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מוסמכת לעריכת דין בישראל ובאנגליה
חן זפט-פייגלין, עו"ד, מגשרת, נוטריון

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Estate Planning with Israeli Property

Just as many of us have family living all over the world, many people also own property or assets in other countries. It may be a holiday home, money in a foreign bank account, investments or even something that we ourselves inherited. One of the consequences of having assets abroad is that usually foreign law will apply to the property rather than English law, and this becomes particularly important when considering what will happen to our estates. In this article, I would like to focus specifically on residents of England and Wales who own property in Israel.

Why make a will?

It is a common misconception that even if we do not make a will, the law will ensure that those we love will inherit our property after we die. But that is not necessarily the case. Under English law, without a will there is a good chance that the government will inherit more of our estate than we would wish through liability to Inheritance Tax. In Israel, although there is no inheritance tax to consider, without a will a spouse is entitled to only part of the estate and there is no automatic right for a surviving husband or wife to take their partner's share of any joint property. In addition, in many situations family in Israel can benefit substantially if they inherit your property through a trust, rather than directly.

It is worth noting that, although English law may allow beneficiaries to vary your will even after your death and to obtain tax benefits by doing so, Israeli law does not recognize these variations and it is important that you take this into account during your lifetime.

A further practical advantage of making a will is that it is an opportunity to gather and organize information about the assets one owns. Particularly in the case of property abroad, it may be that no one else is familiar with the details of your assets. It is therefore important that alongside the will, you leave details which will enable your executors or family to locate your property, such as bank details and account numbers or title information for any real estate. Although there are no original title deeds for property in Israel, ownership of registered property is identified by block and parcel numbers, while ownership of unregistered property is identified through production of your purchase agreement or confirmation of your rights from the appropriate recording body.

Do I need a separate will for my property in Israel?

It is important that you have a valid will to ensure that your property will be inherited by those you wish. It could be that you have a single will applying to all your property worldwide or you may prefer to draw up a separate will for your property in Israel. The Israeli courts will recognize a valid English will and this can be submitted for probate, however many people decide to make provisions in a separate will for their property here. For example, an Israeli will allows you to give specific instructions with regard to your Israeli estate and also to appoint executors resident in Israel to deal with property here.

The will should be drafted in a language which you understand and so, unless you are a Hebrew speaker, this can be in English. The Israeli courts are permitted to certify wills in English however, if the provisions are complex, they may require a certified translation. This again is another reason why many people make a separate will dealing only with their property in Israel.

Obviously, if you wish to draft a separate will for your Israeli assets, it is important to take professional legal advice to ensure that the two wills are complimentary and that one does not affect the validity of the other. In addition, as Israeli law does not recognize codicils or other testamentary documents unless these are witnessed in the same way as a will, you should ensure that all relevant instructions and dispositions concerning your Israeli property are included in the will which you file in Israel.

Applying to the Israeli Courts

The Israeli courts have jurisdiction to hear estate proceedings either if the deceased was resident in Israel or if the estate includes Israeli assets. Therefore, although you may be resident in England, the Israeli courts have the right to entertain proceedings concerning your Israeli estate.

However, even if the English courts have already validated a will and issued a grant of probate, there is no automatic recognition of this grant in Israel. All wills must be submitted to the Israeli Registrar for confirmation and, if the will has been made by a foreign resident, a legal opinion from an expert on the relevant law must confirm that the will is valid. The courts also require that the application is advertised publicly and that notices are sent to the beneficiaries to inform them of the proceedings. In most cases, the Israeli lawyer who is handling the application should be instructed to deal with the court's requirements.

You should also bear in mind that the probate process is notoriously lengthy and inefficient, and that it may not be possible to distribute or deal in the assets for several months. At the end of this period the courts will certify an order giving effect to the provisions of the will and allowing the executors to collect and distribute the assets.

In conclusion, if you own property in Israel it is essential to recognize that Israeli law may apply to these assets. If you want to ensure that your assets are dealt with according to your wishes, even after your death, it is important to take the necessary steps at the earliest opportunity.

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