

The Signing of Instruments (Miscellaneous Provisions) Jersey Law 2018

Insights - 14/06/2018

Overview

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The above law was registered by the Royal Court of Jersey on 1 June 2018 and came into force on the 8 June 2018 (save for Article 5 which relates to the Capacity and Self Determination (Jersey) Law 2016 and which will come into effect once that law comes into force itself).

It brings about a much needed update in the law that was initially highlighted as being required in 2015 when a local resident gentleman passed away after being mentally but not physically capable of signing a Will due to a paralysis of his hands. The result of this was that he was considered to have died intestate, despite having directed a friend to sign his Will on his behalf, and his estate passed in accordance with the law rather than in accordance with his wishes. Thankfully, in this particular case, the family of the gentleman were happy to agree for his estate to be distributed in line with his wishes outlined in the invalid Will in any case, however had there been any family discord, this solution would not have been available.

This case raised potential human rights and discrimination issues within the current law as there was no mechanism by which a person with a physical disability or medical condition that rendered them unable to actually sign their name, could make a valid Will.

The above law also amends the laws in relation to the signing of affidavits, powers of attorney and lasting powers of attorney (as governed by the new Capacity and Self-Determination (Jersey Law 2016) to enable these documents to also be validly executed by a person who cannot physically sign

their name.

However it has been noted that safeguards were needed to be put in place to ensure that this legal update cannot be abused where someone is signing a Will or a document on behalf of someone else. This is why it is a requirement that, for a Will to be valid, the person making the Will must declare, in the presence of two witnesses, one of whom must be a qualified witness (a local Advocate, Solicitor or Notary), that the Will is to be signed by another person on his or her behalf. The Will must also be read aloud to the person making the Will prior to the signing occurring. This is not dissimilar to the procedure currently followed for the signing of Wills covering Jersey real estate.

It is a welcome development that this gap in the law has now been addressed and that there is clear guidance which enables a person with a physical disability or medical condition that renders them unable to sign their name, to still execute valid and legal documents and Wills.

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