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de la stratégie aux actes

Notaires de France

FROM STRATEGY TO DEEDS

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THE KEY PHASES OF THE ESTATE SETTLEMENT

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While notaries are often called upon to assist their clients on the occasion of happy events (marriage, gifts, the acquisition of a home), they are also present for more painful events, such as an estate settlement of a close family member.

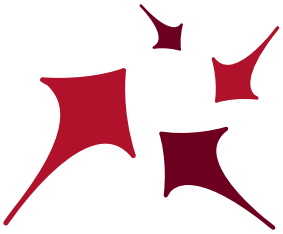
Over and above the administrative formalities to be executed at the time of death, the loss of a close family member also involves settling the transfer of the person's estate, with a deadline of 6 months for filing the inheritance tax form with the tax authorities.

However, an estate settlement cannot be considered solely from a tax point of view: it is essential to deal with civil matters and issues regarding the administration of the deceased's estate in order to ensure that the surviving partner is protected as fully as possible, to avoid creating tensions within the family and to make the best possible choices among the various options available, whether by law or provided for in the deceased's will.

The aim of this guide is to set out the major stages in an estate settlement from a notarial point of view. It is therefore intended first of all for heirs in order to provide them with the necessary information to understand the formalities to be carried out during the months after death and the choices that they must make. It is also intended for all those who want to anticipate their succession as carefully as possible and reduce foreseeable difficulties to a minimum.

STEP #1

OPENING OF THE SUCCESSION



The first stage in the settlement of a succession consists in selecting a *Notaire*. You will have to provide the *Notaire* with certain documents needed to open the succession and carry out, if applicable, a will search. The heirs must make arrangements for the administration of the estate.

THE CHOICE OF *NOTAIRE*

The heirs must agree on the choice of *Notaire*. It is possible to choose the deceased's *Notaire* if he or she had one. It is generally the *Notaire* who is in possession of the will. But the heirs are free to choose another *Notaire*, who will then shortly obtain the relevant information held by his or her fellow *Notaire*. The ideal solution is for all the heirs to agree on the choice of *Notaire*. Otherwise, each heir may be represented by his or her *Notaire*. Where there are several *Notaires* involved in the succession, the "succession *Notaire*", that is to say the *Notaire* who will be entrusted with responsibility for drawing up all the relevant notarial deeds, will be designated in accordance with the often complex rules and regulations for the notarial profession. The *Notaires* of the other heirs, called "second *Notaires*", will be responsible for assisting their respective clients.

In the event of a contentious succession, the fact of having several *Notaires* may make it easier to find a solution. On the other hand, the involvement of several *Notaires* may make the procedure more complicated.

Where several *Notaires* are involved, the "succession *Notaire*" receives the full amount of the fees payable in respect of most of the instruments. Unlike a real-estate transaction, the remuneration is not shared between *Notaires*. Heirs who want to appoint their own *Notaire* must therefore bear the said *Notaire*'s fees at the agreed rate.

Althémis advice

When there is a good understanding between the heirs it is preferable for them to appoint a single contact person to deal with the *Notaire*. This contact person is kept informed of all developments. It is his or her responsibility to pass this information on the other heirs.

SEARCHING FOR A WILL OR TESTAMENTARY DISPOSITIONS

Following a death, one of the first things to be done is to trace the deceased's testamentary dispositions (will or gift to surviving spouse) as they will help to identify the heirs and the share of the estate to be devolved upon each heir. Even if a will is sometimes found in the deceased's personal papers, such documents are generally lodged with a *Notaire*. In principle, all wills lodged with a *Notaire* are registered in the Central Register of Wills (the "FCDDV"), which all *Notaires* must search on the basis of a death certificate. If this search reveals the existence of a will other than that lodged with him or

THE DOCUMENTS REQUIRED

The settlement of a succession requires a number of documents with a view to identifying the heirs, assessing the value of the estate to be taken into account for the settlement of the succession, including liabilities, and in order to take account of the civil and tax impacts of any previous gifts. The Notaire will inform you of the main documents and information required in this regard at the time of the opening of the succession.

The Notaire will then write to the various entities (banks, insurance company, public revenue office, employer, etc.) to obtain the necessary information.

her, then he or she will request a copy from the *Notaire* who holds it.

Where there are several wills, in principle the most recent will is considered to be the valid will and must be deposited in the *Notaire*'s official records. A copy is also sent to the court. In some cases (in particular where there are no forced heirs) it is also necessary to have the will validated by the President of the Court: this procedure is known as grant of probate, which requires the use of a French barrister.

For life insurance contracts taken out by the deceased, it is the beneficiary clause which will determine who receives the death benefit. This information may be held by the company, but may also have been entrusted to the *Notaire*, or included in a will.

A REPRESENTATIVE WITH RESPONSIBILITY FOR SETTLING THE SUCCESSION

Subject to certain conditions, it is now possible to designate during one's lifetime a posthumous representative who will be responsible for the administration of the estate or certain assets, based in particular on their specific characteristics (business, complex assets, etc.) or the need to assist certain heirs (minor children, elderly or vulnerable people).

Such a mandate must be executed before a *Notaire* and must be accepted by the representative before the deceased's death.

The period of validity of the mandate is limited in time (2 or 5 years depending on the circumstances), but may be extended by the courts. It is also possible to appoint in a will an executor whose tasks are different and consist in ensuring that the deceased's last wishes are respected.

