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domiciliaries

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Offshore Laws

BERMUDA
BRITISH VIRGIN ISLANDS
CAYMAN ISLANDS
GUERNSEY
JERSEY

1898

Founded

About Carey Olsen

Carey Olsen is a leading offshore law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey from a network of nine international offices.

We are a full service law firm advising on banking and finance, corporate and M&A, investment funds and private equity, trusts and private wealth, dispute resolution, insolvency and property law. For further information please visit careyolsen.com.

Our Wills service

We provide a comprehensive Will drafting service for clients who are domiciled outside of Guernsey and Jersey but who have movable assets situate in the Islands. Guernsey and Jersey movable assets can include bank accounts in the Islands, stocks and shares in companies incorporated in, or with their registers based here in the Islands, rights under contracts governed by the law of the Islands and other tangible assets.

Guernsey and Jersey are not part of the United Kingdom and are separate independent jurisdictions for probate purposes.

Do I need a Guernsey Will?

It is not essential for you to have a separate Will to cover your Channel Island assets especially if you already have a validly executed Will which covers your entire estate including Guernsey and Jersey. However, there are benefits to having a separate Channel Islands Will.

When a person dies leaving assets in the Islands it is likely the Channel Islands asset holder will require a Guernsey and/or Jersey Grant of Probate or (if the deceased did not leave a Will) Letters of Administration to enable them to release the assets to the Court appointed personal representative or heirs of the deceased.

In Guernsey, the person entitled to apply for the Grant of Probate or Letters of Administration is required to make the application by making a personal appearance at the Ecclesiastical Court in order to swear the necessary oath. If the personal representative is not resident or unable to fly to Guernsey in order to do so, the Ecclesiastical Court can prepare a postal oath to be sworn outside of the Island before a notary public or someone authorised to administer oaths.

In Jersey, the person entitled to apply for the Grant of Probate or Letters of Administration is required to make the application by making a personal appearance in the Royal Court of Jersey in order to swear the necessary oath. If the personal representative is unable or unwilling to fly to Jersey in order to do so, they will need to appoint a local agent to attend the Court appointment on their behalf.

If there is a Guernsey Will that appoints a local executor, this process is much easier and is therefore a more time and cost effective way of dealing with the Guernsey estate. As such you may wish to appoint our executorship company, Carey Olsen Client Services (Guernsey) Limited as the executor named in the Will. If our executorship company is appointed it means that if we hold the Will, we only need a Death Certificate and confirmation of the value of the deceased's Guernsey assets (or in the event there is a Guernsey Will and this deals with the worldwide estate, details of these assets) together with written confirmation from at least one local institution which holds the deceased's assets that a Guernsey Grant is required.

If there are assets in Jersey as well as in Guernsey, Jersey Probate will also be required. Our Jersey office will be able to assist in obtaining Jersey Probate in these circumstances.

If a person passes away leaving only one Will covering his worldwide estate which is not a Guernsey or Jersey Will, the normal procedure is for this to first be proved in the court in the relevant country of the deceased's domicile. The original Grant (or equivalent) issued by this court or a court sealed and certified copy needs to be obtained for use in the Guernsey and/or Jersey application. A number of other documentations will also be required before the application can be made. Whilst the Guernsey and Jersey probate procedure is exceptionally efficient, unfortunately, not all jurisdictions enable the personal representatives of the deceased to obtain probate in such a short time frame and, therefore, if there are assets in the Islands these cannot be accessed until the original probate application has been completed. This adds time and expense to the probate procedure.

If a person has multiple Wills, these can be proved in the relevant jurisdictions concurrently which again can make the administration of the estate easier and quicker allowing access to those assets in the relevant jurisdictions, assets which may be needed by the deceased's family to pay outstanding bills of the deceased or even in their ongoing day to day affairs.

What can the Will cover?

A Will prepared by Carey Olsen can cover your assets in both Guernsey and Jersey. It can also be extended to cover other offshore jurisdictions such as the Isle of Man or Cayman Islands and, indeed, may deal with your worldwide estate should you so wish. If you wish us to extend the Will further to cover assets situate in jurisdictions outside your country of domicile, we can do so, however, you should be aware that the Will may then need to be submitted to probate in each relevant jurisdiction in which the assets are based.

If you have immovable property (real estate) abroad, we strongly advise that you instruct a lawyer qualified in the law of the country in which the property is located to prepare a Will to cover that property. The succession of immovable property is governed by the law of that country in which the property is located rather than the law of your country of domicile so it is important to ensure the Will is valid to cover this.

Domicile

It is advisable to record your legal domicile in any Will. If you are domiciled in Australia, Canada or the United States of America, we need to know which state or province you are domiciled in.

Your domicile for probate and legal purposes may be different from your residence.

Your domicile is important as the rights to inherit moveable assets are usually governed by the provisions of the law of a person's domicile and will also determine the validity of claims against your assets after you die. The laws of your jurisdiction of domicile may also determine the taxes that are payable on your worldwide estate. In cases of doubt, expert legal advice may need to be obtained.

The substantive provisions of your Will (i.e. who is entitled to inherit) must comply with the law of your domicile and we will work with legal advisers in that jurisdiction to ensure compliance.

Executors

An executor is the person named in the Will and who is charged with the responsibility of collecting in your assets, paying any debts and distributing the balance of the estate to your beneficiaries. You may appoint one or more individuals to be your executors and they may be members of your family and/or beneficiaries of your Will and/or professional persons in your own jurisdiction.

Carey Olsen Client Services (Guernsey) Limited is our in-house executorship company and provides an independent executorship service if required. If the Will is dealing with your Channel Island assets, it is recommended that we are appointed as executor to simplify the process of obtaining probate in the Islands.

In the event your named executor should at the time be unwilling to take up its appointment, they may wish to appoint Carey Olsen Client Services (Guernsey) Limited to act as their attorney to administer the estate on their behalf.

Beneficiaries

We require the full names and addresses of all your beneficiaries, their ages and dates of birth if they are under 18 and the maiden names of any married women or former names of anyone mentioned in the Will. Your beneficiaries may consist of individuals, charities, foundations, companies and trustees of a trust.

It is usual to name one or more primary beneficiaries (such as a spouse, parents or siblings) and then substitutional beneficiaries (such as children) who will inherit in the event of your primary beneficiaries predeceasing you.

Changes of address, or names on marriage, of the testator or beneficiaries do not require the Will to be updated, but it is useful for us to be informed in order to ensure our records are kept up to date.

Assets

It is useful for us to have a list of your assets and where they are situated. We do not list these in your Will as they are subject to change but they are a useful starting point when it comes to administering your estate.

Any assets that are in joint names will normally pass automatically to the survivor but without Wills in place it can be uncertain who inherits if joint asset holders die together, for instance in a common accident.

Costs

Our fees for drafting a Will are time-costed at the fee earners hourly rate and will vary from case to case. Please contact us for more information.

Storage of Wills

We have a safe custody facility in our offices where we can keep your Will at no extra charge. It is inadvisable to store your Will at home where it could get lost, stolen or inadvertently destroyed.



Key contacts

For further information or professional advice please contact our Wills Service team below:



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