

Jersey Wills for Foreign Domiciled Persons

Insights - 07/08/2020

This briefing has been prepared for the assistance of clients domiciled outside Jersey who are considering making a Jersey will. It is not intended to be a comprehensive analysis of the relevant legal principles or requirements and specific legal advice should be sought.

It is generally advisable for an individual domiciled outside Jersey to make a will covering the disposition of his or her Jersey assets on death, but the precise needs of any one person will depend upon their individual circumstances.

This briefing attempts to answer some of the more common questions that are asked by people who are not domiciled in Jersey, but have assets in Jersey and are concerned about how their estate will be distributed. However, it can only be a guide and in every case specific legal advice should be taken.

Questions are posed and answers provided under the following headings:

- the importance of domicile
- wills of personal estate
- wills of real estate
- intestacy; and
- other questions

The Importance of Domicile

What is domicile and why is it important?

So far as wills of movable property (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 (this is an aspect of 'essential' validity) are governed by the

law of your domicile at the date of your death. In certain circumstances the laws of the country of your domicile at death may determine whether or not your will has been properly executed ('formal' validity). Formal and essential validity are discussed further near the end of this section.

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". 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 will fall into one of the following three categories:

- Domicile of origin

Your domicile of origin depends upon the domicile of one of your parents at the time of your birth, not on where you were born, nor on the parents' residence at that time. Generally, a legitimate child takes his or her father's domicile and an illegitimate child takes his or her mother's domicile. Further, although a domicile of origin may be replaced by either a domicile of choice or a domicile of dependence, should either of the latter be lost, then a person's domicile of origin will be revived.

- Domicile of choice

A domicile of choice is acquired if a person goes to live in a jurisdiction with the intention to remain there permanently. It is therefore acquired by a combination of two things: the fact of actual presence or residence in a country and the requisite intention to permanently reside there. The two must coincide.

- Domicile of dependence

A minor (a person who is aged under 18) will have a domicile of dependence (generally that of his or her father), unless one is dealing with the grant in, and the distribution of, the movable estate of a deceased minor whereupon the deceased minor will have become capable of having an independent domicile when (if at all) he or she attained the age of sixteen years or married under that age.

Formerly under Jersey Law upon marriage a woman adopted the domicile of her husband, now for the purposes of a grant in and the distribution of the movable estate of a deceased woman who has at any time been married, the deceased woman's domicile will be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

Once a will has been made, a person's domicile continues to be important. As indicated above,

it is the testator's domicile at the date of death which always governs a will of movable property's (personal estate's) essential validity. Therefore, once you have made a will of movable property and ensured that it complies with the law of your present domicile, should you change your domicile then you should ensure that your will is essentially valid under the law of your new domicile.

What does formal validity mean?

Formal validity relates to the manner in which the will should be signed, the number and capacity of the witnesses, whether it should be dated and so on. It is vitally important that the will is executed properly or it may be of no effect. Under the Probate (Jersey) Law 1998, a will of movable estate is treated by the Jersey courts as properly executed if, at the time of its execution or at the time of your death, its execution conforms to the laws of Jersey or the internal law in force either in the territory **(i)** where it was executed, or **(ii)** where you were domiciled, or **(iii)** where you habitually resided, or **(iv)** of your nationality.

What does essential validity mean?

Essential validity relates to fundamental issues such as whether you are able to make a will in the manner in which you would like to, or at all. For example, some jurisdictions may require that a testator leave a certain part of his assets to a surviving spouse or children. If your will is not essentially valid, then it may be open to challenge (for instance, by a disgruntled member of your family).

| Wills of Movable Property

What is Movable Property?

Jersey law distinguishes between movable property and immovable property. Broadly speaking, immovable property consists of freehold land and buildings together with their permanent fixtures and fittings. Movable property is everything else and 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, through which ownership of shares guarantees occupation of a particular flat or unit) and insurance policies. Movable property is also sometimes referred to as personalty, movables, movable estate or personal estate.

Why should I make a will strictly relating to my movable property situate in Jersey?

