or are in relation to maintenance. There are special provisions regarding the matrimonial home (which if involved and granted provides protection for a spouse of the debtor). The Law contains powers to ensure the debtor and creditors are treated in a fair manner (e.g. the power to set aside transactions at an undervalue, to set aside extortionate credit transactions).*
- **Dégrévement (and réalisation):** *dégrévement* is a process to clear secured charges (eg mortgages) from land so that it can be sold. *Réalisation* is a process where any movable property is sold at public auction, with the proceeds shared amongst creditors. The debtor is not discharged from any outstanding debts at the end of either of the processes.
- **Remise:** a privilege given to a debtor owning immovable property who is in financial difficulties in exchange for which they give up all of their property and rights and agree to act only in accordance with the advice of two Jurats who sell all of their property. At the end of the procedure (usually between 6 and 12 months) as long as all of the secured creditors have been repaid in full, and a payment made to unsecured creditors, the debtor will be discharged from any outstanding balances.

2. What is remise de biens?

The phrase 'remise de biens' literally translates as 'handing over property' and the purpose of the procedure is to protect an individual or a company from creditors to allow their property to be sold in an orderly fashion. A remise is a privilege given to a debtor who is in financial difficulties in exchange for which they give up all of their property and rights and agree to act only in accordance with the advice of two Jurats. The debtor must show good faith in order to be awarded the remedy and must provide full co-operation at all times to the Jurats, even where they do not agree with decisions the Jurats have made.

The Jurats will sell all of the debtor's property and at the end of the procedure (usually between 6 and 12 months) as long as all of the secured creditors have been repaid in full, and a payment made to unsecured creditors, the debtor will be discharged from any outstanding balances due to their unsecured creditors.

The court has clearly stated its preference for the modern insolvency procedure of *désastre* over ancient ones such as *remise*, unless it is a simple case or the interests of justice require otherwise, and in a case decided in 2014 where the applicants had applied for a *remise* the Royal Court stated that:

'The Court should endeavour to order a désastre, even if it is more costly as a procedure, unless it can be shown to be in the interest of justice that the older remise procedure should be used, or ... there was some good or sound reason to do so.... unless it was to avoid the real injustices that can flow from a dégrèvement.'

3. Criteria

A debtor can be an individual or a company, and in order to apply for a *remise*, the debtor must:

1. Own immovable property: this could be freehold property such as land or a house, or shares in a company which give the right to live in a share transfer building; and
2. The value of the debtor's property must be more than the value of the secured debts, so that the secured debts can be repaid in full and at least a dividend can be paid to the unsecured creditors.
3. The applicant must show good faith.

There are three categories of debts: secured, priority and unsecured.

- Secured debts: either those which have been registered in the Public Registry against a debtor's immovable property, either with their consent (for example a loan to purchase property, often referred to as a mortgage) or after a judgment has been ordered against them in court and registered against their property or those made under the Security Interests (Jersey) Law 1983 or 2012.
- Priority debts: unsecured debts which a law says must be paid before others, and include parish rates, social security and tax payments, and GST where the debtor is GST registered.
- Unsecured or ordinary debts: every day liabilities including utilities and phone bills, credit cards and overdrafts, and also where a judgment has been made against a debtor, but that judgment has not been registered in the Public Registry.

4. When to apply

As long as the criteria set out above are satisfied, a debtor can make the application unless:

1. A declaration of *désastre* has been made against them (a *remise* can be applied for if an application for *désastre* has been made but not yet granted); or
2. A *dégrèvement* hearing has been conducted and a creditor has accepted the property at the *dégrèvement* hearing and been confirmed as *tenant après dégrèvement* before the Samedi Court)

There is no requirement that a debtor wait for any proceedings to be issued against them by a creditor. A *remise* application is more likely to be successful where the application is issued as soon as possible after financial difficulties begin.

