

The differences between the Jersey and English processes on probate and wills of real estate

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Jersey is a separate jurisdiction to England with a separate body of law. In particular, the law of inheritance and probate differs significantly from that of the UK and creates responsibilities for the executors and administrators of those who leave movable assets in Jersey on their death.

Probate describes both the grant and the process of obtaining it. A grant of probate (a Grant) is issued to the executor named in a will, or their substitute, where the individual named is unable, unwilling or renounces. Where there is no will, a surviving spouse or civil partner or (where there is no surviving spouse or civil partner) the eldest son (or someone appointed by the Greffier) is entitled to take out a Grant of Letters of Administration (Letters) to recover or receive any part of the deceased's Jersey movable estate.

Where the deceased leaves movable estate in Jersey, a Grant or Letters is required before the assets can be released to the executors or administrators. This applies whether or not the deceased was domiciled in Jersey. There is only one exemption, namely where the deceased is not domiciled in Jersey and the movable estate is worth less than GBP10,000. However, the holder of the Jersey asset may still insist upon a Grant or letters prior to release.

An application for a Grant or Letters is made to the Probate Registrar at the Judicial Greffe (the office of the clerks of Jersey's Royal Court). An oath is taken by the executor/administrator and all documentation submitted to the Registrar is retained, with original wills and copy grants being open to inspection.

No death duties, estate duty, inheritance tax or capital gains tax are payable in Jersey. Stamp duty is payable under article 5 of the Stamp Duties and Fees (Jersey) Law 1998 and is assessed based on the net value of the estate for Jersey domiciliaries, and the value of the net Jersey estate only for non domiciliaries, as at the date of death, at 0.5 per cent for the first GBP100,000 and 0.75 per cent thereafter up to a maximum stamp fee of GBP100,000. The Probate Registrar also charges an application fee of GBP80 if through a legal office, and more for a personal applicant.

The family, with assistance from the Registrar, will often deal with the estate of a Jersey domiciled deceased individual. The basic documents required include the original will, death certificate and a valuation of the net assets at the date of death. Legal assistance may be sought where the estate is sizeable, the family feel unable to deal with the situation or there is a risk of dispute.

A fast-track process is available when dealing with Jersey assets belonging to a deceased domiciled in England, Scotland, Wales, Northern Ireland, Isle of Man or Guernsey and where a valid Grant has been obtained in that jurisdiction. An oath must be sworn by the person who has obtained the Grant/Letters. The Grant, the will and any codicils must each be sealed by the Royal Court and certified on the reverse by the Registrar as true copies of the originals. The Probate Registrar will not accept documentation where the sealing cannot be felt on every page. The Grant is limited to the Jersey assets and is produced and used to access them.

Where the deceased has not been domiciled in Jersey or the UK but has left Jersey assets, the Grant is issued in the country of domicile and must be re-sealed before any Jersey assets can be accessed. An affidavit of Foreign Law may be required if the will does not conform to Jersey Law, or where there is no will. All non-English documentation must be accompanied by an official translation. A power of attorney enables a person (often an advocate) to act on behalf of the executor. The attorney takes an oath, and the Grant, restricted to Jersey estate, is used to uplift or transfer assets in accordance with instructions.

Will disputes

A will can be attacked on various grounds including incapacity, failure to adhere to applicable formalities, illegality, fraud and coercion. Jersey law still imposes forced heirship in relation to movable estate, so a will of movables of a Jersey domiciliary can be subject to a claim for reduction ad legitimum modum where a surviving spouse/civil partner or child does not receive their lawful entitlement. The will is not set aside, instead the entitlement is provided for and the testamentary dispositions are reduced.

The prescription period for both nullity claims and reduction ad legitimum modum is a year and a day from the death. An

additional remedy is a claim that rapport a la masse be made. This is a claim by one or more heirs against another (not an attack on the will) which is made within one year and a day from death.

Anyone making a will must be of sound mind, and at least 18 years of age or be married (Jersey law allows people to be married at the age of 16, but those aged between 16 and 18 must have the written consent of their parents or guardians).

A will must be signed or acknowledged in the presence of two witnesses who must be present at the same time to attest (witness) the will. No witness can benefit under the will they witness or even be a close relative of either the person making the will or someone taking a benefit under the will.

A will can be amended as often as desired by signing a document called a codicil – but the procedures for correctly executing a codicil are the same as the procedures for creating a will, and an incorrectly executed codicil will be considered invalid. Wills should be revised as personal circumstances change, for example, when people get married or divorced or have children.

Cancelling a will

Revocation may take place at any time prior to the death of the person making the will. Revocation can be carried out by destroying the will, executing a further will or by the testator evidencing an intention to revoke, for example by writing 'this will is revoked' on the document. We would advise anyone to seek legal advice before revoking a will or part of it so that the consequences of so doing are known before the act of revocation is carried out.

A will dealing with immovable property in Jersey must be executed in accordance with the strict formalities required of Jersey law. If it is not, it will be invalid and ineffective. There are certain peculiarities of Jersey law which may not be complied with if the will is not prepared by Jersey lawyers. The main points are that one of the witnesses must be either an Advocate or Solicitor of the Royal Court, a Crown Officer or a member of the Jersey States if the will is executed in Jersey, or a notary public if the will is executed outside of Jersey. Further the will must be read aloud in the presence of the person making the will and the two witnesses.

Jersey law stipulates that in relation to immovable property a surviving spouse (which includes, in this context, husbands, wives and civil partners but not unmarried or 'common law' partners) is entitled by law to life enjoyment of one-third of it.

If there is no will, or if the will is found to be invalid because it does not comply with Jersey law, the Island's legislation dictates the following:

a single person's immovable estate shall be divided equally between his or her heirs (usually brothers or sisters);

that the immovable property of a single person with children will be divided between them in equal shares;

that the immovable property of someone who leaves behind a wife or civil partner but no children shall go to the surviving wife or civil partner;

and that the immovable property of someone who dies leaving a wife or civil partner and children shall be divided equally between the surviving partner and the children, and that in each case the surviving partner will have lifetime enjoyment of the matrimonial home.

Confusion can arise where the families of those with assets in the Island, and practitioners dealing with those estates, are not familiar with Jersey law. They may assume that Jersey is part of the United Kingdom (which it is not) and that a UK Grant will suffice, and be unaware of the requirement to go through a separate probate process in Jersey itself, to obtain a Jersey Grant.

It is possible that, as a result of this lack of awareness, Jersey movable estate may come to be dealt with without a Grant or Letters being obtained, where the custodian of the asset is also unaware of the requirements imposed by Jersey law.

The Probate Jersey Law (art 23) provides that anyone who takes possession of or who in any way administers any part of a deceased's moveable estate without obtaining a Grant or Letters is guilty of intermeddling and liable to up to 12 month's imprisonment and/or a fine. Although prosecutions are rare, the consequences are serious, and should ensure that appropriate advice is taken and the requisite applications are made.

Although the relationship between Jersey and the UK is in some senses complicated, in a legal sense it is very clear – the two are different jurisdictions, with separate bodies of law. This has an impact on inheritance and probate issues, and non-Jersey practitioners can minimise complexities and delays by taking advice and guidance on Jersey law at an early stage. In most cases, the assistance of a Jersey lawyer will produce a cost effective and faster outcome.

This article first appeared in STEP Journal.

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