



M Intelligence

Enhancing understanding of sophisticated planning strategies and their applications.

An Overview of International Forced Heirship Rules

Forced heirship is a system by which many countries limit an individual's testamentary freedom and require distribution of estate assets through a specified formula. U.S. inheritance laws are generally characterized by freedom of testation, where forced heirship structures prioritize obligation towards family at the expense of autonomy.

History

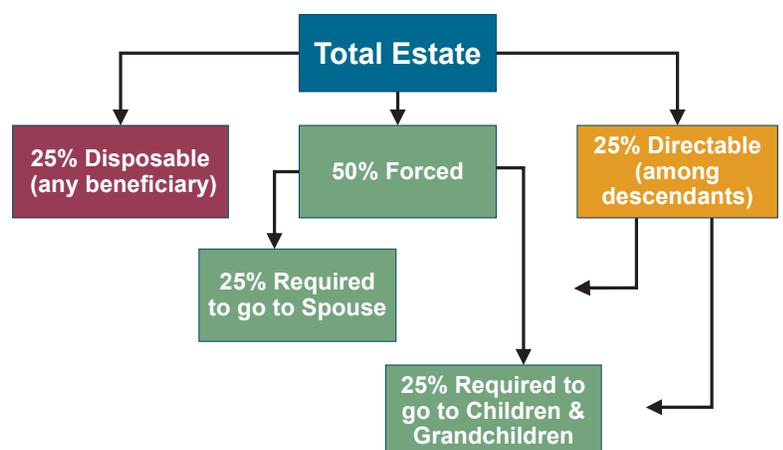
Forced heirship is generally applied in jurisdictions following civil law traditions. Much of continental Europe and Latin America apply some type of forced heirship structure. This inheritance system draws its roots in Roman, Germanic, and Spanish law, with post-revolutionary France bridging these old values with modern laws. There is little uniformity amongst these nations, as laws vary from country to country. Within the U.S., Louisiana is the only state with some legislation influenced by forced heirship traditions.

Process

Under traditional forced heirship laws, family members are entitled to a specific portion of the estate's property, with the estate owner having control over the remaining portion of the estate. Heirs have a claim on the estate for their applicable portion of the estate. After statutory obligation, the disposable portion that remains may be as little as one-quarter of the total estate. Moreover, this financial duty to the forced estate generally cannot be reduced through lifetime gifting. Often,

all lifetime gifts are taken into account at the time of death to calculate estate disposition. A chief concern is the impact of forced heirship claims on inter-vivos (lifetime) trusts. Assets deposited outside the applicable jurisdiction in an inter-vivos trust may be considered subject to a forced heirship requirement and clawed back if the assets are still considered to be part of the estate.

Sample Forced Heirship Structure



M Intelligence

An Overview of International Forced Heirship Rules

Planning Opportunities

The goal of forced heirship—to create a defined structure of estate bequests—limits planning options as compared to estate planning in a common law jurisdiction. Life insurance is a unique planning tool, in that many jurisdictions allow it to be held outside of an individual's estate and provide liquidity at death that can be especially useful for estate planning problems arising from forced heirship restrictions. For example, an estate consisting of a closely-held business is especially susceptible to division among active and inactive family participants. Portions of the business are required to pass to both, which may not meet the needs, goals, or best interests of either group. Furthermore, this problem will continue to compound in future generations, as ownership interests of closely-held businesses are further divided. Life insurance is worth considering in these circumstances, as it can be useful to equalize the inheritance of both inactive and active business participants and meet forced heirship obligations. Individual jurisdiction tax and legal requirements should be thoroughly researched, and qualified local counsel should be sought.



For Educational Purposes Only

CONFIDENTIALITY NOTICE: This document is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use, disclosure, or distribution is prohibited.

© Copyright 2017 M Financial Group. All rights reserved. 0728-2017

M Financial Group | 1125 NW Couch Street, Suite 900 | Portland, OR 97209
T: 800.656.6960 | www.mfin.com

