

The Importance of Having a Will - Key Questions to Consider

The importance of having a Will is increased when family members are located in various countries. Wills should be regularly reviewed & reflect any changes.

By **Paul Webb**, 26th March 2018

As families become increasingly international the importance of having a will is increased further. With family members located in different countries, it is vital that appropriate wills are drafted and, subsequently, regularly reviewed and amended to reflect any variation in circumstances. Often the jurisdictions where assets are located and/or where family members reside will be subject to change.

1. Are wills only applicable to wealthy individuals?

This is a common misconception. You do not have to be wealthy to have a will. Everyone over the age of 18 should have a will.

If you draw up a personal balance sheet and take into account your current property, business and investment values, you may be surprised at exactly how much you have to dispose of.

Often, forgotten "hidden" assets include intellectual property rights, pension rights, insurance policies and all of your electronic data, which should form part of your estate planning (these assets may not necessarily form part of your estate for will-writing purposes).

Do not forget to take into account assets you may inherit in the future, as well as capital distributions from a trust. If you have multiple assets and multiple heirs, you have assets in more than one country, or you would like to leave specific items to specific people or to a charity of your choice, then you must make a will.

2. An individual already has a will. Why should they make a new one?

Your will must be tailor-made to fit your current personal and financial circumstances and wishes.

If you already have a will, you should review it regularly (at least on an annual basis), as it is surprising how quickly a will becomes outdated. Your financial position will almost certainly change and births, marriages, divorces or deaths in the family, or a move to another country, can all impact on the validity and efficacy of your will. Tax laws, tax residency status, and other legal and financial matters change frequently and each can have a significant impact on the legitimacy of your will.

3. If an individual does not have a will, do his/her assets automatically go to his/her spouse/civil partner and children in some sort of equal formula?

Failing to draft a will, or having a will declared invalid on your death, will mean that you die intestate and this may have the following results:

- The applicable law usually provides a fixed, arbitrary and potentially impractical formula for the division of your estate, which may not accord with your actual wishes.
- Distant relatives or even the state may benefit from your estate and your spouse/civil partner may not receive the full share of their inheritance.
- Your heirs may be left with a legal battle or have to share indivisible or illiquid assets with your blood relatives.
- An executor/administrator/trustee not known to you or your family may be appointed. 'Third party' executors and trustees usually charge the maximum allowable professional fees and are unlikely to deal with the realisation of assets and the administration of your estate in a sympathetic manner.
- There could be no guardian of your choice for your minor children, which could have a huge detrimental effect on them.

- Bank accounts could be 'frozen' for a lengthy period of time, resulting in cash flow problems and could potentially cause creditors to take a firmer, more aggressive approach with regard to the repayment of claims.
- Business bank accounts may be 'frozen' if monies owing by the deceased are payable to third parties and are unable to be repaid in a timely manner by the estate, leaving the business in a vulnerable position.
- Before an executor is appointed or if a will is being challenged, assets are at risk and insurance policies may not be able to be claimed, even if they fall outside of the estate.
- Intestacy, a court case, or other challenges to a will can generally result in embarrassment, stress and complications for your family, and a financial mess to clear up, and with potentially little time to sort it out, this only exacerbates the problems.
- The cost of winding up your estate will increase, often significantly, as additional legal and other costs will be incurred.

4. If someone has lived in different jurisdictions and has acquired assets, including fixed property, does he/she need more than one will to cover these?

You can have one "worldwide" will to cover your assets in all jurisdictions, but it is not advisable.

If you have significant assets in multiple jurisdictions, you should have separate wills to cater for each jurisdiction and below are a few reasons why:

- Where fixed (immovable) property is concerned in certain jurisdictions a property transfer may only be legally effected by way of a valid (local) will.
- There are significant differences in the inheritance laws and practices between Common Law and Civil Law countries. In addition, if you have assets in the UAE or other countries with a Muslim majority, you will also

have to consider Sharia Law, which will dictate strictly who gets what and also dictates the appointment of temporary guardians. It is essential for an expatriate living in such a country to ensure that a will is drafted (and properly registered) for them according to their particular national laws, to cover their assets within that jurisdiction and the appointment of resident guardians. This will effectively alter the way inheritance and guardianship laws and practices could be applied by the courts in that country. If they do not do this, then normal Sharia Law will apply. Local authorities will apply their local laws and protocols strictly and are not usually sympathetic to a particular family's needs, concerns or wishes.

- Preparing a separate valid will per jurisdiction will assist you and your executors in separating your assets, subject to inheritance tax and death duties in the various jurisdictions, and potentially avoid paying double tax on the same assets. This is particularly important in jurisdictions which do not have inheritance taxes/death duties, so that those assets do not fall into your estate where death duties are to be paid.
- It makes the appointment of a locally qualified and court-recognised executor easier, and significantly reduces time, costs and complications across jurisdictions, particularly where one professional company is dealing with the entire international estate.
- Wills need to be “ring-fenced” per jurisdiction, and it is therefore preferable to get professional advice per jurisdiction. For example, if you have multiple wills that are specifically limited to UK, South African, US and Australian assets, but you also have assets in the Isle of Man, you would die intestate in the Isle of Man if you do not have a Manx will (with the added probate costs associated with winding up an intestate estate in an offshore jurisdiction). Probate may not be avoidable by Manx laws, but having a separate Manx will to cover Isle of Man assets will create certainty, avoid delays and a potential court application.

It is vital that each jurisdictional will caters for local laws and taxes, and does not revoke or cancel any other will, or create ambiguity.

What Would Dixcart Recommend?

International families should consider the use of universal executors and trustees (usually one multi-jurisdictional international firm or trust company) who know them and

their family personally, have been involved in planning their estate around the world, and who have a working knowledge of their businesses and properties. This would help to ensure that their entire estate and all of their assets are protected, and can be dealt with “under one roof” promptly, confidentially, seamlessly and at a reduced cost.

A final point: make sure that your chosen executors and trustees have the legal and fiduciary capacity to be appointed as such in all of the jurisdictions where you have a will. In most countries, the relevant probate authorities follow strict processes and ‘screening’ procedures to appoint executors and trustees, to ensure that the estate and heirs are protected. Make sure that your nominated executor and trustee will not be disqualified or have to provide a bond of security, which will cause confusion and delays, and may result in having to appoint another person in their place.

Additional Information

If you require further information regarding wills or multi-jurisdictional wills, **or have any questions regarding estate planning, inheritance tax planning, or probate in the countries where you own assets**, please speak to our Dixcart office in the UK:
advice.uk@dixcart.com.

Please see our [Private Client](#) information.

Updated: January 2020