IMPACT OF THE CUBAN EMBARGO ON INHERITANCES BY CUBAN NATIONALS

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I. BACKGROUND OF THE CUBAN EMBARGO AND UPDATE

BACKGROUND OF OFAC AND ITS PURPOSE

“The Office of Foreign Assets Control ("OFAC") administers and enforces economic sanctions, primarily against countries and groups of individuals, such as terrorists and narcotics traffickers."1 The sanctions block assets and restrict trade to accomplish foreign policy and national security goals.2

HISTORICAL FRAMEWORK

The Treasury Department has a long history of dealing with sanctions.3 For example, prior to the War of 1812, Secretary of the Treasury, Albert Gallatin, imposed sanctions against Great Britain for harassing American sailors.4 During the Civil War, the Union Congress enacted a law prohibiting transactions titled the Morrill Tariff of 1861 which provided a licensing regime under rules and regulations administered by the Treasury Department and called for the forfeiture of goods involved in transactions with the Confederacy.5

OFAC is the successor to the Office of Foreign Funds Control ("FFC"). The FFC was established during World War II following the German invasion of Norway in 1940.6 The Secretary of the Treasury

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2. Id.
3. Id.
4. Id.
6. Id.
administered the FFC program throughout World War II. The initial purpose of the FFC was to prevent the Nazi use of the occupied countries' holdings of foreign exchange and securities. It also attempted to prevent the forced return of funds belonging to nationals of those countries. Such controls were further extended to protect the assets of other invaded countries. After the United States formally entered World War II, the FFC played a leading role in economic warfare against the Axis powers by prohibiting foreign trade and financial transactions, and also by blocking enemy assets.

OFAC itself was formally established in December of 1950. It was created after China entered into the Korean War, when President Harry Truman declared a national emergency under the Trading with the Enemy Act of 1917 ("TWEA"). The President had then effectively blocked all Chinese and North Korean assets that were subject to the jurisdiction of the United States.

In 1963, pursuant to TWEA, President John F. Kennedy wrote a memorandum to the Secretary of State. Ultimately, a trade embargo was imposed which ordered the blocking of Cuba's assets and of assets belonging to Cuban nationals. The relevant regulations that implemented these sanctions are found in 31 CFR part 515 [et seq.].

Section 16 of the TWEA provided for corporate criminal penalties of up to $1,000,000 and individual criminal penalties up to $100,000 or ten years in prison, or both, per count. Fines for criminal violations could be increased pursuant to 18 U.S.C. § 3571. TWEA also provided for the forfeiture of property that is the subject of a violation. TWEA authorized civil penalties up to $50,000 per violation. It also allowed the respondent to request an agency hearing. The respondent also had the right to prehearing discovery, and if the respondent elected this option, the civil penalty could be imposed only after such a hearing.

In 1977, Congress passed the International Emergency Economic

8. Id.
9. Id.
10. Id.
11. Id.
13. Id. at 4424.
14. Id.
15. Id.
16. Id.
17. Id.
Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-06. IEEPA replaced TWEA as the statutory authority for a Presidential declaration of a national emergency in peacetime for the purpose of imposing economic sanctions.\(^{18}\) Other pre-existing programs continue to be administered under TWEA, but new programs under TWEA may be established only during wartime.\(^{19}\) Most recently, sanctions remained in place under TWEA only with respect to (1) comprehensive sanctions against Cuba, (2) a residual blocking of North Korean assets previously blocked, and an ongoing prohibition against the importation of certain goods from North Korea without an OFAC license, and (3) certain offshore trade in strategic goods with the former Soviet Bloc.\(^{20}\)

**THE FEDERAL REGULATIONS**

The Executive Branch of the U.S. Government issued the Cuban Assets Control Regulations ("The Regulations"), 15 CFR Part 515, on July 8, 1963. The Regulations were issued under the Trading with the Enemy Act.\(^{21}\) The Office of Foreign Assets Control of the U.S. Department of Treasury administers the Regulations.\(^{22}\) The sanctions under the Regulations seek to deprive the Cuban government of U.S. dollars.\(^{23}\) The sanctions include criminal penalties which range from ten to thirty years in prison, and corporate fines from $50,000 to $10 million, and also up to $250,000.00 in individual fines.\(^{24}\) Further, civil penalties can range from $250,000 to $1.075 million.\(^{25}\)

The Regulations prohibit any person subject to U.S. jurisdiction from dealing in any property in which Cuba or a Cuban national has an interest.\(^{26}\) There is a total freeze on Cuban assets.\(^{27}\) All property of Cuba and Cuban nationals in the possession or control of persons subject to U.S.


\(^{19}\) Id.

\(^{20}\) Id.


