



Guide to Wills in the Cayman Islands

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Preface

Cayman Islands law does not prevent persons domiciled in other jurisdictions from making testamentary writings governing the administration of assets situated in the Cayman Islands ("Cayman Wills"). However there are restrictions to a Cayman Will, which are discussed below, and persons desirous of making arrangements with respect to the administration of assets, may need to consider the use of a Trust Instrument or a Settlement to achieve certain objectives.

Higgs & Johnson strongly recommends that legal advice from professional advisors in the country of residence of a would-be testator be obtained, in relation to what is sought to be achieved by using a Cayman Will. Higgs & Johnson will not provide advice on legal or other ramifications relating to the use of a Cayman Will, insofar as the laws of any foreign jurisdiction are concerned. Our professional advice will be provided within the context of the laws of the Cayman Islands.

TESTATOR WILL REQUIREMENTS

The Cayman Islands are bound by the English Common Law principle that a testator can only leave one will. However a testator may leave more than one expression of his testamentary intentions. Therefore he may leave several documents worded so as to describe themselves as his wills or as codicils to his will. However it is the aggregate or the net result of the testamentary intentions or the several documents that constitute his will. If a document purporting to be the will of the Testator is inconsistent with later testamentary writing, no legal effect will be given to the earlier testamentary document. However if a testamentary writing is consistent with an earlier writing and can be read together, both documents together are considered the Will of the Testator. Higgs & Johnson. will therefore draft the respective Cayman Will in a manner so as to prevent it from revoking an earlier testamentary intention. To achieve this objective it will be necessary for the client to produce copies of earlier testamentary writings so to safeguard against the Cayman Will having the effect of revoking the provisions of the earlier testamentary writings or to limit the revocation to what is intended. It is important to bear in mind that any testamentary writings made after the execution of the Cayman Will may have the effect of revoking the Cayman Will. Higgs & Johnson. therefore recommends that there be disclosure of any existing Cayman Will to the legal representative drafting any later testamentary writings so that the later testamentary writings may be drafted with the existing Cayman Will in mind. Also, it is recommended that the would-be testator's legal representative consult this firm or a Cayman Islands Attorney-at-Law concerning the Cayman Will before drafting the later testamentary writing. The Cayman Islands have various laws with respect to the formalities of a Will and a Cayman Will should be drafted with these rules in mind.

PROBATE OF WILLS

Succession Law in the Cayman Islands allows the probate of any Will, admissible to proof, to be granted here in the Cayman Islands:

- if the will is in the English Language, to the executor named in it; or
- if the will describes the duties of the named person in terms, sufficient to constitute him executor according to the tenor of the will, to that person.

A will is admissible to proof if it has been accepted by the country of domicile as a valid testamentary document and if it is executed in accordance with the law of the Cayman Islands. Please bear in mind that under the laws of the Cayman Islands, where the deceased died domiciled outside the Islands, the Judge has the power to order that a grant is made to any of the following persons:

- to the person entrusted with the administration of the estate, by the court having jurisdiction at the place where the deceased died domiciled; or
- where there is no person entrusted, to the person beneficially entitled to the estate, by the law of the place where the deceased died domiciled or, if there is more than one person entitled, to such of them as the Judge may direct; or
- if in the opinion of the Judge, the circumstances so require, to such person as the Judge may direct. Where the whole or substantially the whole of the estate in the Islands consists of immovable property (i.e. land), a grant in respect of the whole estate may be made in accordance with the law that would have applied if the deceased had died domiciled in the Cayman Islands.

It is important to note that where a person dies domiciled in a foreign country, the courts of the Cayman Islands will follow and apply the law of the foreign country when dealing with the succession to the ownership of movables situate in the Cayman Islands. Movables are assets other than land. Therefore the validity of any gift of movables made in a Cayman Islands Will of a testator domiciled at the time of his or her death in Country A, would fall to be determined by the law of Country A. To the extent that any testamentary disposition is made by such a person, it may be invalidated by, or may abate so as to give effect to the law of Country A.