



Where There's a Will...

Solicitor MICHAEL BULA answers our burning questions about wills and estates in France.

How can a beneficiary accept or renounce an inheritance in France?

Unlike in Australia, the death of a testator gives rise to automatic inheritance rights for beneficiaries, subject of course to acceptance or renunciation, and as long as the beneficiary did not commit or act as an accomplice to the murder of the deceased.

Within 30 days of death, a beneficiary may "purely and simply" accept the inheritance, which brings with it the danger that if the estate is insolvent (more liabilities than assets) the beneficiary is personally liable to the amount of his or her share to pay the liabilities.

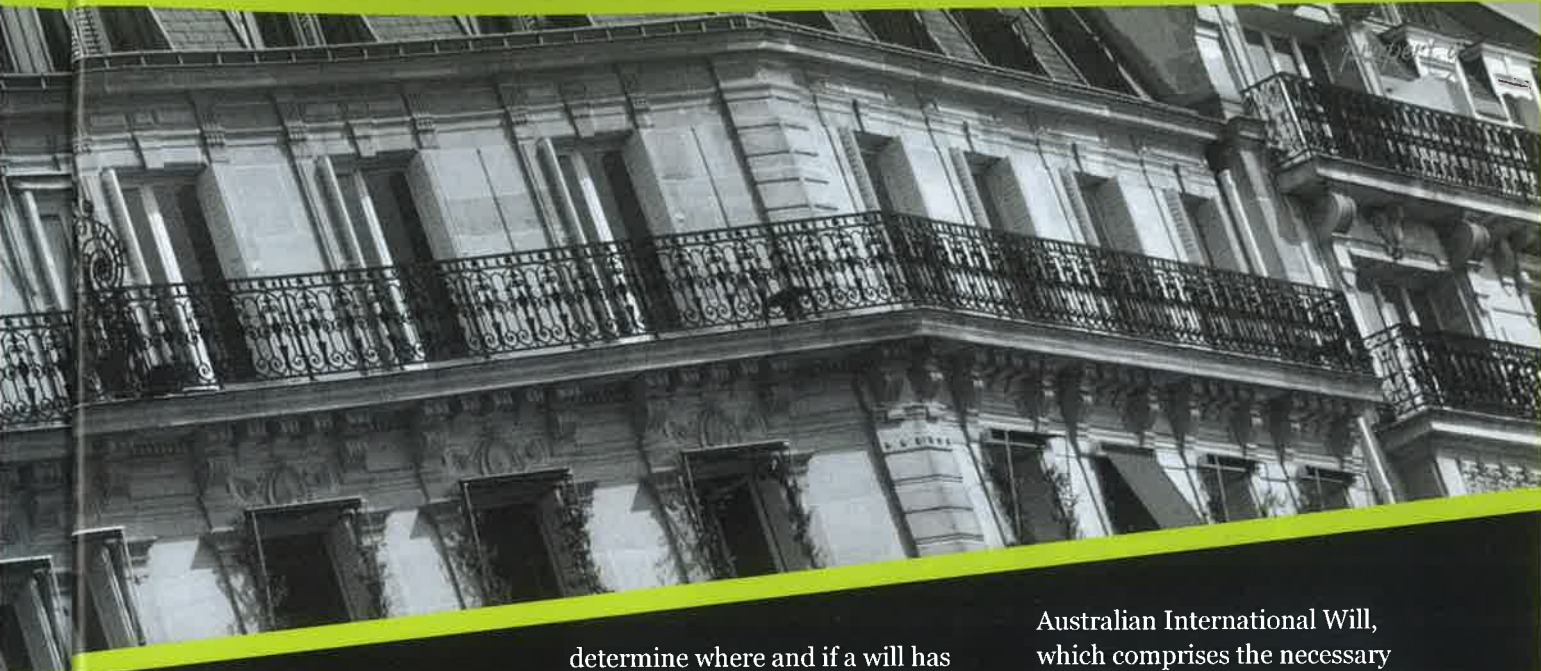
The more secure method is to accept subject to inventory, which means that if liabilities exceed assets, the beneficiary will not be called upon to pay any debts and will receive no value for his or her share, which will cancel out.

The other option is to renounce, which has the effect that the beneficiary is deemed to never have had an entitlement at the date of death and is not called upon to receive or pay out any monies and his or her share reverts back to the estate and to the succession pool of assets, to which the other beneficiaries are entitled.

What are the common types of French wills?

The French Civil Law system recognises four distinct categories of wills:

1. The Holograph or fully handwritten will which must be handwritten, dated and signed, all by the testator
2. The Authentic Will which must be made in the presence of two notaries or one notary and two independent adult witnesses, which is typewritten and received as a notarial act
3. The Mystic Will that is handed to a notary in a sealed envelope by the testator affirming it is his/her will and where the notary prepares



a filing deed. The envelope is only opened upon the death of the testator

4. Exceptional Wills made in times of war, sea voyages, life-threatening diseases etc. Effectively, the rules are relaxed in terms of testamentary criteria and requirements.

Is there a register of wills in France?

It is obligatory for a notary to register any will received by him or her in their minutes with the Central Wills Registry in Venelles, France (Fichier Central des Dispositions de Dernières Volontés).

The Australian Commonwealth, its States and Territories could do well to follow this example. It allows consultation on the Register to

determine where and if a will has been made (reference to a notarial office etc.).

Can an Australian determine how estate assets in France are distributed to beneficiaries?

I will cover the position of testators who die after 17 August 2015 only (for those who have died before that date I suggest specific advice be obtained), a critical date where the European Succession Regulation entered into force. Coupled with this is the new form of Australian International Will pursuant to the 1973 Washington Convention, which entered into force in all Australian States and Territories on 10 March 2015.

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Australian International Will, which comprises the necessary testamentary provisions, as well as compliance with the Washington Convention and its additional certificate by a solicitor or notary, an Australian testator may indeed provide that Australian law (the law of domicile of his or her particular State or Territory in Australia) may govern the distribution of assets in France, by virtue of the provisions of his or her will. A specific legal procedure is required in order that the Australian International Will provisions apply in France, with the intervention of a French notary. ♣

All matters covered in this article are of a general nature. Specific advice tailored to the client's circumstances should be sought.



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