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MARTINEZ - ECHEVARRIA LAW FIRM

ACQUIRING A PROPERTY ON LA COSTA DEL SOL

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ABOUT US

Martinez-Echevarría is an international law firm that provides a host of first class legal services. Established in 1983 on the Costa del Sol, the firm has become a reference point in the local legal community in our areas of operation as per its specialization in multidisciplinary legal advice to both companies and private individuals.

We know the area, and we know that a first class service means not only giving expert advice and assistance but also ensuring that our clients have continual access to up to date information on issues that may affect them and/or their business.
Martinez-Echevarría counts on a team of 120 legal professionals working in 16 offices located in 4 countries. We pride ourselves in being a firm of international lawyers specialized in providing bespoke legal services to a discerning international clientele.

ACQUIRING A PROPERTY IN LA COSTA DEL SOL

As specialists in the real estate field, the highly renowned law firm Martínez-Echevarría, acts as an independent legal advisor to buyers immersed in the process of purchasing a property in Spain.

Be aware that when deciding to purchase a property in Spain, the logical first step is to choose a reliable real estate agency that can help you to find a property which best suits your needs. Herewith there is a basic guideline to the steps involved when purchasing a property in Spain:

THE RESERVATION DEPOSIT

In order for a property to be removed from the market, it is customary for the potential buyer to place a deposit of between 6,000 - 10,000 Euros (this amount varies depending on the property purchase price). This deposit can be paid to the Real Estate agency or to our clients account, as the buyer's legal representative.

DUE DILIGENCE / SEARCHES

Once the deposit has been paid, we will request the real estate agency to provide us with the contact details of the vendors lawyer to notify them our representation and to request from them the necessary documentation in order to carry out the appropriate due diligence in which we will verify all relevant aspects related to the property, such as:

PURCHASE FROM A DEVELOPER (OFF PLAN OR NEW PROPERTIES)

1. The legal identity of the owner/the seller of the immovable property you intend to buy;
2. That the property under construction is legally registered in the corresponding Land Registry;
3. That the property is free from charges (mortgages, liens, encumbrances, etc.) It is customary for the developer to have finance to build which may take the shape of a mortgage. Should the buyer not be interested in taking over the proportional part of said finance in the way of a mortgage on the property, then it will need to be cancelled prior to completion, with all the cancellation costs paid by the developer.
4. That the property has been granted the corresponding municipal building permit and habitation licence (where applicable) by the Town Hall in question, and respects local urban planning rules.
5. That the construction specification or quality specifications are made available to the buyer and included in annex to the purchase agreement.
6. That there is a Bank Guarantee or Insurance Policy in place in order to provide guarantee for all monies paid to the developer during the construction process.
7. Confirm and check the content of the mandatory 10 year insurance guarantee (Seguro Decenal) that will provide coverage for any structural defects on the property.
8. Revision of the purchase contract drafted by the developer in order to assure that its content respects the buyer's rights and that it is fully understood by the buyer and to ensure that this document respects the buyer's rights.

PURCHASE FROM AN INDIVIDUAL (RESALE OR SECOND TRANSFER

1. The legal identity of the owner/the seller of the immovable property you intend to buy;
2. That the property is legally registered in the corresponding Land Registry;
3. That the property is free from charges (mortgages, liens and encumbrances, etc.)
4. That the property has been granted the corresponding municipal building permit and habitation licence by the Town Hall in question, and respects local urban planning rules.
5. The study, preparation and signing of whatever private contracts (reservation agreement, option contract, sale contract) or public, notarial, documents (purchase/sale deed) which are deemed necessary to execute the purchase operation. The standard procedure is to first sign a private contract normally with the payment of 10% of the purchase price, and after a reasonable lapse of time, to sign the public deed of sale/purchase.

Our services will also cover the following important aspects :

- Obtaining your NIE number. The NIE number is a tax number in Spain for foreigners. You need this number in order to be able to register your purchase in the land registry office and pay your taxes. This number is also needed to arrange your contract with service suppliers such as water, electricity, telephone, and other services.
- Verification of existing debts on the property, such as Council Tax Rates (IBI), horizontal property (community) charges, outstanding utility bills, and calculation of the Plusvalía Tax that is applicable in cases where the vendor is non-resident and in accordance to Spanish law must be retained from the purchase price.
- Payment of the corresponding expenses and taxes arising from the public deed of sale/purchase and the registration thereof in the corresponding Land Registry.

