



# GUIDANCE NOTE

## Central Register of Wills, Gibraltar

On the 11th day of May 2021, the Central Register of Wills was established in Gibraltar, where it is possible to register all Wills and Codicils created in the past, or any new Wills and Codicils.

### The principles for creating a valid Will.

It is advisable that when you write your Will you use a professionally qualified person to do so. A well advised and regularly updated Will alleviates disputes and minimises exposure to tax when your Will is brought into effect.

A Will is a document that specifies how a person's assets, including real estate, personal property, and investments, are distributed after the person dies. This document is commonly referred to as a Last Will and Testament, or simply a Will.

Section 5 of the Wills Act 2009 of the Laws of Gibraltar sets out that: *"A will shall be treated as properly executed if its execution conformed to the internal law in force in the territory or State where it was executed, or in the territory or State where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of those times, he was a national"*.

A Will created in Gibraltar is valid when signed by the testator in the presence of two witnesses. The witnesses should sign at the same time. It is very important that the two witnesses are not beneficiaries under the Will, as otherwise they will forfeit their interest under the Will.

### What is a Codicil?

A Codicil is a legal document that changes specific provisions of a Last Will and Testament, but does not affect all the other provisions of the Will. You can modify, update, or even completely revoke your Last Will and Testament at any time as long as you are mentally competent.

A Codicil is a written amendment to a person's Will, which must be dated, signed and witnessed, just as a Will would be, and must make some reference to the Will it amends. A Codicil can add to, subtract from, or modify the terms of the original Will.

The Central Register of Wills has provisions to register a Codicil that can be added to an existing Will that has been registered with the Central Register of Wills.

## Why should you register your Will or Codicil?

If you are in possession of a Will, can you be absolutely certain that it is the last Will? Could it have been superseded by a subsequent Will, or could the Will have been modified by a subsequent Codicil?

If no Will has come to light, and you are proceeding as an intestacy, can you be totally sure that there is definitely no Will out there which, should it come to light, would alter the way in which the estate would be distributed?

The Central Register of Wills helps people to find Wills quickly and easily, and gives certainty to the whole process of making and recording a Will. After the leading court case of *Face v Cunningham* [2020] EWHC 3119 (Ch) it was decided that the burden of proof must rest on the party propounding a Will. Registering a Will is very useful in helping with the formal requirement of proving that a Will has been validly executed and witnessed.

Registration of a Will in Gibraltar is not compulsory, but it is strongly advisable. It is certainly recommendable, as it removes uncertainty and will ensure that when the time comes, if for any reason a copy of your Will cannot be found, it can easily be traced and located. It will also provide a record of who the executors are, their details and where the Will is officially kept.

## Registering a Will with the Central Register of Wills.

There are three separate procedures under which a Will can be registered with the Central Register of Wills. It is up to the testator to choose the procedure that best suits his or her requirements.

1) **The first procedure** requires that:

- An original Will is produced;
- The identity of the testator is established by the production of the testator's passport or identity card;
- The Will is checked to ensure it is signed by the testator and two witnesses who are not beneficiaries under the Will;
- The Will is checked to ensure it appoints at least one executor, but not more than four;
- If the testator is not appearing in person, proof of life of the testator will need to be produced (certified by a Notary Public or Commissioner for Oaths);

An officer of the Central Register of Wills will make a copy of the Will, stamp the original Will and return it to the testator, or his representative.

A new and unique entry will be created in the Central Register of Wills for that particular Will, recording the following information:

- Full name of the testator;
- Date of birth of the testator;
- Testator's identity card number or passport number;
- Testator's nationality;
- Testator's address;
- Testator's email address;
- Testator's telephone number;
- Full name of the executors;
- Full name of witnesses;
- Date of creation of the Will; and
- Where the original Will is kept.

