

Making a Will in Guernsey (Bailiwick Residents)

Making a Will is unlikely to be as difficult as you think, so don't put it off as so many people do. Once it's been properly completed, you only have to review it periodically and remember that it doesn't take effect during your lifetime, so it can always be altered provided that the proper formalities are complied with and that you have the mental capacity to do so.

Bailiwick law differs considerably from English law in relation to Wills, so it is always wise to take legal advice, rather than to rely on what you read in national newspapers or see on television.

In Guernsey, for historic reasons, different rules apply to real estate (houses and land) and to personal estate (house contents, cars, pets, bank deposits, life policies, shares, premium bonds, crockery, cutlery, money and so on). If a Guernsey resident is to cover both real and personal estate, he or she (depending on circumstances) may make a single Will to cover both his real and his personal estate or may make two Wills, one for real estate and the other for personal estate.

In order to find out what suits you best and what your requirements are, your advocate will have to ask you some questions, for example:-

Are you single, married, married with children, divorced, widowed, living with a partner, married for a second or subsequent time? Please note that a reference in this article to a person's spouse (i.e. husband or wife) does not include that person's partner. A spouse may have certain rights of inheritance from his or her wife or husband but a person has no right of inheritance from his or her partner.

If you have children, are they from your present marriage or from a previous marriage? Do you wish to provide for any stepchildren?

Are you married or living with a partner, or living apart from your spouse? What sort of assets do you have and how do you own them? For example, are both of your names on the title deeds of the house, do you have separate bank accounts, do you hold any assets in the names of the two of you and do you have any assets overseas? Do you have an existing Will? It is helpful to take the title deeds of your house to your advocate for him or her to check. It is also helpful for you to list all of your assets and to detail the various contacts, such as your bank manager, your insurance broker and your financial adviser. In this way, you can keep an active check on your assets. This list should be reviewed and brought up to date on a regular basis and may prove invaluable to your executor.

If you have young children, do you want to name a particular person to provide for their care should you and your spouse/partner both die before your children become adults?

Caution: these notes are only by way of general guidance and should not be relied on in isolation. Different laws apply in relation to the island of Alderney and again the island of Sark. In all cases, you should take legal advice from an advocate in relation to your particular circumstances.

Real Estate in Guernsey (houses and land)

If you are unmarried, divorced or widowed and you do not have any children, you can name anyone or any charity as your beneficiary and you are not restricted in your choice of beneficiary, but if you do not make a Will, your real estate will go to your brothers and sisters in equal shares or to your remoter relatives. In these circumstances, if you are illegitimate, your estate will pass to the Crown. Under recent changes to Guernsey law, illegitimate children now have the right to inherit.

If you are married whether or not you have children, you should be aware that most married people will have bought their house in such a way that on the death of the first of them, the survivor will own it in his or her sole

name without the need for a Will to transfer it to the survivor of them. When that survivor dies, the house will then vest automatically in their children in equal shares, but it is advisable to make a Will to provide specific benefit for a spouse and then for children.

If you are married but without children and you have real estate in your sole name as opposed to your real estate being in the joint names of you and your spouse, it will not automatically go to your spouse; instead it will pass to your brothers and sisters in equal shares (or to your remoter issue), but if your spouse survives you, he or she will be entitled to a right of enjoyment (but not ownership) of up to one half.

Should you choose to make a Will, you can benefit your spouse or whoever you like, but you cannot deprive your spouse of the right of enjoyment if he or she should survive you.

If you are married with children and you have real estate in your sole name as opposed to your real estate being in the joint names of you and your spouse, on your death it will go to your children in equal shares and if your spouse survives you, he or she will be entitled to that right of enjoyment of up to one half.

Should you make a Will, you may be restricted in your choice of beneficiaries. A person with children can only benefit in a Will of Guernsey real estate his or her spouse, children, grandchildren, remoter issue and step-children and children and so forth.

A Will of Guernsey Real Estate made in Guernsey need no longer be witnessed by Jurats of the Royal Court.