5. Making an application

- 5.1 The debtor issues a Representation in the Samedi division of the Royal Court, which sits on a Friday afternoon. The debtor must provide a detailed statement of all immovable and movable property they own, and a list of their liabilities, in order to prove that their secured debts can be repaid in full with at least a small balance for the unsecured creditors. The debtor must swear that this statement is true and correct and provide evidence in support of the application, including copy valuations of any assets, bills, statements and any correspondence from lenders and creditors. If any judgments have been awarded against the debtor in either the Royal Court or Petty Debts Court, a copy of the Act of Court should be attached. A template representation, affidavit and schedule of assets are attached to this Guide as appendices.
- 5.2 The Representation must be filed with the Royal Court and the Judicial Greffe no later than 12 noon on the Wednesday before the day the matter is to be heard, together with court stamps. The Stamp Duties and Fees (Jersey) Law 1998 sets out the applicable fees, which are currently £120 ordinary stamps and £10 Jurat's stamps, and these can be purchased from the States Cashiers at Cyril Le Marquand House. A debtor can seek an exemption from these fees by applying to the Viscount with a statement of the material facts.
- 5.3 Historically, the application was made *ex parte* (without notice to any other person) although, if the application was being made during other legal proceedings, such as a *dégrévement*, those parties should be notified by providing them with a copy of the application, as a matter of common courtesy and to avoid additional costs being incurred in the pursuit of other proceedings. Since the introduction of PD 17/12, the documents supporting the Application to Court must be provided to the Bailiff, the Judicial Greffier, the Viscount and any secured creditor at least 48 hours' prior to the application being presented to the Court.
- 5.4 The debtor must attend Court when the application is heard, whether they are legally represented or not. If the application is accepted for consideration the Court will appoint two Jurats to examine the debtor's financial affairs and report back to the Court within 15 days.
- 5.5 The appointment brings about a moratorium of litigation, both by and against the debtor, while the Jurats are seized of the matter. Once the application has been heard the debtor should make contact with all of their creditors to notify them of the application and to seek confirmation of the balances of their debt and any applicable rates of interest.
- 5.6 The Jurats prepare a report for the Court. They will investigate the value of the debtor's assets, appointing professional valuers for immovable property, and also movable property where appropriate. They will also review the debtor's debts, and may meet with creditors and interested parties.
- 5.7 The Court reads the report and hears any persons who wish to oppose the application. *Remise* is a discretionary remedy and the Court can depart from the views the Jurats expressed in the report, but they cannot grant a *remise* unless they are satisfied that there will be a credit balance for distribution amongst the unsecured creditors.
- 5.8 The decision is final and without appeal, however a *doléance* application can be made on the grounds that there was a failure of natural justice or the decision was made in excess of the court's jurisdiction. Two *doléance* applications have been made in the last twenty years, and neither has succeeded.

6. Application Refused

- 6.1 The next steps are dependent on the situation at the time the debtor made the application:
- If *dégrèvement* proceedings were in progress, these will continue;
 - If a *désastre* application had been made by a creditor, but not granted, this application will proceed;
 - If no proceedings were in progress,
 - the debtor or their creditors can make an application for a declaration of *désastre*; and
 - any creditor could commence *dégrèvement* proceedings.

7. Application Granted

- 7.1 When the court grants a *remise* application they will appoint two Jurats and stipulate the duration of the *remise*, which is usually an initial period of 6 months.
- 7.2 The Jurats have unqualified authority to sell all of the debtor's assets. They decide what is sold and to whom, and settle any disputed claims. They must consider the views of the debtor, but this is just one factor to consider, and they can act against the debtor's wishes.
- 7.3 The *remise* procedure is a privilege and the debtor's actions are very restricted during the period of the *remise*. They can only act with the guidance of the Jurats and must act in accordance with their advice. It would be very difficult for a debtor to challenge the decision of the Jurats to proceed with the sale of the property. At the very least, the debtor would have to make an application to the Court by way of a Representation/a *doléance* on the grounds, for example, that the Jurats had exceeded their authority, were (manifestly) wrong in law, or there had been a breach of natural justice. The Jurats have the power to sell the property at their discretion. The debtor's wishes, though they must be considered by the Jurats, are but one factor to be weighed with all others when a course of action is being decided upon.
- 7.4 Once the application for a *remise* is granted there are two possible outcomes:

A. Remise succeeds

Where the debtor's assets have all been sold, the costs of the *remise* and the secured creditors have been repaid in full, and at least a dividend paid to the debtor's unsecured creditors, the *remise* is complete. The Jurats will return the matter to the Royal Court and the *remise* will come to an end. Any debts which have not been repaid in full are extinguished, and the creditor is no longer able to pursue payment. The debtor regains control of their affairs, and can make a clean start free of any debts.

B. Remise unsuccessful

If at any point during the *remise* it becomes clear that the sale of the debtor's assets will not clear the secured debts in full and leave a balance for the unsecured creditors, or that there is no person willing to purchase the property, the *remise* will fail and a *dégrèvement* and *realisation* will follow. If proceedings had been started by a creditor before the *remise* application was made those proceedings will resume, and if not, the court will appoint two *attournés*. At the end of these procedures, the debtor will be discharged from any remaining debts.

