

• GUIDELINES FOR MAKING A WILL: NON-RESIDENTS WITH ASSETS IN JERSEY

Probate work, whether in the preparation of wills or the administration of estates, demands a high level of sensitivity and understanding. At Collas Crill, we are involved with extensive estate planning and the administration of estates in Jersey for personal representatives throughout the world. The idiosyncrasies of Jersey law and custom in matters relating to inheritance and succession can be a baffling minefield and so the ability to communicate and explain with concise clarity is all-important. We hope the following guidelines to Jersey Probate for non-residents is helpful. Understanding clients' concerns and achieving solutions and objectives with minimum fuss are our key aims.

THE MAIN REASONS FOR A NON-RESIDENT WITH ASSETS SITUATE IN JERSEY TO MAKE A WILL

- To ensure that any assets situate in Jersey ("the Jersey Estate") will be distributed according to the Testator's wishes.
- To nominate the person whom he/she wishes to administer their Jersey estate (ie the Executor).
- To facilitate the quick and efficient administration and distribution of the Jersey estate.
- To perpetuate for beneficiaries the advantages which prompted the Testator to place the assets offshore in the first place.

HOW TO MAKE A WILL IN JERSEY

We will assist you in this respect. It is important to distinguish between immovable estate and moveable estate. Immoveable estate essentially consists of land, buildings, and other permanent fixtures and fittings upon land as well as rights in and over land. Moveable estate includes items such as bearer bonds and nominee accounts (where the nominee holds as "bare trustee" as well as bank accounts, tangible assets and shares in unit trusts and investments and shares in companies.)

With regards to wills of immovable estate, the law of the country in which the property is situated governs the validity of that will, so a will dealing with immovable property in Jersey must be executed in accordance with the formalities prescribed by Jersey law.

It is most unlikely that a will made elsewhere will have complied with the formal requirements of Jersey law with the result that the deceased would be deemed intestate insofar as concerns his/her Jersey immovable property. A separate will is, therefore, essential for anyone owning property in Jersey.

Due to Jersey's offshore status, the assets of most non-residents will consist of moveable estate. A will in relation to such estate is treated by the Jersey courts as properly executed pursuant to the Probate (Jersey) Law 1998, if its execution conforms to any one of the following criteria:

- the laws of Jersey;
- the internal law in force in the country where the will is executed;
- the internal law in force in the country where the Testator is domiciled at the time of his death; or
- the internal law in force in the country of which the Testator is a national.

Once a Jersey will meets any one of the above it is valid under Jersey law and it is possible to make an application for Probate of the said will in Jersey independently of any other will the Testator may have left in relation to assets in any other jurisdiction. However, should the Jersey will be contested then the "essential validity" of the will (ie where the Testator's wishes as set out in his will are valid) is what needs to be proven and this is governed by the law of the Testator's domicile.

Within the will in relation to the Jersey Estate it will be necessary to provide for an Executor(s) who is the person charged

with the task of gathering in the assets and ultimately distributing them in accordance with the terms of the will. Collas Crill has an executorship company that provides all Executor, but it is not essential for an Executor to be resident in Jersey.

WHAT HAPPENS UPON DEATH?

IMMOVEABLE ESTATE SITUATE IN JERSEY

It will be for the devisees of the will to ensure its registration at the Public Registry of the Island of Jersey. The registration of the will effectively conveys title to the beneficiaries. An Executor is not involved with immovable estate. The current stamp duty payable on such registration is calculated as follows

WHERE THE NET VALUE OF THE IMMOVEABLE PROPERTY DEVISED

- a** does not exceed £50,000
50p each £100 or part of £100, with a minimum fee of £12.00
- b** exceeds £50,000 but does not exceed £300,000
£250 in respect of the first £50,000 plus £1.50 for each £100 or part of £100 in excess thereof
- c** exceeds £300,000 but does not exceed £500,000
£4,000 in respect of the first £300,000 plus £2 for each £100 or part of £100 in excess thereof
- d** exceeds £500,000 but does not exceed £700,000
£8,000 in respect of the first £500,000, plus £2.50 for each £100 or part of £100 in excess thereof
- e** exceeds £700,000 but does not exceed £1,000,000
£13,000 in respect of the first £700,000 plus £3.00 for each £100 or part of £100 in excess thereof

- f** exceeds £1,000,000 but does not exceed £1,500,000
£22,000 in respect of the first £1,000,000 plus £3.50 for each £100 or part of £100 in excess thereof
- g** exceeds £1,500,000 but does not exceed £2,000,000
£39,500 in respect of the first £1,500,000 plus £4.00 for each £100 or part of £100 in excess thereof
- h** exceeds £2,000,000
£59,500 in respect of the first £2,000,000 plus £5.00 for each £100 or part of £100 in excess thereof

A further £60 stamp is payable on all applications in respect of the Court Administration charge.

MOVEABLE ESTATE

Under the Probate (Jersey) Law 1998, Article 19(2), a Jersey grant of Probate or Letters of Administration must be obtained to establish the right to recover or receive any part of the moveable estate situate in the Island of any deceased person domiciled outside of Jersey where the total value of the Jersey assets is in excess of £10,000. There is no inheritance tax payable in Jersey. However, a stamp duty is payable on all applications and is calculated as follows:

WHERE THE NET VALUE OF THE JERSEY ESTATE

Does not exceed £10,000

No fee

Does not exceed £100,000

£50 for each £10,000 or part thereof

Is in excess of £100,000

£500 in respect of the first £100,000 plus £75 for each additional £10,000 or part thereof

A further £60 stamp is payable on all applications in respect of the Court Administration charge.

