

Worldwide Will

Assets in multiple jurisdictions might warrant multiple Wills.

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WHEN ADVISING CLIENTS ON MAKING A Will, it isn't uncommon to discover they have assets in foreign jurisdictions. That being the case, advisors need to know how to deal with issues that may arise from owning overseas wealth.

Consider the following scenario. Mary is a Canadian citizen who lives in Ottawa but spends her winters in Florida, where she owns a condominium. Mary also inherited property from her parents in France.

In advising Mary about her estate plan, what issues should you be aware of?

The main concern is whether one Will is sufficient for Mary's multiple assets. A Will created in one jurisdiction and purporting to distribute assets in another may or may not be valid, depending on whether the Will is accepted pursuant to the laws of the jurisdiction in which the asset is located. Issues concerning the domicile of the client, and whether the foreign-owned assets are real property or personal property must also be considered.

Let's assume Mary makes a Will in Ottawa, leaving her Florida condominium to her sister, Bianca. There are several possible consequences. Bianca may or may not receive the condominium depending on whether the Will is in compliance with Florida laws. If the Will isn't valid in Florida, an intestacy regarding

the condominium will result. Whether Bianca receives the property will depend on the law in Florida governing property distribution when one dies without a Will.

What the courts say

In the case of *Granot v. Hersen*, (1998, 21 E.T.R. (2d) 153), Henry Hersen, a Swiss and Canadian citizen, made a Will three weeks before his death. He owned property in both Ontario and Switzerland. He Willed the Ontario property to his son and the Swiss condominium to his daughter, although he didn't specifically identify the condominium in his Will.

The court decided the rights to the Swiss property would be determined by the internal law of Switzerland, which granted a one-fourth interest to Hersen's son.

So even though an individual may attempt to distribute real property through a Will, if it is in a foreign jurisdiction, the law governing the location of the property may prevail.

What options, then, does Mary have? For one, she can make a separate Will for each of her foreign-owned assets, while ensuring that each complies with the law of the jurisdiction where the asset is located.

Mary might also consider making an international Will recognized by the Succession Law Reform Act. An international

Will is valid between countries that are signatories to the Convention, assuming it complies with the form of an international Will.

So, if Mary made and signed an international Will in Ontario, leaving her French property to Bianca, there would be no issue as to whether French law or Canadian law would govern this distribution, or about the validity of Mary's Will.

Most important, Mary's wishes concerning the distribution of her property would be carried out.

Although the international Will is an excellent response to dealing with many of these issues, it isn't without limitations. Only 12 countries have signed and ratified use of the convention. (These include Canada, Italy and France, but not the United States.)

And in Canada, while Ontario, Manitoba, Newfoundland, Alberta, Saskatchewan, Prince Edward Island, New Brunswick, and Nova Scotia recognize the international Will, British Columbia and Quebec don't.

So it's important to be aware of the issues that arise when assisting clients who own assets in multiple jurisdictions, particularly if they intend to make a Will. Prudent estate planners will ensure they have an understanding of the issues, and that their clients are well apprised of the options available to them.

Akua Carmichael is an independent estate lawyer. This article isn't intended as legal advice. If you feel you need legal advice, please obtain legal counsel concerning your individual situation.

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