

## **Dawn Alderson, Head of the French Law Team, reports on recent topics concerning Wills and French Property**

Did you know that?

Many people have a tendency, despite best intentions, to put onto the back burner questions regarding the succession to their assets in the event of death. In blunt terms, who will get what.

All too often we see cases where a client will have put in place a Will several years ago and not have got around to updating this to take account of new circumstances before his or her death. This can result in unintended consequences which can be distressing and/or expensive for the beneficiaries particularly where a person dies owning property in France.

As most owners of French properties will know, French law imposes rules on how a person may leave his or her property. You are not free to leave the property to your surviving spouse (or partner) as you might wish, if you have children or grandchildren. It is only on rare occasions when the surviving spouse can inherit the property automatically on the death of the first spouse and become the 100% owner of the property.

As a result, it is important that owners of French properties do in fact understand what will happen to the property in the event of their deaths. Following on from this is the need to have in place a Will which will apply to the French property and which can also be enforced in France – if the French rules are not respected by the Will the provisions will be automatically revised to take account of the children's rights no matter what the Will might say.

Will this be as you wished? Can you do anything to prevent it? Do you need to consider how you should protect your spouse in this case and will she/he be happy with the solution.

Lots of questions.....

Another danger which can trap the unwary is having a traditional style “standard” English Will in place when they die which they may have executed many years previously perhaps even before the French property purchase. Similar problems arise when a Will may have, in fact, been executed fairly recently but without the necessary advice as regards French law and its effect. In both situations there was a failure to understand how the Will would apply in France or indeed consideration given as to whether it should have applied at all.

For instance, we have recently acted for a widow whose husband had died leaving her and their two children as his heirs. The children were still minors when he died. The husband,

since the early days of their marriage and before the children were born, had owned a property in France. At the time of the purchase he had put in place a “*Donation entre époux*” with his notaire to take effect on his death whereby he left the largest share as was possible in the property to his wife.

Several years later, after the birth of his children, he made a new English Will leaving his residuary estate on trust for his wife absolutely if she survived him but if not, for the children. The Will revoked the previous arrangement for succession put in place in France by the notaire and therefore on his death, the Will took effect over the French house.

After much deliberation and delay, the notaire decided that the clauses of the English Will providing that the wife should receive the entirety of the deceased’s Estate were unable to be applied in all the circumstances. This was the case even though the wife had accepted the gift should be reduced to allow for the children’s rights in French law. As a result, the share received by the surviving spouse in the French property was limited to her rights on intestacy in France being much less than the amount to which she could have been entitled if the Will had operated as the deceased had intended.

Other issues arise and are particularly difficult to manage when a person dies in the mistaken belief that the Wills that he has in place cover the situation and protect his family or partner on his death. Following a review of the Will(s), it is only too common to find that in fact the legacy of the French property has been wiped out by a later Will and the actual beneficiary is not as the deceased would have wished. Another variation on this is seen when a disposition exists in France drawn up by the French notaire and which either inadvertently revokes the client’s English Will or more often is revoked by a new English Will. This has resulted in situations where the beneficiary of the property following the death is not as was intended. Worst of all, delays and legal costs mount up as the lawyers in England and France try to salvage something from the situation.

What to do?

Why not contact us and ask us to review your current position in France and England? We can advise if things are not set up as you would have wished and what you can do to put matters right! Simple!

For further assistance and advice, please contact:

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