\(^{23}\) Emergency Coalition to Defend Educ. Travel v. Dep’t of the Treasury, 545 F.3d 4, 6 (D.C. Cir. 2008).

\(^{24}\) U.S. DEP’T OF THE TREASURY, supra note 1.

\(^{25}\) Id.

\(^{26}\) Cuban Asset Control Regulations, 31 C.F.R. §515.201 (2012).

\(^{27}\) See id.
jurisdiction is “blocked.” Blocking imposes a complete prohibition against transfers or transactions of any kind. No payments, transfers, withdrawals, or other dealings may take place with regard to blocked property unless authorized by the Treasury Department. Because of the severe penalties, extreme caution must be exercised in order to not become involved in unlicensed transactions in which there is a Cuban interest. In the case of a U.S. decedent, the estate becomes “blocked” whenever a Cuban national is an heir of a decedent or is the deceased.

CUBAN BLOCKED ACCOUNTS AND OTHER BLOCKED ASSETS

Pursuant to the freeze on Cuban assets, both governmental and private assets are affected. This includes financial dealings with Cuba, all property of Cuba and of Cuban nationals, and of Specially Designated Nationals of Cuba in the possession or control of persons subject to U.S. jurisdiction. Any and all property, in which Cuba or a Cuban national has an interest that finds its way into the U.S., or into the possession or control of persons subject to U.S. jurisdiction, is automatically blocked by operation of law. Banks receiving unlicensed wire transfer instructions in which there is any Cuban interest, or any instrument in which there is a Cuban interest, must freeze the funds on their own books or block the instrument, regardless of origin or designation. “Suspense accounts” or accounts used temporarily to carry doubtful receipts and disbursements pending a permanent classification are not permitted. Blocking imposes a

29. Id.
30. Blocking is another word for “freezing” and is a way of controlling targeted property. Id. Title to the blocked property remains with the individual target, but the exercise of powers and privileges normally associated with ownership is prohibited without authorization from OFAC. Id. Blocking immediately imposes an across-the-board prohibition against transfers or dealings of any kind with regard to the property. Id.
31. See id.
34. U.S. DEP’T OF THE TREASURY, supra note 1. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. Id. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Id Collectively, such individuals and companies are called “Specially Designated Nationals” or “SDNs.” Id. Their assets are blocked and U.S. persons are generally prohibited from dealing with them. Id.
35. An Overview, supra note 33.
36. Id.
37. Id.
complete prohibition against transfers or transactions of any kind. Unless authorized by the Department of the Treasury, no payments, transfers, withdrawals, or other dealings may take place with regard to blocked property. Banks, however, are permitted to take normal service charges. Also, blocked deposits of funds must be interest-bearing and "setoffs," or agreements to extinguish a default are not allowed.

All persons in possession of blocked property are required to register with OFAC. Further, persons subject to U.S. jurisdiction who engage in any commercial dealings that involve unauthorized trade with Cuba, either directly or indirectly, risk substantial monetary penalties and criminal prosecution. Pursuant to the Regulations, financial institutions are required to file an annual report on all of their blocked accounts.

**RECENT CHANGES TO THE CUBAN ASSETS CONTROL REGULATIONS**

Two years ago, President Obama lifted all restrictions on family travel and remittances to family in Cuba. Further, the President wished to focus on expanding eligible humanitarian donations and increasing telecommunications with Cuba. Currently, and most recently, "President [Obama announced] changes . . . [in] (1) purposeful travel, (2) non-family remittances; and (3) charter flights to and from Cuba." The purpose of these recent changes is to increase people to people contact; enhance the free flow of information to, from, and among the Cuban people; support a civil society; and help promote their independence from Cuban authorities. From the early moments of his presidency, President Obama has reduced the scope of the embargo on Cuba and this will allow many US

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38. Id.
39. Id.
40. Id.
42. Id.
43. Id.
44. See OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY, ANNUAL REPORT OF BLOCKED PROPERTY FORM (OFAC "requires an annual report of all property blocked or funds retained under OFAC regulations . . . to be submitted annually by September 30.").
46. Id.
48. Id.
citizens to visit Cuba for the very first time.\textsuperscript{49} All international airports in the United States will eventually be allowed to have flights to and from Cuba.\textsuperscript{50}

Under the new rules, students, faculty, staff, religious groups, and leaders will be allowed to visit.\textsuperscript{51} OFAC will only license groups that certify that all participants will have a full-time schedule of educational activities that will result in meaningful interaction between the travelers and the Cuban people.\textsuperscript{52} President Obama has also agreed to let telecommunications companies pursue business in Cuba.\textsuperscript{53} This was barred under the embargo and is perceived to be a large step towards improving communications among family members living in Cuba and the United States.\textsuperscript{54}

**REMITTANCES TO NATIONALS OF CUBA**

The remittances for nationals of Cuba were initially highly restricted pursuant to Section 515.570 of the Cuban Assets Control Regulations ("the Regulations").\textsuperscript{55} In September 2009, President Obama eased the restrictions on remittances to Cuban nationals including those that had Cuban Blocked Accounts ("CBA") pursuant to an inheritance.\textsuperscript{56} At the present time, if the owner of a CBA is a Cuban national residing in Cuba and can demonstrate he or she was a "close relative" of the decedent from whom he or she inherited the funds, as defined under Section 515.339,\textsuperscript{57} then he or she will qualify for an unlimited amount of remittance up to the


\textsuperscript{50} Press Release, supra note 47.

