

Where there's a Will, there's a way

Peter G. Economides, FCCA, TEP
Chairman
Totalserve Group
peter.economides@totalserve.eu

I have lost count of how many times when I have advised expatriates on tax structuring, when I asked them if they have a will, I have been met with a blank stare. Many people find the idea of death disturbing, yet together with taxes, it is a certitude. The consequence of dying intestate (i.e. without having made a Will) can prove both complicated and expensive.

Since expatriates may often have unclear domicile or a spouse with a different domicile as well as assets located in more than one country, estate and inheritance planning is not something to be put off.

The only certain way to ensure that your spouse, partner or relative etc. will inherit what you want them to inherit and when you want them to inherit is to make a will. If you die without having made a will (intestate), the intestacy rules apply in an arbitrary manner, particularly if there are no children.

As a result your spouse could have to share your estate with relatives (e.g. brothers and sisters, aunts and uncles) whom you may never have intended to benefit. Nearly every legal system contains forced inheritance provisions to deal with questions of inheritance when there is no will in place.

For example, Mr Smith did not bother making a will, assuming that everything would go to his wife, Eve. He left an estate of £300,000 and no children. His wife and two brothers survived him. Under rules in force in England and Wales Eve is only entitled to the personal effects (furniture etc), £200,000 and half the balance giving her a further £50,000. The brothers received £25,000 each.

Where the order of death between a husband and wife is uncertain e.g. as the result of an air crash certain unintentional consequences may arise. In England and Wales the law assumes that the younger survives the elder. Where a married couple without children die in such circumstances the effect could be that all the family's assets go to the younger's brothers and sisters. This legal presumption can be varied by your will.

A home-made will should really be used only in the most straightforward of circumstances. Some homemade wills can have disastrous consequences for example omitting to deal with the situation where the main beneficiary does not survive; failing to take advantage of capital gains tax/inheritance tax exemptions; referring to assets which are no longer owned on death.

Other reasons to make a will include the ability to provide for specific funeral arrangements (i.e. burial, cremation, or the donation of your body for medical research). You can also ensure or prevent a religious ceremony takes place at your funeral.

Another good reason to make a will is to safeguard minor children's interests (i.e. children under 18 years of age) by appointing legal guardians to care for them if both husband and wife have died e.g. in an accident.



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You must appoint Executors to deal with your estate in the event of your death and hold property on trust for example while a beneficiary is a minor. These Executors have a very important role to play and should be business-minded family or friends and/or professional advisers. In England & Wales to some extent Executors can act before grant of Probate, which is when the probate registry sends out a legal document that allows one or more people to deal with the estate.

Personal items such as jewellery, paintings and heirlooms can be dealt with in the will and by reference to an informal letter of wishes.

At a stressful time for your family and friends such worry, complications and expense can be avoided through making a correct will. Even if you have already made a will it is important to keep this under review at regular intervals (at least every five years). The world does not stand still and in particular your family circumstances and relevant taxation laws will change.

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