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Multi-jurisdictional Wills

Power Play Blog 2.4

Given the nature of your sport, especially at the professional level, it's common for our clients to own assets in several jurisdictions at the same time – multiple states, provinces or even countries. In this edition of our blog, we'll explain some of the issues and reasons we've been recommending that multiple wills be prepared. Recent data indicate there are approximately 45 million foreign-born people living in the U.S. – some have become citizens, but many of those are non-citizens living in the United States. Many own a home in the city where they are playing, and also in another country such as in the U.S., Canada, or Sweden. These global assets should be considered when structuring a comprehensive estate plan.

What solutions are available? First, we must consider the fact that different countries operate under differing legal structures. Canada and the UK, for example operate under *'common law'* whereas countries such as Germany, Switzerland and Sweden operate under *'civil law'*. A complete examination of the differences between these two systems is beyond the scope of this blog. It's important to note however, that one of the tools we have been using often in the estates we structure is the use of trusts. While these are regular tools in common law countries, civil law countries typically do not recognize them. In addition, common law and civil law countries have different rules governing the disposition of assets, and the order and amount certain beneficiaries must inherit, notwithstanding the wording in the will document. For example, when a non-U.S. citizen owns property in another country, the law of the country where the property is located may affect how that asset is handled. Some countries may not accept a will drafted in another country as valid, which can cause severe problems in settling an estate. The U.S. operates under a "hybrid" system of laws, essentially a combination of common and civil law, which also can vary state to state.

A civil law country may not recognize a trust created under the estate in a common law country. Therefore, the civil law country may not recognize the beneficiaries named in the will, or may treat the trust as a separate, unrelated party, and impose extraordinarily high inheritance tax rates. This is one of the reasons we have been introducing the idea of multiple wills – each one dealing only with the assets (money, property etc.) located in that country, and drafted by someone familiar with the laws of that country. In that way we can be certain that nothing in a will drafted in one country revokes or cancels any previously drafted will in another country.

One of the most common applications of the multiple will approach occurs when someone is playing/living in a U.S. city, and also has interests in a business in their home city back in Canada, or vice versa. Having a separate will to handle the shares and the holdings of that business is important, not only if you have residency in the U.S. during the season, but also when drafting your personal will in

Canada. Keeping the business separate and out of the overall estate can save a lot of money when it comes to having your will probated, as the value of the shares in that separate business could be worth a substantial amount.

(There is a second option, an international, or multi-jurisdictional will, but many countries do not recognize them. As a result, ONE Sports has chosen not to recommend them, unless a specific special case warrants it.)

One thing to pay particular attention to if you have a separate business from your hockey career, is whether there were any personal guarantees required on the company bank loans. If you signed a "general "personal guarantee, and if your company is not able to repay that loan, the bank may have recourse back to any assets or inheritance due to you from an estate. Our recommendation is to negotiate a provision in that guarantee to exempt any assets that you may acquire as a gift or inheritance. If there is an existing guarantee in place, ask if you can renegotiate that guarantee to exclude those gifts or inheritance monies. The onus is on the person making the will to ask their beneficiaries about any personal guarantees they made that could affect their inheritance. This is an important point to discuss with the lawyer drafting your will.

Further to drafting wills in multiple jurisdictions, we have also been working with our clients in the same manner with respect to the various powers of attorney required. One Power of Attorney (PoA) may work in multiple states, provinces or countries, but these different jurisdictions may have distinct rules for what constitutes a valid PoA. When it comes to the health care directives, or PoA for personal care, we really want to make sure that document is valid and current for the place you are living at that specific time.

Something we have blogged about in the past and continues to be a point of discussion in our planning, is digital assets. Digital assets (online photo albums, Facebook accounts, any digital file you may own) also include digital accounts. Think about: a) virtual currency accounts (Bitcoin), PayPal, credit card or other loyalty programs, b) virtual property where you own a license to use the account such as Kobo, iTunes, c) accounts that contain personal information such as personal email accounts, Facebook page, Twitter, LinkedIn. We recommend you discuss this topic specifically with the lawyer drafting the will. Laws in this area are changing rapidly. The province of Saskatchewan for example has recently introduced Canada's first piece of legislation addressing fiduciary rights (the right of your executor) to access these assets and accounts. Until laws like this become more common, you may consider the following:

1) Identify all of your digital assets and accounts. This includes writing down the location of all your mobile devices, computers, flash drives, etc.
2) Make a detailed account of what you want done with each digital asset and account. We suggest including a separate, signed and sealed letter addressed to your executor but not included as part of the will.

3) Provide access to your executor by leaving a password-protected list using something like LastPass or 1Password.
4) Make sure you update this list periodically.

It is important not to list any passwords with the actual will. When a will goes through probate (the subject of previous blog 2.3), it may become public record, thereby putting those accounts and the passwords at risk.

Stay safe and protect yourself and others at all times.