

Jersey Wills for Foreign Domiciled Persons

Publication - 20/11/2018

Introduction

This briefing has been prepared for clients domiciled outside Jersey who are considering making a will to cover their Jersey based movable assets.

This briefing attempts to answer some of the more common questions that are asked by people who are not domiciled in Jersey, but hold assets here and are concerned about how these will be distributed following their death.

Do I need a will to cover my Jersey assets?

It is advisable, although not essential, for you to make a separate will covering your Jersey assets and confirming what will happen to these assets following your death if you are domiciled outside Jersey, but the precise needs of any one person will depend on their individual circumstances.

While you are not legally required to have a separate will covering your Jersey assets if you already have a valid will that is drafted to cover your entire worldwide personal assets, there are a number of benefits from doing so.

If a person passes away leaving assets in Jersey which have a value of over £10,000, the asset holder is legally obliged to request that a Jersey Grant of Probate (if the deceased left a will) or Grant of Letters of Administration (if the deceased did not leave a will) is produced to them to enable these assets to be released to whoever is named on that document as the deceased's personal representative (PR). The Grant gives the asset holder the assurance that they need to be able to take instructions from, and release the assets to, that named PR.

Jersey law has a requirement for the PR of a deceased person's estate to make a personal appearance in the Royal Court of Jersey in order to apply for the Grant of Probate or Letters of Administration and swear the relevant Oath. If this person or persons cannot make this journey to Jersey, for example if they live the other side of the world or do not wish to travel, they will need to instead appoint a Jersey based agent, such as a solicitor, to make this appearance in the Court on their behalf.

If you put a separate will in place to cover your assets in Jersey, you may wish to consider appointing a Jersey based agent as your executor in the first instance. This makes the process of applying for a Grant, and the required Jersey Court appearance, much easier when the time comes and can therefore make the administration of your Jersey estate more time and cost effective. Ogier has an executorship company, Ogier Executor and Trustee Company Limited, who can be appointed in this capacity and if so, the application for the Grant and the realisation of the Jersey assets, can be done very quickly and usually within a few weeks.

If you only have one will covering your worldwide estate, the usual procedure is for this will to be admitted to Probate, or the equivalent procedure, in the Court of your country of domicile first. This is in fact a requirement of the Jersey Court if there are assets in the domicile country which require administering. The document issued by the Court in the country of domicile will then need to be used to obtain the Jersey Grant. This can all take time and add to the cost of

the overall estate administration. If you have a separate Jersey will covering your Jersey assets, this will can be admitted to Probate in Jersey without being reliant on a document being issued in another jurisdiction, making the administration of the Jersey estate much more efficient. This can assist with the payment of debts in other jurisdictions if required.

What is domicile and why is it important?

So far as wills of movable (or personal) estate are concerned, the law of your domicile is of paramount importance. Under Jersey law, the rights (if any) held by your family to certain proportions of your personal estate are governed by the law of your country of domicile at the date of your death.

Domicile is the connecting factor which links a person with a particular legal system. The concept of domicile is a complex issue, but in its most general sense may be described as a person's "permanent home" and the place that they have the most connection to. It is not the same as either residence or ordinary residence, although these are factors which may be taken into account in determining a person's domicile.

A person's domicile is important for succession purposes because it is your domicile at the date of your death which, may govern the validity of your will of movable (personal) estate and may also dictate any taxes that are payable on your worldwide estate.

We recommend that you record your country of domicile in your Jersey will so that there is no uncertainty in this regard. It may also be recommended to record your nationality and habitual residence – your lawyer can advise more on this.

What is my movable (or personal) estate?

Jersey law distinguish between movable or personal assets and immovable or real estate assets. Broadly speaking, your immovable estate will consist of freehold land and buildings together with their permanent fixtures and fittings. Your movable estate will comprise everything else and will includes such items as money, furniture, jewellery, cars and paintings as well as intangible assets such as shares (including shares of a property-holding company) and insurance policies. Movable assets are sometimes also referred to as personal assets, movables, movable estate or personal estate.

What can the will cover?

