

Protecting Your Assets for Your Heirs

Researched and
Authored
by
Martine Heyer

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Protecting Your Assets For Your Heirs

By Martine Heyer

Being Prepared for Life & Death in Boquete

This document "Preparing and Protecting your Assets for your Heirs" is to help you now and to help your Executor and Heir(s) after the fact.

I hope you already own a copy of "Being Prepared for Life & Death in Boquete" from Boquete Health and Hospice. If not, you can acquire one at www.BoqueteHealth.org. Boquete Hospice is a great organization and the booklet is incredibly useful for all of us. So please do get your copy and more than that, actually fill out all the forms it contains. Then review the forms every 5 years or so and note your changes, as nothing is static for very long in Boquete.

Since After Life Comes Death

After your death there will be someone - an "Executor" or your "Heir(s)," who will deal with your assets and debts.

This document is for you to help and make things as easy as possible for your Executor and Heirs, since Panama has many different unfamiliar and complicated rules and documents - and they are all in Spanish.

Here I will only talk about your Panamanian Real Estate and Banking assets. This document has no relevance at all to those who have no assets in Panama.

Cars are not considered Assets in this document.

For assets residing in other countries, please take the advice of your lawyer and/or tax accountant in that country.

In Panama do not mention the assets in your home country in Panama documentation. This will avoid complications for your Executor/Heir.

Decide with your lawyer and/or tax accountant in your home country whether to mention your Panamanian assets in your Will or Trust in that country. The USA is interested in any and all your assets worldwide; so be sure to consult your tax adviser.

What is Probate & Who Needs it in Panama

The goal when it comes to asset transfers is, as in most countries, to avoid Probate.

Probate is the term for a legal process in which a Will or Testament is reviewed by a Judge to determine whether it is valid and authentic. Probate also refers to the general administering of the debts of the estate, whether there is a will or not, and much more. Probate laws and rules and regulations differ in all countries and all States.

In Panama there are two (2) types of Probate: With a Will or Without Will (Testada o Intestada). The "Testada" or with a Will is supposed to be easier and faster. However, you must still go before a Judge who will execute whatever was stated in the Will. The "Intestada" or without Will is when the deceased person did not leave any written

instructions or Will whatsoever. Then it becomes a matter of the Heir going before the Judge here in Panama to prove their relationship with the person who died, provide evidence of the assets and create an official claim. When it comes to Probates under the “Intestada” that is when any and all issues will arise; and years of legal fees, time and constant delays will occur.

So Probate — especially in bureaucratic Panama

1. Takes time
2. Costs money
3. Takes away your autonomy, through government supervision that your Heirs are obliged to pay for.

For your information: Inheritance is not taxed in Panamá. The inheritance taxes (impuesto sobre herencias) were abolished as of 26 December 2002.

Death certificate - Who, What, Where and How

It is essential to obtain a legal death certificate from the Tribunal Electoral, ASAP. It is called a “Certificado de Defunccion.”

Upon your demise, after the medical folks have signed off, your remains are free to be buried or cremated. It is important and essential that the Death Certificate must state the cause of death. The funeral home will want the official death certificate from the Tribunal Electoral before you can be buried or cremated. So getting the death certificate from the Tribunal Electoral will be the first step.

Also, make sure that you leave clear instructions about your desires and what to do with your remains. Some people want to be buried while others prefer to be cremated. Everyone who dies in Panama needs a Panamanian death certificate. A good idea is to obtain 10 or more original copies of the “Certificado de Defunccion” from the Tribunal Electoral as you will likely need originals for banks, Social Security (phone number 800-772-1213), etc.

Once the Executor has your Panamanian “Certificado de Defunccion”, death certificate, in hand, he/she can then proceed to estate management and estate distribution.

When the Death Occurs in Panama

For a US citizen, once the official Panamanian “Certificado de Defunccion” is obtained, the Executor should immediately forward that death certificate to the US Embassy here in Panama. The Embassy will provide the Executor with a “Consular Report of Death of an American Abroad”. Copies of that report are provided to the next-of-kin or legal representative and may be used in US courts in settling estate matters.

