

Legal battle shows the importance of keeping an up-to-date Will



A recent case shows how important it is to keep your will up to date.

After a director of Barclays Bank died unexpectedly in a skiing accident, her family discovered that her will was out of date and could not be used. As a result, her assets were frozen. It took two years and an expensive court process to unlock the situation; the last thing that a grieving family needed.

Discretionary trust

Katherine Clarke was born in New Zealand. She had taken estate planning advice and amended her will in 2015 to leave her property to a discretionary trust based in New Zealand. The purpose of the trust was to manage her assets in the event of her death, so that money could be gradually transferred to her young daughter as she grew up.

Invalid gift in the will

In 2016, Katherine decided to wind up the trust after being advised that it could affect her tax status in New Zealand. Unfortunately, her will was not updated at the same time, with the result that it directed Katherine's property to a trust that no longer existed. This meant that the will was ineffective, and the family had to ask the court to clarify what should happen to Katherine's estate.

Issues with domicile

The situation was even more complicated because Katherine had lived a very international life. Although she was born in New Zealand, she had lived and worked for many years in the UAE and the UK, and her domicile was unclear. Domicile determines which country's legal system is relevant to your will, and, in Katherine's case, that would make a very large difference to the amount of UK inheritance tax payable on her estate.

If you are domiciled in the UK, your whole estate (less any reliefs and exemptions) will be subject to UK inheritance tax, -even property held abroad. If, on the other hand, you are domiciled overseas, inheritance tax is only payable on your UK assets..

Everyone has a domicile of origin, usually acquired at birth, which is based on the domicile of your parents. It is possible to acquire another domicile if you move to another country, intending to reside there permanently.

In this case, Katherine's (already uncertain) will stated that she was domiciled in New Zealand even though she had lived and worked in other countries, including the UK, since 2006. This was a multimillion pound estate with assets in various countries , meaning the domicile question had to be determined in the courts.

The outcome

After two years of court proceedings, it was eventually decided that Katherine's domicile was, indeed, New Zealand and her husband was given permission to administer her estate.

Keeping an up-to-date will

All those problems – and the expense – could have been avoided if Katherine's will had been updated when she decided to wind up the discretionary trust.

We don't all have multi-million pound estates, or an international lifestyle, but problems can arise in any case where the will has not kept up with other changes.

It is important to check that your will continues to provide for your family and to distribute your property as you intend, especially if your circumstances have changed. This is particularly important if your financial situation has changed, if you have married, remarried or divorced, or if you have had children or grandchildren.

Please contact us for assistance if you wish to update your will.



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