\textsuperscript{51} Washington, supra note 49.


\textsuperscript{53} Taylor, supra note 45.


\textsuperscript{56} See 31 C.F.R. § 515.570; SULLIVAN, supra note 55, at Summary.

\textsuperscript{57} 31 C.F.R. § 515.339 (2011). A close relative is defined as "any individual related to that person by blood, marriage, or adoption who is no more than three generations removed from that person or from a common ancestor with that person." Id.
entire balance of the blocked account to be sent via an authorized remitter provided that he or she meets the requirements under the Regulations.\textsuperscript{58}

In addition, the owner of the CBA ("Petitioner") must swear to the following: 1) Petitioner is aware that there are penalties associated with misrepresentation of facts for the purpose of obtaining funds from a CBA and that such misrepresentation is a violation of the laws of the United States of America;\textsuperscript{59} 2) Petitioner is considered a "close relative," as defined by CFR§515.339, which include any individual related by blood, marriage, or adoption who is no more than three generations removed from the deceased or from a common ancestor;\textsuperscript{60} 3) Petitioner is not one of the prohibited members of the Cuban Communist Party as defined by CFR§515.338 as any member of the Politburo, the Central Committee, Department Heads of the Central Committee, employees of the Central Committee, and secretaries and first secretaries of the provincial Party central committees;\textsuperscript{61} and 4) Petitioner is not one of the prohibited officials of the Government of Cuba as defined by CFR § 515.337 as Ministers and Vice-ministers, members of the Council of State and the Council of Ministers; members and employees of the National Assembly of People’s Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals, and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior; employees of the Ministry of Defense; secretaries and first secretaries of the Confederation of Labor of Cuba and its component unions; chief editors, editors, and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; and members and employees of the Supreme Court.\textsuperscript{62}

II. IMPACT OF THE EMBARGO ON ESTATES OF DECEDEMTS

PROBATING AN ESTATE WHERE BLOCKED CUBAN NATIONALS ARE INVOLVED

Probating an estate where Blocked Cuban nationals are involved requires that the personal representative, as well as his or her attorney, follow the requirements of Title 31 of CFR 515, known as the Cuban

\textsuperscript{58} See 31 C.F.R. § 515.570 (discussing remittances under the Cuban Assets Control Regulations).
\textsuperscript{59} See id.
\textsuperscript{60} See 31 C.F.R. § 515.339 (discussing meaning of "close relative").
Assets Control Regulations (“the Regulations”). A blocked estate of a decedent is defined by the Regulations as, “any decedent’s estate in which a designated national has an interest.” The designated national would include a decedent, the personal representative, a creditor, heir, legatee, devisee, or distributee of a beneficiary of the decedent’s estate.

PROHIBITION ON ADMINISTRATION OF BLOCKED ESTATES

Section 515.407 of the Regulations states that all transactions incident to the administration of the blocked estate of a decedent are prohibited. Such transactions include the appointment of a personal representative, collecting assets, paying claims, and distributing to beneficiaries. However, Section 515.407 of the Regulations permits exceptions for certain transactions in connection with the administration of blocked estates when authorized through a specific license, which permits the unblocking of estate assets to certain heirs of the decedent under certain circumstances. The transactions that are authorized are listed in Section 515.523. The list of authorized transactions, incident to the administration of decedent estates, include: the appointment of a personal representative; the collection and preservation of assets; the payment of funeral expenses; the administration expenses including professional fees and costs; and the transfer of title pursuant to testamentary provision or intestacy laws. However, the transfer of title pursuant to a valid testamentary disposition does not authorize any unblocking or distribution of any estate assets to the designated national.

