

Is Your Will Valid After You Move? How Relocation Affects Your Estate Plan

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According to a recent study conducted by [Consumer Affairs](#), the average American moves 11.7 times in their lifetime. While the majority of these moves occur within the same county, or city, millions of Americans move every year from one state to another. When a client executes a will and subsequently moves to another state, an obvious concern arises: Will their will, drafted in one state, be admissible to probate in their new state of residence?

The short answer is that most states will admit a will to probate that was validly executed under the laws of another state based on the Full Faith and Credit Clause of the U.S. Constitution and basic principles of comity.

New York, in fact, has a statute directly on point; EPTL § 3-5.1 provides that a will executed outside the state is valid within the state if it is in writing, signed by the testator, and otherwise executed in compliance with the laws of New York, the jurisdiction in which the will was executed, or the jurisdiction in which the testator was domiciled, either at the time of execution or at the time of death.

New Jersey similarly provides, pursuant to N.J.S.A. § 3B:3-9, that a will executed in compliance with New Jersey law is valid within the state regardless of where it was executed. N.J.S.A. § 3B:3-9 further provides that a will that is not executed in compliance with New Jersey law is nevertheless valid if it is executed in compliance with the state or country where the will was executed, or the state or country where the decedent was residing at the time of the will's execution or at the time of the decedent's death.

However, there are significant differences in the probate laws of each state that can make executing a new will a prudent decision.

Choice of Executor

Many states only have minimal requirements for who may serve as executor of an estate. For example, New Jersey law provides that so long as an individual is 18 years old and competent, they may serve as executor of a decedent's estate. In contrast, New York law provides, pursuant to SCPA § 707, that, a non-citizen, non-domiciliary may not serve solely as executor of an estate; a domiciliary co-executor must be appointed. Further, a person who does not possess the qualifications required of a fiduciary by reason of substance abuse, dishonesty, improvidence, want of understanding, or who is otherwise unfit, is also disqualified from serving as executor. The court may, in its discretion, also disqualify an executor who is illiterate or who has been convicted of a felony.

Inheritance Tax

An inheritance tax is levied on the assets received by the beneficiary of an estate. This is in contrast to an estate tax, which

taxes the entire corpus of the decedent's estate regardless of the ultimate beneficiaries. While the vast majority of states do not have a state inheritance tax, several states still maintain an inheritance tax, including New Jersey. The inheritance tax applies to bequests to relatives, including brothers, sisters, aunts, uncles, nieces, nephews, and distant relatives, as well as non-related individuals.

Suppose a domiciliary of Florida (which does not have an inheritance tax) wishes to provide a bequest to their longtime romantic partner. If the bequest is made under the client's will and they later move to a state with an inheritance tax, the client may inadvertently subject their romantic partner to a hefty inheritance tax. Thoughtful planning could be employed to avoid this result. For example, rather than leave the bequest under their will, the client may make the same gift during their lifetime.

State-Level Estate Tax

Another potential concern when changing domiciles is state-level estate taxes. In 2025, the federal estate tax threshold for individuals is \$13.99 million. As such, very few individuals have federal estate tax issues. While the majority of states do not impose a state estate tax, a significant number of states still maintain an estate tax. Overwhelmingly, the state estate tax threshold is significantly lower than the federal estate tax threshold.

For example, a will drafted in Oregon will likely have been drafted with the \$1 million estate tax exemption threshold in mind. As such, married clients with relatively modest assets may employ an estate planning technique called a "credit shelter trust," a trust designed to fully use the decedent's remaining estate tax exemption amount at the time of their death. If the client later moves to New York, where the state estate tax threshold is currently \$7,160,000, funding a credit shelter trust may no longer be necessary or even advisable. The trustees of the credit shelter trust, typically the surviving spouse and one or more independent trustees, will likely be obligated to administer a trust that may not serve a functional purpose, all the while incurring unnecessary administrative expenses.

Statutory Right of Election

Another potential concern is that a will drafted based on the spousal rights of one state may lead to unintended consequences if the client later changes their domicile.

For example, many states permit the surviving spouse to "elect" against a decedent's will, taking an inheritance based on a statutory formula as opposed to what is provided to them under the will. The laws of each state vary significantly in how the elective share of the surviving spouse is determined.

A client may prefer to transfer the maximum amount of their assets possible to their children or other beneficiaries at their death, especially if their spouse has significant personal assets or if they are in a second marriage and have different beneficiaries than their spouse. As such, they may provide directions that their spouse is only to receive their elective share. If the client later changes their domicile, they may inadvertently provide significantly more (or less) to their surviving spouse than they may have intended, inviting conflict, ambiguity, and potentially subverting the client's testamentary intent.

Conclusion

If a client moves from one state to another, they should strongly consider consulting with local counsel. This ensures that their will is valid under the new jurisdiction and continues to align with their estate planning goals. Even if the client's will is valid and does not need to be re-executed, it is nevertheless essential that advanced directives such as health care proxies, powers of attorney, and appointments of standby guardianship are updated when moving to a different jurisdiction, as many states have statutory forms, and out-of-state forms may be rejected by health care providers and financial agencies.