MORGAN McMANUS SOLICITORS

WILLS AND CROSS-BORDER ESTATES

Fergal McManus
Solicitor and Registered Tax Consultant
Partner, Morgan McManus Solicitors
The Diamond
Clones
Co Monaghan

WHAT ARE THE ISSUES IN DRAFTING A WILL FOR A PERSON WITH CROSS-BORDER ASSETS?

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Do they need two Wills?

The Hague Convention – provides for the recognition of foreign Wills. Ireland and the UK are signatories

A foreign Will will be regarded as valid in a signatory country with regard to **form**, where it complies with the internal law of:

a) the place where the Testator made the Will

b) a nationality possessed by the Testator, either at the time when he is she made the Will or at the time of his or her death

c) a place in which the Testator had his or her domicile, either at the time when he or she made the disposition or at the time of his or her death

d) a place in which the Testator had his or her habitual residence, either at the time when he or she made the disposition or at the time of his or her death

e) in so far as Immovable Property is concerned, the place where it is situated

TWO WILLS REGARDLESS?

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Immovable Property

- Tend to be prudent for a Will to be made in the country where the property is situate
- General Rule of Thumb, under Private International Law, a Will dealing with Movable Property will be construed in accordance with the laws of the domicile of the person making it, whereas a Will dealing with Immovable Property will be construed in accordance with the laws of the place where the property is situate
- For example, not every jurisdiction might recognise a “Life Interest”

IS THERE A DOWNSIDE TO HAVING TWO WILLS?

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- Exercise great caution that the foreign Will does not revoke the domestic Will and vice versa
- Each Will should contain a Declaration that such Will is to apply to property within a particular jurisdiction or to which that jurisdiction's laws apply and it should also say "This Declaration also applies to the revocation clause contained in this my Will"

ARE THERE SPECIAL CONSIDERATIONS IN MAKING WILLS FOR BUSINESS PEOPLE?

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- Executors and Trustees should have power to run your business
- Company Issues – Shareholding – Articles of Association
- Successor Issues

MAIN CONSIDERATIONS WHEN MAKING A WILL FOR SOMEONE WITH CROSS-BORDER ASSETS

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If you have cross-border assets, you and your solicitor should consider the following:

- Do you need more than one Will?
- Where are you domiciled? If there is any potential doubt about this, steps should be taken to ensure you have the right evidence
- Where are you Resident or Ordinarily Resident? Once again steps may have to be taken to ensure that you have the right evidence
- The tax implications of your wishes

WHAT ARE THE ISSUES IN ADMINISTERING A CROSS-BORDER ESTATE?

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Where a deceased person held assets in two different countries or jurisdictions, he or she is said to have a "cross-border estate"

- In which jurisdiction should the property of a cross-border estate be administered?
- If there is no will, which intestacy laws apply?
- How the estate is to be taxed?
- Where was the deceased domiciled?

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WHAT IS DOMICILE?

- In Roman times special privileges were accorded to individuals who were citizens of a Roman city
- This has developed over the centuries and there are various ways of acquiring domicile of a particular jurisdiction e.g. Domicile of Origin, Domicile of Choice, Domicile of Dependency and Deemed Domicile

IN WHICH JURISDICTION SHOULD THE PROPERTY OF A CROSS-BORDER ESTATE BE ADMINISTERED?

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What is a Grant of Representation?

A Grant of Representation is an official legal document issued by a government agency, usually known as the Probate Office, to the Personal Representatives of the deceased person that allows the Personal Representatives to administer or deal with the assets of the deceased

ONE GRANT OF REPRESENTATION OR TWO?

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- If the deceased person had assets in two countries, the general rule is that a Grant of Representation will be required in each country
- When administering a Will, you apply to the Probate Office in the country where the deceased person was domiciled first
- Colonial Probate Acts whereby Northern Ireland, England and Wales recognise Irish Grants of Representation and “Reseal” them
- The Republic of Ireland does not have a reciprocal arrangement

WHICH INTESTACY LAWS APPLY?

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What is Intestacy?

- When a person dies without having made a will, they are said to have died “intestate”. If a person dies intestate then their estate will be divided up or administered in accordance with the Rules of Intestacy
- These Rules of Intestacy tend to vary hugely from country to country

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IN A CROSS-BORDER ESTATE, WHICH RULES OF INTESTACY APPLY?

The general rule is that in all jurisdictions within the United Kingdom and the Republic of Ireland, the correct jurisdiction to apply the intestacy rules is the jurisdiction in which the deceased was **domiciled**

EXCEPTIONS TO THE GENERAL RULE

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- The only exception to the general rule relates to **Immovable Property** in the **Republic of Ireland**
- The Republic of Ireland intestacy rules apply to land and buildings, regardless of where the owner was domiciled
- The deceased person's farm or business in the Republic of Ireland may well be divided up among his next of kin in a different proportion than his Northern Ireland property

WHAT ARE THE LAWS OF INTESTACY IN NORTHERN IRELAND?

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- "Issue" includes children, grandchildren and great grandchildren etc. living at the date of the deceased person's death
- If there is a surviving spouse (or civil partner) and surviving issue, the spouse (or civil partner) gets:
  a) The first Stg£250,000; and
  b) The personal chattels; and
  c) (i) If there is one surviving child (with no predeceased child leaving issue) or no surviving children and one predeceased child leaving issue, half of the residue

     (ii) If the deceased had no surviving children but more than one predeceased child leaving surviving issue, or one surviving child and one or more predeceased children leaving issue, or at least two surviving children, one third of the residue

WHAT ARE THE LAWS OF INTESTACY IN NORTHERN IRELAND?

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- **And** in the case of c)(i) above, the child (or if predeceased the issue) gets one half of the residue. **And** in the case of (c)(ii) above, the children, child or issue get two thirds of the residue
- If there is a surviving spouse (or Civil Partner) and no issue but surviving parents, siblings (or their issue) the spouse (or Civil Partner) gets:
    a) the first £450,000
    b) the personal chattels
    c) one half of the residue
- **And** the other half of the residue is divided as follows: If the deceased is survived by one or more parent, they take in equal shares but if there are no surviving parents then siblings take in equal shares
- If there is a surviving spouse (or Civil Partner) and no surviving issue, parents or siblings or their issue, the spouse takes the entire estate. If there is no surviving spouse, the next of kin take according to the rules of priority

WHAT ARE THE LAWS OF INTESTACY IN THE REPUBLIC OF IRELAND?

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- If a person dies without making a will, and he or she is survived by a spouse (or Civil Partner) and issue e.g. children or grandchildren then the surviving spouse shall be entitled to two-thirds of the Estate
- If there are no issue then the surviving spouse (or Civil Partner) is entitled to the entire Estate
- If there is no spouse or issue, the Estate will go to the next of kin in accordance with the rules of priority

HOW IS THE ESTATE, OR INDEED THE BENEFICIARIES TO BE TAXED?

I now hand you over to Rose Tierney