

THE NEED FOR AN ISRAELI WILL

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- How can I best protect my loved ones and my assets in Israel? Do I need a Will?
- What if I have assets in Israel but have a “foreign” Will?
- I want to make a Will in accordance with Halacha – what do I do?

You will find general guidance on these matters in this short review.

DO I NEED A WILL AT ALL?

- To best protect your loved ones and to ensure that your assets are distributed as you would like, it is important to leave a valid Will.
- A Will can also provide for who will care for your minor children if you and your spouse predecease them.
- You can create a trust in Will e.g. to ensure that your assets are controlled by a reliable third party to protect your heirs from various pitfalls.
- On second marriage, a partner may wish to care for the new spouse but also provide for children and grandchildren.
- Dying without a Will can create unexpected hardships for your loved ones and may even lead to avoidable family feuds.
- A Will can speed up the estate administration process and save time, money and frustration.

I HAVE A WILL MADE OUTSIDE OF ISRAEL. DO I NEED AN ISRAELI WILL?

If the deceased had assets in Israel, the Will has to be probated in Israel even if it is already probated in another country.

To probate a foreign Will in Israel is far more complex, lengthy and costly than probating an Israeli Will. For example, various documents will need to be officially translated. There may be a need for court applications on certain matters: recently the court required a formal application regarding lodging a copy of the Will where the original was lodged in a foreign jurisdiction. This adds a great deal of expense, time and effort. In practice, all the additional requirements can add many months to the probate process.

Therefore, if you have assets in Israel (or are contemplating acquiring assets in Israel), it is sound planning to make a valid Israeli Will to save your heirs and executors time, cost and effort. You certainly should make one which expertly takes all your personal circumstances into account.

WHAT HAPPENS IF I DO NOT HAVE ANY WILL AT ALL?

The Israeli “intestate” law is basically as follows:

If there is a surviving spouse:

1. The family car and the household contents are inherited by the deceased’s spouse. The family home, bank accounts and the rest of the estate are shared between the remaining spouse (who gets half) and the deceased’s children (or further descendants, or parents if there are no descendants). This means that the surviving spouse will share ownership in the home she may have lived in for many years.
Obviously great difficulty could arise for a surviving spouse, for example if he or she needs to sell and move to a smaller home or a retirement home, but the children are minors and cannot validly consent, or the in-laws do not wish to sell.

Expensive court actions and maybe family bitterness are foreseeable, so it is best to avoid these problems.

2. If the deceased did not leave children or parents, but left brothers and/or sisters, then in general the surviving spouse receives two-thirds and the remaining third is divided equally among the surviving siblings. Here too obvious difficulties could arise.

B: If there is no surviving spouse:

The following family members, in this order, will be the heirs: the deceased's children and their issue (grandchildren or further descendants), the deceased's parents and their issue (brothers and sisters of the deceased), the deceased's grandparents and their issue. However conflict situations between heirs arise more commonly where there is no valid Will.

C: If there is none of the above:

In the absence of any of the above-mentioned family, the assets will go to the State of Israel.

It is sound advice to avoid these and other problems by making a valid Israeli Will.

REQUIREMENTS FOR A VALID ISRAELI WILL

There is freedom of testation in Israel, meaning that any person (*except persons deemed unable to understand the nature of a will*) may bequeath his or her estate, or any part or specific assets, as he or she chooses. Under the *Inheritance Law*, a Will must be made by the testator personally.

There are formal requirements for the Will to be valid, and it is best to consult a lawyer who not only can advise on Wills in general, but who is experienced in all areas of estate planning.

JEWISH LAW (HALACHIC) REQUIREMENTS

The Torah lays down specific laws of inheritance that very often do not suit a person's desires on how to leave his assets after his passing.

A Rabbinic enactment provides for gifts in contemplation of death that takes effect after the death of the grantor, and yet the gift is deemed acquired during the donor's lifetime. This avoids the Torah law of automatic inheritance, yet takes effect after death to avoid the problems and complexities that may arise, both legally and halachically, by simply declaring that a gift is made a moment before death.

It is advised to leave a sum that will devolve in accordance with halacha, and in addition to have an halachically binding "poison pill" clause that will kick-in against any halachic heir who may try to attack the Will.

The proper halachic requirements are quite complex. Knowledge of the relevant Torah laws, including e.g. kinyanim, is required, as is specialized halachic drafting to properly fulfil the halachic requirements.

CONCLUSION

To sum up, it is certainly an essential part of any sound financial plan to arrange a Will that governs your specific needs and takes into account your specific

circumstances, and is drafted by an expert in all areas of estate planning and administration.

This article is for general information only and does not constitute legal advice.

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Financial & legal background with over 25 years' experience make David uniquely qualified to handle your legal-financial affairs.

Drutman Law Offices

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