THE ADMINISTRATION OF THE DECEASED'S ESTATE

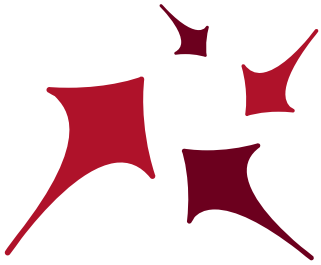
Upon death, the heirs become the co-owners of all the estate's assets, depending on their share of the estate (unless they waive their right of succession), until the division of the estate which will individualise the rights of each heir. The co-owners are also responsible for the estate's liabilities in the same proportions.

It is to be noted that the estate's assets (real estate, car, etc.) must continue to be insured, under the responsibility of the heirs, who must take all necessary steps in this regard.

The heirs are subject to a regime of joint-ownership, which means that specific dispositions (for example sales) must be agreed unanimously. On the other hand, for acts of administration, decisions are adopted on the basis of the two-thirds rule (article 815-3 of the French Civil Code).

Throughout the period of administration of the estate and up to the distribution of its assets, it may be advisable, in some cases, to open a bank account in the name of the succession in order to facilitate the payment of bills in connection with the succession.

STEP #2
"ACTE DE NOTORIÉTÉ"



The authentic deed called *"acte de notoriété"* lists the various heirs (legal or testamentary) of the estate. For complex successions, it may be necessary to use the services of a genealogist.

The *"acte de notoriété"* is signed by all the heirs, if applicable in the presence of 2 witnesses, who must be adults, unrelated to the deceased or the heirs and to each other. The witnesses must have known the deceased and his or her family and their role is to attest the devolution of the succession (for example that the deceased did not have, to their knowledge, children other than those mentioned in the document).

The *"acte de notoriété"* must be drawn up as soon as possible since it enables the *Notaire* to act on behalf of the succession and notably to release funds on bank accounts, if the heirs agree.

This document will also be used as the basis for drawing up the other succession instruments (deed of allotment, inheritance tax form, ownership certificate, etc).

An heir who makes a false statement, in particular by hiding the existence of another heir (an illegitimate child for example) is liable not only to conviction for the concealment of material information relating to a succession and the payment of damages, but also to other sanctions, including criminal proceedings. Similarly, an heir who conceals the existence of assets will be guilty of concealment of part of a legacy and will forfeit all of his or her rights over the asset in question.

It is to be noted that the signature of an *"acte de notoriété"* does not constitute, in itself, acceptance of the succession, unless that is specifically mentioned in the document.

In order to determine the heirs of a succession, it is necessary to ascertain whether or not the deceased had established specific dispositions. In the absence of a will, the law defines the heirs and offers them certain options.

Althémis advice

People who have entered into a formal civil partnership (a "PACS") and cohabitants cannot be considered as married couples. Under the law they are not mutual heirs, unless there is a will to that effect.

THE LEGAL HEIRS

If the deceased has not made any specific dispositions, the law starts by making specific provisions for the deceased's legal spouse and children. Therefore, depending on the composition of the deceased's family, the distribution of the estate will vary.

Where the deceased has children, the rights of the spouse and the children

Where all the deceased's children are the children of both spouses, the surviving spouse may choose between 2 options:

- Everything in usufruct (right to use or receive the income on assets during his or her life): the bare ownership is shared equally between the children
- Or 1/4 on a full ownership basis: the full ownership of the other 3/4 is shared equally between the children

Where the deceased has at least one child from a previous union, the surviving spouse will receive only 1/4 on a full ownership basis, since the legislator did not want to leave a usufruct option, as the age difference between the spouse and the children of another union might be small. However, it is possible to provide for this possibility by means of a will or via a gift between spouses.

No children, but a surviving spouse

In such cases, the spouse becomes a very privileged heir who receives full ownership rights:

- 1/2 of the estate where both the deceased's parents are still alive (each receiving 1/4)
- 3/4 of the estate where only one parent is still alive (who then receives 1/4)
- The whole of the estate if both the mother and father are dead. In the last case, there is however an exception concerning family assets, that is to say the assets still existing on the day of the succession that the deceased had received from his mother and father. Half of any such assets reverts to the deceased's brothers and sisters if they were born of the same parents who transmitted the assets, while the other half devolves upon the spouse.

If there is no spouse

- Where there is no spouse, the estate is divided equally between the children
- Where there are no children, the estate is divided between the parents (1/4 each) and the brothers and sisters
- Where there are no parents, the estate is divided equally between the brothers and sisters
- Where there are no brothers and sisters, it is the ascendants who inherit
- Where there are no ascendants, the ordinary collateral relatives (uncles, aunts, cousins, etc.) inherit according to the principle of the division of the estate into 2 equal portions, one for the heirs on the mother's side and the other for the heirs on the father's side, each portion being devolved in each line upon the closest heir, up to the 6th degree
- Otherwise, the estate passes to the State.

THE HEIRS WHERE THERE IS A WILL

The deceased's testamentary dispositions (a will or gift to the surviving spouse) may reduce, cancel or increase the rights of the legal heirs in the estate. However, this testamentary freedom is subject to certain restrictions when there are forced heirs.

The forced heirs are those for whom the law reserves the right to a minimum portion of the estate, of which they cannot be deprived without their agreement. This agreement may be given either before or after the deceased's death, in which case strict formal rules must be respected.

The forced heirs are the deceased's children (living or represented), or the spouse (where there are no children).

Where there is no spouse, the reserved portion depends on the number of children of the deceased: 1/2 where there is one child, 2/3 where there are 2 children

(1/3 each) and 3/4 where there are 3 or more children. In the case where one of the children is predeceased, his or her own children (the deceased's grandchildren) inherit in his or her place (they are said to represent the predeceased child) and are also forced heirs.

Where there is a spouse, the children's reserved portion may be adjusted if the deceased wished to increase the rights of his or her spouse, who has a so-called special disposable portion.

