

A PLACE IN THE SUN?

Although this may be the title of a television programme it also evokes a current trend as increasing numbers of us are looking to buy a property abroad.

This article is intended to deal with problems now facing English Owners of Property in France, it could also equally apply to English owners of property elsewhere on the continent, for example, Spain.

In contrast to English law, where a person can leave their property under their Will however they think fit, in countries that are based on Civil law, such as France, the extent to which a person can dispose of their property by a Will is limited by the succession laws. The Civil Code gives your parents and your children an absolute right to inherit a certain part of your Estate in France. These family members are called the “reserved heirs” and that part of the Estate, which must go to the reserved heirs, is called the “legal reserve”. The reserved portion of the Estate will vary according to the number of children. It should be noted that a spouse is not a reserved heir.

In a lot of cases, the property abroad is bought as part of a long term project intended to provide a holiday home for the family or perhaps an extra income through lettings. It could be run down and in need of repair. Unfortunately, the worst can happen and more unfortunately, at the worst possible time. There may be a death. A co-owner dies and the surviving owner is left with a project which has become a burden and a financial drain on resources. On top of this, as a result of the French succession laws, the surviving owner may now jointly own the property with an infant(s).

Often the only practical solution is to sell the property. This is not a problem where all of the owners are over 18. But what if the owners who have inherited the property are minors?

The ability of a child to sell a property is usually determined by the nationality of the child. Since children in England are unable to own land, they are unable to sell land. The French system has its own methods of protecting the interests of infant owners but if the child is domiciled outside of the country, the French courts will not have jurisdiction.

However, an Order of the English court will be recognised in France. If you find yourself having to sell a property in France where there is an infant owner, then you will need to make to an application to the English Court for an Order appointing someone to sell the property in France on behalf of the child. The Order of the English Court will be accepted as good title.

The application is normally quite straightforward but it is expensive. In an ideal world, the sale should be postponed until the infant owner is 18. Unfortunately, this is not always practical.

Several documents will need to be produced to the Court in support of the application, for example, a copy of the contract for sale and a translation in French and evidence that the property has been properly marketed for sale and that the agreed price is a competitive price. As the child does not have legal capacity, the application will need to be made on behalf of the child through a “litigation friend”, that is, someone who is able to fairly and competently conduct the proceedings on behalf of the child and who has no interest adverse to that of the child. Often the co-owner will be the surviving parent in which case it may be appropriate for, say, a grandparent to represent the child.

When considering the application, the Court’s duty is to protect the interests of the child. Before it makes an Order, the Court will need to be satisfied that the sale is in the child’s best interests. If all of the adult owners consent to the sale and the only thing preventing the sale is the fact that an English Order is required on behalf of the child, the Court may be happy to make an Order on

paper without the need for a hearing provided all of the paperwork is in order. This reduces the costs and makes more money available for distribution.

If faced with this situation, it is important to obtain guidance from the outset from an expert. Normally the buyer in France will agree to exchange contracts on condition that a Court Order for sale is obtained. If contracts are exchanged without this and for whatever reason the contract is not completed by the seller, the seller may find himself penalised financially; for example, he may have to pay a percentage of the purchase price and the agent's commission.

No doubt as the world's population continues to migrate at a rapid rate, the laws will evolve and any differences between country's laws will eventually be ironed out. The laws as they stand at the moment should not put you off enjoying a place in the sun. Just bear in mind a potential problem that lurks there for as long as your children are minors.