LOCAL COURT PROCEDURES IN MIAMI-DADE COUNTY (11TH JUDICIAL CIRCUIT)

In Miami-Dade County, Florida, as waves of Cuban immigrants continued to move to South Florida, it became necessary for the Eleventh Judicial Circuit to develop a procedure that would allow the proper administration of decedents’ estates that involved a designated Cuban

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63. See 31 C.F.R. § 515.201 (2011) (applying to all transactions with Cuba); 31 C.F.R. § 515.407 (2011) (discussing the administration of blocked estates).
64. 31 C.F.R. § 515.327.
65. Id.
66. See 31 C.F.R. § 515.201; § 515.407.
67. See 31 C.F.R § 515.407.
69. See 31 C.F.R. § 515.523 (2011); see also 31 C.F.R. § 515.525 (discussing certain authorized transfers by operation of law).
national. Therefore, during the mid-1980s, OFAC and the Probate Division of the Eleventh Judicial Circuit, with the cooperation of the local bar association, developed a procedure to handle these estates.

The procedure requires the appointment of a guardian ad litem to represent the interest of the Cuban heirs in any blocked estate of a decedent, as defined under the Regulations. The appointment of a guardian ad litem rotates among the attorneys with licenses from OFAC that allow the attorneys to legally travel to and work within Cuba. This guardian ad litem is also given the duty of representing the interest of the Cuban heirs and depositing the share of the estate belonging to the Cuban heirs in a Cuban Blocked Account pursuant to Section 515.319 of the Regulations.

The procedure of this appointment involves the proper identification of all new probate estates that include a Cuban national, and it starts with the clerk of the court. The clerk opens the estate file and stamps the file with a notice on the outside that states a blocked account shall be established for Cuban heirs. The guardian ad litem is notified upon appointment by the probate judge handling the estate.

ROLE OF THE GUARDIAN AD LITEM

Probate and guardianship cases that fall under the Regulations involve the interests of Cuban nationals. In these particular instances, as stated above, a guardian ad litem is sought to represent those interests. For instance, a determination of heirs is required in Cuba or in the United States in order to initiate the distribution process. The objective is to find

72. See Valdes & Zamora, supra note 71, at n.11.
73. See id. at 367.
74. See id. at 368 (noting that lawyers are chosen from among a group who have received a specific license from the OFAC to represent Cuban national heirs in probate matters); see also Isla, supra note 71.
75. See id. at 368–73; see also 31 C.F.R. §§ 515.319, 515.327, 515.523 (2011).
76. See Isla, supra note 71.
77. See 31 C.F.R. § 515.522 (2011); 31 C.F.R. § 515.327. “A person shall be deemed to have an interest in a decedent’s estate if [he] . . . [i]s a creditor, heir, legatee, devisee, distribute, or beneficiary.” 31 C.F.R. § 515.327(c). In order to unblock pro rata shares for certain heirs, specific licenses can be issued. 31 C.F.R. § 515.522(a). Heirship can be proven by providing a variety of documentation and other particulars about the account containing the assets. 31 C.F.R. §
who the heirs of the decedent are, and where they reside.\textsuperscript{78} Only after the heirs are determined can the attorney and the court proceed to distribute the assets and administer the estate of the Cuban decedent.\textsuperscript{79} The purpose of this law is to protect the interest of Cuban national heirs while ensuring compliance with the requirements of the Regulations.\textsuperscript{80}

The guardian ad litem must notify OFAC of the name, interest, and addresses of the Cuban heirs involved in the estate, as well as the filing of an oath of the guardian ad litem with the probate court. The nature of the representation by the guardian ad litem varies from case to case. In simpler cases where only monies are involved, the guardian ad litem is limited to receiving the funds at the end of the case, and opening a CBA in the name of the Cuban nationals who are the heirs of the estate of the decedent.

However, more complex cases require additional work by the guardian ad litem. If, for example, the estate contains real property that must be sold or transferred, or where the property served as the decedent’s homestead, most title companies will require a deed from each heir. Obtaining a deed from a Cuban national is a daunting task. The Cuban national must make an appointment through the guardian ad litem, to have the deed executed before an officer of the United States Interest Section in Havana, Cuba.

The guardian ad litem is also charged with investigating the identity of all heirs residing in Cuba.\textsuperscript{81} There are many cases in which there are unknown heirs whom require proper identification.\textsuperscript{82} Heirs are located and

\textsuperscript{78} See 31 C.F.R. § 515.522(c).

\textsuperscript{79} See Valdes & Zamora, supra note 71, at 369.