A Consular Officer will send the Executor up to 20 certified copies free of charge. Read more about the US Consulate on this website:

<https://pa.usembassy.gov/death-of-a-u-s-citizen/?ga=2.164833340.228161712.1626032554-956398278.1559736433>

Though it seems that another option for the Executor is to have a licensed Panamanian translator (for a fee) translate the “Certificado de Defunccion” into English and place her stamp. In the USA, American banks and other agencies (Social Security, Insurance, Pension, etc.) lately have accepted the translated version with no problems at all.

But do not forget that the Executor or Heir is still charged with sending a copy of the death certificate to the country of origin's Embassy/Consulate here in Panama. (USA uses form DS-2060).

Canada has different rules, though their Government also wishes to be advised ASAP of the death of a Canadian abroad. I suggest if you are Canadian, you contact the Canadian Embassy and/or use Google to search for the rules that may apply and how to obtain a legal Canadian death certificate.

When You Do Not Die in Panama, But Elsewhere

If you die in any country other than Panama, and have assets in Panama, your Executor will immediately need a legal death certificate from the other country, where you actually died. That death certificate needs to be Apostilled. Then after translation by a licensed translator, the death certificate and the Apostille pages are notarized. These translated documents need to be taken to the Tribunal Electoral (in David) in order to obtain a proper Panamanian death certificate.

What is an Apostille?

Frequently folks wonder "What in heaven's name is an Apostille?" and why?

An Apostille is the authentication of a document to verify that the document provided by local authorities can be trusted.

The Apostille Agreement is an International Agreement that was signed into law and agreed to be accepted by many countries worldwide at the "the Hague Convention" in 1961. It is a worldwide system that most countries have adopted to verify and trust that the certificate(s) presented is authentic and true.

Apostilles are a double notarization, since only verified/notarized documents get Apostilles from the Secretary of State. Birth certificates, marriage certificates and death certificates, are the documents most often requiring Apostilles. The Apostille verifies that the official bureaucrat who signed the original certificate — maybe many years ago— was indeed the licensed government bureaucrat in power at that time and in that location.

Canada is a non-signatory to the Hague Convention, but Canadian documents for use abroad must also be certified twice if not three times: First by the Canadian Ministry of Foreign Affairs in Canada and subsequently by the Consulate of the receiving country in Canada (in this case, Panama). Then as soon as it arrives to Panama, that document which has already been certified by a Panamanian Consulate abroad, must be re-certified or "Legalized" by the Ministry of Foreign Affairs.

This is again to certify that the official who signed the document at the Consulate is duly authorized to do it so at that time on that date.

Who can give me the Apostille I need? That depends upon which document it is and where the document originated - Where the birth, the marriage or the death took place.

In the United States, it is the Secretaries of State that provide Apostilles. They are located at the State Department located in the Capitol City of that particular State.

(I find that Google is a master at finding the current names and addresses of the Secretaries of State in all 50 states.)

Dealing with Assets

If your asset is Real Estate/Real Property

Then Probate or no Probate depends on how title to said property is held.

Holding Title in Your Name

If you hold title in your name or if married in your joint names, then 50% of the asset (the portion of the deceased) will/may go through Probate. Here is where registering your marriage with the Tribunal Electoral becomes important to you. When the marriage is registered, there will be no question as to your relationship with the deceased. You have to prove this relationship in front of a Panamanian Judge, who may not recognize your marriage certificate from another country unless Apostilled.

Holding Title as a Corporation. Why?

If you hold title in the name of a Corporation, the property will still go through Probate. The benefits of holding title as a Corporation are: the ease of changing the Corporate officers and reduced taxes upon the sale of the asset.

Corporations owe taxes to the Panamanian government of \$300 annually. In addition there is an annual fee to your lawyer, (as the legal representative of the Corporation), an amount up to \$250 annually. Thus, a Corporation will cost approximately \$550 annually. This discourages some from creating a Corporate entity.

Another huge benefit of owning a Corporation is that the Corporation is an entity that does not die when you die. So, if your Corporation prepares a Power of Attorney for your Executor/Heir, that POA stays valid and does not disappear upon your death.

