Making a will in Jersey

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Introduction

Very often the only contact an individual will have with a lawyer is when giving instructions for the making of a will. To assist you in giving us instructions regarding your wills, we have drawn up this short guide entitled 'Making a will in Jersey' and hope you will find it helpful. It applies only to individuals who are domiciled in Jersey.

Domicile is not the same as either residence or ordinary residence. In Jersey, a person takes the domicile of their father at birth or, if illegitimate, of their mother. Women, upon marriage, adopt the domicile of their spouse. You may subsequently adopt a domicile of choice. A domicile of choice is adopted by taking up ordinary residence in a new country and doing so with the intention of remaining in that country indefinitely even if you do not actually do so.

In Jersey, property is divided into immovable property (referred to in this document as 'Real Estate') and movable property (referred to in this document as 'Personal Estate'). Real Estate consists of land and buildings on land (including fixtures and fittings but excluding movable contents) including freehold property and also leases for more than nine years and certain mortgages known as 'hypothèques conventionelles'.

All other property in Jersey is Personal Estate which includes, for instance, monies, chattels, and all types of shares, even those entitling the holder to occupation of a 'share transfer' flat or house. Different rules apply to wills of Real and Personal Estate and, accordingly, it is the practice of most Jersey lawyers today to prepare separate wills for Real and Personal Estate.

Later in the document guidance is given as to how Jersey law permits you to leave your Real and Personal Estate depending on whether you are married or unmarried, in a civil partnership or have children or not. By way of further introduction, we deal below with some of the preliminary questions you may be asking yourselves on the subject of making a will in Jersey.

This document is intended as a guide only and is not intended as a comprehensive statement of

the law on succession and is not intended to take the place of legal advice.

Should I make a will, and if so do I need to consult a lawyer?

The question is looked at specifically later in this document in relation to Personal Estate. However, it is important in any event to consider the benefits of making a will. When you die without a will, you die "intestate" and your estate may be dealt with quite differently from what would have been the case if you had made a will.
If you choose to make a will, it is essential that it is in correct form and properly witnessed to ensure its validity. As such we strongly advise that you instruct a lawyer to draw up your will.

Who can make a will and who should witness it?

To make a will you must be of full age, ie 18 years old or more and of sound mind. You can only make a will if you are under 18 years of age if you are married or in a civil partnership. Even then you must be a minimum of 16 years of age. A will must be signed or acknowledged in the presence of two witnesses who must be present at the same time to attest (witness) the will. No witness can benefit under the will they witness or even be a close relative of either the person making the will or someone taking a benefit under the will; this may make the will invalid.

As regards Real Estate, one of the two witnesses must be either an Advocate or Solicitor of the Royal Court, a Crown Officer or a member of the States if the will is executed in Jersey or a Notary Public if the will is executed outside of Jersey. Also, a will of Real Estate needs to be read aloud in the presence of the person making the will and the two witnesses.

Can I change my will?

A will can be amended as often as you wish. wills should be revised as your personal circumstances change, for example, when you get married or divorced or have children.

Revoking a will

Revocation (cancellation) may take place at any time prior to the death of the person making the will. Revocation can be carried out by destroying the will, executing a further will or Codicil or by the Testator evidencing an intention to revoke, for example by writing "this will is revoked" on the document. We would advise you to seek legal advice before revoking a will or part of it so that the consequences of so doing are known to you before the act of revocation is carried out.

Appointment of an Executor

You appoint an Executor in respect of your Personal Estate but not your Real Estate. The Executor is the person who will administer your personal estate, ie call in the assets and pay off the debts and distribute your property in accordance with your will. You may appoint anyone as your Executor providing they are of full age and of sound mind. It would be preferable to appoint an executor resident in Jersey. You should check with the individual concerned that they are happy to act as your Executor. Ogier has its own Executor Company and you may wish to discuss the possibility of appointing this company as your Executor.

Is the term 'household effects' important?

Yes, it is. You will see it used later in this guide.

It means articles of household or personal use or ornaments normally situate in or around the matrimonial home, excluding:

- any motor vehicle;
- any articles used wholly or principally for business purposes;
- money or securities for money, eg Premium Bonds;
- any single article or any single group of similar or related articles forming a set, having in either case a value over £10,000; and
- any article of personal use or an ornament which is the subject of a specific bequest under the will of the deceased.

What if my spouse or civil partner and I die together?