\textsuperscript{80} See Isla, supra note 71 (explaining that when a last will does not exist, the guardian ad litem must search for the deceased’s heirs in Cuba).
identified by obtaining birth certificates, marriage certificates, death certificates, visits to the last known address of the decedent, and even seeking the assistance of Cuban officials to aid in the search.\textsuperscript{83}

In addition to investigating the identity of all of the decedent’s heirs, the guardian ad litem must also file a report.\textsuperscript{84} The report must include the findings of the guardian ad litem as to specific information regarding the identity of the heirs and also that the guardian ad litem has advised the heirs that the funds belonging to the Cuban national will be deposited in the CBA, pursuant to the Regulations. The guardian ad litem also advises the heirs of the Regulations and any relevant, important information the heirs should know. Finally, the guardian ad litem can obtain a specific license to send remittances to the qualified Cuban national through the use of an authorized remitter such as Western Union.\textsuperscript{85} This license also authorizes the guardian ad litem to charge for his or her services in connection with sending the remittance.\textsuperscript{86}

A blocked account pursuant to Section 515.319 is “an account in which any designated national has an interest, with respect to which account payments, transfers or withdrawals or other dealings may not be made or affected except pursuant to an authorization or license authorizing such action.”\textsuperscript{87} The Regulations require that the Cuban Blocked Account be in the name of the beneficiary of the decedent’s estate prior to the establishment of a CBA by the guardian ad litem.\textsuperscript{88}

TRAVEL TO CUBA, THE NEED FOR SPECIFIC LICENSE, AND DISCOVERY IN CUBA

The guardian ad litem should meet with his or her clients in every case. There are certain cases that require specific actions, which have already been discussed.\textsuperscript{89} In addition, in wrongful death cases, the personal injury attorney who is prosecuting the claim on behalf of the estate is often

\textsuperscript{83} Valdes & Zamora, \textit{supra} note 71, at 369–70; see also Isla, \textit{supra} note 71.

\textsuperscript{84} See Valdes & Zamora, \textit{supra} note 71, at 368–69.

\textsuperscript{85} See 31 C.F.R. § 515.570(g) (2011) (authorizing specific licenses on a case by case basis); Isla, \textit{supra} note 71 (explaining that Cuban heirs can receive periodic remittances through Western Union).

\textsuperscript{86} See 31 C.F.R. § 515.570(g) (2011) (describing how specific licenses may authorize excess remittances); Valdes & Zamora, \textit{supra} note 71, at 372 (explaining that when there is a successful recovery at a trial for the guardian ad litem representing a Cuban national, the lawyer will be paid from the gross proceeds); Isla, \textit{supra} note 71 (giving the standard hourly rates of an attorney representing a Cuban national in probate matters).

\textsuperscript{87} 31 C.F.R. § 515.319 (2011).

\textsuperscript{88} 31 C.F.R. § 515.523(c)(1) (2011).

\textsuperscript{89} See \textit{supra} text accompanying notes 78–96.
required to take depositions in Cuba, or use other discovery procedures.\(^90\)
For example, it may be necessary to depose certain individuals to determine, among other things, the economic support that was being given to the client/heirs, the impact of the incident and the extent of their pain and suffering as it relates to the death of the decedent.\(^91\) In such a situation, if the survivor is a sibling of the decedent, he or she would only receive whatever economic losses resulted from the death of the decedent, whereas, if the decedent happened to be a child, the parent would be entitled to pain and suffering for their mental anguish in losing their child, regardless of whether or not the child was an adult. In wrongful death actions involving the death of a child's parent, any surviving child under the age of twenty-five is entitled to recover for his or her pain and suffering under Florida law.\(^92\)

In order to carry out some of the guardian ad litem's duties, which include determining heirs and engaging in discovery, the guardian ad litem needs to travel to Cuba.\(^93\) Many times, the author has traveled to Cuba and discovered heirs that were not disclosed or known to the heirs in the United States. These events serve to illustrate the importance of being diligent in investigating the decedent's heirs and the need to travel to Cuba to successfully accomplish discovery tasks. However, since travel to Cuba is restricted, with only a few exceptions,\(^94\) the guardian ad litem must solicit a license to travel to Cuba from OFAC, as well as a work visa from the Cuban government.\(^95\) The specific license must be obtained pursuant to Section 515.318.\(^96\) Under the Regulations, there is no specific authority for an attorney appointed as guardian ad litem to travel to Cuba to represent a Cuban heir in blocked estates.\(^97\) In 1994, OFAC remedied the situation and created a special license for this particular purpose based on the broad

\(^{90}\) Valdes & Zamora, supra note 71, at 369.

\(^{91}\) See id. at 370 ("The best method for obtaining discovery in Cuba is by way of depositions."); see also Fla. Stat. § 768.21 (2011).

\(^{92}\) See Fla. Stat. § 768.21(3) (2011); see also Fla. Stat. § 768.18(2) (2011).

\(^{93}\) See Wilfredo Cancio Isla, Despite Embargo, Cubans get Inheritance, EL NUEVO HERALD, Oct. 15, 2007.


\(^{97}\) See 31 C.F.R. § 515.560(a) (2011) (discussing travel related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction).
provisions of the Regulations. Originally, licenses were for a one-time trip, but several years later, OFAC began issuing one-year licenses to those guardian ad litem who were receiving regular appointments to represent Cuban heirs.

