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SPANISH PROBATE AND SUCCESSION

DOES YOUR CLIENT NEED A SPANISH WILL TO DISPOSE OF SPANISH PROPERTY? WHAT ARE THE CHALLENGES?

Though it is unpleasant to think about death and we try not to think about it, it has a nasty way of coming on suddenly and unexpectedly and the very last thing that is wanted is to have to deal with difficult bureaucracy at a time of bereavement, and what is far worse, in a country where your client may neither speak the language, nor have local connections and have no knowledge of legal issues.

The idea that in the absence of a Spanish will, property owned in Spain by foreign nationals goes to the Spanish State is of course wrong. However, it is advisable that foreigners who own property in Spain or are retired in Spain make a Spanish will disposing of their assets in Spain, in order to avoid expensive and time-consuming formalities and also to simplify the legal formalities to be completed on their death. Consequently the reason behind the advise to have a separate will in Spanish form is a practical one. Failure to dispose of the Spanish estate in a will in Spanish form means that the estate cannot be administered in Spain until an English Grant of Probate or a Grant of

Letters of Administration has been obtained. By the time one of these Grants has been obtained, the time limit of 6 months from the date of death to pay Spanish Inheritance tax may have passed and a surcharge may be imposed for late payment of the tax.

In addition to advising your clients on the above point, it is important to explain to them the importance and impact that the “lex successionis” may have on the administration of their estates and on the possibilities of the provisions contained in their will or wills to be challenged by third parties.

When a foreign Spanish property owner dies, Spanish law must be applied to his Spanish assets as a result. The Spanish Civil Code refers all matters of succession to the national law of the deceased and by application of the English International Rules of Conflict the matter might be referred back to Spain. This “renvoi” made by the English Rules is accepted by Spanish Law although at present courts, both in Spain and in England, are slightly opposed to a strict application of this rule and are somehow flexible on its application. Be aware that Spanish laws of succession are different from those in other countries; the deceased in Spain must leave two thirds of his estate to his compulsory heirs and therefore, an intestacy situation may leave the matter of succession open to claims by persons who might be considered as compulsory heirs under Spanish law.

Notwithstanding this, as the law stands at present, if a foreign testator makes a will disposing of his Spanish property, he can bequeath his Spanish assets to anyone he pleases as long as the laws of his country of nationality allow him to do so. But a client who has made a will disposing of his Spanish property and leaving it to the person of his choice, should be advised that his compulsory heirs, if any, may try to contest his will.

These are only general guidelines and not definitive statements of the law, all questions about the validity of testamentary dispositions, the law applicable to the succession etc. shall be directed to a Spanish lawyer when there is a Spanish element in your client's estate.

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Department of Spanish Probate and Succession

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