All other personal Power of Attorney documents, no matter who they are assigned to, whether notarized or not, from "living will" and "medical choices" to the Power of Attorney to your lawyer for any purpose (for instance, to deal with real estate issues), all become invalid the minute you die. So prepare your Power of Attorney for your Executor in the name of your Corporation. Your lawyer can help you with this. Make sure your lawyer gets the Power of Attorney notarized and registered.

I just learned that if your personal POA is specifically written with specific after death duties assigned to your lawyer, then it is possible that the POA stays valid during the Probate process. This Power of Attorney should be very specific on the duties to be performed by the attorney after your death. Most people grant their lawyer a POA with "wide and sufficient powers". That wording is a little too risky. If so, you better really trust your lawyer. As you now have probably handed over all your assets to said lawyer on a silver platter. This is great if your lawyer was/is/and will be an honest man, in the past, in the present and the unknowable future. And will continue to execute your wishes to the best of his/her ability.

That kind of after death POA is meant for people who have Heirs that cannot travel or people who wish to leave their Panama assets to a University, a Society, Planned

Parenthood or any other charitable organization. Those individuals are the ones who should consider creating an after death POA. But risky it remains and trust is involved.

Holding Title in a Private Interest Foundation

You can also hold title in the name of a Panama Private Interest Foundation. Most folks use their Corporation(s) to fund their Foundation, (this is similar to funding a Trust under US laws).

Having a Panama Private Interest Foundation is the only way to guarantee NO probate. This really is the ONLY way to be SURE there will be NO Probate.

Benefits of a Panama Private Interest Foundation:

PPIF is another entity that does not die.

So be sure to have your Foundation also prepare a Power of Attorney for your Executor. Your lawyer can help you with this. Make sure the Power of Attorney is notarized and registered.

As Panama Private Interest Foundations have no owners, the assets cannot be claimed by any of its managers, founders, council members, protectors or beneficiaries. It is nice to know that there are no sticky finger options in a Foundation.

Panama Private Interest Foundations have their own set of rules for changing the officers, President/Secretary etc. etc. (go read yours if you already have a Foundation and make sure the rules are included).

Foundations are based upon the principle that there are Beneficiary(s) listed; as Beneficiaries are the purpose for having a Foundation.

By Law the assets in a Panama Private Interest Foundation are non-freezable. (There may be exceptions if the Panama Private Interest Foundation is younger than three years old, but after three years this is absolute).

Foundations bequeath to family members, according to the founder's guidelines. There are no forced heirship rules; you bequeath your assets to those you want to inherit them.

Panama Private Interest Foundations can collect royalties. No taxes will be accrued on foreign earned income (outside of Panama).

Panama Private Interest Foundations are exempt from local bank interest taxes.

Any smart person who owns Panama real estate assets should have a Foundation in Panama. It really is the only way to make sure your assets will go where you wish them to go. Of course, there is a \$400 annual Foundation (tax) fee. In addition there is the annual fee to your lawyer as the legal representative of the Foundation. This is an amount up to \$250.00 - approximately \$650.00 yearly. This is totally worth it. A small tax to support your adopted country and protect your assets.

Do Register Your Marriage at the Tribunal Electoral

If you have a Cedula, you want to be sure the Tribunal Electoral has your legal marriage certificate on file. This is not an automatic, as Immigration, even with an Apostilled marriage certificate from another country in front of them, frequently “forgets” to register your marriage, as this is not their obligation. Immigration is a separate Government Agency, and it is not required to communicate with the Tribunal Electoral

on your behalf. Immigration deals with the rights of individuals to remain in this country under the laws of the various visas that Panama offers.

When you apply for your Cedula, you use the documents the Immigration Department has given you indicating you are a legal immigrant; and then the Tribunal Electoral (the government agency in charge of all citizens) registers you as a legal resident.

