

HOW TO DIVORCE BY CONSENT FROM A DISTANCE

Published: 06 September 2018

Is it possible to get divorced in Spain without attending court from abroad? The answer is yes.

Law 15/2015 of 2nd July of Voluntary Jurisdiction provides for the spouses to divorce by mutual agreement by granting a public Deed before a notary public as opposed to attending court.

This type of divorce requires both spouses to agree to divorce, lived separately more than 1 year, non-existence of minor children not emancipated or with judicially determined capacity.

Today is not uncommon to find spouses living separately in different countries, having rebuilt their lives with another person, wishing to divorce so that can re-marry their current partners.

In this type of situation, it is not easy or convenient, for one or both parties, to move to another country to ratify their decision.

Recently, in Scornik Gerstein Llp, we had a client with such a situation, one of them residing in Spain and the other one abroad and since it is a very recent and interesting topic; we would like to share our vision and experience in this matter.

The divorce deed will contain the spouse will to divorce and will always be accompanied by a Regulatory Agreement by which the existing economic regime will be liquidated.

To get divorce from abroad before two possible options will be considered; either granting a power to act by proxy or giving their personal consent at different times and before different notaries.

We have opted in this case for the second option ... Why?

Because is simpler and cheaper since no proxy is necessary to be appointed. We chose this second option because the only thing that is needed is finding notaries with jurisdiction as per the grantors' domicile willing to collaborate.

The steps to follow to be able to divorce before two different notaries would be as follows:

- 1) The parties agree the content of the Regulatory Agreement.
- 2) One of the parties, from his/her country of residence, grants a Divorce Deed together with the Regulatory Agreement, before a notary of that country and assisted by his/her legal representative.
- 3) Such deed is legalized so that can be enforced in Spain.

- 4) A copy of the Deed is sent to the other party and he/she, assisted by his/her lawyer, signs the same and exact Deed before the second notary public, inducing his/her consent and ratifying the will to divorce by mutual Agreement.
- 5) The receiving notary will submit both deeds to the civil registry corresponding to annotate the divorce.

The divorce will only take place as from the granting of this second deed, when a notary collects the statements of both spouses and declares the marriage dissolved.

Written by Carmen García.