

# Why make a Will or two in Jersey?



# A Will gives you control, options and means you can give opportunities to others.

“It is too expensive”; “everything I own will go automatically to my spouse or my children”; or “my assets are too insignificant”. These are common misconceptions. You may wish to consider making two Wills in Jersey.

How often in your own life have you thought that you would have done something, taken a journey, taken a course but that you couldn't because you didn't have the money? A Will can allow others to enjoy opportunities that you never had. In essence, a Will is the tool that allows you to pass on your possessions to benefit others. The only certain way to ensure that your spouse, partner or relative, etc. inherits what you intend is by making a Will. If you die without having made a Will, the intestacy rules apply. These may produce unexpected results, particularly if there are no children.

At present entitlement to a share of an estate in Jersey cannot be claimed by common law co-habitees. Therefore, if you live with your partner and die without having made a Will, your partner will not automatically inherit any of your estate. The estate will automatically pass to your heirs at law (i.e. children or brothers and sisters or parents or remoter relatives).

Home-made Wills should be treated with caution and should only be used in the most straightforward of circumstances. Some home-made Wills can be disastrous, for example failing to deal with Jersey immovable property assets at all. STEP has gathered large numbers of examples where things have gone wrong. Many people omit to cover the position if the main beneficiary does not survive; or refer to assets that are not owned on death.

Instead, take advice from and have your Will drafted by a properly qualified professional. See the directory at the end of this booklet or contact a member of the Society for Trust and Estate Practitioners [www.step.org/online-directory](http://www.step.org/online-directory)

This booklet is a brief guide to making a Will. It is not intended to provide comprehensive advice and you are strongly advised to take legal advice before making your Will.

## What is a Will?

A Will is a legal document in which you set out how you would like your estate to be dealt with after your death. It contains the names of the individuals or institutions who you want to receive your assets.

Your property and personal possessions are collectively referred to as your estate. However, as Jersey law treats movable and immovable estate differently for succession purposes, we need to consider them separately and it is usual to make two Wills to cover both types of assets.

Your movable estate includes bank accounts, jewellery, furniture, cars, life insurance proceeds and shares (including shares in a property holding company entitling the owner to occupy a share transfer apartment).

Your immovable estate comprises freehold property in Jersey including houses, commercial premises, farms and fields, contract leases for more than nine years and flying freehold apartments.

## Why make a Will?

Even if the value of your estate is small, there are important reasons why you should make a Will. On a practical level, a Will provides certainty for your family and friends at a time of emotional distress as it tells them how you wish your estate to be dealt with. On a legal level, it ensures that your estate is distributed in accordance with your wishes after your death.

Previously, the term 'descendants' under Jersey law excluded illegitimate children of a man. The law changed on 29th January 2011 giving all legitimate and illegitimate children equal rights in respect of inheritance. However, this change does not apply retrospectively. It will only apply (1) in cases where the deceased did not leave a Will - if the death occurred after the change in the law; or (2) in cases where the deceased did leave a Will - if the Will was made on or after the change in the law (or if a Codicil was made on or after this date confirming an earlier Will). Therefore, if there are illegitimate children in your family you may wish to consider updating your Will made before the change in the law.

If you die without having made a valid Jersey Will, you are said to have died intestate and in such cases your estate will be distributed in accordance with the terms of the Jersey law of intestacy which may differ from what you want. For example, if you have stepchildren or a common law partner, they will not benefit from your estate under the law of intestacy. It is recommended therefore that you seek legal advice and write a Will where appropriate.

## Can anyone make a Will?

To make a Will a person, known as the testator, must be of full age (over 18 years old) and of sound mind. However, an exception to this rule is a married minor, who is able to make a valid Will.

## What can my Will deal with?

Most people want to keep their Will as simple as possible and often give the whole of their net estate to one or more persons.

such as a spouse or children. You can also make gifts of specific items such as jewellery or sums of money in your Will.

You can choose who you want to be your executor, you can name a guardian to care for your children and you can give directions for your funeral. The role of executor is explained in more detail below.

## What are the legal requirements?

If you own immovable estate it is advisable to make two Wills, one covering your Jersey immovable estate and the other covering all of your other assets. A Will of immovable estate should be registered in the Public Registry while your executors obtain a Grant of Probate of your general Will which authorises them to administer your estate which may include property in other countries.

Jersey law stipulates certain legal requirements in relation to making a Will, and, if these are not complied with, it may mean that the Will could be declared invalid. It is recommended therefore that you seek legal advice and have your Will drafted professionally by a lawyer. A Will covering estate other than Jersey immovable property should be signed or acknowledged by the testator in the presence of two witnesses who are both present at the same time. Witnesses should not be beneficiaries under the Will or be close relatives of the testator and should be persons of full age and of sound mind.

A Will of immovable estate must be read out loud to the testator in the presence of the witnesses one of whom should be a Jersey lawyer (or other suitably qualified witness).

## How much does it cost?

The cost of instructing a lawyer to prepare a Will really depends on how complicated the Will is. Most lawyers are happy to provide estimates.

