



 **VIBERTS**

NON JERSEY DOMICILED  
PROBATE & STAMP DUTY

# Welcome

Viberts' Personal Law Department is one of the Island's leading providers of wills and probate services. Our team has a wealth of experience and our clients can be confident in the knowledge that we will provide a sensitive and effective service, giving peace of mind. We focus on meeting the needs of our clients. People matter to us.

## About this probate brochure

This brochure is meant to act as a guide to understanding how to obtain a Grant of Probate if you are not domiciled in Jersey but you have assets in Jersey.

We offer a tailored approach to each of our clients. As a result of this, we recommend that you read the information enclosed as a starting point and then contact us to discuss your circumstances and how we can help you find the right solution.

Viberts aims to give you peace of mind, whilst offering a professional and tailored service.

If you have any questions, however small, about managing your own or a loved ones' affairs then please call our personal law team for an initial 30 minute free consultation. Contact us:

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## Probate and estate administration

Viberts offer a professional executorship service through our in-house executor company, Viberts Executors Limited, for both individuals and professionals both locally and offshore.

For further information please refer to our Professional Executorship Services section of this brochure.

## Executors and administrators

Under Jersey law it is only necessary to appoint an executor or administrator to deal with a deceased's movable estate (personal estate). This includes bank accounts, investments, jewellery, share transfer properties and cars etc. Immovable estate (or real estate) is not dealt with by an executor; the will of immovable estate is instead registered in the Public Registry, giving title of the property to the devisees. Immovable estate includes freehold property, including everything built on land, leases over 9 years and the benefit of certain mortgages.

When a person dies, their estate is categorised as either testate, if they have made a will, or intestate if they have not.

If a will is made, it is usual for an executor to be named in it to administer the estate when the testator (person making the will) dies. If the deceased did not make a will, then an administrator is appointed to administer the estate by the court.

The job of the executor and administrator is identical. They both have an obligation to gather in all the deceased's movable assets, pay any debts and funeral expenses and then distribute the remainder of the estate in accordance with the provisions of the will, or in the absence of a will, in accordance with the law.

In some countries the concept of an executor and an administrator does not exist. In these circumstances the beneficiaries named in the will, or those entitled to inherit under the law, must obtain written confirmation from lawyer in the place of the deceased's domicile to confirm who is entitled to administer the estate of the deceased. In some cases this can be more than one person and is not always the beneficiaries named in the will.



# Obtaining probate

Under Jersey law probate must be obtained if the deceased was domiciled outside of Jersey and held assets of £10,000 or more. If the assets held in Jersey are less than £10,000 then the asset holder, such as the bank or investment company, has the discretion to accept the foreign probate, or equivalent, together with an indemnity from the Executor.

If a grant of probate is required then a full Jersey probate application will be required, unless the deceased died domiciled in England, Wales, Scotland, Northern Ireland, the Isle of Man and Guernsey, and probate has already been obtained (the fast track option).

If obtaining probate for a non-Jersey domiciled estate in Jersey, the executor must either attend the Jersey Probate Registry in person, or as is usually the case, appoint an attorney to apply on their behalf. Viberts in-house executorship company, Viberts Executors Limited ("VEL") regularly act as attorney in this way.

## Non-Jersey domicile - foreign jurisdictions

If the deceased died domiciled in England, Wales, Scotland, Northern Ireland, the Isle of Man or Guernsey, and probate or letters of administration has already been obtained in the place of domicile, then it is possible to obtain a Jersey Grant of Probate or Letters of Administration by "resealing" the existing grant. This process is known as a "fast track" application.

A fast track application allows a Jersey Greffier's certificate to be annexed to a court sealed and court certified copy of the grant and will, or letters of administration, instead of a separate new grant being necessary.

The following documents will usually be required when making a fast track application for probate;

- A Court sealed and Court certified true copy of the Grant of Probate or Confirmation (issued in the UK or British Isles), or letters of administration;
- A Court sealed and Court certified true copy of the will;
- A certified true copy of the death certificate;
- An Oath, signed by the appointed executors or administrators; and
- Copy of any renunciations or death certificates for any named executor in the will not appointed.