It is only where there are no children that the spouse becomes a forced heir for a quarter of the estate.

The children's reserved portion when the spouse receives the largest freely disposable portion for example a gift between spouses

Number of children of the deceased	Spouse's choice	Children's rights (to be divided equally between them)
One	→ 1/2 in full ownership → 100% in usufruct → 1/4 in full ownership and 3/4 in usufruct	→ 1/2 in full ownership → 100% in bare ownership → 3/4 in bare ownership
Two	→ 1/3 in full ownership → 100% in usufruct → 1/4 in full ownership and 3/4 in usufruct	→ 2/3 in full ownership → 100% in bare ownership → 3/4 in bare ownership
Three or more	→ 1/4 in full ownership → 100% in usufruct → 1/4 in full ownership and 3/4 in usufruct	→ 3/4 in full ownership → 100% in bare ownership → 3/4 in bare ownership

STEP #3
VALUE OF THE ESTATE

This stage consists in determining the assets and liabilities comprised in the estate, while taking account of the deceased's matrimonial property regime (if he or she was married), previous gifts and, in some cases, life insurance contracts.

LIQUIDATING THE MATRIMONIAL PROPERTY REGIME

All married couples are married under a matrimonial property regime, even if the vast majority have not signed a marriage contract. In such a case, the law provides for the application of the regime of the equal division of property acquired during marriage (for all marriages since the 1st February 1966) which concerns almost 90% of couples.

However, the death of one of the spouses results in the dissolution of the matrimonial property regime, which is a prerequisite to the settlement of the estate.

Regime of the equal division of property acquired during marriage
This regime makes a distinction between 3 pools of assets:

- The community assets, that is to say the assets acquired for valuable consideration by the spouses during the marriage, including earned income (salaries, profits, attendance fees, severance pay, etc.) and the income on their private assets.
- Each spouse's private assets

The main types of private assets:

- The assets owned by the spouses before their marriage and those received during the marriage by way of a succession or gift
- Belongings of a personal nature (for example their personal wardrobe or compensation for non material damage) and/or tools necessary by one of the spouses for professional purposes
- The assets acquired using their own cash or the proceeds of the sale of private assets or related assets. See below an illustration of the situation of the surviving spouse under a regime of the equal division of property acquired during marriage.

→ PENSION ENTITLEMENTS

Generally the heirs contact the relevant pension funds or companies directly: death information, survivor's pension rights, repaying if applicable amounts received, attestation of the amounts to be declared to the tax authorities in connection with the deceased's income tax return.

SPECIAL PROTECTION OF THE SPOUSE WITH REGARD TO THE HOME AND FURNITURE

The surviving spouse has the possibility to remain in the home that he or she occupied with the deceased, for at least one year (right of use of one year). After that period, he or she may choose to remain there during his or her lifetime (life interest) if the estate owns the property in question. This protection concerns only the principal residence (and its furniture) and in no event any secondary residence. Moreover, this right does not apply to properties owned via an investment company (unless the deceased was a tenant of the company, which is rare). When the property is jointly owned with a third party (for example, the deceased owned it jointly with one of his or her brothers and sisters as a devise from their parents) the temporary right applies, but a life interest is excluded. Finally, these rights do not apply if the deceased has transferred the bare ownership of the principal residence, retaining for himself or herself solely the usufruct since, in such cases, the property no longer falls within the scope of the deceased's estate. The usufruct is then merged with the bare ownership, unless there is a clause which provides for the usufruct to revert to the spouse.

RIGHT TO ONE YEAR'S UNDISTURBED POSSESSION

The surviving spouse is entitled to remain in the property for one year following his or her spouse's death, irrespective of the rights of succession which might devolve upon him or her:

- If the property is rented, the surviving spouse simply has to pay the rent which will be reimbursed by the estate
- If the property is owned by the deceased or the 2 spouses, the surviving spouse may live there rent-free for one year

The occupancy related charges must be borne by the surviving spouse.

The temporary right to housing is a public policy provision. Thus, one spouse cannot deprive the other spouse of this right, even with the latter's consent. This right is free of consideration, which means that it exists over and above the spouse's rights in the succession.

RIGHT OF UNDISTURBED POSSESSION OF THE HOME AFTER THE ONE-YEAR PERIOD

After one year, the spouse is no longer entitled to the free use of the home. If the property is part of the estate, the surviving spouse may request a lifetime right of use and occupancy.

If the property is rented, he or she may take over the lease and pay the rental charges.

LIFETIME RIGHT OF OCCUPANCY AND USE

If he or she chooses this option provided for in law (within 12 months of the deceased's death), the surviving spouse has during his or her lifetime (life interest) the right to continue to occupy the property occupied as the couple's principal residence and the right to use its furniture. Unlike the temporary one-year right, the lifetime right of occupancy and use may be removed if the deceased expresses a wish to the contrary, which must be recorded in an authentic will drawn up by a Notaire.

The right of occupancy and use is only really interesting if the spouse has succession rights in full ownership: thanks to the rights of occupancy and use, he or she may retain undisturbed possession of the property and its furniture, irrespective of the arrangements for the distribution of the estate.

On the other hand, if he or she is given usufructuary rights over the whole estate, the life interest will not bring any additional benefits. In contrast, as usufruct is a right in rem, it is transferable. Moreover, it allows the spouse to rent out the property whereas under a right to occupancy, the rental possibility is only available in limited cases.