8. Useful contacts

Bailiff's Chambers
Bailiff's Judicial Secretary
Address: Bailiff's Chambers, Royal Square, St Helier JE1 1BA
Telephone: 01534 441100
Email: bailiffschambers@gov.je

Citizens Advice Bureau
Address: St Paul's Centre, New Street, St Helier, JE2 3WP
Website: www.cab.org.je
Telephone: 0800 735 0249 or 724942
E-mail: advice@cab.org.je

Jersey Family Mediation Service
Address: Suite 7, Bourne House, Francis Street, St Helier JE2 4QE
Website: www.fmj.je
Telephone: 01534 638898
E-mail: info@fmj.je

Institute of Law
Website: www.lawinstitute.ac.je

Jersey Advisory and Conciliation Service
Address: 3rd Floor, 1 Seale Street, St Helier JE2 3QG
Website: www.jacs.org.je
Telephone: 01534 730503
E-mail: jacs@jacs.org.uk

Jersey Financial Services Commission
Website: www.jerseyfsc.org

Jersey Legal Information Board
Website: www.jerseylaw.je

Judicial Greffe
Address: Royal Court House, Royal Square, St Helier JE1 1JG
Telephone: 01534 441300
E-mail: jgreffe@gov.je

Legal Aid
Website: www.legalaid.je
Telephone: 0845 800 1066
E-mail: email@legalaid.je

Viscount's Department
Address: Morier House, Halkett Place, St Helier JE1 1DD
Website: <http://www.gov.je/Government/NonexecLegal/Viscount/Pages/index.aspx>
Telephone: 01534 441400
E-mail: viscount@gov.je

Appendix 1: Representation

**IN THE ROYAL COURT OF JERSEY
(Samedi Division)**

IN THE MATTER OF AN APPLICATION BY [DEBTOR NAME]

FOR A REMISE DE BIENS PURSUANT TO THE LOI (1839) SUR LES REMISES DE BIENS

SPECIMEN REPRESENTATION

THE REPRESENTATION OF [DEBTOR NAME] (hereinafter referred to as “the Representor”) shows that:-

1. The Representor resides at [full address including postcode]. The Representor is the [freehold/share transfer] owner of that immovable property. [Include details of any other immoveable property]
2. For some time the Representor has been unable to satisfy [his/her/its] commitments to its main secured lender [name of lender] and to other creditors.
3. [Brief details of litigation to date, if any]
4. The Representor wishes to apply to the Royal Court pursuant to the Loi (1839) sur les remises de biens for “*La permission de remettre son bien entre les mains de la Justice*”.
5. In accordance with Article 1 of the 1839 Loi the Representor has prepared a statement of his movable and immovable property verified by affidavit which discloses that [his/her/its] assets exceed [his/her/its] secured liabilities.

WHEREFORE the Representor humbly prays as follows:-

1. That pursuant to Article 2 of the 1839 Loi, the Court do appoint two Jurats to report on the said application
2. [That the *dégrèvement* of the immovable property of the Representor be stayed]
3. That the Representor notify the secured and unsecured creditors of the Representor (as set out in the Affidavit) of this application so they might have an opportunity to raise such objections to the Representor’s application for a *remise de biens* after receiving the report of the Jurats

- 4. That a *remise de biens* be granted pursuant to the 1839 Loi
- 5. That the Court make such further or other orders as it thinks fit.

Dated this [date] day of [month] 201[]

.....

Address for service in Jersey:

[Postal address]

[E-mail address (if any)]

Appendix 2: Affidavit

IN THE ROYAL COURT OF JERSEY (Samedi Division)

IN THE MATTER OF AN APPLICATION BY [DEBTOR NAME]

FOR A REMISE DE BIENS PURSUANT TO THE LOI (1839) SUR LES REMISES DE BIENS

SPECIMEN AFFIDAVIT

I, [DEBTOR NAME] of [full address and postcode] make oath and say as follows THAT:-

1. I depose this affidavit in support of my application for permission to place all my property “entre les mains de Justice” pursuant to the Loi (1839) sur les remises de biens (“the Law”).
2. Insofar as the facts and matters to which I depose herein are within my own knowledge, they are true and, insofar as they derive from information supplied to me, I believe such information, which is derived from the sources identified below, to be true to the best of my knowledge, information and belief.
3. This affidavit includes details of my movable and immovable assets as required by the Law. The contents of this statement are true to the best of my knowledge, information and belief.

