

# Estate Planning for US Citizens resident in Switzerland or with property in Switzerland



# Are your US documents still valid?

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Your US will, trust, beneficiary designations, or joint tenancy with rights of survivorship might not be applicable

- Forced heirship rules or marital property rights may interfere
- If you want US law to apply, an explicit choice of US law clause is necessary
- instead of US law you may enter into a Swiss inheritance agreement with your heirs, but minor cannot sign such agreement
- US healthcare and advanced care directives are not valid in CH
- Trusts may have disadvantageous Swiss tax implications



# US citizens resident in Switzerland

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- Principle: Swiss law on marital regime applicable  
Swiss inheritance law applicable
- Marital agreements on separation of assets applicable
- If no marital agreement – ordinary regime of acquired property  
all assets earned (not inherited or gifted) are joint property
- US last wills are valid provided the law of the US State of origin is  
explicitly chosen (typically not in a US last will)



# US citizens resident in Switzerland

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- Forced Heirship Rules
  - Surviving spouse and children
    - surviving spouse  $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$
    - children  $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$
    - disposable share  $\frac{1}{2}$
  - Parents and siblings have no forced heirship claim



# US citizens resident in Switzerland

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- Swiss inheritance law
  - Forced heirship rules are violated if assets are in a trust even if heirs are beneficiaries
  - Heirs can enter into an inheritance agreement and waive their forced heirship portion



# IRA Accounts

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- If US law is applicable – no issue in Switzerland
- If Swiss law is applicable
  - IRA account is treated like a 3d pillar account – not part of the estate but taken into account for the forced heirship portion
  - IRA is transferred in the US according to US rules – if forced heirship portion is violated – surviving spouse or other beneficiary has to compensate deprived heir



# US citizens resident in the US with Swiss property

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- US probate Court is not concerned with Swiss property
  - In addition to US will a Swiss will should be executed regarding Swiss property
  - Swiss real estate cannot be transferred into a trust unless all trustees and beneficiaries are Swiss citizens
  - US trust can be appointed as heir – sale of property within 2 years



# What if I have minor children?

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- If Swiss law is applicable, forced heirship portion cannot be violated – KESB will file a claw back action in court.
- A minor (until 18) cannot sign contract waiving his or her rights.
- Child's property can be left with surviving parent or another custodial adult to be held for the child until the child turns 18.





# Guardianship for minors

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- Guardianship for a minors
  - The person you think is most appropriate to serve as guardian can be mentioned in a last will
  - A person in the US with close connections to the child is possible
    - the Swiss Courts will ultimately decide what is in the best interests of the child

# Healthcare and Advanced Care Directive

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## Healthcare

- US document is not valid in Switzerland
- Additional healthcare directive should be executed
  - Advanced instructions for physicians
  - Appointment of a representative for health-care purposes



# Healthcare and Advanced Care Directive

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## Advanced Care Directive

- In case you are incapacitated during lifetime
- Freedom to appoint the representative you want
- Freedom to define the scope of their powers in
  - Personal assistance
  - Management of the assets
- Possibility to appoint two different representatives



# US Trusts

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- Trusts are typically tax transparent, assets and income allocated to settlor
  
- If settlor passes away or if irrevocable discretionary trust is the beneficiary of the estate
  - Trust may become intransparent – Swiss inheritance tax of up to 40% may be applied
  
  - later distributions to beneficiaries taxable as income
  
  - Tax ruling can be obtained from tax authorities



# Do I need to hire a Swiss lawyer or notary to draft a Swiss will?

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- You can hand-write your will yourself but the asset division is determined by Swiss law
- If you want an outcome different than Swiss inheritance rules consult a lawyer



# Contact

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