2) **The second procedure** for registering a Will is the same as that described in the first procedure with the **important difference that the original Will is deposited with the Central Register of Wills for safekeeping**. A supplementary fee is charged for this custodial service as set out at the end of this guidance note in the section entitled "Fees".

3) **The third procedure** for registration does not require you to provide a copy of your Will to the Central Register of Wills. Under this procedure the Central Register of Wills will record only the existence of your Will and tags its location, as well as the name(s) of your executor(s), so that the people you have left your estate to, or those you have chosen to be your executors, can find your Will when you have passed away.

Registration ensures that if beneficiaries and executors are unaware that you have written a Will, or they forget where it is located, it can easily be found by conducting a search of the Central Register of Wills after the death of the testator. The testator will need to produce proof of identity to register and record the existence of his Will even though under this procedure he does not need to produce a copy of his Will.

### **Certificate of registration of your Will.**

Upon registering with the Central Register of Wills you will be issued with a certificate of registration as proof that your Will was registered.

Under the three procedures the location of the Will and all other particulars registered will be kept confidential. Only when you have passed away can the location of your Will be declared and disclosed. Even then, it will be disclosed only when the person searching for your Will has a genuine, bona fide interest, and only if that person can provide a copy of your death certificate.

### **Effect of Marriage or Divorce on an existing Will.**

When a person marries, any Will that he or she created prior to the marriage will be void unless the Will was created in contemplation of marriage and a statement to that effect is contained in the Will.

Where a testator divorces, or has his or her marriage or civil partnership annulled, any interest of the spouse in a Will created during the marriage will lapse as will any appointment of the spouse as an executor unless a contrary intent was contained within the Will.

### **Who is entitled to see a Will in Gibraltar?**

In Gibraltar, through the probate process it will be decided who can see a Will. If the grant of probate has been issued, a Will is then considered a public document. This means anyone can apply to the Probate Registry or to the Central Register of Wills for a copy. In most cases, if you ask to see a Will, the executor will not refuse once a probate has been granted.

When presenting a Will for registration the testator agrees that it will be possible following registration of that Will for any person to request information from the Central Register of Wills after his death for confirmation that he created a Will, but not as to its contents. Only the executors appointed in a Will are entitled to see the Will before probate is granted.

Under the strict common law in past years, only the executors, or the personal representatives of the estate were entitled to see the Will. Even if you were named as a beneficiary in the Will, this did not necessarily mean that you were entitled to see a copy of it. This has now changed in Gibraltar, and once probate is granted the Will becomes a public document.

Once issued, a copy of the grant of probate should be filed with the Central Register of Wills. This will make it possible, if the Will has been registered, for any member of the public who may have an interest in the estate of the deceased to obtain a copy of the Will from the Central Register of Wills, or for information relating to the Will to be disclosed.

### **Are beneficiaries entitled to see the Will?**

If you are a beneficiary named in any Will of the deceased, or would be entitled to receive a share of the estate if a Will did not exist, you have the right to see a copy of any of the Wills made by the deceased during their lifetime (whether they have been revoked or not) that are available to the executor.

### **How do I find out if I am named as a beneficiary in a Will in Gibraltar?**

You have the right to know if you are a beneficiary. The executor should reply confirming your right to inherit from the estate, and what your share of the estate is. If you have not been named in the Will, it is up to the executor's discretion, or courtesy, to inform that you are not a beneficiary.

If you are listed as a beneficiary in a loved one's Will, you are legally entitled to be notified of this fact by the executors. While there is no specific legal time limit for this, the executors should inform you as promptly as possible as to your entitlement under the Will once probate is granted.

### **What happens if you can't find the original Will?**

To get a grant of probate you need to produce the original Will. If an original Will cannot be found, a copy can be admitted to probate under certain circumstances. If the court finds by clear and convincing evidence that the Will copy is a replica of the testator's original Will, the court will admit the Will copy and the estate will be probated. In such a case, proof of registration of a Will is most helpful. If the Will was registered under the first procedure prescribed above, a copy of the Will can be obtained from the Central Register of Wills.

