

COLLAS DAY | PRIVATE CLIENT

Property Services

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It is commonly the case that people put off making a Will or are slow to amend their Will as circumstances change. The risk they run is that, on their death, their estate is not disposed of in the way they would wish and loved ones are not left as securely provided for as the deceased intended.

For people who are not familiar with the details of Guernsey law relating to inheritance, particularly those coming here from another country, there are potential pitfalls and constraints to be avoided when making a Will.

Changes to Guernsey's Inheritance Laws, which have been in effect since 7 May 2008, have introduced new provisions which affect how different heirs are treated.

Dealing with these issues now can save loved ones anxiety, hardship and expense later.

## Who is this relevant to?

Anyone who lives in Guernsey or owns property ('real estate') or has personal estate in Guernsey. For the purposes of this leaflet, Guernsey means the island of Guernsey rather than the Bailiwick.

If you have connections with Sark or Alderney you will need specific advice in relation to these jurisdictions.

## Estate

There are two categories of 'estate' (what someone dies owning and can leave to others). These are personal estate (sometimes referred to as 'personalty') and 'real' estate ('realty'). Property in Guernsey is dealt with in a distinctive way. Property elsewhere is not subject to Guernsey law.

## Personal Estate

Your personal estate covers all personal assets, monies, shares, proceeds of policies of life assurance and so forth and all other assets apart from real property in Guernsey.

## Real Estate

Your real estate includes all land and buildings in Guernsey.

There are special rules and restrictions as to who can be left Guernsey Real Estate and an advocate's advice is always necessary.

## Making a Will

It is possible to deal with your estate either by separate wills (one dealing with personalty and the other with realty) or by a combined will dealing with your entire estate. An advocate will be able to explain the implications of either course of action.

## What's the next step?

Everyone's circumstances and wishes differ and those differences will determine the action you should take. The impact of the law relating to Wills and inheritance can be substantial and complex to understand. An advocate with expertise in this area of law will be able to bring the issues that affect you to your attention quickly and reliably. Before meeting with an advocate it is helpful to gather information and think through certain issues. Your meeting will be more effective if you do.

## General Objectives

What do you want to achieve through your Will? Whom do you wish to benefit? Are there outcomes you wish to avoid?

## Specific Bequests

Note down a list of any particular items or amounts to be left to individuals and any limits or restrictions. For example, if a bequest is to be made to Mr X, then consideration should be given as to whether the bequest is to be made to X's wife or children should X have died, or whether the gift is to fail completely.

You should consider whether specific bequests should take effect immediately or only on the death of your surviving spouse.

## Executors

An Executor is a person who will deal with winding up your personal estate on your death and distribute your bequests. Who should act as Executor? It is common to appoint your surviving spouse or, on the death of the surviving spouse, a member of the family or a professional person (who will charge for the service) such as an advocate or accountant. Collas Day's trust company, Guernsey Trust Company Limited, accepts such appointments and its charges can be provided upon request.

## Special considerations for parents

### Trust Provisions

Is it intended that a child's share should be tied up in trust until a specified age? If so, then until what age (18, 21, 25 ...)?

### Guardians

Is it intended to appoint guardians to any children who could be under 18 when you die? If so, who would you nominate?

### Personal Details

These are immediately relevant where Guernsey real property forms part of your estate.

- A The full names (including any middle names, maiden names and former names) and address of you and your spouse or partner;
- B The full names and dates of birth of any children;
- C The full names and dates of birth, or ages, of any grandchildren.

## Domicile

Were you born in Guernsey?

If you were not born in Guernsey what month and year did you take up permanent residence in Guernsey?

## Other Matters

When you go on to make a Will it will be necessary to provide precise details of names, addresses and other personal information of beneficiaries, relatives, executors and so on, to avoid ambiguities.

You will also be able to specify other matters in your Will such as giving directions about your funeral and the disposal of your body.

## Will Check List

To help you work through these issues Collas Day provides a Will Check List for you to set out your intentions, instructions and other information. This is available from Manor Place Reception or can be downloaded from our website at [www.collasday.com](http://www.collasday.com)

## Signing a Will in Guernsey

In order to be valid, a Will must normally be typed or in handwriting.

A written Will must be signed by the person making it in the presence of two witnesses. An exception to this rule is a Will disposing of personal estate entirely handwritten, signed and dated by the person making it.

There are rules governing who can be a witness and the relationship between a witness and beneficiaries of the Will. These rules seek to ensure the independence of witnesses.

If you have been taking the advice of an advocate on the terms of your Will the advocate will ensure that the Will is made valid.

If you choose to make a separate Will of Realty, such a Will may still be witnessed by two Jurats of the Royal Court, although this is no longer a necessity.

## Altering your Will

A Codicil (a supplementary document to a Will) is subject to the same formalities for execution as a Will.

You may choose either to amend an existing Will by way of a Codicil or make a new Will depending on how fundamentally you wish to change your bequests and upon your personal circumstances.

You are also free to leave non-binding directions and recommendations for executors and heirs

## Conclusion

If you have estate of any worth and care who will inherit it but have not made a Will you should do so.

An initial meeting with an advocate will bring you up to speed on the issues you have to address.

Once you have made a Will you have secured peace of mind for yourself and your loved ones.

Making a Will is a serious business - but it need not be difficult or expensive.

## Note

*This leaflet is only a guide and introduction to the provisions of Guernsey Law; it is not exhaustive or definitive and specific advice on the matters to which it refers should always be obtained.*

*To make an appointment with an advocate, please call 723191.*



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