

# Estate Planning - Wills

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

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This guide explains why it is important to have one or more wills 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, but nationality may also be relevant. Domicile (in its broadest sense) is the place to which 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. If you own real estate, the law of the country where the real estate is located will also often be a relevant factor in the succession.

If you die intestate, 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 those you had intended.

It is often necessary therefore (particularly for international clients with assets around the world) to take advice in more than one country and potentially to have more than one will disposing of those assets.

## Advantages of having a will

### Certainty of succession

A will 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.

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 and 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 provides guidance and certainty.

### Speed of administration

For some individuals, speed of administration is a key concern and having more than one will may 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 may mean that the administration of those assets can progress almost immediately following death.

If, however, there is no country-specific will, the estate administration would not be able to start until probate has been obtained in the deceased's country of domicile which, depending on the jurisdiction, could significantly delay releasing assets to the heirs.

## Issues relating to children and spouses

If you have substantial assets, but you are worried that your intended heirs would not be capable of managing those assets if you died now, then a will can be drafted in a way that incorporates some helpful flexibility.

A carefully considered 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 benefit, but also that the majority of your assets are ring-fenced for the benefit of your own children and do not pass, for example, to your new partner's own children, or your new partner's subsequent partner.

## Tax and other considerations

There may be other factors that could make it unattractive for your heirs to receive an absolute right to your assets on your death such as inheritance or gift taxes, divorce, potential creditor claims and reporting obligations. In such circumstances a more flexible will may be desirable, not just for you but also for the wider family.

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.

## Trusts and wills

Some of the advantages mentioned in relation to wills can be achieved through the use of trusts, either set up to receive assets in your lifetime 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 enough to receive substantial assets, or if there are tax issues to consider. 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 own certain assets personally at the time of your death; one example is shares in companies whose purpose is to hold business interests or other assets. Often it is helpful for these shares to be owned by the trustee of a trust, so that on death they do 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 and its assets, keeping the shareholding intact and allowing the management of the company to continue uninterrupted.

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 relevant jurisdictions before any succession planning is implemented.

Often, the optimal solution is a carefully designed combination of trusts and wills.

## Contacts

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