Your will can cover all of your movable assets that are situated in Jersey. We can also consider covering other offshore jurisdictions such as Guernsey, the BVI, Cayman and Hong Kong (where Ogier have offices) if you have assets in these jurisdictions and possibly other offshore jurisdictions such as the Isle of Man. We can provide you with advice on this once you have informed us of the nature and location of your assets.

If you own immovable assets anywhere then it is important to take proper advice regarding the succession of these assets upon your death as this will usually be governed by the law of the country in which the immovable asset is located.

What is an executor?

The executor is the person or organisation appointed in your will who is charged with the task of handing your estate after your death and who must collect in your assets, pay off your debts and then distribute the balance to your beneficiaries. We recommend that you tell the

person whom you appoint to be executor under your will of their appointment. We would also suggest that you inform him or her where the original will is kept.

Subject to there being no impediment under the law of your domicile, you may wish to consider Ogier's own executor company, Ogier Executor and Trustee Company Limited, to be the executor of your Jersey will. It is impartial, professional and experienced in the administration of estates and can make the process of obtaining a Grant of Probate in Jersey much more straightforward.

What happens if I die intestate (without making a valid will)?

If you die without making a valid will that covers your movable (personal) estate situate in Jersey then it will be necessary to obtain a Jersey Grant of Letters of Administration before your Jersey assets can be dealt with. The person entitled to apply for the Jersey Grant of Letters of Administration will be determined by the law of the jurisdiction of your domicile at the date of your death. The identity of the relevant person may be difficult to ascertain (as may be the identity of your heirs) and this can be an additional reason for you to consider making a will specifically relating to your personal estate in Jersey.

How do I make a will for my movable estate situate in Jersey?

We are able to draft this for you – simply complete and return our will Questionnaire and we can draft a will based on your requirements to send to you for consideration and review. You can send it to wills@ogier.com and it will come through to a member of our experienced team who will contact you to take this forward.

The Will Questionnaire outlines all of the information that we will need from you such as the details of your beneficiaries (who can be individuals, charities or trustees of a trust), your assets and your personal circumstances. Please provide as much information as possible. It is useful for us to have a list of your assets and where they are situated to ensure that your estate planning requirements are fully appreciated and considered. Details of your assets are not mentioned in your will and remain confidential but will be a useful source of information for your executor in due course.

You might also wish to think about making a log of your digital assets, such as financial and social media resources, music and photo collections and bitcoins, and the passwords needed to access these so that your executor can administer these correctly upon your death.

Do I need a Jersey will if I am a beneficiary of a Jersey trust?

If you are not domiciled in Jersey but you are a beneficiary of a Jersey trust you generally do not need a will to deal with your interest under the trust. However, you should always seek specific legal advice in situations such as these.

Do I need a Jersey will if I am a shareholder of a Jersey company?

If you are not domiciled in Jersey but you are a shareholder in a Jersey or Guernsey company then, generally, a Jersey Grant of Probate or Letters of Administration will be required in order to deal with the shares and transfer them on your death. Therefore, it would be beneficial for you to make a Jersey will dealing with such shares although in each case specific advice should be taken.

Do I need a Jersey will if I own joint assets in Jersey?

If you co-own a Jersey asset, it is necessary to check how it is held. Jersey law recognises two forms of co-ownership which are joint ownership and ownership in common. The crucial difference between them is that on the death of an owner in common, his interest in the asset passes to his estate whereas on the death of a joint owner, it would instead pass to the surviving joint owner/s. The presumption in Jersey is in favour of ownership in common, so express words are needed for joint ownership to be created. You should check this on any bank mandate or share certificate to ensure that this is clear.

While it is usual for assets that are owned in joint ownership (as opposed to owners in common) to pass to a surviving party without the need for a Grant of Probate or Letters of Administration, joint owners should consider who would inherit those assets in the event of something happening to them both.

About Ogier

Ogier provides practical advice on BVI, Cayman Islands, Guernsey, Jersey and Luxembourg law through its global network of offices. Ours is the only firm to advise on these five laws. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

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