Having your marriage and Panamanian born babies, if any, registered at the Tribunal Electoral is extremely important, especially in case of illness and death; and also because your wife/husband's part of your joint assets will go to Probate even when a legal marriage certificate is on file with the Tribunal Electoral. However, with the marriage certificate on file, you have good evidence of relationship. When it comes to a Probate without a Will, the "Heir" must show evidence about the relationship with the deceased person. That is the reason for the registration of the Marriage Certificate and Birth Certificates in the case of children.

What About Wills or Testaments?

A short explanation of a Will or a Testament for your benefit - both require Probate in Panama.

Most other countries favor a Will or Testament. This too exists in Panama. It works well for Panamanians, who live here, speak Spanish and know the rules and how to bend them when necessary. But for non-citizens who live abroad, it is not great, as it will involve the Probate process.

By all means have a Will or Testament in your home country for the assets that reside in that country.

Avoid Having a Will Here in Panama

The Panamanian Civil Code, in Law 2 of August 22, 1916, provides the guidelines for the use of Wills. In general, every Will/Testament must identify those who will inherit the deceased's assets and/or how these assets should be distributed/used.

Once the person "stops functioning", dies, the instructions of the Will must be confirmed through the Probate process. Probate is the principal law which applies to inheritance issues in Panama is the Civil Code, Third Book, Titles I to V, articles 628 to 938. This law applies to everyone who owns property in Panama, both nationals and foreigners, regardless of the religion, nationality, or place of residence of the deceased.

Wills Mean Probate.

Probate in Panama is before a court. An Attorney is required to represent you before a Judge who is assigned your case. Your Heir will have to pay for both the court costs and the Attorney's fees for several years and it will be expensive.

Although there is no estate tax, Attorney fees and Judge process costs will be high, not to mention the time spent during the Succession Process that can take 1-3 years.

Legally a fee up to 10% of the assets being probated can be charged annually.

Probate can and will surely take up to 3 years with annual costs attached. I have already heard of a probate for a non-Panamanian citizen taking more than 5 years. As time is a fluid concept in Panama.

And yet there is worse. When there is no Will or Testament on file, then, in Panama, your wife/husband, children, parents, may all receive certain given percentages of your assets after the legal fees attached to the Probate have been paid. Those percentages are as follows: 50% of assets to the legal wife and 50% to the legal children. When there are no children and the parents of the deceased are still alive, then 50% goes to the wife/husband and 50% to the parents of the deceased. Otherwise, 100% goes to the legally married wife/husband of record. (registered as such in the Tribunal Electoral).

If you would like a different division, your wishes should/can be listed in a Will to be Probated.

The most prevalent is the Open Common Will, created through the following process. Wishes for asset distribution must be read by the Testator in the company of a Public Notary, three witnesses and two interpreters (if the Will is not in Spanish), all of whom then sign it. At that point, the Public Notary issues a Public Deed and the Will becomes official. The Will can also be prepared by the Testator alone or together with an attorney, who can advise and help with translation if necessary.

The Panamanian Civil Code, in Law 2 of August 22, 1916, provides the guidelines for the use of Wills. In general, every Will/Testament must identify those who will inherit the deceased's assets, or how these assets should be used. Once the person dies, the Will's instructions must be confirmed through the Probate process.

So here is the situation: When you leave a legal notarized Will, (the document is not very costly to create) then your assets will go through Probate. Your Heirs will get to pay the bills for the next few years while not having access to the funds.

However, if you create a Panama Foundation, then your Heirs will not pay; but you will be paying the \$650.00 annual fees until your demise.

Clearly your choices in this situation should be carefully considered, as the ramifications can be costly for your Heirs, especially if they are not residents of Panama.

Every country in the world has its own rules. If there is no (registered) Will or Testament, then said assets will be divided as to the rules of the country where your assets reside. So definitely, a Will is better than nothing, but a Foundation is best. Let me reiterate: Paying Foundation taxes of \$400 a year and \$250 a year to your lawyer (\$650 annually) is peanuts compared to having to deal with the Panamanian Probate. This process does not even benefit the country, merely the individual(s) Judge and Lawyer who handle the Probate. It is especially difficult for non-Spanish speaking relatives who live far away. They have to travel, take vacation time and hire lawyers. Since this probate process is different in each and every country, your Heirs probably have no clue as to what is what, and confusion reigns. And worst of all, the Probate circus can take 3 years or longer, during which time assets of the estate may diminish by 10% of their value annually.