Unlike the temporary right of use the property, a life interest is not granted free of charge to the surviving spouse, since the value of the rights of occupancy and use is applied against the value of the surviving spouse's rights in the succession:

- If the granting of rights of occupancy and use does not exhaust the spouse's rights in the succession, the latter will receive the balance of his or her rights in the existing assets
- If value of the rights of occupancy and use exceeds that of the rights in the succession, the law protects the surviving spouse: the latter is not required to reimburse the estate

PRIORITY LEASE ENTITLEMENT

If the spouses do not own their principal residence, but are tenants, article 1751 of the French Civil Code provides for the lease to be held jointly: irrespective of the matrimonial property regime, and even if the lease was concluded by one of the spouses before the marriage, the lease to the property occupied by both spouses is deemed to belong to both of them.

Consequently, if the principal residence is rented, the surviving spouse who occupied it with the deceased, has an exclusive right in respect of the said property and will therefore be entitled to continue to occupy it. Moreover, he or she has, if he or she so wishes, a life interest in the furniture (option to be exercised within 12 months).

EXAMPLE

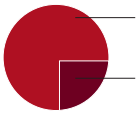
Situation of a spouse married under regime of the equal division of properties acquired during marriage, without dispositions in his or her favour, depending on the option selected and where there are no previous gifts to be taken into consideration

OPTION OF THE SPOUSE FOR A QUARTER IN FULL OWNERSHIP

In this case, the spouse's economic rights are as follows:

- **25 %** of the deceased's private assets
- **62,50 %** of the community assets
- **ALL** of his or her private assets

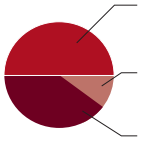
The deceased spouse's private assets



75 % *Portion of the estate devolving upon the other heirs in full ownership*

25 % *Portion of the estate devolving upon the spouse in full ownership*

Community assets

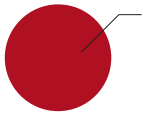


50 % *Portion retained by the surviving spouse in full ownership*

12,50 % *Portion of the estate devolving upon the spouse in full ownership*

37,50 % *Portion of the estate devolving upon the other heirs in full ownership*

The surviving spouse's private assets



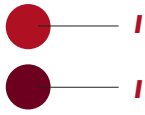
100 % *Portion retained by the surviving spouse in full ownership*

TOTALLY IN USUFRUCT

The spouse's economic rights are as follows:

- **100 %** of the deceased's private assets in usufruct
- **50 %** of the community assets in full ownership
- **50 %** of the community assets in usufruct
- **ALL** of his or her private assets

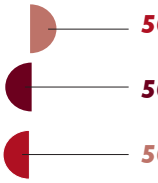
The deceased spouse's private assets



100 % *Portion of the estate devolving upon the spouse in usufruct*

100 % *Portion of the estate devolving upon the children in bare ownership*

Community assets

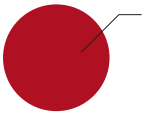


50 % *Portion retained by the surviving spouse in full ownership*

50 % *Portion of the estate devolving upon the spouse in usufruct*

50 % *Portion of the estate devolving upon the children in bare ownership*

The surviving spouse's private assets



100 % *Portion retained by the surviving spouse in full ownership*

Recompense

If funds have been transferred between the 3 pools of assets, it is appropriate, at the time of death, to reconstitute them in order to take them into account when determining the compensation which may be due by one pool of assets to another: legally speaking, this is known as a recompense or a claim between spouses.

Example 1

A wife has inherited from her parents a house which was sold and used to finance part of the acquisition of a secondary residence. At the time of the new acquisition, the reinvestment was not declared: the house is therefore considered as community property. Nevertheless, to take account of the fact that the secondary residence was partly financed by the wife's private funds, the community estate must pay her an amount in compensation. If she is deceased, her estate will include this debt claim, which will constitute a liability of the community estate.

Example 2

A husband has received by way of a gift a building lot on which the spouses have built a house with the use of joint funds. Pursuant to the principle of related assets, the land and the construction are considered as the husband's private asset. Nevertheless, the husband will have to pay compensation to the community estate to take account of the value of the construction. After having taken account of the recompense, the surviving spouse retains half of the community estate pursuant to the property regime, and obviously his or her private assets. The succession (in respect of which the surviving spouse may also have rights as an heir) includes the other half of the community estate and half of the deceased's private assets.

Regime of separation of assets

In a regime of separation of assets, all the deceased's assets are part of the estate's assets. However, any claims between spouses, which have to be settled at the time of the succession, need to be taken into account.

Unless there is a specific clause setting up a limited community of assets, the spouse does not have any special advantages pursuant to the property regime: he or she has only his or her rights in the deceased's succession.

HOW ARE GIFTS VALUED?

From a tax point of view, the value taken into accounts is the value determined on the day when the gift was made, provided that it was duly declared to the tax authorities (notarised gift deed, registered gift from hand to hand).

For civil purposes, a distinction has to be made between gifts inter vivos, called "donation-partage", and simple gifts. For the latter, in principle the value used is that of the asset on the day of death. For gifts inter vivos, the calculations are based on the value of the asset on the day of the gift, which makes it possible to avoid any discussion between the various recipients who would have received assets of the same value, but have used them in different ways.

Community of property regime with specific clauses

In the case where a regime of full community of property includes a clause transferring all the assets to the other spouse, there will be no estate assets (with a few exception): all the assets of the spouse are devolved upon the surviving spouse. In such a scenario, the children of both spouses receive nothing, not even their share of the reserved portion of the estate. Any children of the deceased born from a different union have the possibility to oppose the transfer of the all assets to the surviving spouse and to exercise what the French Civil code calls an "action en retranchement".

If, instead of a transfer of all assets, there is a "privileged allocation" clause, the spouse will be able to claim what he or she wants from the community estate, with the balance being contributed to the deceased's estate. This arrangement is more flexible and is a way of prioritising the protection of the spouse, while providing for the possibility to transfer a portion of the assets to the children.