TAXES AND EXPENSES

The expenses and taxes arising from the execution before a Notary Public of the corresponding deed of purchase are as following:

IN THE CASE OF FIRST TRANSMISSION:

- VAT 10% for residential properties. | VAT 21% on plots, garages and storage rooms.
- Stamp Duty (for Andalucia) 1.5%
- Notary fee: notary fees are calculated according to a scale agreed by the authorities and is dependent on the nature of the purchase and the number of sheets contained in the deed of sale/purchase. Therefore all notaries charge the same fee for the same concept. The notary fee for the purchase of a typical residential property would vary between 500-1,800 Euros
- Land Registry fee: land registry fees are calculated according to a scale agreed by the authorities. Normally, the land registry fee amounts to 50-70% of the notary fee.
- Legal fees 1% of the property purchase price plus 21% VA

IN THE CASE OF A SECOND TRANSMISSION/RESALE

- Transfer tax: on amounts up to 400.000 Euros tax is levied at 8%; on amounts from 400,000 Euros up to 700,000 Euros tax is levied at 9%; and on amounts over 700,000 Euros tax is levied at 10%.
- As a clarifying note, for a property with a purchase price of 1 million Euros, the first 400,000 Euro is taxed at 8%, the amount from 400,000 up to 700,000 is taxed at 9% and the amount over 700,000 Euro is taxed at 10%, therefore the total amount due would be 32,000 + 27,000 + 30,000 = 89,000 Euro
- Notary fee: notary fees are calculated according to a scale agreed by the authorities. Therefore all notaries charge the same fee for the same concept. The notary fee for the purchase of a typical residential property would vary between 500- 1,800 Euros
- - Land Registry fee: land registry fees are calculated according to a scale agreed by the authorities. Normally, the land registry fee amounts to 50-70% of the notary fee.
- - Legal fees 1% of the property purchase price plus 21% VAT

NOTE: In the case of purchasing a property and constituting a new mortgage both notary fees and registry fees will be applicable as the mortgage has its own public title deed which will then need to be registered, Stamp Duty is also applicable at 1.5% of the mortgage responsibility amount.

Please find below a series of scenarios which contemplate the approximate costs involved when purchasing with a mortgage:

Purchase Price	**150.00**	**Mortgage amount (70%)**		**105.000**
Purchase costs		Mortgage costs		
Transfer tax	12.000	Stamp Duty	2.625	approx
Notary	800	Notary	800	
Land registry	700	Land registry	700	approx
Bank management fees	320	Bank management fees	320	
	13.820		4.445	**Total 18.265**

Purchase Price	**250.000**	**Mortgage amount (70%)**		**175.000**
Purchase costs		Mortgage costs		
Transfer tax	20.000	Stamp Duty	4.375	approx
Notary	900	Notary	900	
Land registry	800	Land registry	800	
Bank management fees	360	Bank management fees	360	approx
	22.060		6.435	**Total 28.495**

Purchase Price	**500.000**	**Mortgage amount (70%)**		**350.000**
Purchase costs		Mortgage costs		
Transfer tax	41.000	Stamp Duty	8.750	approx
Notary	1.200	Notary	1.200	
Land registry	900	Land registry	900	
Bank management fees	650	Bank management fees	650	approx
	43.750		11.500	**Total 55.250**

Other costs you should take into consideration		
Agreement fee	1%-1,5%	
Home insurance	350-700€	approx
Valuation	600-1000	approx

PRIVATE CONTRACTS

Once we complete our due diligence, and providing that everything is in order, in a period of 2-3 weeks from the signing of the reservation deposit, we will proceed with the preparation and subsequent signing of the private purchase contract with the payment of the amount previously agreed with the vendors. Upon the signing of the private purchase agreement it is customary for the buyer to pay to the owner an amount equivalent to 10% of the purchase price in the case of resale property and an amount equal to 30% of the purchase price in the case of off plan properties.

The private contract is a very important step, as herein we will set out the terms and conditions of the purchase; therefore we will carry out all the necessary negotiations with the vendor's legal representatives in order to defend the client's best interests.

Power of attorney. Many of our clients choose to grant power of attorney in our favour in order to act on their behalf in Spain during the buying process. This will enable us to sign the relevant paperwork related to the purchase and the mortgage, if necessary. The power of attorney can be granted in Spain by a public notary, which is the easiest way, with an estimated cost of 70 Euros, or at the Spanish Consulate in your country of residence.

Furthermore, it can also be granted in your country of residence before a public notary, but in this case it should then be legalized with the Apostille of the Hague Convention or through Consular legalization for it to have legal value in Spain. In any event, we will also assist you during this process should you choose to grant power of attorney, here in Spain or abroad.