Dealing with Bank Accounts

So how to deal with assets in Bank accounts? Another sticky wicket - because on the world platform Panama stands accused of money laundering operations.

Bank account(s)

- Checking
- Savings
- Certificates of deposit
- In your name
- In the joint name of you and your spouse
- In the name of your Corporation
- In the name of your Foundation

In the last 10 years it has become a common option to assign a Beneficiary to your personal account(s) by giving the bank the following information: The Name(s), phone number, Passport number, Address, Email and Birth date of your Beneficiary and the percentage of your account they will inherit. Each bank has their own form and some banks will require notarization.

(If your Heirs get along, then sometimes it is easier to list only one Beneficiary here, because an “in person” visit (travel) to Panama is required. That trusted person can distribute the obtained funds as desired in your own country, thus requiring less travel for the others).

How to Declare Your Beneficiary

You can assign your Beneficiary when you open the account or any time thereafter. In order to cash out, the Beneficiary will need to make a personal appearance with the proper documents such as all their ID's (Passports, etc.) and your Panamanian death certificate. The money will be made available to the Beneficiary in due time - Say 14 days or more after the Bank's due diligence.

All is well if your Beneficiary is someone who lives in Panama legally and has a residency visa of any kind, or better yet, has their own or your joint bank account. Life becomes more complicated for an Heir living abroad.

Can Tourists Own Bank Accounts in Panama?

If your Heir travelled here on a tourist visa, then your account needs to be closed.

Your heir has the right to your cash, but not to banking services. Since a tourist, who is not in the process of requesting immigration for a residency visa, has difficulties opening and owning an account here. (especially folks with USA nationality). The only option then is to accept the cashier's check the bank will issue to your Heir.

A side note —Bank accounts that are opened with the help of a lawyer for visa/immigration purposes stay open for a few months and there is a reason why the lawyer is involved. The lawyer must certify that the immigrant-to-be is actually involved in an immigration process. As soon as, the person obtains his or her residency, the new immigrant must provide a copy of his or her ID card to the bank, if not, the account gets closed again.

In reality, banks are not supposed to open accounts for non-residents, but the banks understand that for the Friendly Nations Visa it is mandatory to have an account. That is why the banks are allowing the opening of certain personal accounts for this purpose and under these particular conditions.

If a copy of the legal ID card is not provided to the bank within the set timeframe, the said account will be closed, as tourists do not have the right to use Panamanian banking services other than using their ATM's in Panama.

Additionally, for banking purposes, the natural person — the human entity—must at all times comply with their regulations. This is true whether the account is in the name of an individual, Corporation or Foundation.

The Executor/Heir will need to, in person, represent the account(s) and sign for the account(s) and that person must be physically present in Panama. This person must be accepted by the bank and comply with the bank's policies. The main policy is being a legal Panamanian resident.

If there is a Foundation, a real human being, will have to represent the Foundation and sign on the Foundations's behalf. This person must be accepted by the bank and comply with their policies. Again, the main requirement here is: being a Panamanian resident. If the human being is here on a tourist visa, and is not in the process of becoming an immigrant, then the account needs to be closed and the monies will be distributed to the Foundation's Beneficiary as a cashier's check.

The Danger of Cashier's Checks

Banks in the USA are very reluctant to accept Panamanian cashier's checks, (please check with your bank in the USA before starting any travels with said check). Thus, frequently it is better to cash the cashier's check.

You then have the option to wire the money home, via someone else's account, as again, your tourist Heir has no rights to Panamanian banking services whatsoever. Frequently, the bank will want to know where the monies originated. But for funds that were already in the bank, and just paid out to you, they are willing to write a letter of explanation in case you are forced to travel with amounts in excess of \$10,000.

Essential Assets for the Executor/Heir that are worth way more than their physical value: PASSWORDS, Your Personal Computer, Cell Phone, Tablets and Credit Cards

The computer and the telephone of the deceased (for online banking opportunities) and all other electronic communication devices with their passwords.

