

Presentation on Wills & Inheritance - Questions & Answers

Q.: Is inheritance decided by the person's native country's laws?

A: The answer is a qualified 'yes' due to Conflict of Law provisions which have been established between countries to resolve legal issues when there's an international conflict. Therefore, the country (or state) of one's nationality determines to what extent the Japanese inheritance law applies. If your home country (or state in the case of the US) has a Remission Law, Japanese law can be followed. It is recommended that expats research the inheritance law as applied in their home country/state in order to determine if there are Conflict of Law and Remission clauses between their country and Japan. Your state is usually your state of birth, however it could be the last state you lived in before you came to Japan.

Q: Should we make two wills, one in Japan and one in our home country?

A: It's better for non-Japanese nationals to have wills in both Japan and the country of their nationality. The content of the two wills must be the same.

The questions below this point are answered with respect to Japanese law, as the Conflict of Law and Remission clauses mentioned above will be used to resolve differences with one's home country/state. [Check the additional links provided for further details on foreign law.] In addition, one should refer to the report on the presentation given prior to the Q&A session, as much more detail is provided.

Q: How much does it cost to have a notarized will made?

A: It depends on the size of your estate. However, the notary public office or attorney can provide the required two witnesses when making a will @ ¥5,000 each.

[Note: After the meeting the speaker recommended that foreigners read about the benefits of using a Japanese notary. She provided a link to a PDF file in English which will answer many questions one might have including how fees are determined from the value of an estate. You can download the PDF file here: <http://www.koshonin.gr.jp/pdf/english.pdf>

Q: What is the role of the two witnesses at the making of a notarized will?

A: The witnesses sign the will. They need to be able to read Japanese.

Q: What if a person has a notarized will, but the notary dies?

A: A will made through a notary public is kept at the notary public office, and the records continue to exist even if the original notary public passes away.

Q: Can an executor be named in a Japanese will?

A: It is highly recommended to name an executor for one's will, preferably an attorney-at-law.

Q. What if an executor dies?

A. You should choose (a) new executor(s) immediately.

Q: What if one decides to give monetary gifts to their heirs before they pass away?

A: If there are such questions, a foreigner should consult an English speaking tax accountant. If a person decides to give all or a large part of their estate to heirs, the gift tax will be much higher than the inheritance tax.

However, one can give limited tax free gifts to children, with a maximum of ¥1,100,000 per child per year. This could be used to reduce the overall value of the estate prior to death.

Q: What if you have a will written in the US over 40 years ago?

A: The age of the will doesn't matter. But if you've lived in Japan many years and have property here, it is strongly recommended that you make a notarized Japanese will.

Q: A foreign resident, with no relatives in Japan, has been living here for many years. What is best to do?

A: If a person with no family in Japan dies, all of the assets go to the Japanese government, unless there is a valid will indicating the estate should go elsewhere.

Q: What if a person is divorced and remarried, with children from both marriages, and some of the children live abroad?

A: It makes no difference where one's children live. Under Japanese law children of a previous marriage have the same rights as those from a current marriage, if there's no will.

Q: What if a person made a gift to one child before their passing. Is the heir's share reduced because of the previous gift?

A: The child should report that they received the gift to other heirs. If they refuse to testify, other heirs must show proof of the gift. A parent and child can easily make a document as proof of the gift.

Q: Is it possible to sell property at a low rate to heirs before one dies?

A. It is illegal to sell property cheaply to a relative, under Japanese law. Before one dies, it is possible to change the title of property to an heir, but the receiving person must pay 2% of the value of the property and a gift tax. Inheritance tax is much lower.

Q: What if the will completely cuts off the children?

A: The children can still claim one half of the regular inheritance law.

Q: A foreign woman is in a long-term relationship with a Japanese man. She takes care of his elderly mother who has Alzheimer's disease. Her partner's brother has died. If her partner dies, she will be the only close relative of the mother. Will she be able to become the legal guardian of the mother with respect to handling financial matters?

A: It's actually considered to be a common-law marriage, which is almost the same as an official marriage, except for inheritance. The woman has no obligation to take care of the mother. However, the woman can apply to become the adult legal guardian, but who would manage the finances would be decided by a family court judge.

Q: An American man is married to a Japanese and he owns a house here. What happens when he dies?

A: Even if a house or other assets are in the name of the non-Japanese person, it becomes jointly owned by the heirs when the person passes away. However, the heirs need to get the name of the title changed legally, which can be expensive.

Changing the name of the owner prior to death costs 2% of the value of the real estate. Changing the ownership is considered a gift, and gift tax is more expensive than inheritance tax.

Q: Does Japan have a quick claim deed?

A: No, not in Japan. You have to officially change the title.

Q. Is it a good idea to jointly own property to reduce the amount of inheritance tax?

A. Joint ownership is not recommended since there may be disagreement on what to do, with respect to selling the property in question. On the other hand, if one owner dies, only half the assets are subject to inheritance tax.

Q: Can the funeral expenses be taken out of the estate?

A: Money from a deceased person's account cannot be used for a funeral, if any heirs take objection to doing so.

Q: Is a will necessary when one's assets are less than the exemption for inheritance, and there are no special disbursements?

A. The speaker agreed that there would be no real reason to have a will, if the basic Japanese law would cover the disbursements of any assets according to one's wishes.