

Wills for Jersey residents

Briefing Summary: A Will is a legal document in which you set out how you would like your estate to be dealt with after your death. It contains the names of the individuals or institutions whom you want to receive your assets. Your property and personal possessions are collectively referred to as your estate.

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What is a Will?

Jersey law treats movable and immovable assets differently for succession purposes, therefore we need to consider them separately when looking at your estate planning needs. Movable assets include things such as bank accounts, jewellery, furniture, cars, life insurance proceeds and shares (including shares in a property holding company entitling the owner to occupy a share transfer apartment). Immovable assets are freehold property in Jersey and also include commercial premises, farms and fields, contract leases for more than nine years and flying freehold apartments. Different rules apply to the inheritance of movable and immovable assets in Jersey so it is therefore advisable to make two separate Wills if you own both type of asset, one covering your immovable estate in Jersey and one covering your movable estate.

Why make a Will?

Even if the value of your estate is small, there are several important reasons why you should make a Will. On a practical level, a Will provides certainty for your family and friends at a time of emotional distress as it tells them how you wish your estate to be dealt with. On a legal level, it ensures that your estate is distributed in accordance with your wishes after your death.

If you die without having made a valid Will, you are said to have died intestate and in such cases statutory law is applied and your estate will be distributed in accordance with the terms of the Jersey law of intestacy which may differ from what you want.

Furthermore, the current Jersey law does not enable unmarried couples to inherit from each other without having a Will in place which can cause uncertainty and complications.

Key Contacts



Keith Dixon
PARTNER, JERSEY
+44 (0)1534 822380

[EMAIL KEITH](#)



Victoria Grogan
COUNSEL, JERSEY
+44 (0)1534 822421

[EMAIL VICTORIA](#)



Claudia Barker
ASSOCIATE, JERSEY
+44 (0)1534 822435

[EMAIL CLAUDIA](#)



Amy Lewis
WILLS AND PROBATE
ADMINISTRATOR,
JERSEY
+44 (0)1534 822277

[EMAIL AMY](#)

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY

CAPE TOWN HONG KONG SAR LONDON SINGAPORE

careyolsen.com

It is recommended, therefore, that you seek legal advice and write a Will to avoid this.

Can anyone make a Will?

To make a Will a person, known as the testator, must be of full age (18 years or over) and of sound mind. However, an exception to this rule is a married minor who is able to make a valid Will.

What can my Will deal with?

Most people want to keep their Will as simple as possible and often give the whole of their estate (known as the residue) to one or more persons such as a spouse/civil partner or children. You can also make gifts of specific items such as jewellery or sums of money in your Will.

You can choose whom you want to be your executor, you can name a guardian to care for any minor children and you can give directions for your funeral. The role of executor is explained in more detail below.

What if I want to alter my Will?

It is possible to make straightforward changes to a Will as often as you wish by signing a document known as a Codicil.

However, it may be simpler to prepare a fresh Will. The formalities for executing a Codicil are the same as for a Will and you should therefore seek legal advice to ensure that everything is done correctly.

We recommend that you review your Wills every five years to ensure that they still meet your needs or whenever you have a significant change in your personal circumstances, for example when you get married or divorced, have a child or receive an inheritance.

What are the legal requirements?

If you own an immovable asset in Jersey then you should make two Wills, one that covers your Jersey immovable estate and a second that covers all of your other assets. After your death the Will of Jersey immovable estate is registered in the Public Registry while your executors obtain a Grant of Probate to your general Will which authorises them to administer your estate.

Jersey law stipulates certain legal requirements in relation to the signing and witnessing of Wills and, if these are not complied with, it may mean that your Will is invalid. A Will covering your immovable estate, for example, must be read out loud to you by a Jersey Advocate (or other suitably qualified witness) in the presence of one other witness who must be of full age and of sound mind.

It is recommended, therefore, that you seek legal advice and have a Will drafted professionally by a lawyer.

How much does it cost?

The cost of instructing a lawyer to prepare a Will really depends on how complicated the Will is. We would be happy to provide you with an estimate for drafting your Will.

What is an executor?

An executor is a person, persons or company that is appointed in a Will of movable estate to carry out the personal wishes of the testator as expressed in the Will. There is no executor of a Will of Jersey immovable estate.

You can have more than one executor if you wish. Your executor will need to obtain probate of the Will and is then obliged to collect in your assets, pay your debts and to distribute the remainder of your estate in accordance with the terms of your Will. Anyone can be appointed as an executor if they are of full age and of sound mind, however, it is advisable to check that your intended executor is happy to carry out the role before appointing them. Your lawyer will generally be prepared to act as your executor if you wish.

Do I have to leave my assets to my family?