ESTABLISHING THE VALUE OF THE ASSETS TO BE TAKEN INTO ACCOUNT

Existing assets

In order to establish the existing assets to be taken into account in the succession, the *Notaire* will liaise with various organisations (banks, insurance companies, brokerage firms, etc.) and request the heirs to obtain a valuation of any real estate or other unlisted assets. For civil reasons (in particular where a minor child is involved) or tax reasons (to escape the 5% flat rate) an inventory of moveable assets may be drawn up.

Gifts to be taken into account

Gifts made by the deceased must also be taken into account.

From a civil point of view, this operation has a threefold objective:

- For assets received in advance as part of the recipient's rights in the succession and referable to the succession, what each beneficiary has already received by way of one or more gifts must be taken into consideration when calculating what he or she is entitled to receive from the existing assets
- To check that the rights of the forced heirs are fully respected (otherwise, a reduction of excessive gifts may be requested)
- For the spouse who exercises a full ownership option, to integrate into the calculation the assets already transferred instead of limiting the calculation solely to existing assets, which would be less advantageous for him or her.

From a tax point of view, gifts made by the deceased to heirs during the 15-year period preceding his or her death are taken into account. This means that gifts are added to the estate's assets, so that the tax allowances or lower rates which have already been used at the time of the gift cannot be re-used for the assets forming part of the estate.

Gifts made within the last 15 years are valued on the basis used at the time of the gift. Nevertheless, for tax purposes, the authorities have the right to increase the declared value of the assets at the time of the gift if they consider that they were undervalued, but solely for the purpose of calculating the inheritance tax.

Life insurance

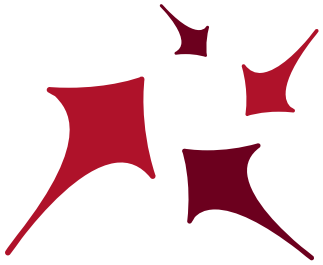
In principle, life insurance contracts payable on death are not included in the estate assets, except where the premiums are considered as excessive regard to the subscriber's financial situation, or when they constitute an indirect gift. When the premiums have been paid with joint funds, it is advisable to analyse the impact of the contracts within the framework of the liquidation of the property regime (recompense if beneficiary is not the spouse). If a community contract is not settled, its cash value is considered as part of the community assets on a civil point of view, but not on a tax point of view anymore, since 1st January 2016.

THE ESTATE'S LIABILITIES

The estate's liabilities consist of the deceased's debts which will be transferred to his or her heirs (which is not the case for example when a whole life insurance policy has been taken out to repay a loan in the event of death). These debts range from simple outstanding bills to taxes payable by the deceased, as well as any welfare liabilities (existence of recoverable benefits) or a compensatory allowance paid to an ex-spouse (which must then be converted into capital).

STEP #4

THE TIME OF CHOICES



Once the value of the estate has been determined, the heirs must make certain choices (acceptance, waiver, etc.) which have specific characteristics when the heirs are the surviving spouse or the children.

WHEN THERE ARE SUBSTANTIAL LIABILITIES

Depending on the initial valuation of the estate's assets and liabilities, the heirs may consider accepting the succession for only the amount of its net assets or waiving it.

Acceptance of the net assets

This is the old procedure of "acceptance under benefit of inventory". In practice this procedure is rarely used given its complexity and the inherent constraints. It must be reserved for successions, where it is difficult to ascertain whether the net situation is positive or negative. Heirs wishing to avail themselves of this possibility must file a declaration with the court or with a *Notaire*. This declaration is publicized nationally. An inventory must be filed within 2 months after the declaration and the creditors must claim their debt. Heirs will be liable for the estate's debts only up to the value of the assets received by them.

→ Althémis advice

Drawing up a will or a gift between spouses allows more flexibility in the settlement of an estate, thanks to a mechanism which enables the beneficiary to take only part of the assets and to leave the rest to the other heirs, in particular the children.

Waiver of succession

When debts exceed liabilities, it is advisable to waive the succession purely and simply, which requires the accomplishment of a series of formalities before the relevant court or before a *Notaire* in order to make the waiver enforceable against creditors.

In case of acceptance

An heir may ask to be discharged of all or part of his or her obligations with regard to a debt of the estate if he or she had legitimate grounds for not being aware of it at the time of acceptance, and when the payment of the debt would add a serious burden on his or her personal financial situation (application must be submitted within 5 months of discovery of the existence and amount of the debt). To avoid risks of tacit acceptance, the legislator has laid down that a certain number of acts cannot be deemed to constitute acceptance: purely conservatory or supervisory measures (such as, for example, the payment of funeral costs and expenses relating to the deceased's last illness) or measures relating to the temporary administration of the estate (for example, day-to-day transactions necessary for the short-term continuation of the activity of an enterprise that is part of the estate).

