GENERAL DEFINITION OF “WILL”

- It is the legal instrument, executed in accordance to formalities established by the Law, that allows a person, *testator*, to define the disposition of his assets after his death.

- Therefore, the WILL or TESTAMENT will allow the person to determined how will be managed and distributed the assets at the time of his death.

- In Costa Rica it is called “Testamento”.

- It enables a person to select his heirs rather than allowing the state laws of descent and distribution to choose the heirs, who, although blood relatives, might be people the testator dislikes or with whom he is unacquainted.

- The will allows a person to decide which individual could best serve as the EXECUTOR of his estate.
INTESTATE SUCCESSION:

- In the event that a person dies without a valid Will it is considered that the person died “intestate” and the distribution of his/her assets and properties will be ruled by the intestacy laws.
- In Costa Rica, these regulations are contained in the Civil Code, which determines that in cases of absence or invalidity of a Will, the estate of the deceased will be transferred to the “legitimate heirs” according to a previously determined hierarchy.
DEFINITION OF LEGITIMATE HEIRS (Civil Code / Costa Rica)

FIRST DEGREE:
Spouse, children and parents of the deceased. They are subject to the following conditions:

- If the spouse has requested or has been granted a legal separation he/she will not inherit the state.
- If the spouse was separated (not legally) he/she will have the right to inherit only the part of the estate acquired since the separation.
- In cases of community property the surviving spouse will inherit the portion owned by the deceased.
- Parents will only inherit if the deceased son/daughter was: (i) born out of wedlock, (ii) was recognized with his/hers mother’s consent or (iii) supported him/her for 2 consecutive years.
- In cases of unmarried couples, the surviving person may inherit if they both had the legal capacity to marry and co-inhabited together for at least 3 years.
SECOND DEGREE:
- Grandparents and other legitimate ascendants.

THIRD DEGREE:
- Natural brothers and sisters on mother’s side.

FOURTH DEGREE:
- Nephews of the deceased.

FIFTH DEGREE:
- Uncles of the deceased.

SIXTH DEGREE:
- The State, specifically to the Board of Education of the district in which the deceased property is located.
TESTAMENTARY DISPOSITION:

- It is the possibility that every individual has to set forth and determine the disposition of his/her assets at their time of death. It is materialized within a legal document that must follow certain formalities in which a person sets forth testamentary intentions.

- This document will have no legal effects till the person’s death and previous to that moment it can be revoked or modified.
TESTAMENTARY CAPACITY:

- Costa Rica’s Civil Code requires that the Testator must have both Moral and Legal Capacity to execute the Will.

(*) Moral Capacity:
- Testator must be of sound mind, have knowledge of the acts, nature and dispositions he/she is undertaking.

(*) Legal Capacity:
- Conditions imposed by the law that would prevent testamentary intent in reference to age.
- (Individuals under 15 years of age are incapable)
Types of Wills and Formalities:

Types:
- (i) Noncupative Wills (Open Will)
- (ii) Sealed Wills (Closed Will)

(i) OPEN WILL
- There are two possibilities for this sort of Will, the Notarized and the Attested, nevertheless the most commonly used in CR is the following:

- **Notarized Will**
  Drafted by Notary public and executed before 3 Witnesses (they will sworn about physical, mental and moral capacity of the Testator)

- One option for a married couple is to execute a “mutual will”, which means: They both reciprocally appoint each other as their universal heir of all possessions, they both may have under Costa Rica, at time of death. In the event that both of them die, both appoint their children as universal beneficiaries of the CR Will or testamentary disposition
The **Will** must comply with the following requirements:

- Indicate the exact place, date, time, month and year in which it is executed
- Read by the Testator or Notary Public in the presence of witnesses (as stated above)
- Signed by the Testator, Notary Public and witnesses
- Simultaneously executed

(ii) **CLOSED WILL**

(a) May or not be in the Testator’s handwriting.
(b) Its contents are not disclosed to anybody but the Testator.
(c) Specific formalities need to be followed to be sealed and valid.
Family Allowance:
Costa Rica’s Civil Code permits the Testator to provide freely of his property as long as he has already provided for the support of:

- Their parents and spouse as required.
- Their minor children until he is of legal age or in disabled children cases for the rest of their life.

Community Property:
- Property acquired by husband and wife during the course of their marriage.
- Each has exactly the same percentage. (50% each)

Testamentary Gifts to Charity:
- Restricted to 10% of the Testator’s estate.
LEGACIES:

- Costa Rica’s Civil Code allows the Testator to assign a determined property or item to an determined individual.

- This action is considered a “legacy”.

**LEAVE A LEGACY**
PROBATE OF FOREIGN WILLS IN COSTA RICA:

- Occurs in situations in which a citizen of one country has a will drafted in a particular country and other assets in Costa Rica.

- What happens to the Costa Rican Assets when that person dies and probate is initiated overseas and disposition of his estate is sought according to the provisions of his will?

- The Costa Rican Code of Civil Procedures has a special provision that allows the recognition in Costa Rica of the ruling of foreign tribunal on estate matters.

- If a foreigner has a property in Costa Rica and his/her will is probated abroad then Costa Rica will recognize the distribution, transfers and other legal acts carried out by the foreign court where the will was probated.
• It will be necessary to have the foreign judgment authenticated and legalized by Secretary of the State and then by the Costa Rican Consulate with appropriate jurisdiction in order to be recognized.

• The authenticated foreign judgment will then have to be filed in Costa Rica before the First Chamber of the Supreme Court to obtain recognition.

• This procedure of judgment recognition is known as: “EXEQUATUR”

• If Costa Rica’s Supreme Court approves the judgment it will issue a ruling to one of the lower Civil Courts to carry out the distribution of property located within Costa Rica.

• It is advisable to have the Costa Rican assets clearly described in order to avoid any confusion.
EXECUTING A COSTA RICAN WILL:

- It is one of the alternatives in estate planning.
- The CR Will could be limited to disposition of assets within the Costa Rican territory only.
- Therefore, all Costa Rican assets will be probated with the Costa Rican Will avoiding all the judgment recognition procedure indicated above.
- Legal advisory is advised in order to avoid any inconsistencies with Will granted in another country.
WILL REVOCATION

- The Testator has the possibility of revoking his Will at any time, and as many time wanted, by expressing his desire to do so and executing a new testamentary disposition.

- It is necessary to express that all the dispositions have been modified or revoked in order to eliminate all determinations previously stated.
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