

Guernsey Wills



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Why make a will?

It allows you to leave your property to the people/institutions you wish to receive it (subject to the restrictions imposed by Guernsey law).

It also provides certainty and direction for your family and friends at a very difficult time.

What happens if you don't make a will?

If you do not make a will, you die "intestate". Guernsey has specific rules which dictate how your property will be distributed if you die intestate. These rules of intestacy mean that your spouse or partner may not inherit as much as you would have wished (or possibly not at all).

What is a will?

A will is a document in which you state how you wish your property to be distributed after your death, the person you want to distribute the property and the person who you would wish to care for your children.

Since 7 May 2008 it has been possible to make a single will which deals with all of your property, both "realty" (land and buildings in Guernsey), and "personalty" (money, stocks and shares, items of furniture, etc).

You must bear in mind that a will dealing with your realty will frequently be registered at the Greffe on your death as a document of title, and therefore if you have very complicated wishes or complex trust arrangements in respect of your personalty, you may prefer to have two separate wills: one dealing with your realty and the other with your personalty.

How do you make a will?

It must be signed and dated in the presence of two witnesses. It can be witnessed by any two people provided that they are not beneficiaries under the will, spouses of the beneficiaries or your descendants, and that they are over 14 years old. It is no longer a requirement of Guernsey law that your will of realty be witnessed by two Jurats of the Royal Court.

In order for your advocate to advise you fully, it is of assistance if he/she is aware of all of your circumstances which can be set out clearly in the "Checklist" [which you can download by clicking here].

Rules relating to Guernsey Realty

Since 2 April 2012, it has been possible to leave your realty to whomsoever you wish and there are no longer any restrictions in place.

Intestacy

If you die without leaving a will:

- If you do not leave children, your spouse/civil partner (although Guernsey law does not currently have any laws relating to civil partnerships), will inherit the whole of your realty.
- If you leave children but not a spouse/civil partner, your children (or remoter descendants) will inherit the whole of your realty.

- If you leave children or remoter descendants and a spouse/civil partner, one-half share of your realty will pass to your spouse/civil partner, and the remaining one-half share will pass to your children, subject to the rights of inheritance and enjoyment of your spouse/civil partner.
- If you do not have a spouse/civil partner or children, your realty will pass to your heirs at law (normally your brothers and sisters or their respective children).

Situation of Spouse/Civil Partner

- Whether or not you leave children or remoter descendants, you can make a will leaving all of your realty (or specified parts of it) to your spouse/civil partner.
- Frequently, married people own their realty jointly (“for themselves, the survivor of them and the heirs of such survivor”). The effect of this is that on the death of the first spouse, the realty passes to the surviving spouse/civil partner.

Distinction between Legitimate and Illegitimate Children

The distinction between legitimate and illegitimate children was removed as of 7 May 2008. The changes in the Guernsey laws of inheritance are not, however, retrospective. Therefore, if a will of realty was executed prior to 7 May 2008, illegitimate children/descendants will not be entitled to any part of your realty unless you have specifically included them in the will.

If, on the other hand, you wish to ensure that illegitimate children/descendants do not inherit your realty, you should make a will naming your legitimate children as the beneficiaries of your realty.

If there is any doubt over the identity of your descendants who are to inherit your realty, it may be necessary for an application to be made to the Royal Court to allow the proceeds of sale of your realty to be distributed to the correct beneficiaries.

It is, therefore, more important than ever, if you are a parent, that you make a will specifically naming the children you wish to inherit your realty.

Rules relating to Personality

Since 2 April 2012, Guernsey law allows you to leave your personality to whomsoever you wish.

Intestacy

If you do not make a will in respect of your personality:

- If you leave a spouse/civil partner but no children, all of your personality will be inherited by your spouse/civil partner.
- If you leave children/descendants but no spouse/civil partner, all of your personality will be inherited by your children/descendants.
- If you leave a spouse/civil partner and children/descendants, then a one-half share of your personality is inherited by your spouse/civil partner, and the remaining one-half share is inherited by your children/descendants.
- If you leave more than one child/descendant, they share the entitlement equally.

- If you do not leave either a spouse/civil partner, or children/descendants, then your personalty is inherited by your heirs at law (normally brothers and sisters or their respective children).

Challenges to your will

Whilst the new law has removed the restrictions as to whom you are able to leave your realty and personalty after your death, it allows certain members of your family to apply to the Royal Court for a share of your estate to be made available to them if they have not been reasonably provided for financially. When making your will you should have consideration for any potential applications that could be made to challenge your will.

The removal of the distinction between legitimate and illegitimate children applies equally to personalty as it does to realty. For the sake of clarity, it is therefore now advisable to set out the names of your children in any will which is made after 7 May 2008.

If you have made your will prior to 2 April 2012, your property will pass in accordance with the will and it will not be affected by the new law.

If you own realty outside of Guernsey, then it is advisable to make a separate will, having taken advice from a lawyer in the relevant jurisdiction. Realty is subject to the "lex situs", ie the law of where it is situate.

This is intended as a brief guide to making a will and to the Guernsey laws of inheritance. You should take legal advice specific to your own circumstances before making your own will, or revising any will which you have previously made.