Wills

A guide on how to write your own and when you should seek advice

citizens advice

The Queen's Award for Voluntary Service
The MBE for volunteer groups

free, friendly and completely confidential advice

Wills

A guide on how to write your own and when
you should seek advice

Why should I make a will?

A will is a document which sets out what will happen to your estate (all the possessions you own in your sole name) when you die. Your estate includes *real property* (buildings and land) in Guernsey, and all *personal property* (money, shares, and other moveable possessions such as jewellery, cars etc) which you own, wherever they might be, if you are "domiciled" in Guernsey. (You are probably domiciled in Guernsey if you live here and consider Guernsey your permanent home, but if you are not sure you should take legal advice before making a will).

A will can also set out various other matters on which you might like to express your wishes, such as funeral arrangements, whether you wish to be buried or cremated, guardianship of any minor children etc (see below).

If you do not make a will, your estate will be distributed after your death in accordance with rules called the rules of "intestacy". Different rules apply to your personal and to your real property, and who gets what if you do not leave a will would depend on whether you are married or in a civil partnership and/or have descendants at the time of your death. The result might not be the way you would choose for your possessions to be distributed. And even if you are content that these rules will achieve the result that you would like, it is often much easier for those you leave behind, and less expensive, if you leave a will clearly stating who you would like to administer your estate in accordance with your wishes (your "executor").

It is also important to remember that the rules about who will benefit on intestacy mean that any of your children born during your lifetime, even if you do not know about them, will be your heirs. If you do not make a will, naming those you wish to benefit, your executor or administrator will have to try to find out whether any other beneficiaries exist, which will take time and incur expenses. If you make a will your wishes will be clear, and no such searches will be necessary.

If you are cohabiting, but not married nor in a civil partnership, the rules of intestacy will not give your partner any automatic share in your estate when you die and so it is especially important to have a will in place.

If you are married or in a civil partnership but you have separated from your husband or wife or civil partner, you should consider making a will to prevent the rules of intestacy benefitting your spouse or civil partner if you die before you are divorced or legally separated. If you already have a will, it will still be valid if you divorce or separate and so it is important to make a new will if you wish to change your beneficiaries in the light of your new circumstances.

Do I need to make more than one will?

Before a recent change to the Law, it was necessary to make separate wills of real property and personal property. This was because a will of real property had to be signed in front of a Jurat. Now, your will can deal with your real property and your personal property in the same document. However, some people still prefer to make two wills because a will disposing of real property becomes an essential part of the title deeds of any real property owned by the testator and will be passed to any purchaser. You might consider for this reason that your will of personal property,

including as it might personal details concerning your gifts of money and other possessions, perhaps the guardianship of your children and so on, is better set out in a separate document.

Who can I benefit?

In Guernsey, the law has recently changed so that you are able to leave your property to whoever you want (your "beneficiaries"). However, certain people, such as close relatives and other people who are dependent on you at the time of your death, might challenge your will if they think that you have not provided properly for them. If you wish to leave someone out of your will who you think might reasonably expect to receive something, it would be wise to seek legal advice so that steps can be taken to reduce the risk of such a challenge. Even if a challenge is unsuccessful the process could be expensive and upsetting for your intended beneficiaries.

If you made a will before April 2012, the old rules of "forced heirship" will still apply to your estate and your will is of limited effectiveness. For example, a proportion of your estate will automatically go to your husband or wife, if you have one, and to any children, whether you want this to happen or not. If you are in this situation, it would be wise to consider whether making a new will would be a good idea so that the new rules will apply, and you are free to leave your whole estate to any person or persons you wish to benefit.

What property will not be included in my will?

If you own buildings or land outside Guernsey it would be sensible to take legal advice in the country where the property is located to ensure that it is properly dealt with when you die. You can include such property in your Guernsey will,, but the laws of the other country will affect its ownership on your death and so without such advice your will might not achieve the result that you want.