→ MINOR CHILDREN OR PROTECTED ADULTS

Where the succession involves a minor child or protected adult it is necessary to obtain the authorisation of a guardianship judge for certain operations:

- **the unconditional acceptance or waiver of succession**
- **the acceptance of a legacy which involves a charge**
- **waiving an «*action en réduction*» in respect of excessive gifts after the opening of the succession**
- **participating in the amiable partition of an estate.**

THE SPOUSE'S MAIN OPTIONS

Where there are children, the spouse has a multitude of options, to be examined from both a civil and a tax point of view, while taking account of the capital that he or she may receive under life insurance contracts. The main options include:

- Accepting or waiving the succession: other than in the cases relating to the size of the estate's debts, the spouse may choose to waive the succession, because he or she is sufficiently protected otherwise. His or her share devolves upon the co-heirs
- Housing: if the necessary conditions are met, the spouse may choose whether or not to avail himself or herself of the lifetime right of occupancy on the principal residence
- Under the matrimonial property regime, where it provides for a "privileged allocation" of the community assets
- In the succession: when he or she has a choice in accordance with legal provisions or the deceased's testamentary dispositions, bearing in mind that in the latter situation, the spouse may choose to lower his or her share. See Althémis advice above

Althémis advice

When the beneficiaries of the life insurance contracts are also heirs, it is advisable to settle the two transmissions at the same time. Thus, for example, the surviving spouse is now exempted from inheritance tax. It may therefore be accurate for the children to benefit from the life insurance pay-out which is less taxed or exempted and the surviving spouse to benefit from the estate's assets on which he or she will bear no taxation.

- Life insurance: similarly, the spouse may choose to refuse the benefit of the contract, thereby giving rise to a generation skip in favour of the second ranking beneficiaries.

THE CHILDREN'S MAIN OPTIONS

- Accepting or waiving the succession: in order to encourage the trans-generational transmission of assets, the law of 23 June 2006 has introduced the possibility for certain heirs who have chosen to waive their succession rights (children and brothers and sisters) to be represented. Thus, the waiver by a child benefits his or her own descendants
- Where there is a gift involved by way of a will, the children may (as the spouse) choose to reduce it. Unlike a waiver, this procedure benefits the other heirs and not the child's representatives
- Exercise their right to an "action en réduction" or waive it: children are protected in their capacity as forced heirs. However, if a gift to another heir impairs their reserved portion, they can choose not to exercise an "action en réduction". That is often the case when the heir in question is their surviving parent. Conversely, they may institute such an action and seek compensation from the heir who has received «too much», in the form of the payment of a compensation
- Life insurance: if the beneficiary clause has been carefully drafted, it can enable each child to refuse the benefit of the contract, which will revert to their own children. It is to be noted that not all beneficiary clauses offer this possibility.

WHAT IS THE DEADLINE FOR ACCEPTANCE?

Except in special cases, the deadline for accepting a succession is 10 years from the opening of the succession. However, 4 months after the opening of the succession, an heir may, in particular at the request of a creditor of the estate or a co-heir, be given formal notice requiring him or her to decide whether to accept or waive the succession. Following such a notice and if the heir in question has not taken a decision within 2 months (and unless he or she has applied to the courts for an extension) the heir is deemed to accept the succession unconditionaly.

STEP #5

CALCULATION AND PAYMENT OF TAXES

The filing of the inheritance tax form requires a valuation of the assets and liabilities to be taken into account. Taxation depends on the specific regimes applying to certain assets and the family link between the deceased and the heirs. It is possible under certain conditions to stagger or defer the inheritance tax payment.

VALUATION OF THE ASSETS

Market value at the time of death

With a few exceptions, the estate's assets must be valued at their market value on the day of death, that is to say at the fair price resulting from the free play of supply and demand.

For real estate assets, we recommend obtaining at least 2 professional valuations (real estate agents, experts, *Notaires*, etc).

- A deduction of 20% on the value of the deceased's main residence (directly owned) is applied provided that the accomodation is also occupied at the time of death by the spouse, the deceased partner under a PACS contract, or by one or more minor children or protected adults of the deceased or his or her spouse. This value of the asset is reduced by a like percentage for the calculation of any subsequent capital gain in the event of resale by the heirs, when the latter are not exempted because the sale relates to the principal residence

- Shares in listed companies are valued at the average stock market price on the day of death or, at the choice of the heirs, on the basis of the average price over the last thirty days prior to the deceased's death. If they are re-sold by the heirs, the capital gain will be calculated on the basis of the value indicated in the inheritance tax form

- A detailed list of unlisted shares and securities must be drawn up, with their estimated values. The same applies to enterprises for which it is now possible to take account of the impact of the deceased death's on the enterprise's value

- For furniture, various valuation methods are proposed, in particular a lump-sum valuation of 5% of the total gross value of the succession as a whole, to which it is often preferable to substitute an inventory value (notarial deed drawn up in the presence of a *Notaire* and an auctioneer). In the case of a sale by auction within 2 years after death, the auction sale price must be used

- Gold coins and bars are valued at the applicable rate on the date of death or at the Banque de France's gold purchase prices.

Althémis advice

Any under-valuation can result in a tax adjustment in respect of transfer duties. In addition, in the event of the re-sale of assets, the capital gains tax will be calculated on the basis of the value declared at the time of the succession.

Total or partial exemption

Some assets may be totally or partially exempted, subject to specific conditions. These assets include notably enterprises (which are subject, among other things, to a collective and individual share retention commitment), woods and forests and forestry goup ventures (in the case of a sustainable development commitment), rural assets subject to a long-term lease and shares in mutual agricultural land groupings (GFA), certain historical monuments and certain investment properties.

Time-bar period

For declared assets, the tax authorities are time-barred on 31 December of the third year following the registration of the inheritance tax form, but continues to run up to 31 December of the sixth year from death if no inheritance tax form has been filed or if any asset has been omitted, or if the tax authorities need to carry out further searches.

DEDUCTIBLE LIABILITIES

Only debts in existence on the day of death are deductible. These include in particular:

- funeral expenses, for which a lumpsum amount of 1,500 euros is deductible, without evidence of payment
- the cost of drawing up a will
- taxes due by the deceased (property tax, income tax, etc.)
- compensation in-lieu of notice and severance pay due as a result of the termination of a contract of employment following the employer's death
- outstanding loans not covered by whole life insurance
- debts justified in particular by a creditor's attestation

CALCULATION OF TAX

The spouse, and a PACS partner benefiting under a will, are exempted from inheritance tax, and any tax on the capital received via a life insurance contract.

