

Legal Update

by **Allan Garro N.**

Don't Forget To Plan Your Will in Costa Rica

All those Expats living in Costa Rica part or full time and/or having important investments in the country should take in consideration what will happen in case they die suddenly. Making plans about this issue could avoid leaving legal swamps and headaches to loved ones. People always expect to live as much as possible, but certainly an accident or unexpected disease could change everything in seconds or days only. The legal document that usually comes to mind is to prepare a Last Will and Testament document in Costa Rica in order to set the "rules of the game" while one is still alive and mentally healthy. The two types of Wills that can be made are described as follows:

- a. **Open.** The entire document is prepared by a Notary according to Testator's desires then introduced on the Protocol Book of the notary. Testator needs to sign in front of three witnesses as a requirement of the document to be valid, then notary will provide a certified document of the document for Testator's records. This type of Will is considered a Public Record and actually gets recorded on an office at the National Records building located in Zapote. It can be voided or modified anytime Testator desires to do so. In case of small modifications it's only necessary to sign a Codicil to Will. There is no problem in case Testator losses the provided copy as a public record it can always be replaced.
- b. **Closed.** Testator writes down the Last Will and Testament document by itself then places it into a sealed envelope. Next step is to take it in front of a Notary who will place a document over the envelope acknowledging such document was declared by Testator as his/her Last Will and Testament document, all of this happening in front of 2 witnesses. There are several risks involved on this kind of will since in case the envelope gets lost there is no way to replace or know its content.

There is freedom in Costa Rica to set the rules of the Will document. However, some exceptions will occur when Testator has minor or handicapped children and/or wife. In case of minors, a judge will always grant their support until they are of legal age or get a career if studying; same for handicapped but in such situation their support needs to be secured for life and in case of a wife Court needs to grant her right to 50% of all assets acquired during marriage time. In case a person dies without a Will then the law sets



who legal heirs are, placing on the first line with equal rights the wife, children and parents of the Decedent person. In case Decedent had no wife or children and parents are dead already, a second line includes grandparents, a third line brothers and the list continues.

It is necessary to take in consideration that whether there is Will or not, a Probate Process always needs to be started in Court and it takes time –years we mean- as well as an important amount of money to cover different costs such as Advertisements, Appraisals made by Court Experts, and Lawyer's fees. In some specific cases Notaries are authorized to replace Court and perform some kind of "Notary Probate Process" but still has important expenses to be afforded. However, some other actions can be taken in order to try avoiding Probate because of said complications. To name an example, in some documents such as certificates of deposits, insurance policies or complementary retirement plans issued by financial institutions beneficiaries can be set anytime upon request, in which case upon death appointed beneficiaries automatically acquire the benefits without further requirements.

Other way to avoid Probate is to set a Trust in Costa Rica that will take effect in case of death, usually called Patrimonial Planning Trust Contract. In this case Grantor will need to designate a Trustee –can be a bank or individual- that will execute Grantor's desires upon death as well as to designate the Beneficiaries of the Trust. Advantages to this are that assets can actually be transferred into the Trust tax free. Some foreigners that already have a Trust on their country of origin as well as have everything here registered under the name of a company, usually grant a contingent full power of attorney over the company to their appointed Trustee on their country of origin. Some other people who have assets under a company being stock holders as well as representatives sometimes grant a contingent power of attorney to their heirs so in case something happened to them the beneficiaries have control over the company.

For those owning Real Estate Property on personal name should consider the possibility to transfer said properties into their heir's names then keep the usufruct right as a lien for life time. Usufruct right is actually a lien over the property that grants the right to use and enjoy it for life. Upon death, such lien gets automatically cancelled then heirs acquire full control over the property without incur in any further expenses. As shown, there are many ways to deal in the event of death avoiding loved ones to suffer the consequences of the lack of planning while still alive.

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