Your will can only deal with property (real or personal) which you own in your sole name. If you own property jointly with another person, it might automatically become the sole property of that person when you die, and your will cannot affect it. For example, two people might own a house together "for themselves and the survivor of them", in which case when one co-owner dies it will become the sole property of the survivor, whatever the will says. However, if joint owners own the house in "undivided shares", the share of the first of them to die will go to whoever that person names in his or her will, or to his or her heirs according to the rules of intestacy if there is no will. This might not be the co-owner. If you are not sure how your jointly-owned property is held, you should look at your title deeds and take advice if necessary.

If you are married and you have a joint bank account with your husband or wife, the bank account will pass automatically to your spouse on your death. Any accounts which are in your sole name will not pass automatically to your spouse and the money in those accounts will form part of your estate and be governed by your will or the rules of intestacy. If you are not married, but you have a joint account with another person, the account might not pass automatically to that other person – if you are not sure you should check with your bank before deciding whether you need to include the funds in that account in your will.

If you are living with your husband or wife or partner at the time of your death, normal household effects will usually be treated as jointly-owned and so will pass to the survivor. However, it is useful to state this in your will and to make specific reference to significant items which you want to be sure will pass to your spouse or partner if there is any possibility of a dispute.

If you die at the same time as another person, such as your husband or wife, or partner, in circumstances where it is not clear which of you died first, the Law presumes that the younger of you survived the older and so the property would pass according to the will or intestacy rules applying to

the younger person. If this is not what is required, the will should make this clear. This will be most significant where the two-people concerned have different heirs.

Do I need to use an Advocate to draw up my will?

It is not legally necessary to use an advocate or other professional adviser to draw up your will. A will is valid provided the formal requirements (see below) are fulfilled. It is not even legally necessary for a will to be typed. However, it is easy to make a mistake which might invalidate your will and that would mean that you would be treated as having died intestate (without a will) and the rules of intestacy would apply instead of what you write in your will.

It is particularly important to have a will professionally prepared in some circumstances, for example

- your family circumstances are complicated (perhaps you have remarried or entered a new relationship and you have children from both relationships whom you wish to benefit)
- you wish to "disinherit" one of your close family members or dependants, perhaps because you think that you have given them enough during your lifetime
- you have a business or your ownership of real or personal property is complicated
- you are cohabiting with someone who is not your spouse or civil partner and you have shared possessions
- you wish to leave property in trust (for example, so that minor children will not be able to access the property until they reach a certain age, or if you wish to benefit an adult person who is for some reason unable to deal with the property themselves).

Although preparation of a will by an advocate or other professional will incur charges, it should be remembered that this will ensure that your wishes will be carried out upon your death and will avoid the risk of potentially expensive, time-consuming and stressful disputes.

The charges for drawing up a will vary and will depend on the complexity of your circumstances. It is worth checking a few firms of advocates to find out how much they would charge for an average will before deciding who to go to. It would be helpful to your advocate and possibly reduce costs if, before you go, you complete a Wills Checklist which you can obtain from Citizens Advice. This allows you to write down basic information such as names, addresses, beneficiaries, what property you own, etc which will save time at the interview.

If you are sure that your family circumstances, and your ownership of property, is straightforward then you can write your will yourself, but you must be careful to follow the rules set out in "**Formal requirements**" below and if you are in any doubt you should get legal advice.

Draft will forms are available commercially or on the internet. These may be used as a guide to writing your own will but should be used with caution and following the rules as to formalities. It is always a good idea to ask a legal adviser to check your will to ensure that it does what you want it to.

Formal requirements

You can only make a will if you are adult (18 or over), and you are capable of understanding what you are doing. A will is not valid if it is made by a person who is incapable of managing his or her affairs or if it is made under pressure from another person.

If there is any question over a person’s mental capacity to make a will it is advisable to seek a medical opinion to reduce the risk of a challenge on this basis.

A will must be in writing and, although it may be valid even if is not typed, it is probably sensible to have it typed if that is possible.

