

A photograph of a sandcastle on a beach. The sandcastle is the central focus, with several towers and a central structure. The background shows the ocean with waves and a hazy sky. The lighting is warm, suggesting a sunset or sunrise. A dark blue diagonal shape is in the bottom right corner.

Making a Will
in Guernsey

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About Carey Olsen

Carey Olsen is a leading offshore law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey from a network of nine international offices.

We are a full service law firm advising on banking and finance, corporate and M&A, investment funds and private equity, trusts and private wealth, dispute resolution, insolvency and property law. For further information please visit careyolsen.com.

Introduction

On 2 April 2012 the Inheritance (Guernsey) Law 2011 came into force which has replaced Guernsey's forced heirship regime with a system of full testamentary freedom (accompanied by family and dependent provisions).

Any individual who currently has a Will executed before 2 April 2012 should be aware that any forced heirship provisions will be preserved unless they execute a new Will or codicil incorporating the new provisions or unless their Will stipulated that the new provisions should apply.

It is now, more than ever, important for those who do not have Wills to record their wishes to ensure that assets are left to the correct beneficiaries.

This booklet highlights the key issues that any individual domiciled in Guernsey and/ or owning Guernsey real estate should consider when drawing up a Will. It also highlights foreign Wills for non-resident/ non-domiciled individuals holding assets in Guernsey.

What is a Will?

A person's Will expresses how they would like their estate to be dealt with after their death. To ensure the Will is legally valid, it needs to be carefully drafted which is why gaining appropriate advice is particularly important.

Why make a Will?

There are several important reasons why it is advisable to make a Will. On a practical level, a Will provides certainty for family and friends at a time of emotional distress, telling them how their loved one wishes their estate dealt with. Legally, it ensures that an individual's property is passed on to persons or institutions of their choice, within the limits imposed by Guernsey law.

In the absence of a Will Guernsey law steps in and dictates how a deceased person's property will pass. This may not accord with your wishes.

For many years Guernsey law made no requirement to make a Will of real estate in certain family circumstances. However, since 2008, in the absence of a Will of real estate, certain Royal Court applications may be required which can delay the administration of your estate and add additional costs. Therefore, it is important to ensure your Will remains up to date.

You should ensure you have a Guernsey Will if you are Guernsey domiciled or you own realty in Guernsey.

How can I make a Will?

The law stipulates certain requirements in relation to making a Will and if these are not complied with it may mean that the Will is ineffective and invalid.

There are a number of formalities associated with making a Will. For example, a Will of personal estate and real estate must be signed or acknowledged by the testator (the person making the Will) in the presence of two witnesses who are both present at the same time. These witnesses must be over 18 years of age and not be beneficiaries or spouses of beneficiaries under the Will.

What information should be included in a Will?

Not only can a Will refer to the disposal of a person's estate, it can also include additional information. For example, it can express a person's wishes as to whom they would like to administer their estate or care for minor children. It might also include wishes relating to trust provisions and deferment clauses, specific legacies and burial/cremation wishes.

How much does it cost?

This of course depends on how complicated the Will is, however, we would be very pleased to provide a fee estimate for you at the outset.

Can anyone make a Will?

To make a Will a person must have what is known as testamentary capacity. In general terms this means that the person making the Will, must be of full age (18 years old) and sound mind. It is usual to have the testator's capacity confirmed by a medical opinion when dealing with elderly or infirm testators.

Can a Will be changed?

A Will can be amended as often as a person might choose, within the appropriate legal framework, provided they retain the necessary testamentary capacity. It is possible to change the terms of a Will at any time or even revoke the whole thing. It is always advisable for a Will to be reviewed if personal circumstances have changed, particularly in light of the new inheritance laws.

What happens if a person dies without having made a Will?

In this case, a person is said to have died intestate. At this point the law sets out clear rules as to who will inherit upon the death of a Guernsey domiciled or realty owning individual.

For a more detailed table outlining the intestacy rules please see page 3.

Types of property

In Guernsey there is a distinction between real estate and personal property. In general terms the former refers to land and buildings situate in Guernsey (realty) and the latter (personalty) to money, shares, possessions etc. It used to be the case in Guernsey that a person had to have two Wills: one which dealt with realty and a second which dealt with personalty.

