

Estate Planning Considerations Regarding Citizenship

If you are a dual citizen, married to a non-US citizen, own property in multiple countries, or want to name a non-US citizen as a beneficiary or fiduciary in your estate plan, you need to seek legal estate planning advice in both countries when developing your estate plan.

Transfer Tax Implications	Wills and Trusts	Foreign Trust/Trustees	Foreign Beneficiary
<p>US persons are generally liable for US estate tax on the gross value of their worldwide assets, subject to applicable exclusions, credits, and deductions.</p> <p>Taxes may be influenced by the physical location of the property, the type and character of the property, the available tax credits between the countries, and the existence of the transfer tax that may exist between the countries. The US has gift/estate tax treaties with 16 sovereign nations that can help determine the tax consequences of holding assets in different countries and may reduce the likelihood of paying taxes in both countries.</p>	<p>If have Wills in each country governing the property owned in that country, each Will should have language so as not to revoke any foreign Wills.</p> <p>Living Trusts rarely translate well between countries and holding property from another country in a US Trust may actually lead to greater taxation in the other country simply by the that country's property being owned in a Trust.</p>	<p>It is not advisable to name non-US persons as successor trustees. Rather, it is actually advisable to include clauses that prohibit non-US persons from serving as trustees and expressly state that a court in the US will always have primary jurisdiction over the Trust.</p> <p>If non-US persons are named as Trustees or the Trust is administered outside of the US, the Trust may be considered a foreign trust and subject to much higher tax liabilities that will likely significantly deplete the assets in the trust before reaching the intended beneficiary.</p>	<p>When making distributions to a foreign beneficiary, the Trustee may be required to withhold additional taxes from the assets to be transferred to the beneficiary.</p> <p>In addition, the beneficiary may also be required to pay taxes based on the foreign country's tax and inheritance laws.</p>

Foreign Guardian	<p>The US Court assesses the best interest of the child when appointing a Long-Term Guardian. When a non-US citizen or resident guardian is desired, his or her ability to return to the US and length of time available to stay to petition the Court for guardianship can be problematic. If a non-US citizen or resident is your desired first choice for guardian then it is advisable to provide a document with reasons for your decision, such as the child and guardian having strong ties, lack of family in the US, your desire for the child to grow up with certain cultural or religious traditions and values.</p> <p>The assumption is the child will need to move to the guardian's country because Courts will not allow person to remain in the US or move to the US based on guardianship alone. As such, Court will likely weigh whether the child is a citizen of the desired guardian's country, speaks the dominant language of that country, and if the country has political instability.</p> <p>It is advisable to appoint a US citizen or resident as a Short-Term Guardian to stay with the child until the Long-Term Guardian is appointed by the Court and it is advisable to name at least one US citizen or resident as a backup Long-Term Guardian if the Court will not appoint your desired foreign guardian.</p>
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susanhuntlaw

Wills • Trusts • Estate Planning • Probate

501 Simpson St. • Greensboro • NC • 27401

336-373-9877 • info@susanhuntlaw.com

www.susanhuntlaw.com