

• GUIDELINES FOR MAKING A WILL: JERSEY RESIDENTS

CLASSIFICATION OF ASSETS

Assets can be classified as either immovables (real estate): land, freehold property, leases of over nine years; or movables (personal estate): cash in your bank accounts, shares (including shares in share transfer properties), units in unit trusts, jewellery etc.

The classification is important because under Jersey law it is usual practice to have separate wills of immovables and movables. This differs from other jurisdictions, such as England and Wales, where all of an individual's assets are dealt with under one will.

Under Jersey law a will of immovables does not require an executor. The will must be registered in the Public Registry for it to take effect. In contrast, a will of movables requires an executor who must attend at the Probate Registry to swear an oath in order to obtain a grant of probate.

OWNERSHIP OF ASSETS

Assets can be held either in your sole name or in joint names. If an asset is held in your sole name then on your death it will pass in accordance with the terms of your will. If an asset is held in joint names, then it will pass to the survivor on the death of the first named individual, outside of the deceased's estate.

Immovable Estate

Where real estate is held in joint names, it can be held either as joint tenants or as tenants in common. If you hold real estate as joint tenants, then it will pass on survivorship (as above). However, if the real estate is held as tenants in common, then your share will pass in accordance with the terms of your will.

WILLS OF IMMOVABLES (REAL ESTATE)

Under Jersey law you are free to deal with your immovable estate as you choose. However, if you die leaving a spouse and a valid will (testate) your spouse may be entitled to rights of dower (widow) or rights of viduité (widower) which equates to a life enjoyment over one third of your immovable assets.

What happens in circumstances where you die intestate?

If you die without leaving a will (intestate) then your real estate will devolve in accordance with the law which provides that:-

1. where you die without leaving a spouse or children your real estate devolves on your heirs at law. (In such circumstances under Jersey law your heirs at law are your siblings. If you have no siblings, your parents are your heirs at law. Should they have predeceased you, your heirs at law are your uncles and aunts or their issue.)
2. where you die leaving a spouse but no children your real estate devolves on your spouse;
3. where you die leaving a spouse and children your spouse may be entitled to a life enjoyment of the matrimonial home and the underlying (reversionary) ownership of the property is split equally between your spouse and your children as tenants in common. In such circumstances, where you die leaving additional real estate your spouse and children will be entitled to equal shares of that property as tenants in common.

Trusts of Jersey Immovables

Jersey law prohibits trusts of Jersey real estate. Accordingly, you cannot direct that upon your death your immovable estate be sold and the proceeds of sale divided in a certain way.

Stamp duty

Whilst Jersey does not have inheritance tax, stamp duty is payable on registration of a will of immovables.

Immovable Estate outside the Island of Jersey

Should you own any real estate outside of the Island, then the devolution of that real estate and the law governing the validity of a will relating to it will be governed by the

law of the jurisdiction where the real estate is situated. You should seek legal advice in the jurisdiction where the property is situated.

WILLS OF MOVABLES (PERSONAL ESTATE)

Your will of movables will set out the devolution of all your assets that are not immovable. This will include any share transfer property if it is held via a company.

What happens in circumstances where you die intestate?

Should you die intestate as to your movable estate, your assets will devolve as follows:

1. where you die without leaving a spouse or children, your movable estate will devolve on your heirs at law. (See above as to who your heirs at law are.)
2. where you die leaving a spouse but no children, your spouse will receive the entire net movable estate; and
3. where you die leaving a spouse and children, your spouse will receive (i) the household effects; (ii) other movable estate to a value of £30,000; and (iii) one-half of the rest of the net movable estate; and your children will receive the other half of the net movable estate.

Children

A recent amendment to the law now means that the illegitimate children of a man have the same rights to share in his estate as any legitimate children would. This has always been the case with the illegitimate children of a woman. This provides protection for the children of unmarried parents.

Forced Heirship: 'légitime'

Under Jersey law should you have either a spouse or children you may only freely dispose of one third of your movable estate. This is because Jersey law provides that the spouse and children of a deceased individual are entitled to certain shares of the deceased's movable estate as follows:

1. where you die leaving a spouse but no children, your spouse will be entitled to claim (i) the household effects; and (ii) two-thirds of your net movable estate;
2. where you die leaving a spouse and children, your spouse will be entitled to claim (i) the household effects; and (ii) one-third of the net movable estate; and your children will be entitled to claim one-third of the rest of the net movable estate; and
3. where you die leaving children but no spouse, the children will be entitled to claim two-thirds of the net movable estate.

This does not mean that your will is invalid if it is not drafted as set out above and many people leave their entire movable estate to their spouse. It just means that a claim could be brought before the Royal Court against your movable estate on your death. The claim must be brought within a year and a day of probate being granted.

Domicile

The law of your domicile will govern how your assets devolve on your death. You may have a domicile of birth (the domicile of your legal father or your mother) or you may have taken a domicile of choice (having sited yourself in a new jurisdiction and created ties to it). We include a provision in your will to state where you are domiciled.

Executor/Executrix

Under Jersey law an executor must be appointed to administer your movable estate. An executor does not need to be resident in Jersey but they will have to attend at the Probate Registry to swear the oath of office in order to obtain the grant of probate. If they are not resident in the Island and do not want to attend in the Island then they can appoint an attorney to attend on their behalf.

Collas Crill has incorporated an executorship company, Collas Crill Executors Limited (CCEL), that can be appointed as your executor and will also act as attorney for non-resident executors. By appointing CCEL as your executor the situation will not arise where your executor may have predeceased you.

Probate Fees

In order to obtain the grant of probate the executor will have to pay fees, calculated on the value of your movable estate as at the date of your death.

Funeral arrangements

You can include instructions to your executor within your will of movables as to how you wish your remains to be disposed of (e.g. cremation with ashes to be scattered) and as to your funeral arrangements.

Tuteur / Tutrice (Guardian) and Tutelle

Under Jersey law when a minor child inherits either immovable or movable estate a tuteur or tutrice (guardian) must be appointed to hold and administer those assets on behalf of the child until the child reaches the age of 18 years old. A tutelle must also be constituted. A tutelle comprises of the guardian and six other named individuals who assist the guardian in making decisions in relation to the minor child's assets. All members of the tutelle must appear before the Royal Court and the guardian must swear an oath of office.

Should you have young children you may wish to draft a letter to your executor setting out who you wish to act as guardian and the other members of the tutelle in circumstances where you die survived by your minor children. You can also include within that letter instructions as to who you wish to care for any minor children. We can assist you in drafting this letter.

Pets

If you have a pet you may wish to include provisions as to who you wish to look after your pet on your decease. You can also make financial provisions for the care of your pet within your will.

If you wish to send us instructions for making your will or wills, then please complete our Wills checklist.

**FOR MORE INFORMATION,
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