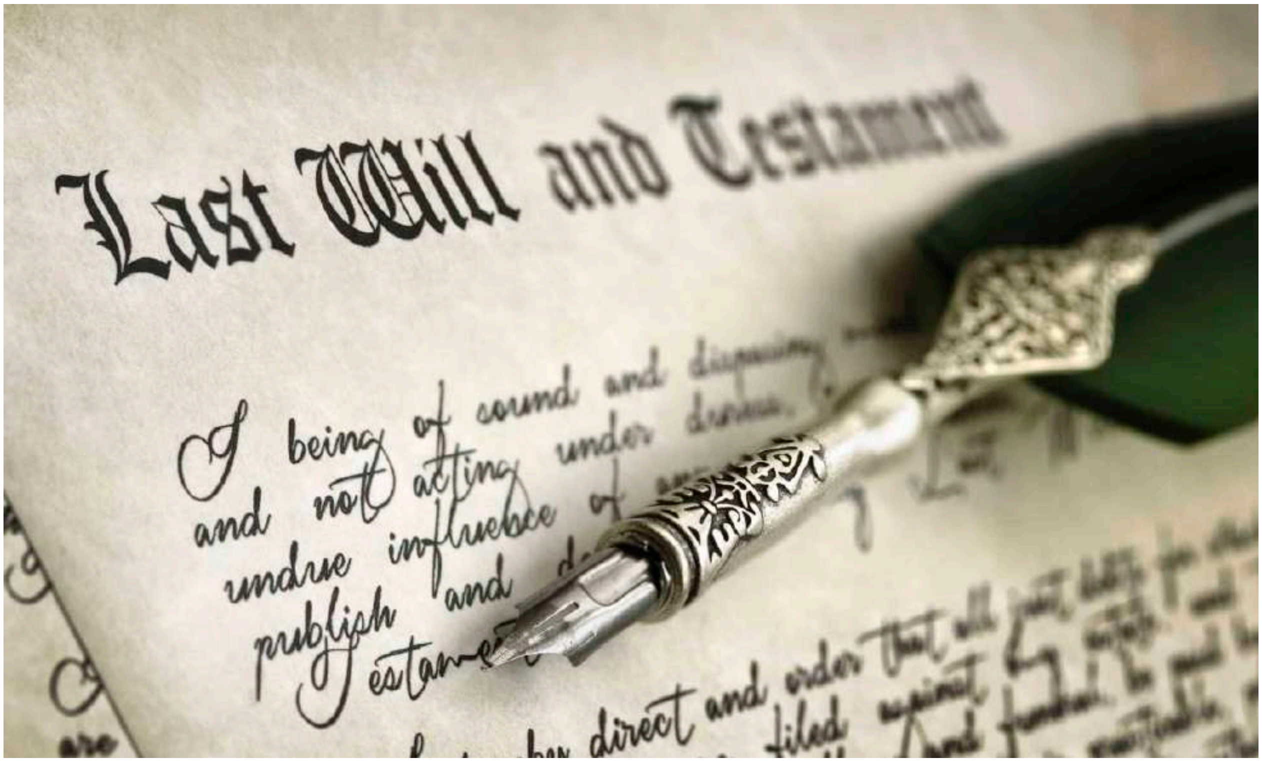
Want To Give Your Family Nightmares? ... Don't Make A Will



Every day, people give their families nightmares by not getting their financial affairs in order before they die. Many do not even make a will, leaving bereaved relatives the difficult job of trying untangle their estates.

If something goes wrong, it is the administrator – usually a close family member or friend who makes sure assets are passed to the right people – who is responsible and financially liable, even if they have hired a lawyer for help.

In the UK for example, According to Insurance Company Direct Line, more than 50% of people have not written a will.

Even amongst the more mature generation, over 33% have not made written instructions for how their assets should be passed on, meaning their wealth would be subject to the rules of intestacy.

In England and Wales, these rules say that the estate must pass to the closest surviving family: spouses first, up to £250,000; then children; then grandchildren; then any surviving parents; then siblings; and so on down the line of relatives. If you have no surviving family, the estate goes to the Crown.

However, with increasingly complex family arrangements, and expats with foreign spouses, identifying the next of kin is not always simple, and the task of simply locating family can be expensive and timeconsuming. The issues of the ‘de facto’ spouse – the partner of years or even decades, but with no documented marriage: informally adopted children, first and subsequent marriages or partnerships, and their respective children all add to the complexity for administrators (and their highly-paid legal advisers).