A will must be signed by you using your normal signature, usually at the end, and when you sign your will you should do so in the presence of two adult witnesses who must then also sign their names while you are still present and then add their printed names and addresses (this is not a legal requirement but it helps to identify them).

The witnesses should NOT be –

- your husband or wife or child or grandchild
- a beneficiary of your will or the husband or wife of such a beneficiary.

It is possible to make what is called a "holographic" will which does not need to be witnessed as described above. Such a will must be entirely handwritten, and signed and dated, by the person making it, and evidence confirming the handwriting will have to be given to the Ecclesiastical Court after your death before the will is accepted as valid. However, it is less risky to sign your will in front of witnesses in the manner described above. It is also important to note that a holographic will cannot dispose of real property, only personal property. If you are the owner of buildings or land you can only leave them by will witnessed in the normal way.

It is important to be aware that a will can only be validly altered if the changes are signed and witnessed using the same formalities as the original will i.e. by being signed in the presence of two witnesses who also sign their names. It is possible to make a "codicil" which is a formal document like a will which amends one or more parts of your will and might be useful if you simply want to change the name of your executor, or add or remove a legacy, for example. If you are getting your codicil drawn up by an advocate it will probably be cheaper than starting from scratch; however, if you are writing your own will you might think that it is just as easy to do a new will incorporating the amendments.

What should I include in my will?

The matters which you will probably wish to cover in your will include the following –

- who you wish to appoint as your executor(s) to sort out your estate after your death (see below for further information)
- beneficiaries (persons to whom you wish to leave your property) - see below
- if you have young children, who should be legally charged with looking after them (guardian) if you die before they are adult
- any wishes you might have in respect of your funeral (cremation or burial, any other matters which you wish to include)

Executors

Your executor, or executors, will be people you trust to sort out your estate in accordance with your wishes expressed in your will after your death. It is a good idea to make sure that they are willing to carry out this task before you name them in your will.

Executors can be members of your family, or friends, or they can be professionals, such as an advocate or an accountant, but a professional person will be entitled to charge for his or her services.

There is no bar to an executor being a beneficiary under your will.

It is usual to name more than one executor so that if one of them dies before you, or is unable or unwilling to carry out the administration of your estate, there is an alternative. You might appoint one person and name another as an alternative in the event that the named person is unable to act. Or you might appoint two or more people "jointly and severally" so that they can decide who should do it when the time comes. If all named executors have predeceased you, before you have had the chance to change your will to name another executor, the Ecclesiastical Court will appoint a person to act as your "administrator" to carry out your wishes – this will usually be your surviving next-of-kin.

After your death, your executor will swear an oath (or affirm) in the Ecclesiastical Court and promise to administer your estate in accordance with your will. He or she will then be able to collect in all the assets, pay all the debts and then transfer the balance of your estate to your beneficiaries in the amounts and proportions set out in your will.

Beneficiaries

These are the people or organisations to whom you wish to leave your property and possessions.

You should be careful to name your beneficiaries individually instead of referring to them by reference to their membership of a class e.g. say, "to my children, John and Mary" rather than simply "to my children". It is important to remember that for the purposes of inheritance there is no distinction between children who were born to you during a marriage and any born outside of marriage. This means that you must clearly identify any children or other descendants who you wish to benefit. If you do not, your executor will have to try to find out if there are any other children or grandchildren born during your lifetime which may delay the distribution of your estate, and increase costs, even if there are no other such children or grandchildren.

It is also helpful, especially if you are leaving something to a person to whom you are not related, to give their address and any other means that you might be able to use to identify them e.g. "my neighbour, Janet Smith, of .....".

