

Executing wills in the Bailiwick of Guernsey during the coronavirus pandemic

Service area / [Trusts and Private Wealth](#)

Location / [Guernsey](#)

Date / [March 2020](#)

Islanders are concerned about making new wills at this difficult time, and may not be sure how they may execute a will whilst adhering to the requirements of the States enforced lockdown.

Section 21 of the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law 2006 sets out the requirements for the valid completion of a will in Guernsey. Similar legislation applies in Alderney¹. It states:

- that the will must be in writing² and signed by the testator or by some other person in their presence and by their direction;
- it must appear that the testator intended by their signature to give effect to the will;
- the signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- each witness must either attest and sign the will, or acknowledge their signature in the presence of the testator (but not necessarily in the presence of any other witness);
- any person who has attained the age of 14 years, and who is not the spouse or a descendant of the testator, is allowed to witness the execution of a will; and
- any gift in a will to a person, or to the spouse of a person, who attested the execution of the will, shall be void and of no effect.

Thus only those outside the family, over the age of 14 and not beneficially entitled under the will can safely witness the testator's signature.

We are being asked whether it is possible to witness wills by Skype or FaceTime. This is not possible under the current legislation. The witnesses must be in the "presence" of the testator. That does not mean that social distancing or quarantine rules need to be breached. All that is required is for the witnesses to be able to see the testator sign the will and vice versa. This can be from a safe distance.

There is an old English case *Casson v Dade* (1781) 28 ER 1010 in which a will was upheld where the witnesses signed the will inside the offices of the lawyer whilst the testatrix was in carriage outside but in line of sight. There is no local case law on this point but as a matter of practice witnessing the will through a window may be the best solution.

Care will need to be taken handling the will itself as it is thought that the virus could survive for 12 hours or more on the paper itself. Thought will also need to be given to ensure that there is no contamination by sharing pens.

It is also possible for someone else to sign a will on behalf of the Testator at his direction. This may be one of the attesting witnesses, and they can either write the testator's name or sign their own name on the testator's behalf. If this is done, there

¹ Separate rules apply in Sark. Please contact us for details.

² Nothing in this law affects the making or validity of a holographic will (entirely hand written and signed by the testator without the necessity of witnesses) of personal property (everything other than land and buildings) pursuant to Article 2 of the *Loi relative aux Testaments de Meubles* of 1847. Holographic wills are still valid provided that they are entirely written, dated and signed by the Testator.

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should be a clear record of this being done both on the face of the will and by other contemporaneous evidence. In these days of smartphones consideration could also be given to recording the process on video.

Advocates and their staff are classed as “Essential Workers” under the lockdown regulations and so are able to travel to ensure that wills are properly executed. Carey Olsen Advocates and colleagues remain on hand to advise with any issues relating to wills, probate, powers of attorney etc. which arise at this difficult time. Please do not hesitate to contact any one of the Wills and Estate’s team.



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