All of these will require passwords. So knowing how and where the passwords of the deceased are stored is essential.

All computers these days have programs that are organizers or note takers, which can be secured with a master password. Please write down, what programs you use and how your Executor can access them.

This single secured file/folder/note can be the Master List for everything else that needs to be accessed:

- Also include the physical location of Passports and your Foundation and Corporations documents
- Bank accounts — where do you bank
- Credit Cards
- Phones
- iPads
- Where in the backyard you buried those gold coins
- Etc.

Once your Heir comes to Panama in the case of multiple nationalities, tell them make certain they enter the country on the same passport they will show to the bank(s); and also, that it is the same passport the bank has on file for your Beneficiary.

Online Money Transfers

Assuming that the deceased had online banking services, and the Executor has access the proper passwords and the security questions, in addition to the passcode of the phone of the deceased, (which has the bank's token stored on it) then the Executor can, via online banking, move monies and originate their own wire transfer to their bank account, in whatever country, without hassling with the bank itself.

When the source of your inherited cash is the sale of a car, the sale of a house, CD's from the Panamanian bank, then a wire will not be an issue. But if you have cash from inexplicable/undeclared sources, (those gold coins in the back yard), life can get more complicated.

However, there are in Panama City several "Fiduciary" companies, who wave their hands, do a happy dance, and for the fee of 2 percent more or less, will wire your cash to your designated bank outside of Panama.

As far as banking goes, most Panamanians who know their way around, avoid mentioning the word "death" at all cost, and immediately, empty the account(s) they have access to via online transfer or by using an ATM card with the correct pin codes. However, for tourists, since the maximum ATM withdrawal is \$500.00 a day, that option is not great when the accounts hold more than \$5,000.00. Plus this will oblige the Executor to stay in Panama longer. Eventually, the Heir will have to go to the Bank manager with a death certificate, and then have to wait for the due diligence of 14 days minimum. Though, once again, it seems that if one gets one's lawyer involved they can do prep work at the bank, to shorten that timeframe.

Are Cars an Asset? or a Liability?

Cars as an asset are a totally different kettle of fish.

Never hold title to a car in your Corporation or Foundation.

Cars should always remain personal property.

To facilitate the eventual sale of your car, it is very useful to already have the owners signature on the back of the pink slip. Also put the owners signature on new blank Tramite papers. The two signed Tramite forms are also very useful to have in your files - together with the original pre-signed pink slip I mentioned. (You can buy Tramite forms from the location/in the town where your car is registered)

Having all these documents pre-signed, though not dated, is useful for you at any time, whether you or your Executor or whoever is ready to sell your car. If desired your lawyer here in Panama can help sell your car or change title.

It is important to keep your car out of your Corporation/Foundation, since in the event of an accident, all of your assets can be attacked. Keep your car registered to you personally in your name as an asset. If it is registered in your Corporation or Foundation it is a liability.

Insurance Issues

Be aware that all insurance policies for real estate and cars void themselves when the insured person no longer functions. The policies will be automatically cancelled upon death, because there is no one to whom the insurance company can make a payment. For real estate, since you don't want your home insurance coverage to end with your death, make sure that the insurance policy for Real Estate assets is the name of your Corporation or Foundation.

Catch 22's

Panama really excels with a number of gotcha's and catch 22's etc.

For instance: Catch 22 #1:

If your Heir is tardy in visiting Panama and is not already working with your lawyer from afar to take care of details and your Heir does not realize that in order to sell your car you need a valid registered Title and a current Revisado. (Why would they know this?)

The following fact:

So, needing a valid registered Title and current Revisado sounds easy and reasonable. However, Revisados can only be obtained in the month the car was first registered (or thereafter). That month is indicated on the Placa, the license plate. Revisados also require current valid title and car insurance, but your insurance has just been cancelled due to death.

So here you have a situation where timing of your death, the timing of your car registration and the timing of you Executors travel to Panama opportunities, are in a convoluted conflict. Luckily Lawyers can help, but costs are involved.

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