

Elderly Clients in France



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Please note that tax law is a complex subject and you should not rely on this article without professional advice on the facts of your case.

Many of the Anglophones living in France (or who own property there) are now retirees which leads to particular issues when they try to set up legal protection for the future as they become more elderly and potentially less well. Here we address two of the common issues. First Lasting Powers of Attorney and second a little known French legal requirement called *Obligation Ailmentaire*.

LPAs (Lasting Powers of Attorney)

With an aging population more people in the UK are entering into LPAs (Lasting Powers of Attorney) which replaced the well known EPA (Enduring Power of Attorney) when the Mental Capacity Act 2005 came into force. However, at the same time more people own property abroad and most people are unclear as to whether or not their LPA or EPA can be used abroad.

This is an area of law which has been evolving in many countries and there has been an International Convention on the topic signed at The Hague in 2000. Although not all of the United Kingdom has ratified this convention, many of its provisions were brought into Law by Mental Capacity Act 2005. Whilst it is always relevant that a client should take specific advice on their personal circumstances, many people will be pleased to hear that in principle an LPA entered into in the United Kingdom can be used in other countries.

How a UK LPA is applied in France

Where it becomes more difficult is that the convention provides that the means by which the power is exercised is subject to the laws of the country in which it is being exercised i.e. you may have a UK LPA but if you wish to exercise it in France you need to apply the conditions relating to their equivalent documents. France is a useful example because they have only recently created a power of future protection and simultaneously ratified the new Hague Convention. Similar to an English LPA, there are, however, notable differences; in particular as to the form in which such a power can be granted and the formalities for rendering the power active. Generally, matters are simplifying and a lawyer experienced in both jurisdictions should be able

to assist clients with managing their future affairs for the event that they become incapacitated.

French nursing home fees

French society is culturally very different from that in the United Kingdom. In particular, it appears that a French legal requirement to maintain ones parents may now be being extended to the UK based children of British French Residents. As a matter of law in France there are articles of the Code Civil which require children to maintain their mother and father or ascendants who are in need. This is well known to French families; the children may be required to contribute to any fees for a parent who is in a nursing home, or such like. In at least one recent case a French local authority has written to a British and UK resident child of an elderly man who was in a French nursing home and sought to apply this legislation to her. It is likely that any judgment against the children in France could be enforced in the United Kingdom. With care costs likely to become more of an issue this is a matter which is not going to go away.

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