When instructed, Viberts would advise you about these documents and assist in the drafting where required.

If it is not necessary to obtain probate in the deceased's place of domicile, but a Jersey grant of probate is still required, then it will be necessary to make a full probate application instead of using the fast track procedure. For further information on full probate applications please see below.

# Foreign jurisdictions domicile

If the deceased died domiciled outside of Jersey, it is necessary to make a full probate application.

In some instances it is not necessary for probate to be taken out in the place of domicile and there is no requirement in these circumstances for probate to be obtained in the country of domicile before a probate application can be made in Jersey. If however probate in the country of domicile is required, then the executor or administrator must first obtain this probate before a probate application in Jersey can be made.

If probate, or the equivalent, has already been granted in the place of domicile then the following documents will usually be required in order to obtain probate in Jersey:

- A court sealed and court certified true copy of the foreign grant and will, or letters of administration (for certain jurisdictions these requirements may differ and further advice is available upon request);
- A certified true copy of the death certificate;
- A signed power of attorney from the person entitled to administer the deceased's estate;
- Official English translations, if applicable.

Where it has not been necessary to obtain probate in the country of domicile then the requirements are very similar however the following documents will also be required:

- The original will;
- Affidavit as to the law of the deceased's domicile, if applicable.

In addition, stamp duty will also be payable. Please see page 6.

When instructed, VEL would advise you about these documents, and assist with the drafting where required.

# Registering a will of Jersey Immovable estate

In order to gain title to immovable property in Jersey it is necessary for the will of immovable estate, which gifts the property, to be registered in the Jersey Public Registry.

In contrast to movable property, an executor is not appointed to deal with the immovable property of a deceased and it is therefore the devisees of immovable property who are responsible for registering the will of immovable estate and obtaining title to it.

If there is only one will covering both movable and immovable estate, then it is necessary for the executor to obtain probate in Jersey first and obtain an authenticated court copy of the will. The authenticated court copy will can then be registered at the Public Registry.

Viberts offers assistance in registering wills of immovable estate and can also offer advice regarding stamp duty, sale of the property or inheritance of immovable property under intestacy.

## Stamp duty and how this may affect your estate

In Jersey there is a stamp duty which may be payable by those who inherit your assets on your death. Jersey stamp duties are usually considerably lower than inheritance tax or stamp duty in other jurisdictions.

Jersey law categorises assets into movable and immovable, and different stamp duty regimes apply to each. Movable assets include jewellery, furniture, bank accounts, shares (including those that relate to share transfer properties) and investments.

### Movable stamp duty

For the purpose of calculating stamp duty on your net movable assets at death, the value of the movable assets is rounded up to the nearest £10,000. Stamp duty is paid when the executor or administrator of the estate applies for probate or letters of administration.

The stamp duty is calculated as follows:

Does not exceed £10,000	No stamp duty payable
Does not exceed £100,000	£50 per £10,000 or part of £10,000
Exceeds £100,000 but does not exceed £13,360,000	£500 in respect of the first £100,000 plus £75 for each additional £10,000 or part of £10,000
Exceeds £13,360,000	Stamp duty is capped at £100,000

An additional charge of £80 is payable in the case of all professional applications.

### Immovable stamp duty

Occasionally, persons domiciled outside of the Jersey own immovable property in Jersey. Immovable assets include land and everything built on it, leases for over 9 years, flying freehold property and the

benefit of certain mortgages. Stamp duty is payable on the registration of a will of immovable estate in the Public Registry and is calculated on a sliding scale, based upon the market value of the property, as at the date of death.