The Wills and Successions (Jersey) Law 1993 addresses inheritance questions in situations where two or more individuals die in circumstances in which it is impossible to determine which of them died first, eg where a husband and wife have made wills leaving everything to each other and die in an accident together. Where both parties have made identical wills leaving their estates to the same person in the event of the death of their spouse there is no problem. Where, however, each party has named a different person to benefit in these circumstances the question arises as to which person will benefit.

Under the old law there were rules to establish which party would be deemed to have died last in the event that there was no evidence as to which party had survived the other. Only the person named by the surviving party would therefore benefit, eg Mrs Smith makes a will leaving her entire estate to Mr Smith, but should he predecease her to charity A. Mr Smith makes a will leaving his entire estate to Mrs Smith, but should she predecease him to charity B.

Under the old law, if Mrs Smith were deemed to survive Mr Smith the estate of both Mr and Mrs Smith would go to charity A and if Mr Smith were deemed to survive Mrs Smith the estates of both Mr and Mrs Smith would go to charity B.

Under the 1993 Law, if there is no evidence as to who died last it will be deemed that they died simultaneously. The effect of this is that both parties' wills will take effect and, therefore, both parties named will benefit, ie in the previous example Mrs Smith's estate will go to charity A and Mr Smith's to charity B. Jointly owned assets will be deemed to have been owned in equal shares.

It is still possible to include a provision in your will as to who should be deemed to have died last in the event that there is no evidence to establish the point.

Children's rights to inherit

Under the Adoption (Jersey) Law 1965, adopted children have the same rights as natural children for the purposes of succession. Stepchildren, however, have no rights in the estate of their step-parent. Since January 2011 illegitimate children have had rights of inheritance from both their father and their mother. Previously they had only rights of inheritance from their mother under the Legitimacy (Jersey) Law 1965.

What provisions can I put in my will in respect of my children?

In the event that both parents were to die leaving their minor children orphaned, it is not possible to provide absolutely in one's will for the appointment of a guardian, known in Jersey as a tuteur. This power of appointment rests with the Royal Court who will usually appoint the person chosen in Court by a majority of seven electeurs. However, it is possible to express a wish as to who you would like the tuteur to be. Whilst the tuteur has legal responsibility for managing the property and affairs of the infant, he or she does not necessarily have day to day care and control of the child. You can express a further wish in your will or in a side letter as to who should have the day to day care and control of your children.

What happens to your estate when you die?

As to how you may leave your Personal Estate and Real Estate and as to what happens on intestacy, we have divided individuals into the follow categories:

- Unmarried people without children
- Unmarried people with children
- Married couples or civil partners without children

- Married couples or civil partners with children
- Married couples or civil partners living apart
- Divorced couples and persons whose civil partnership has been dissolved

Unmarried people without children

- Real Estate

You can make a will leaving your Real Estate to whomsoever you wish.

If you do not make a will, if you are not married or in a civil partnership, your partner will not inherit your Real Estate as your spouse or civil partner would. Your heirs, normally your brothers and sisters, will receive your Real Estate in equal shares. If there are no brothers and sisters, it can get very complicated and the heirs will vary according to whether you acquired property by intestate inheritance or by other means such as a contract of purchase or as devisee under a will.

- Personal Estate

You can make a will leaving your Personal Estate to whomsoever you wish.

If you do not make a will, if you are not married or in a civil partnership your partner will not inherit your Personal Estate as your spouse or civil partner would. As with your Real Estate your heirs, normally your brothers and sisters, will receive your Personal Estate in equal shares.

Unmarried people with children

- Real Estate

You can make a will leaving your Real Estate to whomsoever you wish.

If you do not make a will your children will inherit in equal shares.

- Personal Estate

If you make a will, but do not leave at least two thirds of your Personal Estate to your children, they will be able to challenge that will so as to receive two-thirds as their minimum entitlement.

If you die without a will, your children will inherit the whole estate in equal shares.

Married couples or civil partners without children

- Real Estate

You can make a will leaving your Real Estate in Jersey to whomsoever you wish. It should be noted, however, that if a spouse or civil partner makes a will but does not leave his or her Real Estate to his or her spouse or civil partner, the surviving spouse or civil partner is entitled to the life enjoyment of one third of the deceased spouse's or civil partner's Real Estate in any event (referred to as 'the right of dower' or the right of usufruit').

In the event that you do not make a will, all your Real Estate will go to your spouse or civil partner.

