

Estate Planning - Wills

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For individuals with assets in Jersey, Guernsey, the British Virgin Islands or the Cayman Islands

This guide explains why it is important to have a will as part of your estate planning and explores the potential uses of trusts with them.

What happens if you die without a valid will?

If you die without a valid will you are said to be intestate. In these circumstances, generally it is the law of your domicile that determines who will inherit your assets and in what proportions.

Domicile (in its broadest sense) is the place that you are most closely connected to at the date of your death. It is a technical term and is often not clear-cut for many international clients; it has a different meaning to residence.

On the other hand, if you own real estate it is generally the law of the country where the property is located that determines how you can dispose of that property and who can inherit it. It is often necessary therefore (particularly for international clients with assets around the world) to take advice in more than one country and to have more than one will disposing of those assets.

Advantages of having a will

Certainty

If you do not make a valid will, or you make a will that only partly deals with your assets, then you are said to have died 'intestate' or 'partly intestate'. In this situation, the law will determine who inherits your assets – not you. This could result in your assets being inherited by people you never intended to benefit, or in proportions different to what you had intended. A will therefore gives you the ability to plan (within the confines of the law) the succession to your assets. This can avoid a lot of difficulty, expense and delay after you die.

Speed of administration

For some individuals, speed of administration is a key concern and having more than one will can help in achieving that goal. For example, if someone has assets in one country but is not domiciled there, having a will that only covers those assets means that the administration of them can progress immediately following death, once probate has been obtained in that country only.

If, however, there is no country-specific will, the estate administration would not be able to start until probate had been obtained in the deceased's country of domicile which, depending on the jurisdiction, can add significant delay in being able to release assets to the heirs.

Maturity of heirs

If you have substantial assets, but you are worried that your intended heirs would not be mature enough to inherit substantial wealth if you died now, or you are worried that they might not yet have the necessary

skills required to take on the responsibilities you have in mind for them, then a will can be drafted in such a manner to achieve this degree of flexibility.

Tax and other considerations

There may also be tax or other issues that could make it unattractive for your beneficiaries to receive an absolute right to your assets on your death (for example divorce, potential creditor claims, reporting obligations, to name a few) and therefore a more flexible will structure may be desirable, not just for you but also for the wider family or intended beneficiaries.

Additionally, if you own assets in countries that are subject to different legal regimes or where succession is restricted in some way, the freedom of testamentary disposition in common law countries can sometimes be used to achieve particular objectives such as equalising succession between male and female heirs.

Children from a previous relationship

A carefully thought out and structured will can also have advantages where there are children from a previous relationship. Such a will can ensure that your new spouse or partner receives some provision, but ultimately that your assets are ring-fenced for the benefit of your own children and not, for example, your stepchildren or your new partner's own children.

Guidance and certainty

On a more practical and emotional level, a will can provide guidance and certainty at a very difficult time. For example, wills generally require the appointment of an executor who is legally responsible for dealing with your estate on your death. Such an appointment at the outset can save time and expense and tells your family or friends who will be in charge of managing your affairs when you are gone. You can also include funeral wishes in your will, which again would provide guidance and certainty. Additionally, most countries do not yet enable unmarried couples to inherit from each other without a will and stepchildren often have no legal right to an estate. Therefore, if you wish to provide for either on your death, you need to take appropriate advice and make a will.

Trusts and wills

Some of the advantages previously mentioned in relation to making a will can be achieved through the use of trusts, either set up in your lifetime to receive assets in your lifetime or on your death, or set up on your death under the terms of your will. Trusts can protect assets should future generations suffer financial, matrimonial or other difficulties, or if the beneficiaries are not mature and responsible enough to own large sums of money. The trustees will be able to take each beneficiary's circumstances into account. Trusts can also be used to benefit future generations by potentially by-passing children to benefit grandchildren.

It may also be desirable not to have certain assets in your sole name (or held for you by a nominee). One example of when that might be the case is with shares in companies. Often it is more desirable for these shares to be owned by the trustee of a trust, so that on death they will not form part of your personal estate and the ownership of the company will not change. This enables you to plan for the future ownership of the company, keeping the shareholding intact, if that is desirable.

Depending on the laws of your domicile, you may have to be mindful of 'forced heirship rules' when considering the use of trusts. As always, appropriate legal and tax advice should be taken in all necessary legal jurisdictions before any succession planning is implemented.

At Mourant we provide legal advice on the laws of Jersey, Guernsey, the British Virgin Islands and the Cayman Islands. If you have assets in one or more of these jurisdictions, you should consider making a will.

Contacts

A full list of contacts in our Jersey International Trusts & Private Client team can be found [here](#).

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