

How Foreign Investors Can Use U.S. Wills to Accomplish Their Estate Planning Goals

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When it comes to cross-border business ventures, the importance of estate planning often remains overshadowed by immediate investment pursuits. However, for international investors eyeing opportunities within the United States, prudent consideration of estate planning is paramount. While some may have made estate planning arrangements within their home jurisdictions, the adoption of a U.S. Situs Will is a strategic option that can be used to ensure the seamless transition of U.S.-based assets, including real estate holdings, financial portfolios, and tangible properties.

The U.S. Situs Will is an underutilized yet efficient legal instrument, offering foreign investors a streamlined avenue for implementing and executing estate plans involving U.S. probate assets in a cost-effective and expeditious manner, when compared to relying solely on foreign wills. Key benefits of the U.S. Situs Will include its drafting in English, ensuring clarity and comprehension by U.S. institutions, its adherence to local legal norms, engendering familiarity with local U.S. authorities, and the elimination of uncertainties inherent in foreign documents drafted under unfamiliar legal frameworks.

This testamentary tool grants foreign investors the ability to dictate asset distribution in line with their preferences and estate plans, in ways that may not be available within their home jurisdictions. Within a U.S. Situs Will, foreign investors can designate devisees of interests in real property, legatees of interests in personal property, and testamentary trust beneficiaries distinct from those stipulated in their foreign wills, establish trusts for minor heirs, and nominate executors for efficient estate administration in the U.S. An executor named in a U.S. Situs Will should be someone who is either in or can travel to the United States to handle estate matters. It is crucial to engage legal counsel with international estate planning proficiency to ensure seamless alignment with global objectives while avoiding the inadvertent revocation of existing testamentary instruments.

While many state laws, such as those of Texas, recognize the validity of foreign wills and provide for the probate of foreign wills in the U.S., probating a foreign will in the U.S. is typically more costly and time-consuming than probating a U.S. Situs Will. Heirs often must wait until the probate proceeding is finalized in the foreign testator's home country before initiating probate in the U.S. and will have to navigate additional obstacles such as finding an attorney with experience in probating foreign wills, obtaining official authenticated probate records of the foreign probate proceeding, having them translated to English, and apostilled.

The estates of foreign investors who die without wills are subject to the intestate laws of their home jurisdiction as well as the intestate laws of the U.S. state in which the assets are located. In many cases, heirs will have to undertake duplicate intestate proceedings in the foreign investor's home country and in the U.S., which can be time consuming and costly. Most importantly, by not leaving a written will, the decedent has forfeited the right to designate an executor to represent the estate, and legatees, devisees, as well as trust beneficiaries specific to assets situated in the U.S., in line with the decedent's personal wishes. Accordingly, heirs will be left to follow default intestate succession laws, which often lead to unintended results, particularly when the decedent had children from different marriages or a blended family.

Despite its advantages, the U.S. Situs Will does not shield against the impact of the U.S. Estate Tax, which can reach up to 40% and applies to both U.S. citizens and foreign investors. The tax implications, contingent upon domicile, necessitate strategic planning. With the current exemption at \$13.61 million for U.S. domiciliaries versus \$60,000 for non-U.S. domiciliaries, foreign investors should seek guidance from legal and tax experts well-versed in representing international clients.

In summary, embracing U.S. Situs Wills presents a savvy approach for international investors seeking to safeguard their U.S. assets and optimize estate planning efficiencies. By proactively addressing legal nuances and tax considerations, investors can mitigate risks, preserve wealth, and ensure seamless asset transmission in line with their personal and business objectives.