Since 2008, an individual can have one Will but many testators (the person that is making the Will) still prefer to have two as a Will dealing with realty is registered at the Greffe after one's death. Having two Wills assists in keeping the contents of a Will of personalty more confidential.

To whom may I leave my realty?

An individual has full testamentary freedom as to whom they may leave realty. However, the law provides that certain family members or dependants who have not received "reasonable financial provision" under the terms of the deceased's Will may apply to the court for provision to be made for them. The court has power to make various orders as it thinks fit. Legal advice should be sought as to the relevant merits of any claim.

Descendants

'Descendants' will include children and remoter descendants, legitimate or otherwise. The law allows you to also include stepchildren in your Will. For more details on this please contact a member of our legal team.

Does it make any difference if I am divorced?

Divorce or a Judicial Separation, which renounces rights to succeed, will mean your surviving spouse has no rights on intestacy. However, in Guernsey, divorce and/or re-marriage does not automatically revoke a Will. It follows that if a spouse is named in a Will of Real Estate or Personal Estate, they will still inherit unless such Wills are revoked.

What happens to my realty when I die?

Immediately upon your death, Guernsey law provides for your realty to vest in either your heirs at law or your named beneficiary. Registration of your Will of realty evidences the fact of your heirs inheriting the property. After registration of the Will dealing with realty it will become a public document. This should be borne in mind when deciding whether to have one Will dealing with both personal and real estate or to keep them separate.

To whom may I leave my personalty?

As with realty an individual has full testamentary freedom as to whom they leave their personalty, subject to provisions for family and dependants.

Appointing an executor

An executor is appointed to carry out the personal wishes of the testator as expressed in the Will of personalty. Every Will of personalty should appoint an executor whose duties will be defined in that Will. An executor obtains probate of the Will. Generally, anyone can be an executor provided that person is of age and sound mind. It is advisable to check with your intended executor that they are happy to carry out the role. Your lawyer will generally be prepared to act as your executor. An executor is not required for a Will of realty.

Carey Olsen Client Services (Guernsey) Limited is our in-house executorship company which provides independent estate administration services and can be named as your executor in your Will.

What is a grant of probate?

Probate is an order of the Ecclesiastical Court which confirms the authority of the executor to administer the personal estate of the deceased. The executor swears an oath that they will administer the estate in accordance with law and render an account when called upon to do so. Some institutions may not release funds/assets without a grant of probate so it is important to ascertain where one is required.

Foreign Wills

There are many individuals who may be neither resident nor domiciled in Guernsey but who hold assets, more usually, personal assets in Guernsey such as monies invested. The personal estate of an individual is governed by the law of his/her last domicile which will not normally be Guernsey if they are only holding assets in Guernsey. Upon the death of the individual the probate procedure can be much easier for the executor if the individual had a Guernsey Will which can be proved for probate purposes. Obtaining probate in Guernsey is far simpler than in many other jurisdictions.

For the preparation of foreign Wills we would be pleased to forward a questionnaire for your completion and return so that we may advise you on your individual circumstances.

Intestacy rules

The following table sets out the basic rules for if you die intestate in Guernsey (without a Will in place). For more detailed explanation please contact one of our team.

	Real estate intestacy	Personal estate Intestacy
No spouse/civil partner No children	Heirs at law	Heirs at law
Spouse/civil partner but no descendants	Whole to spouse/civil partner	Whole to spouse/civil partner
Descendants but no spouse/civil partner	Whole to descendants	Whole to descendants
Spouse/civil partner and descendants	Spouse/civil partner will receive: <ul style="list-style-type: none">• an undivided 1/2 share of the matrimonial home;• an undivided 1/2 share of any other realty; and• life enjoyment until death or remarriage of the remaining 1/2 share of the matrimonial home The descendants will receive the rest	1/2 to spouse/civil partner 1/2 to descendants

The rules regarding who inherits (heirs at law) if a person dies without a spouse, civil partner or descendants are more complex and can be explained upon request.



Key contacts

For further information or professional advice please contact our Wills Service team below:



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