

EXPATS AND DUTCH FAMILY LAW

For whom this flyer is written?

This flyer is useful for people, the so called expats, who have come to the Netherlands and are intending to live here for a number of years, most times related to their work in the employment of a foreign employer. They often hold assets both in their country of origin and in the Netherlands. In some cases they have assets all over the world.

Which problems are expats facing?

Expats may cope with the following issues during their stay in the Netherlands:

- often their last will does not correspond with their wishes when dying in the Netherlands due to conflicting laws of succession;
- the law applicable to their inheritance and/or their matrimonial law has been changed due to their stay in the Netherlands;
- the personal situation has changed during their stay in the Netherlands which can lead to all kinds of issues also with respect to their children;

1. The Drawing-Up of a Will

It is important for expats to have a Dutch civil law notary assess whether it is necessary to draw up a will. This is particularly relevant if they have acquired valuable assets in the Netherlands such as a real estate.

Every country in principle has its own rules about the devolution of property after someone's death. Most countries take account of the testator's nationality in applying the laws of succession. However, someone who has been living in a country other than that of his nationality longer than a specific period (usually longer than five years) may be confronted unintentionally with the laws of succession of his

country of stay. To avoid complicated legal issues and unintended consequences it could be advisable to draw up a will, in which a choice of law is made with regard to the law of succession applicable to the inheritance.

It is also important for expats to have the tax consequences reviewed should they die in their country of stay. Both the country of origin and the country of stay may levy inheritance tax on the estate.

Expats who have children living in the Netherlands may have an additional reason to seek Dutch notarial advice. Dutch law recognises the appointment of a guardian for the children only if recorded in a will drawn up by a civil law notary in the Netherlands.

2. Making a Marriage contract

Dutch matrimonial property law allows for a so-called community of property. This means that the spouses each are entitled to one half of the joint property upon divorce. This is often undesirable. In that case a Dutch civil law notary can draw up a prenuptial agreement, to keep the assets of both spouses separate (according the Hague Convention on the law applicable to Matrimonial Property law).

3. Making a Cohabitation contract

In the Netherlands cohabiting partners often draw up a cohabitation contract. Especially if they buy real estate together, it is important to make agreements in advance about the possible end of the cohabitation following a split-up. A cohabitation contract can also help to save considerably on inheritance tax.

4. Ask for help from the notary by winding up the estate

If an expat or one of his family members dies, a Dutch civil law notary can help to solve all issues with respect to the winding up of the estate as well as with respect to tax issues related thereto.

This flyer is written only from a Dutch law perspective and contains no legal advice. Other (international) law may apply and conflict with Dutch law. This has not been taken into consideration in this flyer.

Closing

For further details or a complementary introduction meeting, please contact Eelko Smit at:

Andries Bickerweg 6
2517 JP The Hague

P.O. Box 18511
2502 EM The Hague

T +31 70 3184200

F +31 70 3561340

E info@bvvg.nl

I www.bvvg.nl