

Administration of Estates on Death Part 1: Guidance on Navigating the Process

The Cayman Islands model of succession is based upon freedom of disposition and therefore, in general, an individual domiciled in Cayman may make any kind of intervivos gift (during lifetime) or testamentary gift (on death) by will. However, when a individual has died holding Cayman assets in their individual name, the Succession Law provides that no one shall administer a Cayman estate without first obtaining an order from the Grand Court. This article is designed to give a broad overview of the legal requirements in relation to administration of the assets of individuals who pass away while resident in the Cayman Islands.

Which law will apply?

If a deceased owned shares in a Cayman Islands company or real-estate located in the Islands, then Cayman Islands law will apply to the estate. For this reason, it is highly advisable for individuals purchasing Cayman real-estate or investing in a Cayman Islands company, to ensure that they have a will which complies with the formalities specified under Cayman Islands law.

The law governing succession in relation to personal property like cars, bank accounts or jewellery, will be determined by the deceased's domicile at the time of death. A person's domicile is more than just being resident in a particular place, it denotes more of a legal relationship between a person/place and must have some degree of permanency. Therefore, if the deceased was born in the Cayman Islands, or had relocated here for a significant period of time with no intention to return to their place of origin, their personal property distribution will likely be governed by Cayman Islands law.

Situations where an order from the Grand Court may not be necessary:

If ownership of assets is held jointly, this can remove the need to apply to the court for a 'grant of representation'. For example if real-estate is co-owned as 'joint proprietor' with another party, then this asset will not be part of the

estate of the deceased. Instead it will automatically pass to the other owner(s) upon death. Similarly, if insurance policies or pensions provide for named beneficiaries, then this will also dictate who will benefit from that asset without the need for a court order.

Is there a difference between dying testate or intestate?

A person may die testate (having left a valid will) or intestate (without a valid will). The provisions of the Wills Law dictate validity (as summarised in an earlier Broadhurst Article '*Everything that you didn't want to know about making a Will*'). There are significant differences between dying testate or intestate.

- **Dying without a valid will:**

Where a Cayman domiciled individual dies intestate, a personal representative (for example a surviving spouse, child or parent of the deceased) must apply to the Grand Court for a Grant of Letters of Administration. This will allow the person the power to deal with the assets in the estate. It is their responsibility to ensure that the estate is dealt with in accordance with the provisions of the Succession Law, which dictate exactly how it must be administered. The allocation of property is dependant on who the deceased is survived by. For example, whether the deceased left a spouse and/or children.

It is not possible for a beneficiary to challenge the adequacy of their provision under the intestacy rules and the law does not take into account whether a married couple have separated. These facts, combined with the complicated nature of the rules mean that it is highly advisable to make a will.

- **Dying with a valid will:**

A personal representative named as the executor in the will (if there are any), will need to get a grant of representation. In order to obtain this, an application for probate must be made to the Grand Court. If an application is granted, the personal representative appointed will be able to distribute the estate according to the provisions of the will. They must also account to the court about how this has been done.

Any person with an interest can challenge the validity of a will. The principal grounds for challenge are:

- Lack of testamentary capacity
- Lack of knowledge and approval of the will's contents
- Duress
- Undue influence
- Forgery
- Invalid execution

Applications to the court for a grant of administration or probate should be made within six months of the death or special leave will be required to make an out of time application.

Questions surrounding administration of estates and probate can often be complex. It is advisable to seek the assistance of a legal professional who can give advice and support. Broadhurst LLC has a wide variety of experience in trusts and estate work and we would be delighted to assist you through the process.

**This publication and the material on this website was prepared for general information purposes only to provide an overview of the subject matter. It is not a substitute for legal advice nor is it legal opinion and should not be taken as such. It deals in broad terms only and is subject to change without notice. If you require legal advice, our specialist lawyers are able to assist. Please contact us on info@broadhurstllc.com and arrange a consultation.*