The other heirs remain liable, with each heir's net share being reduced by tax allowance which depends on his or her family link with the deceased.

The amount thus determined is then taxed at the applicable transfer tax rate depending on the heir's family link (in direct line or not). Assets acquired on the basis of bare ownership or usufruct are valued according to a scale which depends on the age of the usufructuary at the date of death.

For the value of the usufruct, the deduction and tax rates, depending on the family link with the deceased, see opposite.

Deductibility of philanthropic gestures

If the heirs want to donate part of their inheritance to an eligible foundation or association, they may each, subject to making the donation within 12 months of the deceased's death, deduct the amount of the donation from the taxable portion in their name subject to inheritance tax. Donations may be made in particular in favour of certain public utility foundations or associations. See our website www.althemis.fr, Links. As this mechanism excludes the possibility for the donor to benefit from an income tax or wealth tax reduction on the amount deducted in respect of inheritance tax, it is preferable to pay the inheritance tax and make an a posteriori deduction, when this tax advantage is more interesting.

Life insurance

Contracts taken out after 20 November 1991 and including premiums paid after the age of 70 are taxed on the basis of the premiums paid, at the transfer tax rate (depending on the family link between the beneficiary and the policy holder). This is done either in the general inheritance tax form, or, if the beneficiary wants to receive the capital more quickly, by means of a partial inheritance tax form covering only these contracts.

On the other hand, life insurance contracts where the premiums are paid before the age of 70 (or after 70, provided that they were taken out before 20 November 1991) are exempt for the death benefits corresponding to the premiums paid before 13 October 1998 and subject to a

ENTERPRISES AND COMPANIES

When the estate includes an enterprise, it is possible, subject to various conditions (share retention commitment, number of shares, management role, etc.) to qualify for a 75% reduction in the tax base. For example, in the case of the shares of an operating company valued at 10 million euros this exemption would represent 7.5 million euros and the tax base would be only 2.5 million euros.

The prerequisites for application of this exemption include an obligation for the heirs to retain their shares for 4 years. A collective share retention agreement in respect of at least 34% of the shares (privately held company) must also have been concluded with other shareholders prior to the deceased's death. This last condition is now more flexible and it is now possible, in certain cases, for heirs to prevail themselves of a collective commitment presumed to exist when the deceased (alone or with his or her spouse or partner) satisfied the conditions at the time of death. It is also possible to conclude a collective commitment within 6 months of death. It is to be noted that commitments concluded before death represent the most favourable arrangement.

specific tax for those paid after that date: deduction of 152,500 euros per beneficiary (for all the contracts taken out on the life of the same insured person and taxed under this regime) and a progressive tax rate. This rate is 20% up to 700,000 euros and 31.25% over and above that amount and the amount is levied directly by the insurance company.

PAYMENT ARRANGEMENTS

In principle, the inheritance tax has to be paid when the inheritance tax form is filed. Tax penalties are imposed for late payment (late payment interest of 0.40% for each month of delay from the 7th month), with an increase of 10% from the 13th month and, if applicable, 40% or even 80%, on the amount of inheritance tax in the event of a failure to respond to a formal demand for payment and/or bad faith. It is possible in certain circumstances to request permission to pay in instalments or to defer payment of the inheritance tax payable.

Deferred payment is possible in particular when the succession includes the transfer of the bare ownership of assets. In such a case, the heirs who obtain the bare ownership do not receive any income on the asset inherited and cannot

Transmission to direct descendants

Amount of the tax bracket	Rate	Calculation of the inheritance tax (P = taxable portion)
From 0 to 8,072 euros	5 %	P x 0,05
From 8,072 to 12,109 euros	10 %	(P x 0,10) – 404
From 12,109 to 15,932 euros	15 %	(P x 0,15) – 1,009
From 15,932 to 552,324 euros	20 %	(P x 0,20) – 1,806
From 552,324 to 902,828 euros	30 %	(P x 0,30) – 57,038
From 902,828 to 1,805,677 euros	40 %	(P x 0,40) – 147,322
Above 1,805,677 euros	45 %	(P x 0,45) – 237,606

Other examples of transmission

Family link	Rate
Between brothers and sisters: from 0 to 24,430 euros	35 %
Between brothers and sisters: above 24,430 euros	45 %
Between relatives up to 4th degree	55 %
Between relative beyond 4th degree	60 %
Between unrelated persons	60 %

Deductions

Family link	Tax allowance
Ascendant or living or represented child	100,000 euros
Brother and sister	15,932 euros
Nephew and niece	7,967 euros
Disabled heir (additional allowance)	159,325 euros
Others	1,594 euros

Respective tax value of usufruct and bare ownership depending on the usufructuary's age

Usufructuary's age	Usufruct	Bare ownership
Between the age of 0 and 21	90 %	10 %
Between the age of 22 and 31	80 %	20 %
Between the age of 32 and 41	70 %	30 %
Between the age of 42 and 51	60 %	40 %
Between the age of 52 and 61	50 %	50 %
Between the age of 62 and 71	40 %	60 %
Between the age of 72 and 81	30 %	70 %
Between the age of 82 and 91	20 %	80 %
Aged 92 or over	10 %	90 %

Example: a deceased person leaving an estate of 1 million euros with the usufruct devolving upon her spouse and the bare ownership devolving upon her only child. The surviving spouse is aged 72. In such a case, his usufruct is valued for tax purposes at 30%. The value of the bare ownership is then valued at 700,000 euros (70%).

dispose of it on their own. They may therefore ask for payment to be deferred up to a period expiring 6 months after the usufruct and bare ownership pass to the same person. However, this deferred payment possibility is not free and bare owners must choose between 2 options:

- Paying duty on the basis of the full ownership value (which remains however that calculated at the time of the first death) instead of the bare ownership value
- Paying duty on the bare ownership value, in which case, however, they must pay annual interest at the legal rate.