PUBLIC DEED OF PURCHASE

After the signing of the private contract, in a period of 4-6 weeks, depending on the conditions agreed with the vendors, the public deed of purchase will be signed by the client with our assistance or by us with the aforementioned power of attorney. At this moment the balance of the purchase price must be paid to the seller, with the buyer taking physical possession of the property.

UTILITIES, RATES, GARBAGE COLLECTION, COMMUNITY FEES AND TAXES

Our office will take care of contracting and/or changing the title of all the contracts with supply companies as well as the relevant taxes concerning the property, and if you so wish we can arrange the direct debiting of those bills (direct payment made by your own bank in Spain).

A bank account in Spain will be needed in order to set up the direct debit for the utilities, rates, household waste collection and community fees. We can also assist you in the opening the Spanish bank account.

OTHER COSTS YOU SHOULD BEAR IN MIND

THE NON-RESIDENT INCOME TAX

Regardless of whether your property is rented or not, you will always have to pay income tax as per the following rules:

- If you do not rent out your property, the Spanish authorities will assume that you have what is called "Deemed Rental Income" which is subject to Non-resident Income Tax. This legal rent is obtained by applying the percentage of 1.1 on the cadastral value (rateable value) of the property, on this base amount the rate of 19 % is applied for European Union Citizens and a 24% for the non-European Union Citizens. This cadastral value is listed on the IBI (tax council rates) invoice and is usually lower than the purchase price reflected on your title deed.
- If the property is rented out, the rate applicable is based on the net rent obtained by the landlord of the property and is 19% for European Union Citizens and 24% for the non-European Union Citizens. According to the new Law, citizens from the EU are allowed to deduct the expenses incurred during the period the property was rented out: electricity; water; community fees; home insurance; interests on mortgage; Council Tax Rates (IBI) & waste collection; maintenance; cleaning services; legal fees for dealing with the income tax returns as well as a 3% annual building depreciation. In this case, a Tax Residence Certificate, issued by the tax authority of the country where you reside, must be submitted together with the tax forms (one for each tax payer).