- Personal Estate

If you do not make a will all your Personal Estate will go to your spouse or civil partner.

If you do make a will but do not leave your Personal Estate to your spouse or civil partner, your spouse or civil partner will be able to challenge that will and would receive the household effects (as defined earlier) and two thirds of your Personal Estate.

Married couples or civil partners with children

- Real Estate

You can make a will leaving your Real Estate to whomsoever you wish. In the event that you make a will, but do not leave your Real Estate to your spouse or civil partner, on your death your spouse or civil partner will be entitled to the life enjoyment of one third of your Real Estate in any event will have (the right of dower or usufruit - see above).

If you do not make a will, your spouse or civil partner and your children will inherit your Real Estate in equal shares. Furthermore, your spouse or civil partner will also have the right to the life enjoyment of your matrimonial or civil partnership home.

- Personal Estate

If you do not make a will your Personal Estate will be divided as follows:

To your spouse or civil partner:

1. The household effects as defined above
2. Your estate up to £30,000
3. Where your estate exceeds £30,000 half of the remainder

To your children:

1. Where the estate (excluding the value of the household effects) exceeds £30,000 the remaining half of the remainder.

If you do make a will and make insufficient provision for your spouse or civil partner and children, the law provides that either the spouse or civil partner or any one of the children can challenge the will in order to receive their entitlement. The entitlements are as follows:

To your spouse or civil partner:

1. The household effects as defined above
2. One third of the estate

To your children:

1. One third of the estate

You can dispose of the remaining one third of your estate as you wish.

If upon death your Personal Estate excluding household effects amounts to less than £30,000, then, if you have not made a will, your spouse or civil partner would be entitled to the full £30,000. If however, you were to have made a will leaving all your Personal Estate to your spouse or civil partner, your children could challenge that will and receive their entitlement of one third of the estate. If, therefore, your Personal Estate excluding household effects will inevitably amount to less than £30,000, and you desire to benefit your spouse or civil partner to the exclusion of your children and there is a risk that your children may challenge your will, you should consider the advisability of making a will of Personal Estate at all or if you have made such a will of revoking the same. In fact, in an estate valued at up to £90,000, were your children to challenge your will which left all to your spouse or civil partner, your spouse or civil partner would be better off if no will had been made.

When considering whether you should make a will of Personal Estate or not, two very difficult considerations need to be addressed. The first is to assess the likely value and extent of your Personal Estate as at the date of your death and the second is the likelihood of your children challenging your will of Personal Estate or not.

These are clearly questions upon which you will need to take personal legal advice so that matters can be considered in the light of your particular circumstances.

- Claims

Wills of Personal Estate are not invalid simply because the testator has not bequeathed his or her spouse, civil partner or children their full entitlement as set out above. The spouse, civil partner or children must bring an action in the Royal Court within a year and a day following the

date of death of the deceased spouse or civil partner to claim their entitlement. In practice spouses and probably civil partners on the whole tend to leave their personal estate to each other and to the children only if the other spouse or civil partner has died first. Very few such wills are challenged by the children, although the likelihood of this happening increases if the surviving spouse or civil partner is the children's step-parent.

- Representation

If any of your children predeceases you leaving issue who survive you the issue will step into the shoes of the deceased child and take between them the share of your estate which their parent would have taken if you die intestate and have the same right as their parent to claim against the estate if your will of Personal Estate does not bequeath them their parent's entitlement.

Married couples or civil partners living apart

Where, at the date of death of one spouse or civil partner, the surviving spouse or civil partner and the deceased spouse or civil partner were not living together and:

- the surviving spouse or civil partner had deserted the deceased spouse or civil partner without cause and such desertion was continuing; or
- there had been a decree of judicial separation granted to the deceased spouse or a separation order granted to the deceased civil partner

then the surviving spouse or civil partner will not benefit from the estate of the deceased unless a will specifically leaves Real or Personal Estate to that spouse or civil partner.

Divorced couples and persons whose civil partnership has been dissolved

Upon divorce or dissolution of a civil partnership, any provision in a will which appoints the former spouse or civil partner as Executor or Executrix or leaves Real or Personal Estate to that spouse or civil partner in their capacity as spouse or civil partner will be of no effect. However, notwithstanding the divorce or dissolution of the civil partnership, if one spouse wants to benefit his or her former spouse or civil partner specifically in their will, then they are able to do so.

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people.

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