

## WHEN YOU SHOULD WRITE TWO OR MORE WILLS

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In the last issue of *Letter of the Law*, we discussed the role and responsibility of executors in administering an estate, an undertaking that can become even more complicated when the laws of more than one jurisdiction apply. This usually happens in one of two cases: when a deceased person resided or was domiciled in British Columbia but owned assets outside the province or when he or she lived outside British Columbia but owned assets here.

When faced with this situation—known as a “multi-jurisdictional estate”—the executor has to address two main questions: where was the deceased domiciled? *and* what assets are within the estate?

The answer to the first is not as straightforward as one might suppose. A domicile is not necessarily a matter of where a person was residing at the time of death. Residency can be temporary and, besides, a person may own residences in more than one place.

Generally, domicile is defined as the place where an individual lives and intends to live indefinitely. The determination may stem from one’s origin (meaning the place where a person was born and continues to reside), be a matter of dependency, or a matter of choice. The matter becomes more complicated in countries such as Canada which have a federalist system that can create more than one domicile for a person. Someone living and domiciled in British Columbia has a Canadian domicile for criminal proceedings but is considered to have a British Columbia domicile for estate proceedings.

Determining domicile, and the jurisdiction governing it, is important because those factors decide if a will is valid, if the deceased had proper capacity when executing the will, and how “movable” assets in the estate will be distributed.

As to the second question—what assets are within the estate?—it is advisable to know first that estate property is generally classified into “movables” (personal property) and “immovables” (usually land). Clearly, the most common situation giving rise to a multi-jurisdictional estate is when a testator owns land in more than one jurisdiction (although personal property can also create difficulties). Immovables are always governed by the laws of the jurisdiction where they are located, notwithstanding where the testator is domiciled.

When planning an estate that is or will be subject to more than one jurisdiction, it is prudent to seek advice from a legal professional in each jurisdiction to avoid unforeseen distribution issues of the assets. The laws applying to estates can vary significantly from jurisdiction to jurisdiction as the following examples show:

- In some circumstances, the laws of one jurisdiction may provide that immovables such as land are subject to a particular heirship structure, which cannot be amended by a will.
- Some jurisdictions have dependent relief legislation. For example, British Columbia's *Wills Variation Act* currently provides that testators must make adequate and just provision for their spouses and children. Failure to do so can result in a court varying the distribution of assets under the will. British Columbia is not the only jurisdiction to have this type of legislation.
- Some jurisdictions, such as the United States of America, have estate taxes which can be applied based not only on residency but also on citizenship. This can significantly affect the value of the inheritances whether passed with or without the benefit of a will.

In fact, given the problems that can arise when more than one jurisdiction may govern the distribution of an estate, a prudent estate plan might draw up different wills for each jurisdiction in accordance with the laws of that jurisdiction.