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Estate Planning for U.S. Citizens Living Abroad



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Introduction

Estate planning is complicated. It becomes even more complex if you're living abroad, particularly if you live in another country permanently but you retain your U.S. citizenship. You'll have to make sure that your estate passes according to your wishes, and you need to know something about your estate tax obligations.

Estate planning issues

Reviewing your will

No matter where you live, if you want your estate plan to be up-to-date, you'll have to review your will from time to time. It makes sense to do this when you go to live in a foreign country. Make any changes necessary and leave a copy with your attorney or executor back in the United States. If you bring personal property with you or buy real or personal property in another country, make sure that you understand how your property will be treated under the laws of that country and of the United States when you die.

Choosing an executor and a guardian

When you update your will, make sure that the executor and any guardian you've named for your minor children are appropriate choices now that you're living abroad. The complexities of managing an estate of a U.S. citizen living permanently abroad may overwhelm a family member who might ordinarily fulfill the duties of an executor quite well. Think about naming an attorney who has experience with international law as your executor. In addition, any guardian you name for your minor children should be someone who can handle the responsibility of raising your children according to your wishes. Especially if your children are citizens of another country or if you wish your children to remain in the country in which they reside at the time of your death, your children's guardian should be physically and emotionally able to raise them appropriately. You should also carefully consider the ramifications of naming a guardian who is not a U.S. citizen. Check the laws of the country in which you live.

Estate tax issues

Property owned abroad

U.S. law says that its citizens and permanent residents are subject to federal estate tax on property they own anywhere in the world, not just property owned in the United States. However, you may find that not only will your estate be taxed by the United States but also by your host country. The good news is that your host country and the United States may have an estate tax treaty that will mitigate part of the cost. You may also receive a credit for death taxes paid in another country under the foreign death tax credit.

If you are married to a foreign national

If your spouse is not a U.S. citizen, estate tax planning can be particularly complex. For instance, if your noncitizen spouse survives you, the unlimited marital deduction is not available unless you provide for your spouse using a Qualified Domestic Trust (QDOT). In addition, you may need to think about creating a separate estate for your spouse by making use of a gift tax exclusion that allows you to make annual tax-free transfers of up to \$134,000 (in 2010, up from \$133,000 in 2009) to a noncitizen spouse so that this money will not be included in your estate.

Because the rules regarding estate planning for U.S. citizens living abroad are very complicated and beyond the scope of this discussion, please consult additional resources and legal counsel.

Federal transfer taxes

A federal transfer tax may be imposed on transfers to U.S. persons from U.S. citizens who relinquish that citizenship, or from their estates. Expatriates who meet guidelines on net worth and average annual net income tax liability for the five years preceding residency termination, and who fail to certify that he or she has complied with all federal tax obligations for the five years preceding the loss or relinquishing of citizenship are subject to the transfer tax.

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