



## **Wills in the UAE: A brief overview**

### **Why make a Will?**

The interpretation of inheritance laws and how they are applied by the UAE courts is a matter that concerns many of us as expatriates.

#### **The key questions seem to be:**

- Whether the inheritance and intestacy laws of India, our home country, prevail over the UAE's local processes, which follow the principles of Sharia.
- Whether U.A.E law is applicable only to UAE nationals, or to all Muslims, or even to all expatriates irrespective of nationality and religion.

There are different aspects to the inheritance laws in the UAE. These laws are explained later in this discussion. The UAE courts do not follow the process of common law, in comparison to India. Hence, precedent on the precise interpretation of laws relating to inheritance is not established.

Therefore, while execution of a Will may not ensure distribution of savings, wealth and assets in accordance with one's wishes in all cases, it is definitely likely to ease matters for the beneficiaries. It is also likely to help secure guardianship of children in accordance with their parents' wishes.

### **Different aspects of Inheritance Laws**

In case a person of any religion dies intestate (without leaving a will), the courts may adhere to Shari'a laws in regard to inheritance of assets and custody of children.

Inheritance matters in the UAE are governed principally by two Federal Laws: The Personal Affairs Law of No.28 of 2005 which allows non-Muslim expats living in the UAE to opt to use the law of their own countries to distribute their assets in the UAE. The other federal law in this area is the UAE Civil Code.

### **Inheritance Laws (I)**

As a result of the Personal Affairs Law (No 28 of 2005), a non-Muslim expatriate who is resident in the UAE can opt for the law of their home country to be applied to the distribution of their UAE assets.

This is irrespective of the fact whether or not the non-Muslim expatriate has a legally recognised Will in his/her home country.

In other words, the descendants can apply for probate in the home country upon the demise of a family member, which will allow them to distribute the UAE assets in the manner that the deceased person would have wished.



## **Inheritance Laws (II)**

The UAE Civil Code provides that the law of the home country of an expatriate will apply to determine how movable assets (cash, investments, cars, personal items, etc) will be distributed. (This will mean application for probate as mentioned earlier.)

However, in regards to immovable property, Article 17 (5) of the Code states that “ the law of the UAE shall apply to wills made by aliens disposing of their real property located in state.” The interpretation of this could refer either to Shari’a law or Personal Affairs Law.

### **What does this mean?**

The local laws may be open to interpretation in certain cases.

It is therefore advisable to make a Will to help reduce the time and costs associated with the process of carrying out a testator’s wishes.

### **What other options are available?**

In some cases, property owners have considered setting up structures of holding companies or trusts in which to hold their immovable assets (mortgage free only) as well as some of their movable assets such as shares, subject to local regulations.

However, many people have made Wills in order to benefit from the legal system that is in place.

### **How to make a Will?**

For the sake of speed and expediency, a Will should be drawn up with the help of a professional person well-versed in these matters.

Local government authorities have given a certificate of recognition to some professionals in order to allow them to carry out this activity.

While drawing up a Will, it is recommended that you check if such a certificate is available.

### **To start with, the person making a Will should have readily available updated details of :**

- Assets in the UAE (with proof of ownership)
- Liabilities, and to whom they are to be paid
- Proof of residence through, for example, recent utility bills
- Passport copies of the entire family
- Other official documents such as marriage certificates etc.



Next, the person making the Will would determine how movable assets [cash, investments, cars, personal items, etc] and immovable assets in his or her estate should be distributed and who should be the Executor of their Will.

The Will may include movable funds, and property, located in and outside the country.

An option available to expatriates who own property and assets in India or elsewhere is to make a Will in the UAE specifying that this is only for their UAE assets. They could therefore make a separate Will for their Indian property, for example.

If there are minor children, their permanent guardian should also be determined.

In the instance where the guardian may not be in the UAE, a separate document is required to allow temporary guardianship of minors to a close friend or relative until probate is granted. This is an important part of the process, to protect your family.

**Once prepared, Wills need to be:**

- translated into Arabic,
- attested by the Dubai Courts or Notary, and
- attested by the Indian Consulate.

Applicants who wish to have their Wills attested may be asked to provide proof of ownership of the assets mentioned in the Will.

Applicants should submit the application to the Courts and to the Consulate personally or through a representative who must hold Power of Attorney that specifically mentions that he/ she has the authority to represent the Applicant for his/ her Will.

Spouses may make a “Mirror Will” for themselves. This would mean that the details of the two Wills would be exactly the same, with the names of testator/ testatrix transposed where relevant.

It is also possible to cancel or amend a Will. This would require the entire process to be repeated.

**In Conclusion**

The information presented here has been gathered through discussions with legal experts and other professionals.

In summary, they feel that it is comparatively beneficial to execute a Will in the UAE.

Otherwise the road to estate disbursement is likely be lengthier and costlier.

**Information Courtesy of:** Website of Consulate General of India, Dubai