

No Will? No Way!

If you die intestate, which is without a will, the law tells the courts of each jurisdiction how your estate will be divided. As in the US, each state in Mexico has its own laws that dictate how the belongings of a person that dies without a will should be apportioned. Most states in Mexico have patterned their state laws dealing with successions on the Civil Code of Mexico City.¹

One principal reason that people have wills drafted is that they do not want to be told by the courts how their property will be divided. Further, if you have underage children, more than likely you do not want a court to decide who will take care of them if St. Peter should come calling early. These are very good reasons to have a will, indeed.

Another reason to consider this document is that to die without a will is more expensive in terms of attorneys and court time. It can also be a pain to the survivors, who are already dealing with a difficult situation. Consider too that by having assets in two countries, you will be duplicating a lot of your expenses. Your family will need to deal at least with two court systems, two sets of attorneys, an official translator (or two), etc. Can you say “mucho dinero”?

Wills are relatively inexpensive documents to draft, especially as compared to the headaches and costs they help avoid later on. A simple will could cost you about \$700 in the US. Simple Wills in Mexico cost about \$300 to draft. Having at least one of these makes good financial sense, helps you sleep better, and you know your wishes have a much better chance of being met if one of these is backing you up.

Die without a will? No way!

Mirror, Mirror on the Wall, Which One is the Truest of Them All?

Is your US will valid in Mexico? Is a Mexican will valid in the US? Yes and yes. Most US states have adopted a version of the International Wills Act which accepts validly drafted foreign wills. Mexican states also accept foreign wills as long as the country where the will was drafted would accept a Mexican will as valid². Further, non-Mexican wills are accepted as valid as long as they were drafted pursuant to the laws of the country in which the document was granted.³

Do you, then, need more than one will? Technically speaking the answer is no. The reason is that wills in both countries usually contain language revoking previous wills. Thus, if you

¹ The Civil Code for Mexico City deals with successions as of Article 1281

² Article 1313 (iv)

³ Article 1593, Mexico City Civil Code

had one document in the US, which was drafted five years ago, and then move to Mexico and drafted a Mexican Will, the US document might be invalid due to the language in the Mexican document.

As a matter of practice however, it is often suggested that two documents with identical provisions be prepared, one for the property in each country. I refer to this practice as mirror Wills. These documents usually state that the US property will be handled by a US executor and the Mexican property will be handled by a Mexican executor. While a disgruntled individual could challenge the oldest version as being invalid, in the end the Will's effect would be the same, and thus there is little reason to challenge on these grounds alone.

There are several advantages to mirror wills. First, it makes the probate proceeds much quicker. There is no need for official translations. Also, local executors are identified, which ideally should make the process move along more smoothly.

Make sure that if you have a Mexican will drafted that you go to the US consulate to have the will witnessed and registered. If you have a US will, next time you go home pass by the Mexican consulate to have that document registered as well.

Living Trusts

By having a will in place, you are able to assure that your wishes are respected, and you also save money and hassles that otherwise your estate would have faced had you passed away without a will. However, your estate still needs to go through the probate process. Probate is a relatively expensive proposition as well, and in the US it is a matter of public record.

If you have property that can be claimed by two or more jurisdictions you will need to go before at least two authorities. For example, if you had property in Oregon and Florida, your estate would face the music of two judges, and all states do not sing the same tune. If in addition you have property in Mexico, you will need to follow a separate process here as well. It would be much simpler, and cheaper, to place all property into a trust which outlives you.

Precisely to address the issues of cost and privacy, estate attorneys in the US have been recommending that assets be placed in what is known as a living trust. While there are no tax advantages to this particular trust, there are other important considerations. Probably the principal advantage for many is that while you are alive, you have full control over assets in the trust. After your death, assets in the trust avoid probate and are transferred "in private" according to the trusts provisions.

Is it possible to place Mexican assets into a US living trust? It is possible. You will need to get the document notarized in the US, and the notary's certification authenticated by the

Secretary of State in the state where the trust has its domicile. You will then proceed to get the trust document translated in Mexico by a court translator. You do not need to have the document notarized in Mexico, but it would not hurt to do so.

There are a couple of issues of which you have to be aware. First, the trust would have to maintain its domicile and administration outside of Mexico in order to avoid being considered a Mexican Trust. Mexican trusts do not allow trustees other financial institutions⁴. A second area to be concerned with is if you own real estate in the restricted zones. Generally foreign entities are not allowed to own real estate in these areas. This law applies to foreign trusts as well. One way around this would be to form a Mexican company and then have the shares of the company owned by the trust.

⁴ Article 350 of the Securities and Credit Transactions General Law