

Benest & Syvret

Making a Will in Jersey



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This brochure is for Jersey domiciled testators and those with Immovable property situated in Jersey





Making a Will in Jersey

Why do you need Wills?

A Will is one of the most important documents you will ever sign. There are many advantages to executing a Will, including:

- Making it less stressful for those left behind by being clear as to your wishes in the event of your death.
- Choosing who will inherit your estate, where there is no close family.
- Providing for your partner.
- Providing for a charity or special cause.
- Gifting specific items, for example jewellery, favourite books, furniture etc.
- Leaving cash gifts.
- Deciding who will inherit in the event that your close family die before you.
- Appointing an Executor to manage your personal affairs when you die.
- Appointing a Guardian to care for minor children.
- Expressing your preference as to who you wish to administer your children's assets in the event that you die leaving minor children.
- Ensuring that family assets are appropriately divided between a second spouse/civil partner & your children.
- Providing for a fixed or discretionary trust of your assets.
- Tax and estate planning.
- Expressing your funeral wishes.
- Saving on the potential costs of heir hunters and genealogists.

How many Wills do you require?

Jersey assets are divided into two categories, Movable and Immovable.

Movable assets (sometimes known as personal property) include cash, bank accounts, investments, shares, share transfer property, leases of less than 9 years, household contents, motor vehicles, jewellery. Movable assets are dealt with in a Will of movable estate. An Executor, appointed in a Will of movable estate, manages your movable assets on your death.

Immovable assets (sometimes known as real property) include freehold property, flying freehold, land, leases of more than nine years, and certain mortgages known as "hypothèques conventionnelles". Those who inherit under a will of immovable estate (or in the absence of a will, the heirs-at-law) take ownership of immovable property directly on registration of the Will. Your Executor is not involved in this process.

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Why should you instruct a specialist lawyer to prepare your Wills?

There are a number of reasons to instruct a specialist lawyer to advise on, prepare and witness your signature on your Wills, including the following:

1. Receive expert advice on estate planning.
2. Understand the claims that may be made against your estate.
3. Highlight taxation issues, upon which you may wish to obtain independent taxation advice.
4. Benefit from advice on stamp duty savings.
5. Avoid the pitfalls of later claims relating to issues of capacity and undue influence.
6. Deal with complex division of family property and options to buy.
7. Ensure that your signature on your Wills is witnessed correctly, in accordance with the witnessing requirements of Jersey law, which differ depending upon whether it is a Will of movable or immovable estate.
8. Avoid subsequent litigation due to ambiguous drafting of your Wills.
9. Understanding the potential implications of lifetime gifts to family members.
10. Understand the legal implications of the provisions in your wills.

Who will inherit your estate should you die without leaving Wills?

If you pass away without making a Will you are said to have died intestate. Jersey law sets out rules, which apply to the estate of Jersey domiciled person, who dies without leaving a Will relating to their movable estate. The following is a short summary of how those rules operate.

Relationship

Single/widow/widower no children

Married or Civil Partner with children

Married or Civil Partner – no children

Movable Assets Pass To:

Heirs at law in equal shares i.e. siblings, failing that parents.

- i) Surviving spouse / civil partner.
Household effects (as defined by law);
£30,000; and Half of the remainder
- ii) Children.
Half of the remainder equally between them.

All to surviving spouse/civil partner.

Jersey law also stipulates rules which apply where a person dies without leaving a Will relating to their immovable estate situated in Jersey, regardless of where that person is domiciled at the date of their death. The application of these rules may lead to complex outcomes. A summary is as follows.

Relationship

Single/widow/widower no children

Married or Civil Partner with children

Married or Civil Partner no children

Movable Assets Pass To:

Heirs at law in equal shares i.e. siblings or their children failing that parents.

Surviving spouse or civil partner receives life enjoyment of matrimonial home and an equal share in the remainder, with each child of the deceased.

Surviving spouse or civil partner inherits all.



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What information do you need to provide in order for your Will to be drafted?

Giving instructions in relation to your Wills is usually straightforward, yet surprisingly it is a matter which people tend to put off.

A small amount of preparation will assist you in making the important decision as to how you wish to divide up your property and will enable you to make the best use of our time with you.

As a starting point it is often useful to make the following preparations:

- A list of your assets, including your digital assets.
- Details of any assets that you own outside Jersey.
- A short family tree.
- Full names of those you wish to benefit. Where the person is not related to you we would require their current residential address.
- Any questions that you may wish to ask.
- Who you wish to act as Executor of your Will of movable estate, bearing in mind that we offer professional executorship services, through our executor company, Royal Square Executors Limited.

