

RIGHTS OF A SURVIVING SPOUSE/PARTNER IN URUGUAY

This is a continuation of our article about the reasons for making a will in Uruguay despite the severe restrictions placed on people's rights to freely dispose of their assets imposed by Uruguayan law when they have surviving children (whether legitimate or not) or parents. In this article we will look at one of the rights of a surviving spouse/partner in such a situation and what can be done to ensure that they are not adversely affected by the legal restrictions.

1. The Conjugal Portion ("Porción Conyugal")

As mentioned in our previous article a spouse/partner is not a legal heir under Uruguayan law. Children and parents are recognized as such and are entitled to particular shares of a deceased's estate. The exact share is dependent on their number. Their number also decides the percentage of assets that a person can dispose of freely in their will.

The conjugal portion is defined in Art 874 of the Civil Code as being the amount necessary to maintain the spouse/partner in a similar situation to during the marriage/cohabitation. But whilst this definition would seem to make it a type of maintenance payment, it is in fact clear from Art 881 that it is more definite than this. Article 881 states that it is a specific amount of the estate only varying according to the number of legal heirs. The spouse is entitled to a quarter of the spouse's assets when there are no descendants i.e. only surviving ascendants. When there are descendants the spouse is entitled to the same as each child.

The right to the conjugal portion arises immediately on marriage i.e. it is not subject to a minimum duration requirement.

Some Practical Examples:

1. If there is one child the surviving spouse is entitled to the same as that child i.e. one third of the estate. This figure is arrived at because where there are 2 legal heirs they are entitled to one third each (and the portion which can be freely disposed of is the other third).
2. If there are 2 children then the entitlement is reduced to one quarter.
3. If there are more than 2 children then the surviving spouse is entitled to one quarter.
4. If there are no children, but there are surviving parents the conjugal portion is also one quarter.

2. The Matrimonial Property scheme in Uruguay:

The principal governing matrimonial property is that any property acquired during a marriage/cohabitation is owned in equal shares. Property acquired before the marriage/cohabitation is the property though of the individual and remains so afterwards. So in the "normal" case that the matrimonial home is acquired after the marriage (and the couple have not signed a formal "separation of assets" agreement), both spouses/partners own

50% of such. This 50% share is deducted from the amount of the conjugal portion. So if for example the conjugal portion is U\$S200.000 in total, but the matrimonial home is worth U\$S400.000 then the surviving spouse will get nothing as she already has a half share in the house worth U\$S200.000. Likewise any assets that the surviving spouse/partner has of their own are also deducted from the conjugal portion.

Note that there is no system of joint tenancy in Uruguayan law so that a spouse cannot automatically become the owner of property on surviving his /her spouse/partner.

3. Options to ensure surviving spouse gets as much as possible of estate:

1. Make a will and ensure they get all the part that is free to be disposed of and that this is expressly stated to be in addition to the conjugal portion.
2. Put all property in joint names so that at least the surviving spouse/partner will have 50% as their own.
3. Ensure that assets like bank accounts/share holdings are in joint names so that the survivor can transfer them into their own name without any probate proceedings being necessary.

4. What not to do!

Do not make lifetime donations of real estate. These should be avoided as whilst they are a valid means of transferring title, they will result in any property becoming unsaleable in the future. This is because of the right of legal heirs to question any donations in the future. The result of this is that no buyer will accept title deeds including a donation unless they were made more than 30 years ago.

Conclusion

A surviving spouse has a right to part of any property in Uruguay, but can be left in a situation of dependency on the goodwill of any children/parents to ensure their lifestyle is not affected. We have indicated some practical measures to try to ensure that spouses/partners are left as much as possible of an estate (assuming that is the testator's wish!). In our next article we will deal with the specific situation of the matrimonial home and the surviving spouses' right to continue living there free of charge, which is a separate right to the conjugal portion.

ESC. ANA LIA MENDEZ/DR. MARK TEUTEN

mail@teutenaboagdos.com

© 2020 TEUTEN ABOGADOS

Note: This article is for information purposes only and should not be relied upon as legal advice. Please consult with a lawyer as to your particular circumstances.