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Wills in Multiple Jurisdictions

Do you or someone that you know own assets outside of B.C.? Did you know that owning certain types of property in foreign jurisdictions could increase both the cost and length of time it takes to administer your estate? Did you know that foreign law might operate to frustrate your estate plan?

Examples of foreign laws that may complicate the administration of your estate plan include:

- Forced heirship regimes (i.e. a large portion of your estate must pass to your spouse and/or children and only a portion can be distributed per your own discretion);
- Different forms of co-ownership (e.g. in Quebec the concept of joint tenancy does not exist. So, when a co-owner of property dies, the deceased's undivided interest in the property forms part of the deceased's estate and does not pass to the surviving co-owner);
- Citizen restrictions on land ownership (e.g. in China individuals can own their house or apartment but the government owns the fee simple land);
- Laws on illegitimacy (e.g. in the Philippines, an illegitimate child is only entitled to half of that of a legitimate child); and
- Obtaining multiple grants (i.e. your personal representative will likely have to obtain a grant of probate (or equivalent grant) in every jurisdiction in which you own real property).

The moral of the story is that multi-jurisdictional estate planning is difficult, and using one advisor and a single Will to build your estate plan could be disastrous.

If you own assets in multiple jurisdictions, you should, at the very least, have your Will reviewed/revised by an advisor in every jurisdiction where you have assets. However, you would ideally be preparing a separate Will for each jurisdiction dealing exclusively with the assets you own in that area. For all you snowbirds, that means having a B.C. Will to distribute your B.C. estate and a California Will for your house in Palm Springs.

Advantages of using multiple Wills unique to each jurisdiction where you own property include:

- Effectiveness: if each Will is prepared in accordance with the succession laws of the relevant jurisdiction, your assets are more likely to be distributed as intended and your overall estate planning objectives are more likely to succeed;
- Confidentiality: if you have only one Will, all of your assets may need to be disclosed in each jurisdiction where the Will needs to be probated or recognized. Having multiple Wills avoids excessive disclosure and preserves your privacy;
- Speedier and Simpler Administration: if only one Will is prepared, your Will will have to be probated first in its original jurisdiction and then recognized in each subsequent jurisdiction where you hold property, a process called a "resealing procedure" in B.C. This two-step process will take longer that having two separate Wills processed simultaneously in two different jurisdictions;
- Tax and Fee Minimization: some jurisdictions levy an estate tax or fee on all property disposed of in a Will. For example, the B.C. probate fee is approximately 1.4% of the fair market value of your property at the date of your death. Using a single Will could expose all of your worldwide assets to the local levies of that jurisdiction. By using multiple wills, the risk of exposure may be reduced and the local levies would only apply to the local assets;
- More Favourable Legal Regimes: multiple Wills could help you to take advantage of other multijurisdictional laws. For example, if a Will-maker owns land in Ontario that is registered under Ontario's old land registry system, it can be transferred without probate, in which case it may be advisable to execute a separate Ontario will for that property; and

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- Different Executors: multiple Wills permit different executors be chosen for different assets. If you have real estate in the U.S., it may be beneficial to choose your cousin, the real estate mogul from Florida, to be the executor of your U.S. Will. Or, consider a B.C. resident who owns a significant stock portfolio managed in Alberta. A separate Alberta Will could have a different executor than the B.C. Will. Even if the estate required probate under the B.C. Will, the stock portfolio need not be disclosed in the B.C. probate application because that property does not pass to the B.C. executor.

Some disadvantages to the execution of multiple Wills include:

- Cost: the execution of multiple wills involves a higher up-front cost (although this may be offset by savings on the administration of the estate);
- Review and Maintenance: we recommend that everyone reviews their estate plan every 5-7 years to ensure that it still effectively conveys their intentions. This becomes more cumbersome if you have multiple Wills; and
- Limitation Period: in B.C., the children or spouse of a Will-maker can make a wills variation claim against their estate. Under Part 6 of the Wills Estates and Succession Act, there is a limitation period for such claims, but the clock doesn't start until the grant of probate has been issued. The use of multiple Wills could mean that a B.C. Will does not require probate, in which case the limitation period may never expire and the estate may continue to be vulnerable to claims by disinherited spouses and children.

We have the experience to help our clients navigate their multi-jurisdictional estates. If you have questions about a particular asset, or need assistance with your global estate plan, contact a member of our team - we're here to help.

Questions? Contact a member of our experienced Estate Team:


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