For your convenience you may download a Wills questionnaire by accessing our website www.benestsyvret.com/wills/questionnaire. Alternatively, we can take your initial instructions over the telephone or in a face to face meeting.

Once we have reviewed your instructions and discussed your circumstances with you, we may ask you for additional information. We will then provide you with any advice that we consider relevant to your circumstances.

Once we have received your instructions draft, Wills will be prepared and forwarded to you for your approval. You should contact us with any amendments that you wish to make so that final documents may be prepared for you to sign.

Jersey law provides that to be validly executed a Will of movable estate should be signed in the presence of two independent witnesses. A Will of Jersey immovable estate should also be signed in the presence of two independent witnesses, one of whom must be an "official witness". It is usual for an Advocate or Jersey Solicitor to act as the official witness, while the other witness required will be a member of staff from this office. Wills of Jersey immovable estate must be read aloud in the presence of the person making the Will and the witnesses.

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What is the role of an Executor?

The Executor applies for probate of the Will of movable estate. Probate grants the permission of the court to the Executor to carry out the terms of the Will. To liquidate, sell or otherwise dispose of assets of an estate of a Jersey domiciled person without a grant of probate may constitute the offence of intermeddling, the punishment for which is a fine and possible imprisonment. There is nothing to prevent an Executor from safeguarding assets prior to obtaining probate, as long as they do not liquidate, sell or otherwise dispose of them.

Prior to applying for probate the Executor prepares an inventory of the assets and liabilities of the movable estate, showing the net value of the estate. Stamp duty is payable when the application for probate is made and is assessed on the net value of the estate at death.

Once probate is obtained the Executor manages the assets of the estate which may include, closing bank accounts, liquidating or transferring shares and investments, dealing with company issues, household contents, antiques, jewellery, coin collections, motor vehicles, digital assets, rehousing animals, dealing with assets in foreign jurisdictions and tax matters.

The Executor then pays the debts of the estate and prepares accounts for circulation to the beneficiaries.

The entire process can take a year and a day from the date on which probate is obtained.

Who should I appoint as Executor?

Any person over the age of 18 and of sound mind may act as Executor. Depending upon the complexities of your estate and your personal or family circumstances appointing a professional Executor may be a good choice. The main benefits of appointing a professional executor are as follows:

Independence/Impartiality – Tensions can arise within a family when a loved one dies. This may cause significant difficulties in the administration of the estate. It is not uncommon for an estate not to be dealt with for a number of years because of family disputes. A professional Executor can ensure that the administration of the estate progresses, on a timely and impartial basis.

Expertise – dealing with an estate may be a complex affair due to the nature of the assets or legal issues that arise during the period of administration. Appointing a professional Executor gives you peace of mind that matters will be dealt with correctly.

Removing the burden – administering an estate is a responsible task which can be a time-consuming process for a family member or friend to deal with. Appointing a professional executor relieves family members or friends of this burden.

Continuity – appointing a professional Executor company, such as our in-house executor company, Royal Square Executors Limited, not only ensures that your estate is dealt with professionally but also has the benefit that you do not run the risk of your appointed Executor dying before you, leaving your estate without an Executor.

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What challenges may be made to your Wills?

Jersey law grants certain inheritance rights (*légitime*) to children and surviving spouses in so far as concerns movable property. Essentially, where a deceased person is survived by a spouse and/or child they may each claim one third of the movable estate, where the Will has not provided for this. Where there is no spouse the children may claim two thirds and where there are no children the spouse may claim two thirds.

A *légitime* claim should be made within a year and a day of the date of death. We can assist you in understanding the potential claims and planning the distribution of your estate so as to avoid any problems.

Stamp Duty on Death

Stamp Duty on movable estate is calculated on the value of the assets in the sole name of the deceased at the date of death. Presently it is calculated as 0.5% up to £100,000 and 0.75% thereafter, plus £80 registration fee. For the purposes of calculating Stamp Duty the value of the estate of rounded up to the next £10,000.

Stamp Duty on immovable estate is again calculated on the market value of the immovable estate at death. Stamp Duty on immovable property is on a sliding scale and is generally the same as the Stamp Duty payable on the purchase of a property. By way of example, at present rates stamp duty on a property with a value of £750,000 is £15,830 and Stamp Duty on a property with a value of £1,500,000 is £47,080.