ISSUES INVOLVING REAL ESTATE TRANSFERS BY CUBAN NATIONALS

In cases involving the transfer of real estate, and where the decedent did not specifically provide for the sale of the real property that it is being devised to a designated Cuban national, there is a need to record the transfer in the public records. A disclosure on the deed must be made stating that the owner of the real property is a designated Cuban national subject to the Regulations. This can create a nightmare for title insurance carriers and, therefore, it is the experience of this author that, in most cases, the Cuban national will authorize the sale of the real property in order to convert the interest into cash and for the proceeds to be deposited into a CBA.

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99. See, e.g., 22 U.S.C.A. § 7205 (West, 2001) (granting one-year licenses for the export of agricultural commodities, medicine, or medical devices to Cuba); Guidelines supra note 98, at 22 (citing 31 C.F.R. 515.565(b)(2)) (stating that licenses for educational exchanges not involving academic study pursuant to a degree program are valid for one year and contain no limitation on the amount of trips which can be taken to Cuba).

100. See Jose I. Valdes & Enrique Zamora, Obstacles Encountered Representing the Interests of Cuban Nationals in the American Courts, 15 FLA. J. INT’L L. 365, 369 (2003). Because “the duty of the guardian ad litem is to verify information,” the guardian ad litem will oftentimes need to deal with deciphering the public records of Cuba. Id. This will involve traveling to the relevant jurisdiction in Cuba and obtaining copies of the records. Id. Sometimes, records need to be obtained from third parties. Id. at 370. But when the third party refuses for whatever reason to provide the records, it may be necessary to hire a Cuban lawyer and utilize the Cuban legal system to reach the documents. Id.

101. See id. at 368. “The OFAC, in conjunction with local court systems, has implemented a system for identifying cases involving Cuban heirs. When an estate is opened, the lawyer must disclose it in the petition for administration and advise the clerk of the court that Cuban heirs are involved.” Id.
ACCOUNTS ABANDONED BY THE TITLEHOLDER

At the time the Regulations came into effect, there were a number of bank accounts that had been opened by Cuban nationals in domestic banks, some of which were abandoned after the diplomatic relations with Cuba were severed and travel restrictions imposed. As required by law, in most states, those accounts were subsequently turned over to the unclaimed or abandoned property division of each individual state.

Section 515.205(f) of the Regulations, requires that interest on the abandoned property be paid by the State prior to effectuating transfer. Section 515.554 specifically deals with the transfers of abandoned property under state laws. This section requires that any property acquired by an estate, pursuant to an abandoned account, is identified as a blocked account under the Regulations and a separate index of these blocked accounts are required to be maintained by the state agency. However, pursuant to section 515.205(f) of the Regulations, the state is required to pay interest on the abandoned accounts held in custody of state agencies because they are categorized as abandoned or unclaimed property. The interest on the accounts should not be less than the maximum rate payable on the shortest time deposit available at any domestic bank in the state.

102. See Sardino v. Federal Reserve Bank, 361 F.2d 106, 108–09 (2d Cir. 1966). In Sardino, the plaintiff Sardino, was a Cuban national residing in Havana, Cuba, but held a savings account in a New York bank. Id. at 108. Sardino had a son who had died in New York. Id. Due to his son’s death, the New York account held thousands of dollars in proceeds from his son’s life insurance policy. Id. The court observed that the bank could not remit the funds to Sardino in Cuba because “the Cuban Assets Control Regulations, 31 C.F.R. § 515.201, issued pursuant to the Trading with the Enemies Act, § 5(b)(1), 50 U.S.C. App. § 5(b)(1), prohibited transfers outside the United States of property owned by Cuban nationals except with specific authorization.” Id. at 108–09.


107. See 31 C.F. R. § 515.205(f). This author has successfully obtained, in three different cases, a substantial amount of interest that, because of the number of years that had transpired since the property was abandoned, was larger than the original amount of the deposit.
One notable exception is California, which has taken the position that no interest shall be paid on abandoned property, subject to the Regulations, held by the state. 108