Background to this application

4. [Set out the relevant facts that led to financial difficulties and any steps taken to alleviate these]
5. [Brief chronology of events including any litigation]

Movable and immovable assets

6. I am the owner of [freehold/share transfer] immovable property in Jersey, namely [property address]. I purchased this property in [date] for the sum of £[amount] with the aid of a secured loan in the sum of £[amount] from [lender name]. I believe that this property has a current market value of approximately £[value] as evidenced by a valuation carried out by [Valuer names] on [date].
7. I do not own or have any interest in any other immovable property in the Island of Jersey or elsewhere.
8. [Full details of share ownership, if any]
9. I do not own or have any interest in any [other] shares in any limited liability companies, in the Island of Jersey or elsewhere.

10. I have the following bank accounts and movable assets:

[Bank account]	[£]
[Household goods and furniture]	[£]
[Vehicles / boats]	[£]
[Jewellery]	[£]
[Stocks]	[£]

11. [Detail any person(s) who owe you money / assets, on what basis and steps taken to recover these debts or assets]

12. Save as disclosed above, I have no other assets.

13. I undertake to co-operate with the Royal Court to enable all of my property to be realised for the benefit of my creditors.

Income

14. [I am employed [full time / part time] on a [temporary / contract / permanent] basis as a [job title] and earn approximately £[amount] per year.] / [I am currently unemployed.] / [My only source of income is [detail benefits / pension received]]

Debts and liabilities

15. The following charge[s] are secured against my property:

16. Loan from [] in the capital sum of [] registered as a judicial hypothec against the property on []. The outstanding balance of this loan as at [date] is [] with interest accruing at [].

17. [Detail any further secured charges or registered judgments]

18. The following judgments have been awarded against me:

[Date]	[Creditor]	[Amount]	[Court]
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19. Save as disclosed above, I am not aware of any other judgments taken against me.

20. Legal proceedings have been commenced against me [set out details]

21. I am further indebted as follows:

[Date]	[Creditor]	[Amount]	[Rate of interest (if any)]
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[Set out a complete list of all current liabilities including: overdrafts, credit cards, rates, utilities (electricity, gas, water), telephone and internet].

22. I do not hold any leases or licenses for any properties.

23. I am not a guarantor for any person or entity, whether in the Island of Jersey or elsewhere.

24. Save as disclosed above, I have no other liabilities.

Current situation

25. On the basis of the figures set out above, I believe that there is a net equity available to myself and any unsecured creditors, as shown in the attached estimated statement of assets and liabilities.

26. [I am presently endeavouring to sell my property. [set out details of estate agents, marketing and offers]].

27. The immovable property detailed at paragraph [number] above is currently [insured with [insurers name]] / [uninsured].

28. Save as set out above I have no further income, assets or liabilities and invite the court therefore to grant my application.

SWORN by the said

[DEBTOR NAME]

this [] day of [] 201[]

Before me;-

Appendix 3: Estimated statement of assets and liabilities**IN THE ROYAL COURT OF JERSEY
(Samedi Division)****IN THE MATTER OF AN APPLICATION BY [DEBTOR NAME]****FOR A REMISE DE BIENS PURSUANT TO THE LOI (1839) SUR LES REMISES DE BIENS****ESTIMATED STATEMENT OF ASSETS AND LIABILITIES**

<u>ASSETS</u>	£	£
Immovable property		0.00
Movable property		0.00
		<u>0.00</u>
<u>Less: Administrative Expenses</u>		
Estate Agent's Fees (1½% on a sale / as agreed)	0.00	
Conveyancer's Fees (½% on a sale / as agreed)	0.00	
Attournés costs in dégrèvement (if applicable)	0.00	
	<u>0.00</u>	
<u>Less: Judicial Fees</u>		
Jurats Fees	0.00*	
Court stamps (approximately)	0.00*	
Valuation Fee re immovables (approximately)	0.00	
Valuation Fee re movables (if applicable)	0.00	
	<u>0.00</u>	
		<u>(0.00)</u>
BALANCE AVAILABLE FOR DISTRIBUTION		<u>(£0.00)</u>
<u>LIABILITIES</u>		£
Jersey secured claims totalling		0.00
Unsecured ordinary claims - a dividend of approx. as per schedule of claims	£0.00	p in the Pound (0.00)
		<u>£0.00</u>
Shortfall as to unsecured ordinary creditors		0.00

* see the Stamp Duties and Fees (Jersey) Law 1998 for details of current fees