## What if I want to alter my Will?

It is possible to make straightforward changes to a Will by signing a document known as a Codicil. However, if you require more substantial changes it may be simpler to prepare a fresh Will. The formalities for executing a Codicil are the same as for a Will and you should therefore seek legal advice to ensure that everything is done correctly.

## Do I have to leave my assets to my family? What is légitime?

It is important to be aware that if you make a Will of movable estate excluding your spouse/civil partner and/or child/children or you leave them less than their legal entitlement, then a claim can be made against your executor by the aggrieved spouse/civil partner and/or child/children. This entitlement is known as légitime and, although the States of Jersey voted to abolish it in 2003, no change to the law has yet been made. The extent of the claim is as follows:-

- A spouse/civil partner can claim household effects and two-thirds of the rest of the net estate if there are no children.
- If there are children then the spouse/civil partner's share of the rest of the net estate is restricted to one-third and the children can claim another one-third share to be shared between them.

- If there is a child or children but no spouse/civil partner, then the child or children are entitled to claim two-thirds of the estate to be shared between them.
- In each of the above cases the remaining third of the estate passes in accordance with the terms of the Will.
- If you have neither spouse/civil partner nor descendants, you have full testamentary freedom to leave your movable estate assets to whomsoever you wish.

Légitime must be claimed formally through the Royal Court within a year and a day of the probate application. Many married couples make Wills leaving their movable estate to each other and to their children only if the other has died first. In practice, however, such a Will is usually subject to légitime challenges only if a degree of acrimony exists, perhaps where there is a family feud or a second marriage.

The phrase “household effects” is defined by the Wills and Successions (Jersey) Law 1993 and means, subject to some exceptions such as motor cars, articles of household or personal use or ornament normally located in or around the matrimonial home.

## Debts

A person will usually die leaving at least some debts such as outstanding bills or an income tax liability. The estate is liable for these debts and also for funeral expenses which are deducted from the assets to calculate the value of the net movable estate for probate purposes.

## Dower

In respect of your immovable estate, if you make a Will and leave a surviving spouse/civil partner then he/she is entitled to claim a dower right of a life enjoyment of one-third of the immovable property that you own.

## What happens if I do not make a Will?

If you die without leaving a Will you are said to be intestate. The following are examples of what can happen.

### In respect of your immovable estate:-

- If you leave a spouse/civil partner with no children then your surviving spouse is entitled to inherit all of your immovable estate.
- If you leave a spouse/civil partner and children then your surviving spouse/civil partner is entitled to life enjoyment of the matrimonial home and your spouse/civil partner and each of your children share the reversionary ownership equally.
- If you leave children but no surviving spouse/civil partner then your children will share the whole of your immovable estate equally. If any child of yours has predeceased you leaving issue then such issue take their deceased parent’s share.

### In respect of your movable estate:-

- If you leave a spouse/civil partner but no children then your surviving spouse/civil partner is entitled to receive the whole of the movable estate.
- If you leave a spouse/civil partner and children then your surviving spouse/civil partner is entitled to receive the household effects, the first £30,000 and a half share of the remainder. Your children receive the remaining half share equally between them.
- If you leave children but no surviving spouse/civil partner then your children will receive the whole of your movable estate equally.

If you die without leaving a spouse/civil partner or issue then Jersey law will determine which of your relatives are entitled to inherit your property.

The rules are complicated e.g. they differ according to whether the property is movable, immovable property you have inherited on intestacy or immovable property purchased by you or inherited by Will.

### Does separation matter?

Yes it does. If you are not residing together and have obtained a decree of judicial separation against your spouse/civil partner, or if he or she has deserted you without good cause, then the surviving spouse/civil partner loses his or her entitlement to your estate unless you make express provision in your Will to the contrary.

## What happens to my Will of Jersey immovable estate when I die?

When your Will of Jersey immovable estate is registered in the Public Registry, title to your immovable property passes to those persons you have named in your Will who are known as devisees. If you leave your matrimonial home to your spouse/civil partner or all of your immovable property to your relatives in the way that they would inherit your estate upon intestacy, then only nominal stamp duty is payable. Otherwise stamp duty is payable on registration at a sliding scale of up to 3% of the value of the property.

## What is an executor?

An executor is a person, persons or trust corporation appointed in a Will to carry out its provisions. Every Will of movable estate should appoint an executor. An executor obtains probate of the Will and is obliged to collect in your assets and to distribute them in accordance with the terms of your Will. Anyone can be appointed as an executor provided that he or she is of full age and of sound mind. However, it is advisable to check that your intended executor is happy to carry out the role before appointing him or her. Your executor can be your spouse or other member of your family or a trusted friend and your lawyer will generally be prepared to act as your executor if you wish. You can appoint one or more executors.

A Will of Jersey immovable estate does not require an executor. Its registration in the Public Registry evidences the title of the beneficiaries to the property.

## What is a Grant of Probate?

A Will of movable estate should not be acted upon until it has been proved in Court and a Grant of Probate issued. Probate is the order of the Court which confirms the authority of the executor to administer the estate of the deceased. The executor is required to swear an oath in Court to confirm that he will faithfully discharge the office of executor in accordance with the terms of the Will.

