

Guidelines for making a will: Jersey domiciled

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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 or civil partner and a valid will (testate) your spouse or civil partner may be entitled to rights of dower 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 civil partner 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 or civil partner but no children your real estate devolves on your spouse/civil partner;

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3. where you die leaving a spouse/civil partner and children your spouse/ civil partner 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/civil partner and your children as tenants in common. In such circumstances, where you die leaving additional real estate your spouse/civil partner 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. For more information please see the article “Obtaining a Grant of Probate and Registering a Will of Realty”.

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 civil partner 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 or civil partner but no children, your spouse/ civil partner will receive the entire net movable estate; and
3. where you die leaving a spouse/civil partner and children, your spouse/civil partner 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.

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