VOISIN LAW

Wills for those domiciled in Jersey | 1

A Will is a written declaration of your wishes as to how your property (assets) should pass after death. A Will can be amended or revoked at any time before death, provided you retain the requisite mental capacity.

Why should I have a Will?

There are many advantages to making a Will:

- You ensure your assets are distributed in accordance with your wishes. If there is no valid Will, your assets will be distributed in accordance with the intestacy rules – 'the law' in effect decides.
- You nominate a person of your choice to administer your 'movable' assets: your 'executor'.
- You can make a clear declaration as to your domicile, or express your wishes regarding guardianship of minor children, funeral wishes, legacies/gifts to a charity, church, friend etc.
- Ultimately a Will assists with matters being dealt with as quickly and efficiently as possible on your death minimising the upset and distress for those left behind.

It is common practice in Jersey, though not a legal requirement, for separate Wills to be prepared to deal with a person's 'immovable' estate or 'realty' (i.e. freehold land and leases over nine years) and a person's 'movable' estate or 'personalty'. This is because the process by which the Will is recognized is different for each type of property, the signing requirements for the Wills are different and there are different claims that may be made against the different types of property.

Wills of Jersey Immovable Estate (Realty)

Immovable estate includes land, (gardens, fields, etc.) and buildings on land, (houses, farms, commercial premises) including leases for more than nine years, 'flying freeholds' and those mortgages known as 'hypothèques conventionelles'.

A Will of Jersey immovable estate must be read aloud to you and executed before two independent witnesses, one of whom must be an Advocate or Solicitor of the Royal Court of Jersey, a member of the States of Jersey or one of the Law Officers of the Crown.

An Executor is not appointed as the registration of the Will in the Public Registry is all that is required to transfer legal title to the beneficiaries (the devisees).

Generally, you may dispose of your immovable estate as you wish. However, if you own immovable estate in your sole name and are married or have a civil partner and you leave that your immovable estate to someone other than your spouse or civil partner, then your spouse or civil partner would have a right to claim their 'dower' which is life enjoyment of one third of your immovable estate.

You can leave your immovable estate to someone living outside of the Island and whilst that person will not automatically obtain general residential qualifications, they will be allowed to live in the property.

If you die intestate (without a valid Will) your immovable estate will pass according to the law to your 'heirs at law'.

Stamp Duty

There is no Inheritance tax in Jersey. However, stamp duty based on the value of the Jersey Immovable Estate transferred by the Will is payable upon registration of the Will in the Public Registry.

In circumstances where the property being left is the matrimonial or civil partnership home to the surviving spouse/civil partner or the Will leaves the Jersey Immovable Estate in accordance with the law of intestacy then no stamp duty is payable on registration of the Will other than an administration charge (currently £90).

If neither of these two exceptions apply then stamp duty will be charged. The current rates are as follows:

- Exceeds 300,000 but does not exceed £500,000: £4,000 in respect of the first £300,000, plus 2% on the balance
- exceeds £500,000 but does not exceed £700,000: £8,000 in respect of the first £500,000, plus 3% on the balance
- exceeds £700,000 but does not exceed £1,000,000: £14,000 in respect of the first £700,000, plus 3.5% on the balance
- exceeds £1,000,000 but does not exceed £1,500,000: £24,000 in respect of the first £1,000,000, plus 4.5% on the balance
- exceeds £1,500,000 but does not exceed £2,000,000: £47,000 in respect of the first £1,500,000, plus 5.5% on the balance
- exceeds £2,000,000 but does not exceed £3,000,000: £67,000 in respect of the first £2,000,000, plus 6% on the balance
- exceeds £3,000,000: £127,000 in respect of the first £3,000,000 plus 7% on the balance.

Wills of Movable Estate (personalty)

Your movable estate comprises everything you own other than immovable estate; for example: your jewellery, bank accounts, cash, investments, furniture, cars, leases for less than nine years and, importantly, 'share transfer' properties. (It is the shares that you own.)

A Will of movable estate must be signed in the presence of two independent witnesses.

The Will should appoint an executor, who can be a friend or family member or a professional adviser such as a lawyer. Voisin Law has an executor company, Voisin Executors Limited, that acts in this capacity. By appointing Voisin Executors Limited as your executor this avoids the problem encountered if an individual named as executor dies before you or is unable or unwilling to act as executor.

A Will provides for payment of debts and any funeral expenses. It will include any specific gifts that you wish to make before stating who is to inherit the balance of the estate (the 'residue'), and if more than one beneficiary, in what proportions.

Jersey law provides that if you have a spouse or civil partner and/or children then they are entitled to certain shares of your movable estate. If you fail to make such provision then your Will would not be

deemed invalid but your spouse/civil partner and/or children could bring a claim before the Royal Court for their strict entitlement under the law.

If you die leaving just a spouse or just a civil partner then that spouse/civil partner is entitled to two thirds of your movable estate.

If you die leaving just children then the children are entitled to two thirds of your movable estate.

If you die leaving a spouse or civil partner *and* children then the spouse or civil partner are entitled to one third of your movable estate and the children (together) are entitled to one third of your movable estate.

There is always a "free third" over which an individual can do with what they choose.

In addition, should you make any gifts during your lifetime to any one or more of your 'heirs at law' i.e. a spouse, civil partner or child or children then that gift could be treated as an advance of their inheritance and another heir at law could call back that gift into account on division of the estate if a claim is made against your Will.

If you die intestate (i.e. without having made a valid Will) your movable estate will pass according to the provisions of the law.

Stamp Duty (probate court fees)

Probate Court fees are payable when an application is made for a Grant of Probate or Letters of Administration and is calculated on the value of the net movable estate at the date of death.

If, however, the total value of your worldwide estate does not exceed £30,000 an 'applicant' (i.e. the beneficiary) may request the estate to be released to them provided the applicant is entitled to receive your estate under the terms of your Will (or in accordance with the intestate succession provisions). It is also a proviso that no caveat is in force against the estate (which can be checked on the Jersey Government website).

The asset holder will request that the applicant complete their application form to confirm they are entitled to receive the estate, that the applicant is not liable to any other beneficiary for such assets and provide all other necessary declarations. The applicant will need to provide their personal details on such application form and once complete the asset/s will be released by the asset holder.

If a Jersey Grant is required, Stamp duty is charged at the following rates:

Where the 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 but does not exceed £13,360,000: £500 for the first £100,000 plus £75 for each additional £10,000 or part of it
- Is in excess of £13,360,000: £100,000

- In addition, the Court also charges a further £80 administration fee on all applications.

If you wish to send us instructions for making your will, please complete The Will Instruction Sheet Jersey Resident and Domiciled.

Voisin's Estate Planning & Capacity team provide expert guidance in all matters concerning capacity issues. If you would like to have an informal discussion about these matters, please contact Eliana Lennon and Angela Roscouet at probate@voisinlaw.com.

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.