(If there is no Will then your movable estate will be administered by an administrator who also swears an oath in Court leading to the issue of a Grant of Letters of Administration. The Court will usually be prepared to appoint your next of kin as the administrator).

## Can I appoint guardians?

If it is possible that any of your children may be under the age of 18 years at your death, you can state in your Will of general estate who you would like to act as their guardian. Jersey law also provides for a tutelle to be set up to manage any movable or immovable property left to minor children. You can express a wish in your Will that certain persons be appointed to any tutelle that needs to be established. Such a wish will not necessarily be complied with but would carry considerable weight.

## A gift to charity: a lasting legacy

You will naturally draft your Will to benefit those closest to you, your family and loved ones, and rightly they must come first - but it is also an ideal opportunity to leave a lasting gift to charity.

But why not also take the opportunity to bring lasting change to the lives of people in need?

It is not only the wealthy who leave a legacy to charity. In fact, as far as the UK is concerned, 17% of Will makers leave one or more gifts to charity in their Will and the same could easily apply in Jersey. Such philanthropists unlock their assets to benefit others. Together they transform the future for charities and the individuals and communities they help around the world.

## Charities in Jersey

If you choose to make a gift to one or more of the charities associated with the Association of Jersey Charities, this will enable future generations to benefit. Your gift can be specific (a defined amount of money) or, since none of us really know what anything will be worth years or decades into the future, it may be better to leave a share of your estate, after loved ones have been provided for. Whether the legacy is large or small, it will make a real and lasting difference to people's lives.

Leaving a gift to one or more charities will help build a future for so many people young and old in Jersey and around the world. Please contact the Association of Jersey Charities to find out more about their members' inspirational work.

## Distribution of Movable Estate

Status of Testator	Légitime Claim	Intestacy
Unmarried without issue	None	Heirs at law
Married leaving spouse and no descendants	Surviving spouse can claim the household effects and two-thirds of the net movable estate	Surviving spouse
Married leaving spouse and descendants	Surviving spouse can claim the household effects and one-third of the net movable estate and the descendants can claim one-third of the net movable estate	Surviving spouse receives the household effects, other movable estate to a value of £30,000 and half the residue and the descendants take the other half
Widowed leaving no surviving spouse but leaving descendants	Descendants can claim two-thirds of the net movable estate	Descendants

## Distribution of Immovable Estate

Status of Testator	Entitlement at law	Intestacy
Unmarried without issue	None	Heirs at law
Married leaving spouse/civil partner and no descendants	Surviving spouse/ civil partner has the right to claim dower	Surviving spouse/ civil partner
Married leaving spouse/civil partner and descendants	Surviving spouse/ civil partner has the right to claim dower	Surviving spouse/ civil partner has life enjoyment of the matrimonial home. Subject to his/ her life enjoyment all property will be shared equally between the spouse/ civil partner and children (or remoter descendants) according to law
Married leaving no surviving spouse/ civil partner but leaving descendants	None	Heirs at law

The consequence of dying intestate (i.e. without having made a Will) can prove both complicated and expensive. At a stressful time for your family and friends such worry, complications and expense can be avoided through making a correct Will.

Even if you have already made a Will it is important to keep this under review at regular intervals (at least every five years). The world does not stand still and in particular your family circumstances and relevant taxation and other laws will change.

Remember also that in a two year period following the death, the terms of a Will can be varied or disclaimed by an appropriate document entered into by the persons involved. This may, however, be prevented by changes in the law.

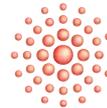
Making a Will need not be expensive. Most lawyers and the legal firms of STEP Members charge a reasonable fee for a straightforward Will.

# Association of Jersey Charities

The objective of the Association of Jersey Charities is to encourage charitable and community work in Jersey and, in particular, to encourage co-operation and co-ordination of activities between members and prospective members, promote discussion and exchange of ideas regarding service to the community. The Association also aims to work closely with members to increase public confidence in the integrity of charity.

Our value base is that the Executive Committee expect every member to aspire to high standards of governance in order to attract public confidence and support. We work closely with members and are committed to acting as a community resource through the provision of advice and information. We will be open in the conduct of our affairs, except where there is a need to respect confidentiality. Officers of the Association offer advice and guidance to existing and prospective members of the Association, and members of

the public who wish to find out more about charities operating in Jersey, via their Administrator and through their website [www.jerseycharities.org](http://www.jerseycharities.org)



Association of **Jersey** Charities

# We recommend you consult your lawyer about making or changing your Will

If you do not have a lawyer please go to the Jersey Law Society website at

[www.jerseylawsociety.je/public/firm-search](http://www.jerseylawsociety.je/public/firm-search)

for a list of local lawyers able to advise,

or consult the STEP directory website at

[www.step.org/member-directory](http://www.step.org/member-directory)

for a list of STEP members in Jersey who specialise in this area.

This booklet has been prepared by STEP, an organisation of professionals (advocates, solicitors, accountants, barristers, bank trustees and probate practitioners) who work with families across generations. This brochure assumes that Jersey law is applicable. Different laws apply in England and Wales, Northern Ireland and Scotland.

For further details of our Members practising  
in your area, contact the STEP office at:

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