

Does “Domicile” always decide which Rules of Intestacy apply in a Cross Border Estate?

Where a deceased person held assets in two different countries or jurisdictions, he or she is said to have a ‘cross-border estate’. If the deceased person had no will in either country, how will their foreign assets be distributed? In other words, which rules of intestacy laws will apply to the deceased person’s assets? These “Rules of Intestacy” tend to vary hugely from country to country. Therefore making sure to apply the correct Rules of Intestacy is vitally important. Applying the correct Rules is not as straightforward as one might think.

As far as Northern Ireland (together with the rest of the UK) and the Republic of Ireland are concerned, one must first ask – ***Where was the deceased domiciled?***

What is Domicile?

Most legal systems in the world have taken and adapted the concept of domicile from ancient Roman law. In Roman times special privileges were accorded to individuals who were citizens of a Roman city. Domicile in ancient Rome meant that each man belonged to the city where he paid his taxes, and in return he had the right to the advantages of belonging to that city. In turn a child would acquire his father’s domicile even though the child was not necessarily born in that city. This has developed over the centuries and there are various ways of acquiring domicile of a particular jurisdiction e.g. Domicile of Origin (country of your birth), Domicile of Dependency (country of your parents), Domicile of Choice and Deemed Domicile.

Once the deceased person’s domicile is established, which Intestacy Laws 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**. For example, an English domiciled person had a bank account in the Republic of Ireland and died without a making a valid Will in either Ireland or England, then their Irish bank account will be administered in accordance with the English Rules of Intestacy.

Are there Exceptions to the general rule?

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. For example, if a person domiciled in Northern Ireland has a farm in the Republic of Ireland, and that person dies without a Will, then the Republic’s Rules of Intestacy will apply to that farm and not the laws of intestacy of Northern Ireland. This

means that the deceased person's farm in the Republic may well be divided up among his next of kin in a different proportion than his Northern Ireland property.

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