If a person owning Real Estate in Guernsey dies without a Will of Real Estate, his real estate will automatically vest in his heirs by operation of law. There will be no immediate need to draw up new title deeds, unless there is more than one heir and the property/ies are to be divided between them or one of them is to acquire the share(s) of the other(s).

If a person owning Real Estate in Guernsey dies having made a Will of Real Estate, it is necessary to apply, via an Advocate, to the Royal Court to register the Will in order to transfer the legal title to the beneficiary/ies.

When a house is owned by a limited company and not by a physical person, the shareholder of that company (its beneficial owner) would not need to make a Will of real estate in respect of that house because it is the company which owns it. The shareholder owns shares which are classified as personal estate and which would have to be dealt with in his Will of personal estate.

Real Estate outside the Bailiwick

If you buy a home overseas, you should take proper legal advice from a lawyer in that country as to whether you need to make a Will to cover your intentions. In fact, you may already have done this when you first bought the property.

In any case you must ensure that both your lawyer abroad and your lawyer in Guernsey know that you have made a Will to cover other property, so that one of these Wills does not have the effect of cancelling the other.

Personal Estate

If you are unmarried, divorced or widowed and you do not have any children, you can leave your personal estate to any person or charity of your choice. If you do not make a Will, your personal estate will go to your brothers and sisters in equal shares or to your remoter relatives. In these circumstances, if you are illegitimate, your estate will pass to the Crown. As with real estate, illegitimate children are now entitled to inherit.

If you are married with or without children, as with real estate, most married people own the majority of their personal estate in joint names, so that on the death of the first of them, the survivor will own it outright and on his or her death, the whole of this personal estate would pass to their children in equal shares. Most people in such circumstances choose to make a Will as a matter of comfort, feeling that they have done everything to put their affairs in order and to make matters slightly easier for their children.

If you are married but without children (or remoter issue), and you have personal estate in your sole name as opposed to your personal estate being in the joint names of you and your spouse, one half only will pass to your spouse on your death, with the rest passing to your heirs according to law. These may be your brothers and sisters or remoter relatives. You need to make a Will to ensure that the whole of your personal estate passes to your spouse if that is your intention.

If you are married and have children (or remoter issue), and you have personal estate in your sole name as opposed to your personal estate being in the joint names of you and your spouse, one third will pass to your spouse on your death and your children will be entitled to the remaining two thirds in equal shares. If you make a Will, you are only free to dispose of one third of your personal estate as your surviving spouse is entitled to one third and your children to the remaining third, but you can leave that one third to a person or charity of your choice. Remember that as a Will only takes effect on death, your personal circumstances may change after you have made your Will, so that if your spouse has died or you do not leave any legitimate issue at your death, you may be in the situation described in paragraph 4 which follows below.

If you are widowed or divorced and have not remarried and have children (or remoter issue), and you have personal estate, the whole of your estate will pass to them in equal shares on your death, but you may make a Will leaving up to one half to a person of your choice; your heirs would be entitled to the other half.

Executors and Administrators

In contrast to real estate when, following a person's death, the real estate automatically vests in that person's heirs by operation of law or by registration of a Will of Realty, personal estate has to be transferred from the estate of the previous owner to the heirs or beneficiaries. The person legally responsible for this task is called the Executor.

You will be advised to appoint an Executor in your Will of Personalty and an alternate person, should the first be unable to act.

In any case, the Executor should be someone that you trust and does not have to be a person with administrative or arithmetical skills as the Executor can always take advice.

When a person does not make a Will of personal estate, but leaves assets which need to be dealt with, it will be necessary to obtain a Grant of Letters of Administration, where the person responsible for dealing with the estate is called the Administrator.

For further details on Guernsey Wills, including the costs of preparation of documents and court and other associated fees, please contact our Wills, Probate and Trusts Team

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This paper is intended as a general review and aide memoire. It does not create a retainer or lawyer-client relationship and does not provide comprehensive or specific legal advice concerning the matters contained within it. This paper should not be relied upon as giving or providing advice on any individual case.