

Estate Planning For Your Worldwide Assets

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More and more Canadians own assets in multiple provinces and countries. Whether you have a family property, vacation villa or securities in a local business overseas, specialized estate planning is necessary to ensure ease of administration of these assets on your death.

Generally, one of the following two strategies is used in estate planning for such assets:

1. Separate “situs” Will

A Will that is executed in accordance with the laws of the jurisdiction in which property is located, and which stands together with your main Will in the jurisdiction in which you reside. You can have a Will in each jurisdiction in which property is owned, as long as each Will makes clear that they are meant to stand together, and each Will specifies the property which it governs.

2. Multijurisdictional Will

This Will applies to all of your property, regardless of jurisdiction. It should be drafted to comply with the laws of each relevant jurisdiction.

Some people may wish to set up an “international Will” that is drafted in accordance with the 1973 United Nations “Convention Providing a Uniform Law on the Form of an International Will.” However, this “Convention” has only been ratified by a few countries worldwide. It has not been ratified by every province and territory in Canada, so an international Will is of limited use, and will not be reviewed further in this article.

Considerations in selecting the right Will

The decision to employ a multijurisdictional Will or whether separate “situs” Wills should be executed is impacted by many factors, including the costs involved and the ease with which you can complete your estate planning.

However, one of the most important considerations is compliance with the laws of the jurisdiction in which your assets are located to ensure your testamentary wishes can be followed. If the laws regarding execution of Wills or even form of Wills differ from the laws of your home province, you may want to consider a separate

“situs” Will to ensure the Will dealing with those assets addresses these nuances in the law.

Other legal issues that may require consideration include:

- **Common law vs civil law:** The nature of the governing law where your assets are located may impact whether or not you are even able to direct the distribution of your assets, the validity of your Wills, the interpretation and/or construction of your Wills, who is responsible for debts and taxes, or who has authority to administer your estate.
- **Testamentary freedom:** If your property is located in a jurisdiction with a “forced heirship” regime, your ability to choose your beneficiaries may be circumscribed by these laws. Your testamentary freedom may also be limited if your assets are located in a jurisdiction that imposes marital “community of property,” which restricts the assets that you may dispose of in your Will.
- **Validity of trusts:** if your intention is to create trust(s) for your beneficiaries, you should review with your lawyer whether trusts are recognized in the relevant jurisdictions. If trusts are valid, your lawyer should confirm what limitations there may be (i.e., in accumulations, perpetuities, etc.), and if trusts are not valid, your lawyer can advise as to what alternatives may be open to you.
- **Choice of executor:** Many jurisdictions require an executor who is resident in that jurisdiction, or impose additional charges and/or administrative steps if an executor resides outside the jurisdiction. Care should be taken to ensure your choice of executor(s) do not complicate the overall administration of your estate.

Many of the other considerations pertain to ensuring ease of administration of your worldwide assets, both for your executor and for your beneficiaries. Consider the following:

- **Language:** If your property is located in a jurisdiction with an official language other than English/French, you may want your Will dealing with those assets to be drafted in the native language to avoid any issues with interpretation and/or translation on your death.
- **Efficient administration:** Many jurisdictions require probate of an original Will to grant administration of property located in that jurisdiction. If you have one Will, then your executor will need to obtain a resealing of the original grant of probate in the other relevant jurisdiction(s) before any property located in that jurisdiction can be administered. Such unnecessary delays can be avoided with separate “situs” Wills as each probate application can occur concurrently, instead of consecutively. This may also allow minimization of probate fees on your assets, as well as protect your privacy regarding your worldwide estate.
- **Income tax:** The overall coordination of the liability for income tax (and/or estate tax depending on the jurisdiction) in all relevant jurisdictions is critical to ensure the estate is administered in a tax-effective manner, and to minimize interpretation issues regarding tax liability.
- **Careful drafting:** Whether you have one Will that will govern your worldwide assets, or separate “situs” Wills, your lawyer here in Canada will need to be well versed in cross-border estate planning and may need to confer with counsel in the relevant jurisdiction(s) to ensure compliance with its laws.

- **Careful review:** Having separate “situs” Wills may increase the risk of inadvertently revoking one or more of your Wills when you are updating your estate planning, and so careful review of the entire estate plan is critical to its overall success and continued validity.

Seek advice

The decision to use separate “situs” Wills or one multijurisdictional Will is one that requires consideration of each approach, the jurisdiction(s) in which your assets are located, and your own personal circumstances. However, no matter which approach is taken your needs are best suited to an estate planning lawyer with cross-border experience. Coordination among your professionals is critical to ensure the success of your estate plan.

For more information, speak with your BMO financial professional.



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