

## Gibraltar – Where there's a Will there's a Way

We are most certainly in unprecedented times in modern history. Many of us have already been affected one way or another by Covid-19, and are reminded round the clock by the media and our politicians of the immediate health, social and economic challenges that the world is now facing, as well as of the uncertain future that lies ahead.

The lockdowns that many countries are now experiencing are having profound effects on our civil liberties, the way in which we interact with each other and, of course, on our finances. Fortunately, there is a good amount of guidance that is now available on the latter, in particular advice about employment rights in the face of job losses and wage cuts.

Worries about finances are inextricably linked to how we look after our loved ones both now and in the future. Estate planning, including the creation of wills and powers of attorney, is often seen as a taboo subject. However, now more than ever, it is worth considering how to protect and ultimately pass on our wealth to our chosen family members, friends or charities.

### Testamentary Freedom in Gibraltar

As with England and Wales (but unlike many other European jurisdictions, where forced heirship applies) here in Gibraltar we have “testamentary freedom” – the right to choose what we want to leave, to whom and under what contingencies. To formally exercise that freedom, we must execute a valid will (more on this below), although rather shockingly figures from the UK indicate that only around half of adults actually get round to doing this. Under Gibraltar law, where someone fails to leave a valid will, their estate automatically passes on their death in accordance with the rules of intestacy set out in section 51 of the [Administration of Estates Act 1933](#) (the “Act”) – a blunt tool that often does not reflect the person's true testamentary intentions.

### Gibraltar's Intestacy Rules

Under the Act:-

If the deceased is survived by their husband, wife or civil partner (“spouse”) and leaves no lineal descendants (i.e. any children, or where a child died before the deceased, any grandchildren)

(“issue”), the spouse will inherit the deceased's personal possessions (“chattels”) and the first £150,000 of the deceased's estate plus 5% interest from the date of death. The remainder of the deceased's net estate (the “residuary estate”) also passes to the spouse on trust during their lifetime.

If the deceased is survived by their spouse and one or more issue, the spouse will, as above, inherit the deceased's chattels and the first £150,000 of the deceased's estate plus 5% interest from the date of death. However, only half of the residuary estate passes to the spouse on trust during their lifetime (after which what is left is held on trust for the deceased's issue in equal shares until they reach the age of 18 (or until they marry or enter into a civil partnership before that age)). The other half of the residuary estate is held on trust for the deceased's issue in equal shares until they reach the age of 18 years (or until they marry or enter into a civil partnership before that age).

If the deceased has no spouse at the time of death but is survived by issue, the issue will inherit all of the residuary estate on trust in equal shares until they reach the age of 18 years (or until they marry or enter into a civil partnership before that age).

If the deceased has no spouse or issue at the time of death but is survived by parents, the parents inherit the residuary estate on trust in equal shares.

The Act sets out further provisions where there are no surviving spouse, issue or parents and so on. For the purposes of this note, however, the important point is that the intestacy rules are complex and often do not achieve what a person wishes to happen to their estate upon their passing.

### Preparing a will in Gibraltar

Where someone wishes to exercise their testamentary freedom, they should execute a valid will and keep it in a safe place. If the estate is relatively simple (e.g. where the only assets are funds held in a personal bank account), and where a person wishes to leave their estate to one or two defined individuals absolutely (without any conditions), it can be cost effective to purchase or download a template will with standard provisions. However, it is essential that the will is carefully completed and the requisite criteria for valid execution (as set out in the [Wills Act 2009](#)) are met.



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As disputes regarding the validity of wills are remarkably common, it would always be our advice to engage a legal professional to assist when preparing a will. An experienced private client lawyer can advise on the ways in which gifts can be left in a will, the suitability of certain executors and on any tax implications that may arise (especially where assets are held in multiple jurisdictions), can explain the risks around post-death claims being brought against the estate by those seeking reasonable financial provision, and can help to ensure that the will is executed and stored safely. They can also advise on the circumstances where wills are revoked (e.g. by express written intention or by intentional destruction by the testator) and the effect of divorce or annulment on the gifts set out in the will.

### Services we provide

We work with a variety of individuals and entities, including HNWI, VHNWI, UHNWI, family offices, trustees and licensed and regulated corporate service providers in creating tailored solutions in all areas of private client work on the Rock. We also advise in relation to the mitigation, management and resolution of disputes arising in relation to private wealth matters, including, for example wills, trusts and powers of attorney.

As a firm, we are conflict free, independent and international in scope, with offices in Gibraltar, London and Paris.

Our expertise on the Rock include:

- Drafting Wills, Trust Deeds and Powers of Attorney
- Trust and Estate Administration
- Advising on the Law of Succession and Trusts
- Insolvent Estates
- Contentious Probate
- Contentious Trusts and Estates
- Claims for Reasonable Financial Provision from an Estate
- Court of Protection and Deputyship matters
- Mental Incapacity and Capacity Related issues
- International Private Wealth and Cross-Border issues

### What to do if you have any questions or concerns

If you would like to discuss any private wealth matters with one of our specialist lawyers, please get in touch with us on +350 200 10 900 or by email at [gibraltar@signaturelitigation.com](mailto:gibraltar@signaturelitigation.com).

We will be pleased to help.



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