DOCUMENTATION

The documentation required in order to make application for Probate will vary, depending on whether:

- a** A non-resident has made a will relating specifically to Jersey Estate.
- b** A non-resident has made a world-wide will.
- c** A non-resident has died intestate ie without having made a will
- a** **Where a non-resident makes a will relating only to the Jersey Estate, the documents required to prove the Jersey will are as follows:**
- 1** A copy of the deceased's death certificate;
 - 2** The original will in respect of the Jersey Estate;
 - 3** Photocopies of any other will the Testator may have made in relation to assets situate outside of Jersey. These photocopies do not need to be certified or notarised and are merely to demonstrate to the Probate Registrar that the Testator has not inadvertently revoked his Jersey will in any subsequent document;
 - 4** If the Executor does not apply for Probate in person a Power of Attorney subscribed by the Executor in favour of a Jersey resident is required. Again, this is a service that Collas Crill's executorship company provides. The Executors/ Attorneys will then present the documentation to the Probate Registrar, together with the appropriate Stamp Duty, and swear the necessary oath. The Grant of Probate will normally be issued within seven to ten working days.
- b** **Where the non-resident of Jersey makes a will in relation to all assets world-wide including those situate in Jersey, the documents required to prove a will in Jersey are as follows:**
- i** A copy of the deceased's death certificate;

- ii** A court sealed and certified copy of the Primary grant with the will and any Codicil thereto attached. If it has not been necessary to make application for a Grant of Probate of the will in another jurisdiction, (eg because all the deceased's assets outside of Jersey were jointly owned) then the original will and an Affidavit of Law in relation thereto is required. The Affidavit must be sworn by a lawyer qualified to practice in the jurisdiction of the deceased's domicile and must state that the will is not contrary to the law of the deceased's domicile;
 - iii** A power of Attorney subscribed by the Executors in favour of a Jersey resident.
- c** **Where the non-resident dies intestate, the documents required to obtain a Grant of Letters of Administration in respect of the Jersey moveable estate are as follows:**
- i** A copy of the deceased's death certificate;
 - ii** A court sealed and certified copy of the Primary Grant. If it has not been necessary to make application for letters of Administration in another jurisdiction, than an Affidavit of Law is required. As before, this must be sworn by a lawyer qualified to practice in the jurisdiction of the deceased's domicile. However in this situation it must state that the person applying for the Letters of Administration is the person entitled to do so in accordance with the law of the deceased's domicile;
 - iii** A Power of Attorney subscribed by the Administrators in favour of a Jersey resident.

In all three situations, stamp duty will be payable as referred to above.

Obtaining probate is therefore far easier where there is a will exclusively relating to the individual's Jersey Estate. Although the documentation required in both (b) and (c) might seem very similar to that in (a), obtaining it can be a time consuming and expensive process. There may be the problem of conflicts of different legal systems, eg common law-v-civil law. There may be cultural differences and language problems encountered between the different jurisdictions. There may also be further time and costs involved in having documents translated.

FAST TRACKS

The Probate (Jersey) Law 1998 has introduced what is known as a "Fast Track" procedure for the estate of persons who die domiciled in the British Isles and leaving a will. This now avoids the need to appoint an Attorney Executor/Administrator to manage the Jersey Estate; making the process of dealing with the assets in Jersey quicker and cheaper. Because of this new procedure, we advise persons with British domicile having assets in Jersey not to make a Jersey Will unless they wish their Jersey Estate to pass to completely different beneficiaries to those named as the residuary beneficiaries of their reversionary world-wide estate or if they feel that access to their Jersey assets prior to obtaining a Grant of Probate elsewhere in the British Isles may be necessary.

For a Fast Track application, we require:

- A copy of the deceased's death certificate;
- A Court sealed and certified copy of the British Grant and, if applicable, Court sealed and certified copies of the will, together with any Codicil thereto, attached;
- An oath to discharge the duties of the office of Executor in Jersey. This oath is prepared by a Jersey lawyer and forwarded to the Executors to be sworn before a person entitled under the laws of the deceased's domicile to administer oaths;
- Stamp duty as above

COSTS

Charges for the preparation of wills of personality or realty, the obtaining of the Jersey Grant of Probate and for the administration of the Jersey estate upon death, are on a time/charge basis, subject to a minimum fee.

CONCLUSION

Collas Crill's aim is to justify and maintain the confidence of our clients: the confidence that we understand their requirements and their problems and the confidence that we will provide clear and practical advice.

We want our clients to be confident that our fees are always competitive, that the "clock" does not start the moment the telephone is answered, and that we are comfortable talking about anticipated costs and methods of payment.

Above all, we aim to establish a relationship with our clients in which they feel relaxed as well as confident in their dealings with us and that we are "on their wavelength". The trend for ever-larger firms of legal and professional advisers too often de-personalises the relationship between adviser and client leaving the client with the feeling that he is no more than a computer generated file number.

At Collas Crill, we are determined that no matter who or what the client, no matter how big or how small, we shall not lose sight of the fact that we are dealing with individuals who expect and deserve individual attention.

FOR MORE INFORMATION, PLEASE CONTACT:



CLARE NICOLLE
ASSOCIATE
t: +44 (0)1534 601747
e: clare.nicolle@collascrill.com



MARIANNE DE SOUSA
LEGAL ASSISTANT
t: +44 (0)1534 601715
e: marianne.desousa@collascrill.com



JULIE HARRIGAN
LEGAL ASSISTANT
t: +44 (0)1534 601713
e: julie.harrigan@collascrill.com

Collas Crill Jersey

40 Don Street,
St Helier,
Jersey, JE1 4XD
t: +44 (0) 1534 601700
f: +44 (0) 1534 601701
e: jersey@collascrill.com
w: www.collascrill.com