

Overseas Assets

An increasing number of people own assets such as a holiday home in a foreign (usually sunny) country, but not every legal system is the same which can result in serious problems when you die. To that end, it is often a good idea to have a foreign Will that deals with any overseas assets that you might own.

Conflicting laws

The inheritance laws in many foreign countries operate differently to the way they do here in the UK. In the case of property, for example, some countries' laws will provide that only local law can govern the disposition of property on the death of the owner; whereas others provide that the law of the owner's country of nationality applies. So without a Will that is governed by local law, there could be confusion as to which law applies to the property; and different laws might very well lead to very different outcomes.

It is also important to recognise that in some countries there are inheritance laws that override the intentions of the deceased. France is a good example, as are those countries who apply Sharia Law, wherein it is a legal requirement that a certain part of the deceased's estate be left to certain specified relatives in prescribed proportions. If that is the case, you will need a local Will as well as some additional planning in order to circumvent the effect of such laws and leave the property to the person or people that you select.

Practical issues

If you own property abroad and die with an English Will but without one that is governed by the local law, your heirs could face a number of practical hurdles and additional costs that could result in delays in their obtaining title to the property.

For example, if the country in question is not an English-speaking one, your executors may need to have documents translated, notarised and/or legalised, all of which is time-consuming and expensive. Your executors will almost certainly have to hire a local lawyer even if you have made a local Will.

Pitfalls

By way of example, a recent case showed that there was considerable confusion for the heirs of a man who died with two Wills; one made in England and the other in a foreign country where he owned property. The difficulty arose because his foreign Will (which was only intended to apply to the assets he owned in that country) specified that it revoked all prior Wills.

Although the 'revoke all prior Wills' clause is standard one, in that case it was not what the testator intended to do. Instead, he wanted to have two Wills that worked in parallel, one for the bulk of his UK estate and one for his foreign assets. Fortunately, the foreign Court accepted that the man had not intended to revoke his English Will, but the case (and the fact that it had to go to Court) illustrates the potential for mishaps.

Inheritance tax (IHT)

If you are domiciled in the UK for tax purposes, then IHT is liable on your worldwide assets which would include, say, a property in a foreign country. There may, however, be relief available under a double taxation treaty with the country in which the property is located, particularly if there is also inheritance tax liability in that country.

The question of domicile is a complicated one, and a British citizen who intends to rely on non-domiciled status should obtain professional advice in relation to the issue, especially as there could be significant tax consequences if HMRC does not accept the claim to non-domiciled status.