

OVERSEAS RESIDENTS WITH AUSTRALIAN ASSETS

Reasons for different Wills to deal with Assets in different jurisdictions

The use of one will with a “whole of world” approach can result in delays and complications when that Will is to be put into effect in a jurisdiction other than the one in which it is made. In Queensland, Courts and authorities will generally only recognize a foreign Will once probate (or an equivalent Court process that confirms the Will is both valid and the most recent Will) has been obtained in the relevant foreign jurisdiction and then a probate process is followed in Queensland. Obviously, this can result in delays, complications and additional costs. Questions may then arise as to how the Will (which has been made under a different legal regime) would operate in Queensland. Further, if the Will has been made in a language other than English, then a translation that would be recognized by the Queensland Courts and relevant authorities is required. Again, such things can give rise to delays, complications and additional costs.

An “Australian” Will

A common solution is for the foreign resident to put in place a Will that deals with the foreign resident’s Australian assets only as at the date of death. The Will that the foreign resident puts in place in his or her own country must be drafted in such a way as not to be inconsistent with the Australian Will – in other words it must operate in respect of the foreign resident’s assets anywhere in the world except those within Australia as the date of death and be complimentary to the Australian Will. The end result is a Will that is in a form that is familiar to Australian Courts and authorities and that should be able to be implemented with less scope for complications, delays and additional costs that may arise in relation to a foreign Will.

Cost of an “Australian” Will

Assuming a straightforward Australian Will dealing with assets owned in individual names only (no companies or trusts are involved) is required and that any liaison with the client’s foreign lawyer is minimal, the legal costs for obtaining instructions, drafting the will together with an advice and arrangements for execution would be approximately \$300.