

NEW PUERTO RICO CIVIL CODE RADICALLY IMPACTS SUCCESSION RIGHTS

Governor Wanda Vázquez-Garced enacted House Bill No. 1654 (now Act 55- 2020), implementing the new Puerto Rico Civil Code, which is the systemized set of rules of law that regulate our civil relations. The new Civil Code directly impacts certain succession rights that need to be considered for anyone who is currently arranging to or that has already executed his/her estate planning documents. These changes are discussed below:

Wills and Forced Heirship Rules

Puerto Rico inheritance is subject to “forced heirship rules”, which means that certain family members (the “forced heirs”) are legally entitled to a fixed portion of a decedent’s estate. As a general rule, pursuant to the **prior** Civil Code, testate succession in Puerto Rico was divided **into three (3) thirds (1/3)** (for testators with children or descendants): (i) the **strict** portion, (ii) the **betterment** portion, and (iii) the **free disposition portion**. Pursuant to the **previous** forced heirship rules, the strict portion could only be bequeathed, in equal shares, to the testator’s children (and in case a child predeceases the testator, to such predeceased child’s descendants, per stirpes). The **betterment** portion could be bequeathed to any or all of the testator’s children (or other descendants), and the **free disposition** portion could be bequeathed by the testator to any person he/she determined freely. In the event no children (or descendants) survived the testator, half of the estate would be distributed to the surviving parents (or ascendants) of the testator, as their strict portion. In addition, Puerto Rico law provided the surviving spouse of the decedent an **usufruct right** over the estate (under both testate and intestate successions), which granted the surviving spouse a right to receive the income, rents and dividends derived from a portion of the estate, regardless of the existence of a prenuptial agreement.

Notwithstanding the above, the **new** Civil Code **eliminates the betterment portion and the surviving spouse usufruct right**, and the testate succession is now divided into **two (2) halves**: (i) the **strict** portion and (ii) the **free disposition** portion. In addition, the new Civil Code alters the forced heirship rules to establish that children (or surviving descendants) **and** the surviving spouse are now the **first order** of forced heirs entitled to the strict portion (in equal shares). In the event no children (or descendants) and surviving spouse are available to receive the strict portion, then the parents (or surviving ascendants) of the testator are the **second order** of forced heirs entitled to the strict portion (in equal shares). In addition, the new Civil Code includes the right of the surviving spouse to decide whether he/she will remain with the principal residence or allow him/her to inhabit it for life and free of charge under certain circumstances, once the testator has passed away.

The foregoing implies that the inheritance rights of the surviving spouse are upgraded to the same level as the testator’s children (or descendants) and, as a result, the inheritance rights of the children (or descendants) are quite reduced. It is important to emphasize that the new forced heirship provisions apply to the wills of testators who are still alive at the date the **new** Civil Code is in force (i.e. 180 days after its approval, which will be on November 2020). To that effect, for individuals who have already executed wills under the provisions of the **previous** Civil Code, they may opt to modify their wills to temper them to the **new** Civil Code provisions, for example, to bequeath a greater portion of the estate to their spouse or to modify the distribution provisions of their free disposition portion (which now consists of fifty percent (50%) of the estate).

Open Will Formalities

With regards to the formalities applicable to open wills, the three (3) testamentary witnesses are no longer required to appear before the execution of the will, unless the testator or the notary voluntarily requires their presence and unless the testator is unable to read or sign the will.

Changes Applicable to Intestate Successions

The forced heirship rules also apply to intestate successions in Puerto Rico, the difference is that they apply to the entire estate (not in portions) and the forced heirs inherit the entire estate in equal shares. Pursuant to the **prior** Civil Code, the intestate forced heirship order in Puerto Rico was the following: (1) descendants; (2) ascendants; (3) surviving spouse; (4) preferred collateral relatives (i.e. siblings or nieces/nephews); (5) ordinary collateral relatives until the 6th order (i.e. cousins); and (6) the government of Puerto Rico.

Under the **new** Civil Code, the intestate forced heirship order in Puerto Rico is now the following: (1) descendants and surviving spouse; (2) ascendants; (3) preferred collateral relatives (i.e. siblings or nieces/nephews); (4) ordinary collateral relatives until the 6th order (i.e. cousins); and (5) the government of Puerto Rico.

Inheritance Acceptance

The **prior** Civil Code established two (2) methods of inheritance acceptance: (1) pure and simple and (2) under benefit of inventory. Under the pure and simple acceptance (or without benefit of inventory), heirs would be liable for all the debts and charges of the estate, not only with the estate assets, but also with their own. Under the benefit of inventory acceptance, heirs were not bound to pay the debts and other charges of the estate, but up to the amount that the estate may be worth, that is, the personal property of the heirs would not be confused with the property of the estate.

The **new** Civil Code eliminates the pure and simple acceptance and states that all inheritance acceptance will be considered as a “benefit of inventory” acceptance, unless the estate debts and obligations are in excess of the estate assets and the heir disposes, consumes or uses estate assets for the payment of estate debts not yet due. Heirs also respond for the loss or deterioration that, due to his/her fault or negligence, occurs to estate assets.

Donations

Our **prior** Civil Code stated that any donations realized by a person during his/her **lifetime** must be accounted for as an advance of the inheritance to the heirs. Notwithstanding, the **new** Civil Code limits the foregoing to state that only the donations realized by a person **during the last ten (10) years** before his/her death, must be accounted for as an advance of the inheritance to the heirs.

Impact on Interested Persons

As mentioned above, the provisions of the **new** Civil Code enter into force 180 days after its approval, that is, in the month of November 2020. During this transitional period, the provisions of the **previous** Civil Code remain in force. Therefore, interested persons should consider the consequences of these changes, both within their prior estate planning and after the **new** Civil Code comes into force.

In the case of people who have already executed estate planning documents prior to the approval of the **new** Civil Code, it is imperative that they analyze the provisions contained in said documents, and consider whether changes should be made, either to protect spouses or other heirs based on permissible provisions under the **new** Civil Code.

In the case of people who have not executed estate planning documents prior to the approval of the **new** Civil Code, they must consider the need to cover both the provisions of the **previous** Civil Code and those of the **new** Civil Code, given the transitional term between both Codes.

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