**ESTATE PLANNING ISSUES**

It is important for estate planners to be informed of when a client intends to designate beneficiaries who are Cuban nationals residing in Cuba. This information will ensure that all the planning documents are in compliance with the Regulations. 109 Pursuant to Section 515.524, a personal representative, trustee or co-trustee of a trust that includes one or more individuals who are designated nationals having a beneficial interest or otherwise, must ensure that a distributive share of the principal or income to a designated blocked national be made by depositing it in a blocked account in a domestic bank in the name of the Cuban national who is the ultimate beneficiary. 110 Therefore, the client must understand that the funds devised to the Cuban national will be segregated from the trust corpus and placed in a CBA subject to the limitations of remittances. 111 In addition, a trustee cannot act upon instructions from blocked Cuban nationals pursuant to section 515.524(c). The application of this section is limited, according to 515.224(d), to a trust that is established by gift, donation, or bequest of entities, and does not apply to trusts established in businesses, or for commercial purposes. There are specific penalties for a trustee that fails to comply with the requirements of the Regulations. It is important for estate planners to also advise their clients that only the share of an estate devised to a designated national will be blocked. The remaining portion of the estate devised to non-designated nationals will not. It is also important for estate planners to be aware that a power of attorney is void, to the extent that it attempts to transfer any interest that a

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108. See Cal. Civ. Proc. § 1540(c) (as amended by 2003 Cal. Stats. Ch. 228 § 8); Cal. B. An., Assemb. B. 1756, Sen. 2003–2004 Reg. Sess. (Cal. 2003) (stating that the purpose of the 2003 amendment to §1540(c) of the California Code of Civil Procedure was to save the State approximately twelve million dollars annually. But see Fla. Stat. §717.121 (2011) (stating “the owner is entitled to receive from the department any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.”).

109. See generally 31 C.F.R. §§515.523–524 (2011) (outlining rules and regulations regarding the administration of certain trusts and estates to which a Cuban national is a beneficiary to, including decedent estates); Jose I. Valdes & Enrique Zamora, **Obstacles Encountered Representing the Interests of Cuban Nationals in the American Courts**, FLA. J. INT’L L. 365, 367-69 (discussing the process for preparing an estate plan for client beneficiaries who are Cuban nationals residing in Cuba).


designated national can have in any property in the United States. In addition, a Cuban national is not permitted to waive or disclaim any interest in any estate of the decedent since such waiver will be tantamount to a transfer of property, which is prohibited by the Regulations.

JOINT BANK ACCOUNTS

Section 515.551 of the Regulations discusses the topic of joint bank accounts. Joint bank accounts in which one or more of the joint account holders is a blocked Cuban national can be unblocked only pursuant to a specific license. Assets in such accounts, without survivorship provisions, can be unblocked after application from a non-blocked applicant, and upon proof of beneficial ownership. If the account has survivorship provisions, only the share of the non-blocked beneficiary can be unblocked. In accounts between husband and wife, if one spouse is not blocked, then only fifty percent of the account will be blocked.

UNBLOCKING OF FUNDS BELONGING TO A BLOCKED CUBAN NATIONAL

A blocked Cuban national who subsequently becomes a resident of the United States, any authorized North American territories, or any other developing countries (except Iran and North Korea), as defined in the Regulations, can apply for a specific license to unblock his or her funds. In addition, upon the death of a blocked Cuban national who has unblocked heirs, a regular probate of the estate will be required and the funds will become unblocked pursuant to Section 515.522.

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112. See 31 C.F.R. § 515.529(b) (2011); 31 C.F.R. § 515.201(b) (2011).
115. See 31 C.F.R. § 515.551(a).
117. See 31 C.F.R. § 515.551(a)(2). Such licenses are issued on the basis of the applicant’s assertions of beneficial ownership interest without the requirement of independent evidence. Id.
118. See 31 C.F.R. § 515.551(a)(3). These accounts are blocked if one spouse resides in Cuba. See id. If fifty percent of the account has been unblocked, and the spouse who is blocked passes away, the surviving spouse may be entitled to the unblocking of the remainder under § 515.522. Id.
120. See 31 C.F.R. § 515.522(a) (2011).
III. COMPLEXITY OF REPRESENTING CUBAN HEIRS

DIFFERENT RULES UNDER CUBAN LAW AND U.S. LAW AS IT RELATES SPECIFICALLY TO PROBATE

The law in Cuba greatly differs from that of the United States. For example, in Cuba, there is no subpoena power in civil cases to compel the testimony of witnesses.\(^1\) Also, Cuban law recognizes a common law marriage,\(^2\) which is not currently recognized in Florida, but is recognized in several other jurisdictions.\(^3\) Cuban law defines common law marriage as:

[The voluntary established union between a man and a woman, who are legally fit to marry, in order to live together. It is based on full equality of rights and duties for the partners, who must see to the support of the home and the integral education of their children through a joint effort compatible with the social activities of both.\(^4\)]

When the stable marital union is not unique because either spouse was united in a prior common law marriage, the marriage where the person acted in good faith and had children born from that union shall have full legal effects.\(^5\) This may result in the existence of unknown surviving spouses in Cuba, which makes the determination of heirs all the more difficult.\(^6\)

To further complicate matters, in Cuba it is possible to establish a marriage after a putative spouse has died.\(^7\) The guardian ad litem sometimes must investigate whether or not the decedent, who was previously married in Cuba, had obtained a valid divorce before leaving

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1. See Fed. R. Civ. P. 45. The rule commands the witness's attendance for the purposes of depositions, hearings, and trial. Id.


