

# The Importance of Making a Will of Real Estate



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It is important that all prospective purchasers of property consider what will happen to their property on their death.

If the Purchasers do not make a will of real estate the property will be inherited by their heirs according to Guernsey law. Such heirs may not be those who they would have wanted to inherit their property. Time spent with an Advocate, before they purchase, will ensure that they are fully aware of the provisions of Guernsey law.

Under Guernsey inheritance law illegitimate children, in the absence of a will of real estate, will not inherit their parents' Guernsey real estate.

## Who Can Inherit Real Estate Under Guernsey Law?

The current law is the Law of Inheritance, 1954.

Under Guernsey law, if a person has no descendants (children or grandchildren) such person has the capacity to make a will leaving his or her real estate to any person, or indeed to a number of persons or charities.

If the person leaves a surviving spouse, the spouse is entitled to enjoy until death or remarriage one half of the deceased spouse's real estate. Nowadays most real estate in Guernsey is owned by spouses "jointly and for the survivor", and thus life enjoyment is a relatively rare occurrence. If a person has descendants, under his will he may leave his real estate to any one or more of the following:-

1. Surviving spouse;
2. Descendants;
3. Illegitimate children and their descendants;
4. Step-children and their descendants;
5. Illegitimate children of his descendants;
6. Illegitimate children of his illegitimate children;
7. Illegitimate children of his step-children.

If a person named as a beneficiary in a will dies before the maker of the will and the maker does not change his will, and if the deceased beneficiary dies leaving issue living at the time of death of the maker of the will, the gift to such beneficiary will not be null and void but takes effect as if the death of such beneficiary had happened immediately after the death of the maker of the will, unless a contrary intention is expressed in the will - this is known as "representation".

The maker of a will can also grant life enjoyment to one or more of the persons mentioned above. Advice needs to be taken, and carefully considered, before such life enjoyment provision is drafted. A life enjoyment carries with it burdens as well as benefits. For example, a person with a life enjoyment, known as a life tenant or usufructuary is under an obligation to keep the house over which the life enjoyment is granted in good repair. There are limits on the repairing obligations, because the life tenant is not liable for what are called "grosses réparations" (major repairs).

## Intestacy

This is the position where the person dies without having made a will.

If the person left a surviving spouse, such spouse will have a life enjoyment of the deceased's realty as explained above. Subject to such life enjoyment, the real estate will automatically vest in the heirs of the deceased. Such heirs are as follows (with heirs in one group taking before the next group):-

1. If the deceased left children (issue), they inherit the real estate equally (with remoter issue representing a predeceased parent).

2. If the deceased had no descendants but left brothers and sisters, such brothers and sisters inherit the deceased's realty equally. If a brother or sister died before the deceased, leaving children, those children will inherit the share in the deceased's realty which their parent would have inherited had he or she survived the deceased (again "representation"). However, this is subject to a peculiarity of Guernsey law which provides as follows:-

- (i) The realty will be inherited by the siblings of the deceased equally with representation, without limitation ("à l'infini") by nephews and nieces and remoter issue where a sibling has predeceased, provided that the realty is what is known under Guernsey law as a "propre" (which means inherited realty).

- (ii) Representation without limitation ("à l'infini") will apply if the realty is what is known as an "acquêt" (which means realty acquired other than through inheritance), but only if the descendants of the predeceased sibling share the real estate with an aunt or uncle. If they do not, representation is not permitted, and the real estate will be shared equally by those persons who are closest in degree to the deceased.

3. If there are no descendants or brothers or sisters, or their children, the real estate ascends to the deceased's parents.

"Propres" will go back up the line from whence they were inherited. For example, if the deceased inherited real estate from his father, it will go to his father or his father's next of kin.

"Acquêts" will go to the paternal line in preference to the maternal line in parity of degree. Therefore, if there are surviving parents, the real estate will go first to the father. If only the mother survives, she will inherit it rather than its going to the father's next of kin.

4. If no heirs can be found, the real estate will vest in the Crown.

5. Any child or remoter issue who is illegitimate will not be entitled to any share in the deceased's real estate, UNLESS, he has been specifically named as a beneficiary in the deceased's will of real estate. This provision of Guernsey law may work hardship because of the increasing numbers of illegitimate children in Guernsey, and the possibility that a considerable number of property owners in Guernsey, who have illegitimate children, may not have made a will.