

● WHERE THERE'S A WILL THERE'S A WAY (WILLS FOR NON-RESIDENTS)

It is quite common for non-residents of the Island to own either real property (houses and land) in Guernsey or have personal estate (eg bank accounts, investments and share portfolios) here. Few of them have made specific Wills dealing with those Guernsey assets. It is worth considering making a Guernsey Will for various reasons, but above all it makes the administration of the estate, whether relating to real property or not, far quicker and more efficient than otherwise. The relatively straightforward process of preparing and signing a Guernsey Will is preferable to leaving the problems to your Executors or your Administrators after your death. In considering whether or not to make a Guernsey Will the following points should be borne in mind:-

GUERNSEY REAL PROPERTY

In the case of real property, the law of the place where the real property is situated will always govern what can and cannot be done in a Will disposing of that real property. Guernsey Law will apply to Guernsey real property if owned by one or more individual. If the real property is owned by a company then the asset consists not of real property but rather shares in the company which owns the real property. Shares in a company are deemed to be personal estate and not real property and therefore Guernsey Law may not necessarily apply to the distribution of that real property on death.

PERSONAL PROPERTY

Guernsey is an attractive place to invest for those not resident in Guernsey. As with many offshore jurisdictions it can bring many benefits from the estate planning point of view. A Guernsey Will dealing with those personal assets situated in Guernsey can result in the administration of the worldwide

estate being completed far more quickly. This is because the Guernsey Will can be admitted to probate in Guernsey soon after probate is being obtained in respect of the other assets in what may be the home jurisdiction (the place where the deceased was domiciled when he died).

● Domicile

If a person is not resident in Guernsey but has personal assets here, Guernsey Law will not apply to the distribution of the Guernsey assets unless he dies domiciled in Guernsey. Domicile, for inheritance purposes, is not the same as domicile for tax purposes. Under Guernsey Law, domicile as a legal concept can essentially take two forms. The first is "domicile of origin", which is the place where the deceased was born and lived after birth. Alternatively, a person may have acquired a "domicile of choice". This is where there is a change of the domicile of origin to a domicile of a different jurisdiction where the person has taken up residence and where he intends to remain permanently. Consequently, during a person's lifetime, his domicile could change many times. It is the law of domicile (whether it be of origin or choice) at the date of death which will govern the distribution of personal estate, wherever it is situated in the world.

Whilst a Guernsey Will will include certain wishes, these will be construed in accordance with the law of domicile of the person making the Will at the date of his death.

Accordingly, prior to signing a Guernsey Will, it is sensible to take advice from a lawyer in the home jurisdiction of domicile in order to ensure that the Will will be wholly effective under that law.

● Further points to consider for Wills of Guernsey Personal Estate

Prior to instructing the preparation of a Guernsey Will the following points should be considered:-

- The Guernsey Will will only apply to the Guernsey assets. It will not apply to real property owned in other jurisdictions. If the Will is to include Guernsey real property this can be included in the same document, provided it is not signed in Guernsey, in which event it will be a separate document signed before Jurats of the Royal Court.
- The Executor named in the Guernsey Will should take advice at the time of death from a lawyer in the country of the deceased's domicile at his death and prior to obtaining probate of the Guernsey estate. The Guernsey Executors should liaise fully with the Executors appointed under any other Will.
- The Guernsey Executor (once sworn in the Ecclesiastical Court of the Bailiwick of Guernsey), will be empowered to gather in the Guernsey assets, pay off the liabilities arising in Guernsey and then either pay over the assets to the beneficiaries named in the Will or pay over the assets to the Executors appointed under the Will of the deceased's home jurisdiction, (if there is one). It should be noted that the Guernsey Executors can be liable for debts of the deceased arising in any jurisdiction even if he has chosen to pay over the assets to the beneficiaries named in the Guernsey Will. Consequently, a Guernsey

Executor is best advised to pay over the assets to the Executors named in the Will of the deceased's home jurisdiction who should be aware of all liabilities of the deceased.

- Tax authorities in foreign jurisdictions often require proof of domicile or residence before allowing Executors to transfer assets to beneficiaries or otherwise deal with them.
- Depending upon where the Executors named in the Will are resident, there may be tax implications for them to consider. In this regard further advice should be taken from an accountant or tax advisor.
- If assets are located in other jurisdictions, consideration should be given to making a Will separate to the Guernsey and main Wills dealing with those assets only. If this is done care needs to be taken not to revoke either the Guernsey Will or the main Will. This can be achieved by expressly confirming the Guernsey Will in the subsequent Will.

● **Ecclesiastical Court**

The probate registry in the Bailiwick of Guernsey is the Ecclesiastical Court of the Bailiwick of Guernsey. This ancient court issues Grants of Representation (probate or letters of administration) for resident and non-resident individuals. It should be noted that the court charges a fixed fee based on a tariff for the grant according to (1) the size of the Guernsey estate, if the grant is subsequent to an original grant in the home jurisdiction or (2) the size of the worldwide estate, if the Guernsey grant is to be the first. The tariff equates to 0.35% of the gross value of the estate. There are supplementary charges for the documentation required such as oaths, powers of attorney and administration bonds.

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