When you are thinking of leaving money or possessions to individuals it is important to consider what you want to happen to their gift if they die before you. If the deceased beneficiary is your child or grandchild, then any gift to them will be automatically shared between their ‘issue’ i.e. children or other descendants unless you make contrary provision in your will. However, this does not apply to gifts to other persons and such cases if you wish their gift or share of your estate to go to their children, or their husband or wife, for example, then you need to say so. If you do not, then the gift to that person will fall into the "residue" of your estate and his or her family will not benefit from it. So, you might say "I leave £100 to X, but if X predeceases me I wish the money to be shared equally between his children Tom and Susan".

If you wish to leave property, whether real or personal, to a charity, it is a good idea to ask the charity for the correct wording to put in the will to ensure that your intention is clear. This is particularly important where you wish the local branch of a charity to benefit rather than the national organisation. You might also wish to consider the purpose of your gift. For example, if you leave money to a hospice, are you happy for the money to go into general funds or do you wish it to be applied for a particular purpose? Discussion with the charity in question is helpful in ensuring that your wishes will be carried out.

You can make any number of specific legacies of money or possessions. You will also need to identify who you wish to benefit from the "residue" or remainder of your estate once the specific gifts have been paid out. For example, you might want to leave specific sums of money to individuals

and charities and then, after all these gifts and your debts have been paid, you wish the residue of your estate to be shared between your named children or specified other relatives.

Remember that a person who witnesses your will cannot be a beneficiary. If a person who is named as a beneficiary is a witness to your signature, that person cannot receive the legacy. However, it will not invalidate your will generally.

Other matters

It is usual for a will to contain clauses dealing with the following matters:

- a clause clearly revoking all previous wills and testamentary dispositions of Guernsey real property (or of your personal property, as the case may be) which you might have made (even if you have not made a will before, this makes it clear)
- a clause directing your executor to pay your just debts, funeral and testamentary expenses.

You might also wish to consider including the following:

- a clause appointing guardians of your children should they be minors at the date of your death (you should make sure that you ask the people you nominate before you include them, and it is a good idea to appoint more than one, "jointly and severally", so that one can act alone or they can act jointly)
- a clause stating any particular wishes you might have with regard to your funeral arrangements and, in particular, if you wish to be cremated or buried.

Where should I keep my will?

If your will is drawn up by an Advocate, you can ask for the original will to be stored safely at the Advocate's offices and keep a copy at home. Alternatively, you can keep the original yourself in a safe place at home where you think it will be easily found after your death. It is a good idea to tell your next of kin, and your executors if different, where you have put it.

Amending your will

Minor amendments to a will may be made by a document called a 'codicil', which must be signed and witnessed in the same way as the original will. Amendments may be made on the will itself, but the same formalities must be employed and if done incorrectly would jeopardise the validity of the entire will. An alternative is to revoke the will and write a new one.

Revoking your will

If you have made a will it is important to review it from time to time to ensure that it still complies with your wishes. If you get married or have children, or if a relationship comes to an end, or you buy a house, or for a variety of other reasons, your will might need changing. You can physically destroy the original signed will and preferably also destroy any copies in case anyone finds one after your death and does not realise that you have revoked the will. However, the best way to revoke a will is to make a new one which includes a statement revoking any wills you might have made previously. A Guernsey will is not automatically revoked by marriage or divorce or any other change in circumstance and so you should always be ready to consider whether an existing will still suits your circumstances and wishes.

call us on

24 22 66

For free, friendly and completely confidential advice on:-

Separation or divorce

Employment issues

Petty debts

Housing problems

Guernsey wills

Scams

Unmanageable debt

. . . and much more

General disclaimer

The purpose of this note is to provide general guidance. While it is believed to be accurate and up to date, it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. Users of this guidance note are encouraged to exercise their own skill and care in relation to the information contained in this guidance note and to obtain relevant professional advice.

Bridge Avenue The Bridge St Sampson Guernsey GY2 4QS

Open Monday, Tuesday, Thursday 9.30 am to 4.00 pm
Wednesday 9.30am to 6.30pm and Friday 9.30 am to 12.30 pm

citizensadvice.org.gg

June 2019