4. Constitucion de la Republica de Cuba (1901) (Constitution) Chp. IV, art. 36 (Cuba).

5. See id. at art. 37.

6. See generally Thomas v. McGriff, 629 S.E.2d 359, 360 (S.C. 2006) (determining whether a common law marriage exists, and if so who are the appropriate heirs).

7. See Matthews v. Britton, 303 F.2d 408, 410 (D.C. Cir. 1962) (established that a common law marriage existed between husband and wife after wife's death, and allowed for the husband to claim benefits).
Cuba and remarrying in the United States.\footnote{128 See A Publication of the Office of Legislative Legal Services, Common Law Marriage (Aug. 24, 2011), http://www.state.co.us/gov_dir/leg_dir/olls/PDF/COMMON%20LAW%20MARRIAGE.pdf (“If a couple married by common law wishes to end their marriage, they must get divorced in the same manner as a couple married in a ceremony.”).} The author has been involved in several cases in which the Cuban resident leaves Cuba, does not obtain a divorce, and proceeds to re-marry in the United States. These are a few matters that illustrate the significant differences between Cuban and U.S. law relating to probate matters.

IV. CONCLUSION

The primary goal of OFAC is to administer and enforce economic sanctions against all targeted foreign countries.\footnote{129 United States Department of Treasury, About Us – Terrorism and Financial Intelligence: Office of Foreign Assets Control, http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx (last visited Feb. 27, 2012).} The Regulations were issued in order to deprive the Cuban government of U.S. dollars.\footnote{130 Id.} In blocking access to property, the Regulations effectively prohibit anyone subject to U.S. jurisdiction from dealing with any property in which Cuba or Cuban nationals have an interest.\footnote{131 See Cuban Assets Control Regulations, 31 C.F.R. § 515.201 (2012).} As discussed herein, the restrictions pose many difficulties when Cuban nationals attempt to receive their inheritance.\footnote{132 Id. at § 515.201(b)(1)–(2).} Although our entire country must abide by the many rules regarding our embargo with Cuba, the restrictions substantially affect the communities in South Florida, particularly Miami-Dade County\footnote{133 See Cuba: What You Need to Know about the U.S. Embargo, 31 C.F.R. § 515.201 (2012), http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba.txt (see area under F. Remittances from blocked accounts and XI. Estates).} As
waves of Cuban immigrants continue to flow into our community, the Cuban embargo and its many prohibitions affect more and more individuals every day\textsuperscript{134}

In dealing with blocked estates, all parties must abide by the Cuban Assets Control Regulations.\textsuperscript{135} Particularly in Miami-Dade County, Florida and Broward County, Florida, the probate judge administering the decedent’s estate appoints a guardian ad litem to represent the interests of a Cuban national’s inheritance\textsuperscript{136} The guardian ad litem’s role is crucial, as he or she determines heirs, engages in discovery, and travels to Cuba to meet with heirs.\textsuperscript{137} When real property, abandoned property, or joint bank accounts are involved, the guardian ad litem’s responsibilities become more complex.\textsuperscript{138} A Cuban national has the opportunity to access and eventually receive his or her inheritance through the efforts of an appointed guardian ad litem.\textsuperscript{139} Despite the complexities of the Cuban embargo—particularly with respect to inheritances—federal and state laws protect the interests of Cuban nationals by allowing them to receive their rightful inheritances.\textsuperscript{140}

\textsuperscript{134} See also supra text accompanying notes 26–28, 33–35. See generally Margot Pepper, The Costs of the Embargo, DOLLARS \& SENSE, http://www.dollarsandsense.org/archives/2009/0309pepper.html (last visited Feb. 23, 2012) (observing that U.S. taxpayers are adversely affected by the Cuban embargo because of lost sales or exports, which range from $1.2 to $4.84 billion in estimated economic losses per year).

\textsuperscript{135} See 15 C.F.R. §§ 515.204 (declaring that persons subject United States jurisdiction are exempt from purchasing, importing, or otherwise dealing in merchandise of Cuban origin, or dealing with products going through the channels of Cuban commerce); supra text accompanying notes 12, 18–20, 33–35, 43–44, 70–71.


\textsuperscript{137} See supra text accompanying notes 70–74, 77–80.

\textsuperscript{138} See supra text accompanying notes 73, 81–83, 89–91, 100–01, 103–05.

\textsuperscript{139} See supra text accompanying notes 86–88, 111–21, 130–34.

\textsuperscript{140} See supra text accompanying notes 70–74, 78–82.