The disposal of full property of assets where the property has been split between usufruct and bare ownership normally terminates the deferred payment arrangements. However, when only a fraction of such assets is sold and the amount of the disposal is not enough to settle the full amount of inheritance tax due, it is possible to continue the deferred payment arrangements for the balance.

Althémis advice

If it is impossible to file the statement of succession within the prescribed time, we advise you to pay an advance payment. The late payment interest will be calculated after deduction of the advance payment.

The payment by instalments option is available to everyone. Thus, the inheritance tax may be paid with 3 payments for a maximal period of one year. However, this period may be extended to 3 years for direct heirs when half of the estate's assets consists of illiquid assets: patents, copyright, business goodwill, unlisted securities, etc.

In practice, the payment by instalments option is rarely used since it is necessary to provide a guarantee, pay interest and make an initial payment within 6 months after death.

Deferred, split payments apply to certain transfers of business ownership (individual companies and privately owned businesses) for which the payment of duty may be deferred for 5 years, then at the end of the period of deferment, spread over 10 years.

The applicable interest rate for split payments or the deferred payment of inheritance tax is set by decree (calculated from the average rate used by credit institutions for fixed rate property loans charged to individuals) and remains the same throughout the period of credit. It may be reduced by 2/3 in the case of a business transfer.

INTERNATIONAL SUCCESSIONS

Since 17 August 2015, international successions are ruled by the law of the State in which the deceased had his or her habitual residence at the time of death.

The usual residence can sometimes be complex to determine, for example if the deceased had left to live abroad for a long time for work. In that case, one needs to look for the country with which the deceased had kept a close and stable connection. Therefore, for people living abroad, foreign law will apply to all the assets of the deceased, even for real estate located in France.

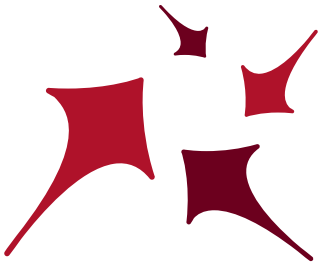
For French nationals living abroad, it is however possible to designate French law in advance in a will in order to disregard the application of foreign law, according to the professio juris principle. As regards the applicable taxation, it is necessary to refer to the various tax treaties concluded by France in order to avoid double taxation.

From a practical point of view, if a succession involves a cross-border element, the Notaire entrusted with the succession must analyse the situation.

Generally speaking, it is also necessary to use the services of a lawyer in the country concerned. See the website of our international network: www.lexunion.com

STEP #6

SUCCESSION INSTRUMENTS



The settlement of a succession involves recording the transfer of assets to the heirs. It can also lead to the allotment of the estate between the heirs.

OWNERSHIP CERTIFICATES

Ownership certificates are necessary to establish that the heirs are the new owners of the assets.

- Immovable property: the ownership certificate must be published at the relevant land registry
- Shares in non-trading companies: the certificate must be filed with the clerk of the commercial court
- Motor vehicles: the transmission of the ownership certificate permits the name of the owner to be changed in the vehicle registration document
- Transferable securities: the competent bodies are generally satisfied with the inheritance tax form, which enables them to change the name of the holders and update the cost price of the securities for the calculation of future capital gains.

ALLOTMENT OF THE ESTATE

The allotment of an estate is not mandatory, even if it is often desirable. It will enable a specific asset to be allocated to each heir, thereby terminating the joint ownership regime resulting from the deceased's death. It may also facilitate the conversion of usufruct or bare ownership into full ownership, which is particularly useful for bank accounts.

Duty of 2.50% is levied on any such allotment. In addition, fees are payable on a proportional basis to the *Notaire* for the services performed.

The sharing of furniture is generally decided directly between heirs, without the use of the *Notaire*'s services.

It is to be noted that an allotment of real estate assets implemented and published within 10 months after death reduces the fees and expenses payable by the estate since it avoids the cost of real estate ownership certificates.

QUASI-USUFRUCT

When the spouse is a usufructuary, it is important to draw up a quasi-usufruct agreement, for example, for sums of money and deposit accounts that are part of the estate. This agreement records, for example, the transfer of capital to the usufructuary and the obligation for him or her to return to the bare owners an equivalent amount at the end of the usufruct. On his or her death, the bare owners will therefore have a debt claim to apply against the estate, thereby avoiding double taxation.

Generally, the agreement exempts the spouse from providing collateral for the repayment of the amounts or to allocate them to an investment on which the usufructuary will receive only the interest. However, the bare owners may decide otherwise.

The same approach can be used for life insurance contracts if the person taking out the insurance splits the beneficiary clause. However, an agreement is still useful to record the transaction and index-link the debt claim.

THE MAIN FEES AND EXPENSES ASSOCIATED WITH THE ESTATE SETTLEMENT

The settlement of a succession is subject to a compulsory "scale of charges" established by the public authorities for notarial services.

Fixed fees are set for certain instruments, to enable notarial services to be accessible, irrespective of the size of the estate: for example, notarised lists of heirs and notarised inventories.

Other instruments are invoiced in proportion to the value of the assets included in the estate: the inheritance tax form, for example, and the notarised certificates establishing the change of ownership of real estate.

In addition, various disbursements, registration fees and publication costs for registering a change of ownership with the land registry have to be taken into account.

Althémis
de la stratégie aux actes

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