### **Searching for a Will on the Central Register of Wills by an executor in order to obtain a Grant of Probate from the Supreme Court.**

The executor will be able to put in a request to the Central Register of Wills for a search to be conducted by the Central Register of Wills for the full name of the person who has died as it appears on the death certificate of the deceased. The existence of a registered Will, its contents and its location are kept confidential. Only when you have passed away can your Will's location be declared and disclosed. Even then, it will be disclosed only when the person requesting information on the Will has a genuine, bona fide interest and that person can provide a copy of your death certificate. Before the Grant of Probate only the executor under the Will has a right to ask for a copy, and then only when he produces a copy of the testator's death certificate to the Central Register of Wills. The testator at any time during his life can ask for a copy of the Will and request information from the Central Register of Wills on any registered Will(s) or Codicil(s) of the testator.

### **Duty of Confidentiality.**

The Central Register of Wills enters into a contract of confidentiality with a testator immediately upon registering that testator's Will or Codicil. The duty of confidentiality that the Central Register of Wills is bound by is under common law, contract law and data protection legislation.

The contents of a registered Will or Codicil cannot be disclosed without the consent of the testator during the testator's lifetime. After the death of the testator the contents of the Will or Codicil on request will be disclosed to the executors when they produce a death certificate. A person other than an executor who produces a death certificate will be able to obtain confirmation of the existence of the Will or Codicil, but not its contents. If there is confirmation that a Will or Codicil exists the person who produced the death certificate will be informed of the name of the executors, but not of the contents of the Will or Codicil.

The Central Register of Wills shall at all times have adequate measures in place to protect against any unauthorised access to the registered information. Once probate is granted the Will or Codicil becomes a public document.

### **Check list for registration of a Will under the first procedure.**

- 1) Completed application form to be submitted.
- 2) Original Will to be produced.
- 3) The identity of the testator will need to be established by the production of passport or identity card, or a certified true copy of either of these documents. A copy of the identity document will be kept by the Central Register of Wills.
- 4) Check that the Will is signed by the testator and two witnesses who are not beneficiaries under the Will.
- 5) Check that the Will appoints at least one executor, but not more than four.
- 6) If the testator is not appearing in person, proof of life of the testator will need to be produced (certified by a Notary Public or Commissioner for Oaths).
- 7) A copy of the Will to be made and the original stamped and returned to the testator, or his representative.

### **Check list for registration of a Will under the second procedure.**

- 1) Completed application form to be submitted.
- 2) Original Will to be produced.
- 3) The identity of the testator will need to be established by the production of passport or identity card, or a certified true copy of either of these documents.
- 4) Check that the Will is signed by the testator and two witnesses who are not beneficiaries under the Will.
- 5) Check that the Will appoints at least one executor, but not more than four.
- 6) If the testator is not appearing in person, proof of life of the testator will need to be produced.
- 7) A copy of the Will to be made and the original retained by the Central Register of Wills for safekeeping, stored in a fire-proof facility.

### **Check list for registration of a Will under the third procedure.**

- 1) Completed application form to be submitted.
- 2) Testator to prove his identity by producing his identity card or passport.
- 3) The testator, or his representative will need to present a completed application form to register a Will duly signed by the testator and produce the original identity card or passport of the testator, or a certified true copy of either of these two documents.

## **Fees.**

- 1) Registration of a Will: £45
- 2) Deposit of original Will for safekeeping: £95
- 3) Certified copy: £30
- 4) Request for information from the Central Register of Wills by the Testator: £20
- 5) Request for information from the Central Register of Wills by the Executor: £25
- 6) Request for information from the Central Register of Wills after the Testator's death by producing death certificate: £20
- 7) Registration of a Codicil: £35
- 8) Notice of Change of Location: £20
- 9) Notice of Revocation: £20
- 10) Filing of the Grant of probate £30