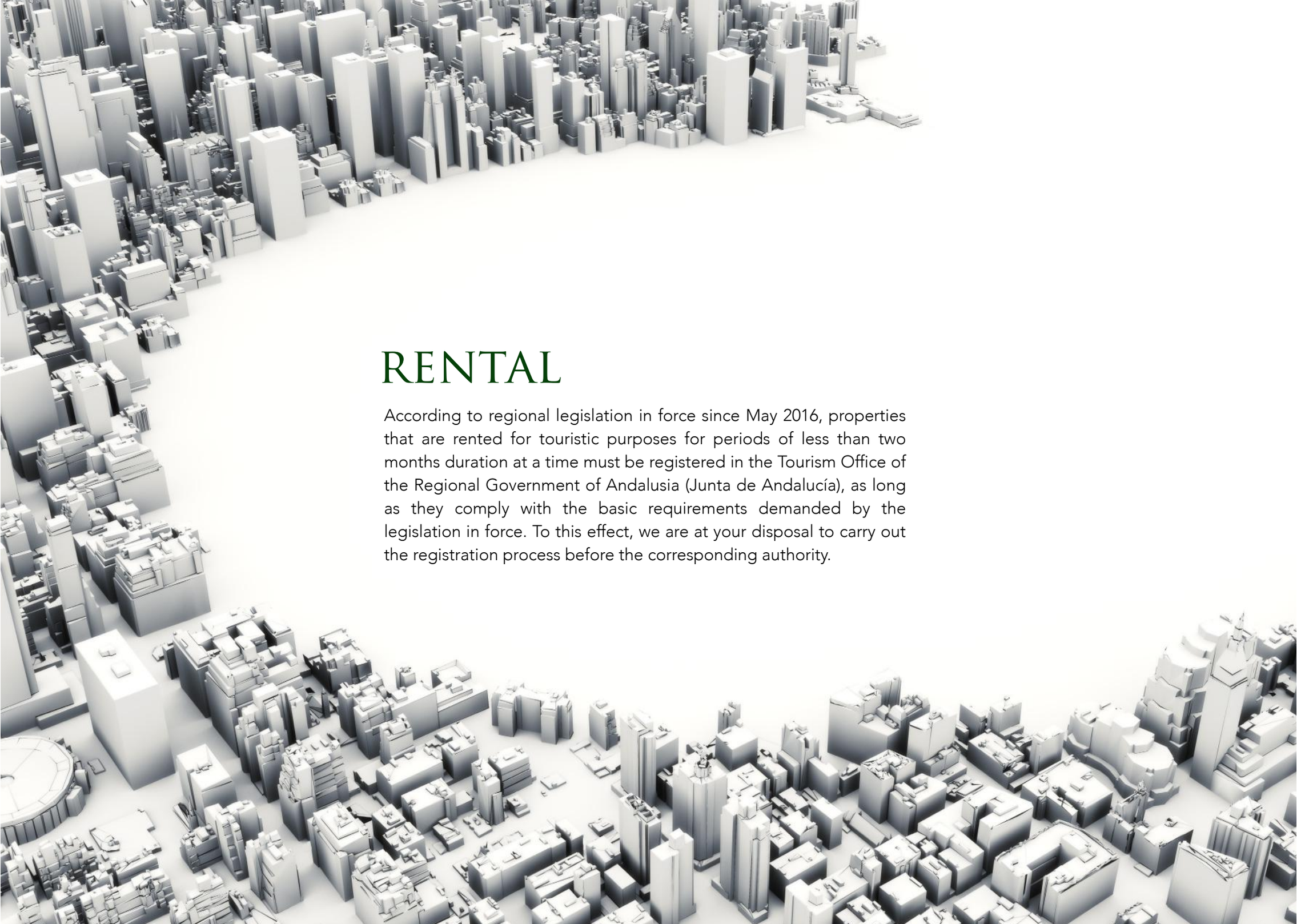
THE WEALTH TAX

This tax will affect residents on their worldwide assets and non-residents with assets in Spain over 700.000 Euros. There is a further exception of 300.000 Euros for the main residential home.

Wealth tax is an annual tax, payable on the total value of your taxable assets as of the 31st of December. If you are a resident in Spain you are liable to be taxed on your assets worldwide; if you are a non-resident, then only on your Spanish assets.
The progressive tax rates range from 0.2% up to 2.5% on assets over €10,695,996.

This tax must be submitted before the end of June of the following year.

- Community fees
- Council Tax Rates (IBI) and household waste collection
- Electricity, water, gas, telephone …
- Home insurance. The community will have its own insurance for the common elements, but we suggest you to have your own home insurance for building and content.
- Our office has at your disposal the relevant qualified staff in order to take care of the calculation and payment of your yearly Non-Resident Income Tax.



RENTAL

According to regional legislation in force since May 2016, properties that are rented for touristic purposes for periods of less than two months duration at a time must be registered in the Tourism Office of the Regional Government of Andalusia (Junta de Andalucía), as long as they comply with the basic requirements demanded by the legislation in force. To this effect, we are at your disposal to carry out the registration process before the corresponding authority.

GRANTING A WILL IN SPAIN

When you have purchased a property in Spain, or you are the holder of any other assets in Spain, such as bank accounts, life insurance policies, shares or any other type of financial products, granting a last will and testament in Spain over your Spanish assets is highly recommended. A Spanish will ensures a smooth distribution of your assets in Spain and that you avoid future formalities, complications, delays, and additional costs derived from the process of succession and inheritance over those properties or assets located in Spain, as otherwise the assets will not be transferred easily to your wife/ husband or relatives.

In the last will and testament the testator may choose the law of his/ her nationality as the law that governs his/her succession. This choice of the applicable law allows the testator to freely dispose of his properties and assets in Spain always according to the limitations established by the legislation of his country of nationality, but in any case avoiding forced inheritance rules applicable under Spanish law. In that regard, the testator shall appoint his inheritors and legatees and will determine the percentages allocated to each of the heirs and the specific assets to be transferred to the legatees.

Otherwise, i.e., not having a Spanish will means expending time and incurring costs associated with the process of giving validity in Spain to a foreign last will and testament. Not having any will and testament at all means that for the distribution of the Spanish assets, it will be necessary to strictly follow what it is stated in the intestacy laws of the country of the last habitual residence of the deceased.

Additionally, in the last will and testament, the testator can establish specific rules to be followed in the distribution of the assets, and appoint an executor who will ensure the fulfilment of his/her last wishes as detailed in the will, and it is also an opportunity to appoint tutors for the children, when these are minor.

To summarise, the Spanish last will and testament will make the process of succession and inheritance over your Spanish assets quicker, easier and less costly.

OUR TEAM

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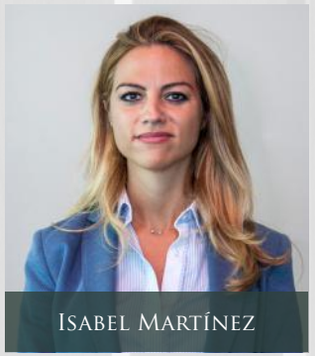
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HONESTE VIVERE,
ALTERUM NON LAEDERE CUIQUE
SUUM TRIBUERE

DOMICIO ULPIANO | JURISTA ROMANO

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