Exemptions from Stamp Duty on immovable estate apply where the estate is left to the deceased's direct heirs, where the matrimonial home is left to a surviving spouse or civil partner or where the estate is left to a charity exempt from payment of Jersey tax. Concessions on Stamp Duty may be applied for in certain other situations.

Leaving gifts to children under 18

The age of majority in Jersey is currently 18. Where a minor inherits movable property over the value of £25,000 and/or immovable property, it is necessary for a tutelle to be formed to manage the inheritance until the minor reaches the age of majority. One or more tuteurs may be appointed. The appointment takes place in the Royal Court on a Friday afternoon, when the tuteur(s) swear an oath undertaking to:

- Faithfully discharge the duties of a tuteur in relation to the minor's inheritance.
- Administer and safeguard the assets with equal or greater concern that they would their own property; and deliver an inventory of the minor's assets under their control to the Judicial Greffier (The Registrar of Probate, Royal Court Buildings, Royal Square, St Helier, JE1 1JG) within 90 days of the appointment, annually thereafter and within 30 days of the minor attaining the age of 18.

A tuteur may not be appointed by Will. It is however possible to express a preference in a Will as to who you wish to be appointed as tuteur, in the event that a tutelle is necessary.



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Appointing a Guardian in a Will

It is possible to appoint a guardian in your Will to care for any children that you may have under the age of 18 at the date of your death.

Gifts to charity

It is important to correctly identify any charity that you wish to benefit under the terms of your Wills. Information on registered charities may be obtained from The Jersey Charity Register, which may be found at <https://charitycommissioner.je/about-jcc/the-register/> or the Charity Commission for England and Wales at <https://register-of-charities.charitycommission.gov.uk/charity-search>. Other jurisdictions have similar registers. Each charity is assigned a unique registration number.

When gifting Jersey immovable property to a charity it is essential that the charity is an incorporated entity. The Charity Register usually provides this information and failing that enquiries may be made with the charity directly.

Digital Assets

Digital assets are those accessed on a digital device such as a laptop, mobile phone, tablet or personal computer. Digital assets are usually accessed online, via a third-party provider such as Google, Meta, Netflix, Apple or Microsoft and may include, photographs and videos, blogs, E-books, online gaming avatars, works and lands, emails and virtual currencies.

On death, digital assets will be subject to the standard contractual terms and conditions imposed by the internet service provider when the account is set up. The options offered by internet service provider on the death of the account holder are as follows:

- Termination of the account and deletion of all information stored on it.
- Selecting a nominee who will be allowed limited access to the account contents following death, such as Google's Inactive Account Manager or Meta's Legacy Contact.
- Permission to access content on produce of a grant of probate, death certificate and verification of identity.
- Memorialisation of content for a brief period of time following death after which the information is deleted.

It is important to be aware of the terms and conditions upon which digital information is held, so that you may plan ahead and prevent digital assets of sentimental or monetary value being lost or destroyed following your death.

Where should my Will be stored?

Once Wills have been signed most clients ask us to retain the originals in one of our fire proof safes at Benest & Syvret, to their order, so that they are not damaged, defaced or lost. We do not charge for this service. We would then provide you with photocopies of your Wills which you should retain in a safe place together with a note that the originals are held at this office so that they may be located after your death. You may also like to inform your Executors where your Wills are kept.

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How much does it cost to make a Will?

As no two Wills are ever the same, it is difficult to provide an accurate quote as to cost. At Benest & Syvret we pride ourselves in being transparent about costs. We will inform you in advance of the cost of taking your instructions, preparing your draft Wills, providing you with the relevant advice and witnessing your signature on your Wills. The majority of the wills that we draft come within our standard fee, details of which may be obtained by telephone on **01534 875875** or email: info@benestsyvret.com

What happens if I wish to change my Wills?

Wills should be reviewed following important events in your life such as marriage, birth of a child or grandchild, the purchase of a new property or death of a beneficiary. Should you divorce after executing a Will in Jersey, gifts made to a spouse or their appointment as an Executor will automatically be revoked. For this reason, it is important that you review your Wills at this time.

Should you wish to make additional bequests once your Will has been made, it is possible simply to create a separate document known as a 'Codicil' to your Will.

Call us for assistance

Making a Will requires serious consideration of issues relating to domicile, the extent and location of your assets and who you wish to benefit. At Benest & Syvret we have a team of lawyers experienced in advising on and drafting Wills, contact us on **01534 875875** or email info@benestsyvret.com and we will be pleased to help you.

Legal Disclaimer

The information in this guide:
Does not constitute legal advice.
Does not create a contractual relationship.
Does not form part of any other advice, whether paid or free.

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