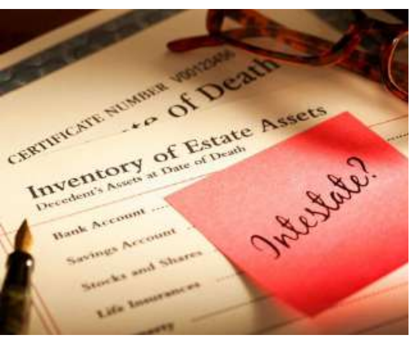
To make matters even worse, the estate of the deceased may involve, for example, bank accounts in the Isle of Man and Hong Kong, investments in the Channel Islands, as well as property and bank accounts in the country of residence, South-East Asia, for example.

For English and Welsh domiciled expats, the law that governs the devolution of their movable estate (e.g. cash, investment funds and personal items), is the law of England and Wales.

However, this is unlikely to extend to the immovable estate (e.g. land and buildings) held anywhere other than England and Wales).

The immovable estate is more likely to be dealt with under the law of the jurisdiction where the asset is located.

As each nation has their own laws to govern the distribution of and the taxation on an estate, no one-size-fits-all Will exists, so, expats who own assets in more than one jurisdiction may find they require several Wills.



What happens without a Will?

With no legally binding Will, the laws of intestacy will apply.

In England and Wales, the intestacy rules will divide the estate in a standard way and this will not suit everyone. For example, a long-term partner (not married or in a civil partnership with the deceased), even if they have children together, will not inherit anything at all, step-children are not recognised under intestacy rules, guardians and executors will be appointed by a court and there will be no provisions for smaller gifts or charitable donations.

It is not difficult to see how the intestacy rules can make for some bitter arguments between family members.

Each country has its own rules to dictate what happens to an estate when a person dies, so, for those with immoveable property situated in a certain jurisdiction, the rules of that jurisdiction which will prevail.

This may have consequences for the taxation of the estate, with death duty applied to the value of the immovable property in its country, and Inheritance tax imposed by the UK (for example) on the whole estate value. This could mean, with no Double-Taxation Agreement between the property jurisdiction and the country of Domicile, death duties could be applied twice.

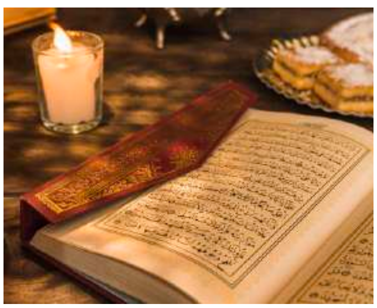
Wills and The European Union (EU)

Expats who hold property in an EU Member State (except Denmark or Ireland - the UK is no longer in the EU), may find the laws governing the devolution of that property are not those of the country where the asset is situated.

The EU Succession Regulation which came into force on 17th August 2015, provides that the succession law which applies to a person's entire estate is decided by that person's last place of habitual residence.

For expats, however, the regulation gives a superseding right to choose the law of their nationality.

A lot of debate has surrounded the EU Succession Regulation and to what it might mean. For example, does having not decided upon a law to govern a property situated in one of the Member States involved mean that the automatic choice is the law of the country where the person was last habitually resident; no matter where that was?



If this is the case then those who reside in countries of forced heirship may find their properties being divided in ways which they would most certainly not want.

For example, the Italian holiday home of an English expat resident in UAE, arguably would be dictated by Sharia law (if there was no election to apply UK law), may take no account of the wishes or family situation of the deceased.

It is clear that there is no simple solution, - no standard will is going to cover all situations.

However, considering what you want to happen to your assets on death, and putting in place the appropriate instructions in good time certainly makes sense to ensure those you care most about are the people who benefit from your estate.

Here's a starting checklist:

- ✓ Ensure you have a will in your country of domicile
- ✓ Ensure you have a will in your country of residence
- ✓ Ensure your pension provider has your up-to-date Beneficiary Nomination.
- ✓ Review any life insurance policies, and place the death benefit in trust, or nominate a beneficiary
- ✓ Review any potential Inheritance Tax or Death Duties, and mitigate if possible.
- ✓ Be aware of what assets form your estate, and any assets which may be considered separate from your estate.

For a confidential, no obligation assessment of your estate and its tax liabilities, please contact me.