The calculation is essentially the same as the stamp duty payable when buying immovable property, and is as follows:

Does not exceed £50,000	0.5% with minimum fee of £12
Exceeds £50,000 but does not exceed £300,000	£250 + 1.5% of the value in excess of £50,000
Exceeds £300,000 but does not exceed £500,000	£4,000 + 2% of the value in excess of £300,000
Exceeds £500,000 but does not exceed £700,000	£8,000 + 2.5% of the value in excess of £500,000
Exceeds £700,000 but does not exceed £1,000,000	£13,000 + 3% of the value in excess of £700,000
Exceeds £1,000,000 but does not exceed £1,500,000	£22,000 + 4% of the value in excess of £1,000,000
Exceeds £1,500,000 but does not exceed £2,000,000	£42,000 + 5% of the value in excess of £1,500,000
Exceeds £2,000,000 but does not exceed £3,000,000	£67,000 + 6% of the value in excess of £2,000,000
Exceeds £3,000,000	£127,000 + 7% of the value in excess of £3,000,000

An additional charge of £80 is payable in the case of all professional applications.

If you are unsure of the stamp duty that may be payable on your estate please refer to the stamp duty calculator on our website.

Certain exemptions apply to the stamp duty payable on immovable property where the will leaves the immovable property to those who would have inherited had there been no will (an intestacy), in the same shares as they would have inherited on an intestacy.

For example, if a parent left property to an individual other than their spouse and their children in their will, or in shares different to how their spouse and children would otherwise have inherited under an intestacy, stamp duty would be payable. Furthermore, it would not be possible to transfer the properties in question to the children prior to death, as Jersey has strict rules in respect residential status. These rules determine where you can work and live in Jersey, as well as determining when you can own Jersey share transfer and immovable property.

Depending upon your circumstances, you must have lived in Jersey for a combined, or continuous, period of 10 years before you can own property in Jersey, unless the property is inherited.

Occasionally, the situation does arise where those who inherit, especially under a will of immovable estate, have insufficient funds immediately available to pay the stamp duty for the registration of the will. In these circumstances it may be possible for the executor, administrator, or devisee to obtain a loan.

A legitimate way of avoiding stamp duty on death is to hold assets jointly for the survivor with another. It is not unusual for couples to hold assets in this way. Stamp duty would only be a consideration on the death of the last joint owner. There are however some instances where this is not possible, or indeed desirable, due to prevailing circumstances, including the nature of the relationship between parties.

For all the reasons set out above, it is important that consideration is given to the impact your wishes as expressed in your wills, may have on the amount of stamp duty payable on your death. The reality is that with some fairly straightforward estate planning, the saving on stamp duty can be considerable, leaving your loved ones financially better off. Viberts offers expertise in this area and would be delighted to assist you.



## Professional executorship services

In some cases the executor appointed in a will or the person entitled to administer the estate may not feel able or wish to do so, particularly if they do not live in Jersey. Other situations may arise where the executor appointed in the will has died or the deceased's affairs are complex. In such cases Viberts is pleased to offer its professional executorship services. Viberts Executors Limited ("VEL"), our in-house executor company, has a wealth of experience in providing such services. By appointing VEL you can be assured that the estate will be dealt with in a cost effective, timely and professional manner by our experts, strictly in accordance with the wishes of the deceased or the rules on intestacy, as appropriate. Viberts' personal law team is also pleased to provide legal advice to those acting in the capacity of executor where there is disagreement, or complex issues arise.

In Jersey it is necessary for a probate application to be made in person and therefore the named executor in a will must either travel to Jersey to make the probate application in person, or sign a power of attorney giving a local lawyer in Jersey the power to make the application in their place. This avoids the expense and inconvenience of travelling to Jersey which could prove costly to the estate.

If a power of attorney is signed in favour of VEL then the probate application will be made by VEL on behalf of the named executor or administrator and VEL will be appointed on the Jersey Grant of Probate as the Attorney Executor. This gives VEL the power to administer the estate in Jersey.



## If you need us

If you have any questions, however small, about managing your own or a loved ones' affairs then please call our personal law team for a free initial consultation.

We place great importance on the establishment of a good relationship between client and lawyer. We will be here when you need us. Contact us:

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**VIBERTS**

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Practice Management Standard  
Law Society Accredited

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