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IS A FOREIGN WILL REQUIRED?

It is becoming a more popular practice for people to possess assets in foreign countries. There are several South Africans that are investing offshore and own properties overseas. Similarly, there are a few non-residents of South Africa who own and possess investments and properties elsewhere. The question is whether a “world-wide will” or a separate will for each jurisdiction, is to be used in dealing with a person’s assets.

To decide as to whether a separate will is required, one will have to consider the type of offshore assets a person has and where those assets are located. A South African will can be recognised in a foreign jurisdiction and be valid overseas however there are various problems that can arise in the winding up of the estate. For example, the Master of the High Court requires that the original will be submitted and likewise, the offshore authorities require the same. It is unlikely that a person has signed two original wills. This can delay the winding up of the estate severely. Another problem that can arise is that each country follows different laws in relation to testation of a will. For example, European countries follow Napoleonic law where inheritance laws override the intentions of the deceased, this means that the testator is limited in bequeathing his assets freely as a specific portion of the deceased’s estate must be allocated to specified relatives. This concept can be avoided if a will is carefully drafted by an expert in that particular jurisdiction.

It is important to note that each country has its own laws relating to the drafting of a valid will. The advantage of obtaining separate wills for your offshore assets is that you will ensure that the will complies with the laws of that country and avoid any conflict of laws issue. Especially if you are a South African that owns immovable property overseas it is advised that a separate will is drafted to deal specifically with that property. In the case where a person has a South African Will and a Foreign will, it must be stated in the South African Will, that the will only deals with the assets in the Republic of South Africa. It is also important to state in your South African will that the will does not revoke the foreign will but that it revokes all previous wills made in respect of assets in South Africa. This will ensure that the wills do not contradict each other and lead to uncertainty.



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When faced with the decision of whether to draft a local will or a foreign will, one needs to consider whether the assets overseas are considerable small, such as a bank account or a fund investment, it is likely to be more cost effective to include these assets in your South African will, for example if you possess an offshore endowment, a beneficiary can be nominated to receive the proceeds on the death of the person assured, and therefore it is not required to be incorporated in a will and makes the winding-up of the offshore estate much simpler and quicker.

Drafting of separate wills may be a somewhat complicated process, but it will avoid many complications and unintended consequences in the distribution of your estate in different countries and will in turn avoid or reduce costs which would otherwise apply. It is very important to consult with an expert when drafting these wills and the consequences of estate planning pertaining to the offshore assets.

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