FINNISH CITIZEN DIES IN USA WITH ASSETS
BANK ACCOUNT IN USA, NO ESTATE IN FINLAND
SURROGATE'S COURT PROCEEDING REQUIRED

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The common perception is that if you die without a Will, that the State will get all the assets and bank accounts. That can happen under certain circumstances; and especially if there are no blood relatives living in the state where the decedent died, or worse yet no blood relatives in the USA. However, it need not happen.

I have represented many Finnish citizens who have been in the USA for years, worked and saved money, perhaps owned a house or a co-op apartment, and have no blood relatives in the State or USA. Some had dual USA and Finnish citizenship, others did not. Those that did not have dual USA citizenship usually have (had) permanent resident status, paid taxes, and had social security numbers,

Under those circumstances, if I was contacted prior to death, I might well recommend a Trust to avoid the extensive legal work that would be required upon death, and the time to probate or process the estate through the Court. In that regard I would direct the reader to my article about Trusts in this website. This article is directed at the case where the death has occurred without any prior planning.

Upon the death, friends or relatives usually contact the banks where there are accounts and inquire as to how to secure the money. The most important question is whether there is a beneficiary designated by the decedent on the account. The banks and all financial institutions will NOT answer that simple question. They will advise you that they will only speak with the court designated representative of the estate. That would be the Executor if there is a Will, or the Administrator if there is no Will. That representative must be appointed by the Surrogate's Court and you will need a lawyer to file the necessary papers.

Most estate lawyers handle estates involving USA citizens and blood relatives living in the USA who are citizens. The estate proceedings are more complicated when there are no blood relatives in the State and most complicated when there are no blood relatives anywhere in the USA, and they are not USA citizens.

I have had experience with these cases, particularly with Finnish citizens. There have been circumstances when the assets have been "left to the State" because the amount of money in the estate did not warrant proceeding because the legal work required would have far exceeded any possibility of recovery. The usual and customary hourly attorney rate is $400 per hour or higher. I have had estates where the hourly rate generated very large fees, depending upon the circumstances.

The first two questions that must be resolved are (1) does the estate value warrant proceeding, and (2) is there a reasonable expectation that the Surrogate's Court will ultimately issue Letters appointing an Executor or Administrator to collect those assets for the blood heirs. If the answer to either of those two questions is NO, I cannot recommend that the heirs commit to paying the legal fee, which usually requires that a significant advance be paid as a Retainer, the amount depending upon the complexity of the case.

There are circumstances when I have agreed to proceed upon a contingency basis. That would mean that the heirs in Finland pay no legal fee unless I recover. Then I would recover usually one third or 40% of the gross recovery, again determined by the complexity of the estate. The benefit to the heirs outside the USA is that they take no monetary risk in the event that the Court does not find the proof sufficient to appoint an Executor or Administrator. Each case has to be determined upon its own merits, or the lack thereof.

A major consideration is whether sufficient proof can be furnished to the Court to assure the Court that the heirs are indeed the heirs entitled to their share of the assets. The degree of proof required will be greater if there is no Will because if there is a Will, the decedent will have specified therein who is to get the assets upon death. The Court is more inclined to carry out the wishes of the decedent as set forth in the Will. The Court would be less inclined to approve a Petition requesting the assets by heirs, particularly if the heirs are not close relatives.

As a minimum, a Family Tree Affidavit by a person with no interest in the estate must be furnished to the Court, setting forth all the heirs of the decedent. Documents might be required together with the Affidavit, which must be notarized and Apostille affixed if the document(s) are coming from outside the USA. Sometimes more than one Family Tree Affidavit might be required. If the heirs are distant relatives, it is usually the case that a closer relative to the decedent predeceased the decedent, in which event the death and the heirs of the predeceased would also have to be proven with documentation.

It is important that the Family Tree Affidavit be sufficient to satisfy the Court that all possible heirs have been accounted for. I have had circumstances when a genealogist had to submit research to document to the Court that the correct heirs are noted in the Petition filed with the Court. In one case involving a Finnish citizen without a Will, the Court required not only a genealogist, but Hearings to have the heirs testify as to their personal knowledge of the Family Tree.

The next consideration is if each of the heirs will sign a Consent to the appointment of an Executor or Administrator, whom the Court would appoint “upon consent of all the heirs”. In short, there is a statutory fee of 5% of the gross estate to that person who has the responsibility to collect and distribute the assets, and report to the Court. That person must be a resident of the State and USA citizen. I have therefore acted in that capacity, not only because there usually is no one able or willing to do so, but because it reduces my legal time because I need not contact the proposed Executor or Administrator on all documents and issues related to the estate. It is therefore the rare exception in circumstances being discussed herein when I am not the proposed Executor or Administrator for purposes of the estate.

There are numerous other items that must be furnished to the Court, the number of which depend upon the circumstances of each case. I would suggest that you contact me via e mail and set forth your particular circumstances so that we might discuss further.

Written by Robert Alan Saasto, Esq.

President FALA