

Stamp duty on Jersey property wills

Service area / [Property Law](#)

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Introduction

Stamp Duty fees for registering Wills of Jersey Immovable Estate rose sharply when they were increased on 1 January 2005. For many years the basis of charge was 0.5% on the first £50,000 of value as at the date of death and 1% thereafter. The new rates are in bands of 0.5%, 1.5%, 2%, 2.5% and 3%.

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By way of illustration, an old Jersey farmhouse worth £1m. would previously have cost £9,750 in Stamp Duty but the charge has now been increased to £22,000. An ordinary £300,000 semi-detached house would previously have cost £2,750 and this will now cost £4,000. In addition, an application fee was introduced in July 2004 of £50 for a professional application via lawyers, or £150 for personal application direct by the Heir.

This is going to be very hard on property rich/cash poor widows or widowers who are only exempted if they inherit the matrimonial home absolutely.

There is an exemption from ad valorem Stamp Duty, which was introduced in September 1999, whereby a property that has been devised to the deceased's spouse that was their matrimonial home shall be disregarded in determining the net value of the immovable property devised. In such cases the Will of Jersey Immovable Estate can be lodged at the Public Registry with the ad valorem Stamp Duty being waived.

Another exemption introduced in March 1999 covered cases where the Will devised all the immovable property of the Testator to those persons to whom the property would have passed on an intestacy and in the same shares. Again, the Will can be lodged for a nominal fee at the Public Registry.

However, the traditional type of Will giving life enjoyment (usufruct) to the spouse and real ownership (nué propriété) to the children does not avoid the charge. Devolution under intestacy in such cases is governed by Articles 5 and 6 of the Wills and Successions (Jersey) Law 1993. The spouse receives life enjoyment of the matrimonial home, together with an equal share of ownership with each of the children sharing as tenants in common (not joint tenants). This is not quite the same as the old usufructuary and nué propriété division as has been provided for in many Wills going back over several decades, some of which may still apply to Testators who are still alive and who have never seen any reason to change their old Wills. Many people who made their Wills more than five or ten years ago may not be aware of the exemptions that are available.

The further exemption introduced in January 2005 covers charitable devises as defined by criteria laid down in Article 115 of the Income Tax Law of 1961. Thus it can be provided that the Charity receives the entire benefit of the devise without having to disperse valuable cash reserves in payment of Stamp Duties.

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Not all properties in Jersey are defined as “Jersey Immovable Estate”. Some houses are purchased in the names of companies, while many luxury flats are owned under the share transfer system, whereby the owner has shares in the company as opposed to owing the property as such. In these cases the property effectively forms part of the deceased’s Movable Estate, as opposed to Immovable Estate, and is managed by his Executors rather than passing directly to his Heirs under the civil law maxim of “le mort saisit le vif sansministere de justice”.

There are two possible disadvantages of such arrangements. One is that any children who are not favoured can claim their légitime over Movable Estate and this may extend to up to two-thirds of the value of the Estate if, for example, if there is no surviving spouse and if there are no other children. Légitime rights have never applied to Jersey Immovable Estate and property owners have freedom of testamentary disposition, apart from the old life enjoyment rights of dower and viduité, which still apply as far as a surviving spouse is concerned.

The other disadvantage applies if it is desired to devise a property to a friend or relative who does not have Jersey residential qualifications. By concession, such UK or foreign beneficiaries have been allowed to have such rights as far as a particular inherited property is concerned. However, a beneficiary of Movable Estate in respect of a share transfer property would not be a devisee of the property concerned and would not thereby obtain residential qualifications.

Stamp Duty payable on Movable Estate was last revised in 1999 at the rate of 0.5% on the first £100,000 and 0.75% thereafter. While the rates are lower, there are no exemptions available for the surviving spouse, heirs on intestacy or charities. Comparisons can therefore be drawn for the Stamp Duty payable on properties for deaths in 2004 or earlier, in 2005 and in cases where the property is owned by share transfer.

Stamp duty

Value	2004	2005	Share transfer
£300,000	£2,800	£4,050	£2,050
£500,000	£4,800	£8,050	£3,550
£700,000	£6,800	£13,050	£5,050
£1,000,000	£9,800	£22,050	£7,300

Corporate ownership of properties can also be a means of avoiding the prohibition of Trusts of property under the “loi (1851) sur lestestaments d’immeubles and the Trusts (Jersey) Law of 1984. A property devised to a company would form part of the deceased’s Movable Estate and under his Will of Movable Estate he could bequeath the residue (which would include the property) to a Trust.

Properties can be put into joint ownership under tenancies in common, which is very popular in England for tax purposes. Or joint ownership can be arranged for the survivor to inherit automatically in the same way as joint Bank accounts and this avoids the Stamp Duty problem altogether. However, joint ownership may have other disadvantages, especially in cases of separation or divorce, or where children of a previous marriage may be disinherited completely. It is often a difficult matter of weighing up various alternatives and their respective advantages and disadvantages.

Such considerations can lead to fairly sophisticated Estate planning strategies being adopted when faced with the apparently simple question of how to make a Will of Jersey Immovable Estate. There are a number of different and often conflicting factors that ought to be considered, of which the amount of Stamp Duty payable may on balance be a fairly insignificant factor. However, such important decisions probably do call for appropriate professional advice being obtained when thinking about making or changing Wills, or when buying a property.

Continued



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