

Is my will valid in Australia?

THE ARTICLE “WHERE THERE’S A WILL”, ABOUT the need for more than one will if you have assets in a foreign country (PERSONAL FINANCE, volume 58, page 30), raised a red flag in my mind.

I hold both South African and Australian citizenship and have term deposits in ING and ANZ banks in Australia, which I keep reinvesting. I have just made a new will in South Africa (where I expect to live out my life), which naturally includes these monies. I have always assumed that the execution of the will would be a straightforward matter.

With overseas-held assets as uncomplicated as these, can you advise whether I need to do anything additional to ensure that the execution of my will does not run into difficulties? I am 79 years old.

I am sure many returnees to South Africa would appreciate comments on this matter, and I look forward to any helpful guidelines.

Name withheld

Chris Murphy, a director of Legacy Fiduciary Services and Estate Planners and the chairperson of the Fiduciary Institute of Southern Africa in the Western Cape, replies:

Generally, a will made in South Africa (compliant with the provisions of the Wills Act) will be recognised and be valid in Australia. Legislation governing wills is slightly different in each state of Australia, but in general, Australian legislation records: “A will made in (almost) any country shall be deemed valid, providing it was made in conformity with the legislation then ruling in the country in which the testator was living at the time that the will was made.”

So, if your South African will (i) is valid in terms of the formalities of South African law, and (ii) was made by you while living in South Africa, it can be used in Australia.

The problem, however, is that even though the will is valid and legal, it has to be proved to be valid and legal. This proof is generally acquired by attorneys and solicitors on both sides of the water preparing documents and obtaining court-sealed copies of the will, and so on, in order that they may attest to the legality of the original will. It then has to be submitted to the Supreme Court in Australia. The attestation could prove costly and delay the appointment of your executor in Australia.

It may well be advisable, instead, to have a separate will in each jurisdiction dealing with the assets in that jurisdiction and appointing appropriate executor(s). Alternatively, in the event that you have a fluid “non-South African estate” (in other words, assets, or the management thereof, may not remain in one jurisdiction, or you are uncertain as to which jurisdiction covers any particular asset), you could have a South African will and a separate “worldwide will” dealing with the assets separately, in order that the administration/probate of your estate can take place simultaneously, cost-effectively and correctly.

The good news is that a worldwide will can be drawn up in South Africa. The important thing is to end up with a South African will that deals exclusively with South African assets and a worldwide will that deals exclusively with assets outside the country. The two wills must not overlap. The critical factor, in this case, is that the worldwide will must comply with the requirements of Australia.