No, you do not. However, it is important to be aware that if you make a Will of movable estate which excludes your spouse/civil partner and/or children or you choose to leave them less than what they are legally entitled to in accordance with Jersey law, then a claim can be made against your executor by the aggrieved spouse/civil partner and/or children. This legal entitlement is known as "légitime" and the extent of the claim is as follows:

- A spouse/civil partner can claim household effects and two-thirds of the net movable estate if there are no children.
- If there are children then the spouse/civil partner's share is restricted to one-third of the net movable estate and the children can claim another one-third share of the net movable estate.
- If there is a child or children but no spouse/civil partner, then the child or children are entitled to claim two-thirds of the net movable estate.
- In each of the above cases the remaining third of the estate passes in accordance with the terms of the Will.
- If you have neither spouse/civil partner nor descendants, you have full testamentary freedom to leave your movable estate assets to whomever you wish.

Légitime must be claimed formally by the aggrieved person through the Royal Court within a year and a day of the Grant of Probate to the Will of movable estate having being issued. Usually a Will is only subject to légitime challenges if a degree of acrimony exists, perhaps where there is a family feud or a second marriage.

For your immovable estate, the general rule is that by making a Will you can leave it to whomever you choose. However, for any estates that open on or after 1 January 2014 in the case of a married person or civil partner, the surviving widow/er or surviving civil partner has a right of douaire (dower). Douaire is a life interest in one-third of the Jersey immovable property owned by the deceased.

You are unable to leave your immovable estate to the trustees of a Trust as this would contravene both the Trust (Jersey) Law 1984 and the Wills and Succession (Jersey) Law 1993 (as amended).

What happens if I do not make a Will?

If you die without leaving a Will you are said have died intestate and your estate will therefore be governed by the provisions of Jersey law. The beneficiaries that will be entitled under the law may not be the same as the beneficiaries that you wish to inherit your estate which is why it is important to make a Will.

The following is an outline of the statutory provisions that will apply in an intestate estate.

In respect of your immovable estate:

- If you leave a spouse/civil partner with no children then your surviving spouse/civil partner is entitled to inherit all of your immovable estate.
- If you leave a spouse/civil partner and children then your surviving spouse/civil partner is entitled to life enjoyment of the matrimonial home and your spouse/civil partner and each of your children share the ownership equally.
- If you leave children but no surviving spouse/civil partner then your children will share the whole of your immovable estate equally.

In respect of your movable estate:

- If you leave a spouse/civil partner but no children then your surviving spouse/civil partner is entitled to receive the whole of the net movable estate.
- If you leave a spouse/civil partner and children then your surviving spouse/civil partner is entitled to receive the household effects, the first £30,000 and a half share of the remaining net movable estate. Your children receive the remaining half share equally between them.
- If you leave children but no surviving spouse/civil partner then your children will receive the whole of your net movable estate equally.

Does separation or divorce matter?

Yes it does. If you are divorced or have obtained a decree of judicial separation against your spouse/civil partner or if he or she has deserted you without good cause then the surviving spouse/civil partner loses their entitlement to your estate unless you make express provision in your Will to the contrary.

Also, if you have appointed your former spouse/civil partner to be the executor of your movable Will, this appointment will be revoked upon your divorce. It is therefore important to review your Wills after a divorce to check that they are still suitable for your needs.

What happens to my Will of Jersey immovable estate when I die?

Your Will of Jersey immovable estate will need to be registered in the Public Registry. As soon as this is done, title to your immovable property passes to those persons you have named in your Will of Jersey immovable estate as the beneficiaries.

There may be stamp duty payable by your beneficiaries upon the registration of your Will of immovable estate. This can be significant as it is calculated on sliding scale of up to 3% of the value of the property. With some correct estate planning, if you leave your matrimonial home to your spouse/civil partner or all of your immovable property to your closest relatives in the way that they would inherit your estate had you died intestate, then there is no stamp duty payable. Otherwise stamp duty is payable on registration of the Will.

What is a grant of probate?

A Will of movable estate does not take effect until it has been proved in court and a Grant of Probate issued. A Grant of Probate is the order of the court which confirms that a Will is valid and also gives the named executor the proper legal authority to administer the estate of the deceased. The executor will be required to swear an oath in court to confirm that he/she will administer the estate both properly and honestly and in accordance with the terms of the Will.

Can I appoint guardians?

In the event that your children are under the age of 18 years at your death, you can state whom you would like to act as their guardian in your Will. Jersey law also provides for a Tuteur to be appointed to manage the funds and any immovable property left to minor children. You can express a wish in your Will that a certain person be appointed as the Tuteur.

Digital assets

The internet is increasingly becoming the main storage point for our financial and personal lives. Digital assets include financial and social media resources, blogs, auction sites, gaming, bitcoins, copyright and image rights, domain names, websites and cloud storage.

We encourage our clients to prepare a digital asset log together with written instructions for their executor about what should be done with their digital assets following death. The log and instructions may be stored safely and confidentially alongside your Will.

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