

Now more than ever Guernsey homeowners need an up-to-date and valid will

Martyn Baudains, partner in Ogier's property department in Guernsey, discusses the importance of updating your will during the COVID-19 pandemic.

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Over the last ten years or so significant changes have been made to Guernsey's laws of succession, the effects of which may have been overlooked by some homeowners. To ensure that your property passes in accordance with your wishes, and to avoid your relatives having to make applications to court, you really should make a will.

The legal formalities for executing a will in Guernsey are much the same as they are in England and are intended to prevent fraud and undue influence. A Will must be in writing, and it must be signed, or the signature acknowledged, by the testator in the presence of two or more witnesses who are present at the same time. The witnesses must then sign the will in the presence of the testator. Normally those requirements do not cause too much of a problem, but in the context of COVID-19 they become quite challenging, but still possible.

The requirement that the will must be signed, or the signature acknowledged, "in the presence" of the witnesses is essential to the proper execution of the Will. We know from court cases in the past that being "in the presence" means that the witnesses must physically be together with the testator and they must be able to see the testator's signature - it seems unlikely that the courts would uphold a will witnessed over one of the popular video apps such as Zoom or Skype;

Under current States of Guernsey directions the testator and the witnesses must keep at least two metres apart. Three people assembling together for the purpose of executing a Will in accordance with the law would need quite a large space, and would have to be careful about sharing pens and handling the actual document.

One solution we have devised is that the testator stays inside their house and the witnesses remain outside standing two metres apart looking in through a window (perhaps speaking to each other over the phone); once the Will has been signed, the document is passed out through the letter-box and the witnesses then sign the Will in sight of the testator. Another option is for the testator to remain in a car and for the witnesses to view the signing through the car windows, the Will is then passed through a gap in the window and the witnesses then apply their signatures leaning on the bonnet of the car in view of the testator.

The information and expressions of opinion contained in this guide are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

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