The effect of dying intestate is discussed generally below. Even though it is quite possible to make a will which covers your "worldwide personal assets" it can be beneficial to make separate wills for personalty situate in separate jurisdictions. For instance, this may make it quicker to obtain probate, so that the assets are released as soon as possible. It may also be possible to

gain tax advantages, although this is a matter upon which you should take specialised advice.

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

We are able to draft this for you. However, as the essential validity of your will of movable property will depend upon the law of your domicile, we recommend that you consult a lawyer where you are domiciled, to ensure that your will of movable property conforms to the laws of that jurisdiction.

What is an executor?

The executor is the person or organisation appointed in your will who or which is charged with the task of gathering in your estate and, in due course, distributing the same. 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 your executor. It is impartial, professional and experienced in the administration of estates.

What happens when I die?

On your death, it is for your executor to gather in your estate, pay your debts and in due course distribute the remainder of your estate. Before the executor may do this, it is generally necessary to obtain a grant of probate in Jersey and certain formalities are required in order to do this. Once the grant of probate has been issued, the executor is free to deal with your estate's Jersey assets.

Wills of immovable property

What is immovable property?

Jersey law distinguishes between movable property and immovable property. Broadly speaking, immovable property consists of land, buildings together with their permanent fixtures and fittings as well as certain rights in and over land. Immovable property is also sometimes known as realty, immovables, immovable estate or real estate.

Which law governs my Jersey immovable property?

So far as wills of immovable property are concerned, the law of the place in which the property is situate is of paramount importance. Therefore, the formal and essential validity of wills in respect of any Jersey realty are governed by the laws of Jersey and the formal and essential validity of wills in respect of French realty are governed by the laws of France and so on.

Why should I make a will strictly relating to my immovable property situate in Jersey?

A will dealing with immovable property in Jersey must be executed in accordance with the strict formalities required of Jersey law. If it is not, it will be invalid and ineffective. There are certain peculiarities of Jersey Law which may not be complied with, if the will is not prepared by Jersey lawyers.

How do I make a will of immovable property?

We are able to draft this for you.

Do I need an executor?

No, an executor is not appointed in relation to your Jersey real estate.

What happens when I die?

Generally, when you leave immovable property situate in Jersey under a will, it is for those named in your will as being entitled to your immovable property (your beneficiaries) or at least one of them to apply through a Jersey lawyer for your will to be registered in Jersey in the Jersey Public Registry (where all title to Jersey land is registered). The act of registration of your will conveys title to the realty to your beneficiaries.

We have an especially experienced team who will be able to assist your beneficiaries with the registration formalities.

Intestacy

What happens if I die intestate (ie, without making will)?

If you die without making a will relating to your movable property (personal estate) situate in Jersey it will be necessary to obtain letters of administration before such estate may be dealt with. The procedure known as obtaining letters of administration where there is not a will is the equivalent of obtaining a grant of probate where there is a will. The person entitled to apply for 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.

If you die without making a will relating to your Jersey immovable property (real estate) it will be inherited by your heirs (such heirs being determined by Jersey Law).

Other Questions

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

If you are not domiciled in Jersey but you are a beneficiary of a Jersey trust, generally you do not need a will to deal with your interest under the trust. However, you should always seek specific Jersey 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 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 as necessary. Therefore, it may be beneficial for you to make a will dealing with such shares although in each case specific advice should be taken.

Do I need a Jersey will if I hold property jointly?

If you co-own property it is necessary to check how the property is held. Jersey law recognises two forms of co-ownership, ie 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 property passes under the will to his successors, whereas on the death of a joint owner, it automatically and instantly passes to the interest or interests of the surviving joint owners. The presumption in Jersey is in favour of ownership in common, so that express words are needed for joint ownership to be created. A joint owner (unlike an owner in common) cannot sell his interest in the owned property to a third party without the participation in the transaction of his co-owner, but any co-owner (joint or in common) may compel the other co-owner or co-owners to join in putting an end to the co-ownership.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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