Upozorňujeme, že výchozí de verze této stránky byla v nedávné době aktualizována. Na překladu do jazyka, ve kterém se vám stránka právě zobrazuje, zatím pracujeme.
Swipe to change

němčina

Succession

Rakousko

Do jazyka, který máte právě nastavený, úřední překlad neexistuje.
Zde je k dispozici strojový překlad. Upozorňujeme, že má pouze orientační charakter. Provozovatel těchto stránek odmítá právní odpovědnost za kvalitu tohoto strojového překladu.
-----angličtina

This factsheet was prepared in cooperation with the Council of the Notariats of the EU (CNUE).

1 How is the disposition of property upon death (will, joint will, agreement on succession) drawn up?

Specific formal requirements must be observed when making a will. The types of will that are recognised under Austrian law include:
a public will drawn up by a notary or court;
a holographic will, which the testator must write entirely by hand and sign; and
a written will (handwritten or typed by someone other than the testator), which must be drawn up in the presence of three witnesses.
A contract of inheritance (Sections 1249 et seq. of the Civil Code (*Allgemeines bürgerliches Gesetzbuch* – ABGB)) can only be concluded by spouses, engaged partners who actually go on to marry and (future) registered partners, and must take the form of a notarial deed (in accordance with Section 1, first paragraph, point (a) of the Notarial Deeds Act (*Notariatsaktsgesetz*)); the presence of two witnesses or a second notary is required. A contract of inheritance, which must meet the validity requirements for testamentary dispositions, may not dispose of more than three quarters of the estate. In this context, registered partners have the same rights as spouses and partners engaged to be married (Section 1217 ABGB).
A joint will may only be made by spouses or registered partners (Section 586 ABGB).
Donationes mortis causa (gifts of personal property made by someone who expects to die in the immediate future, taking full effect only after the donor dies) are regulated by Section 603 ABGB and are given through a contract, which must take the form of a notarial deed.

2 Should the disposition be registered and if yes, how?

Wills, contracts of inheritance and any contracts waiving the right to the inheritance or to the reserved share can be registered in the Austrian Central Register of Wills (*Österreichisches Zentrales Testamentsregister*) (Section 140b of the Notarial Code (*Notariatsordnung*)), provided that they have been deposited with a notary, court or lawyer. This electronic register is managed by the Austrian Chamber of Civil Law Notaries (*Österreichische Notariatskammer*) and is the only register of wills that is regulated by law. Courts and notaries are required to report the existence of any such documents to the register (Section 140c(2) of the Notarial Code). The purpose of registration is to make these documents easier to find during probate proceedings. Lawyers and law firms may register wills and other testamentary dispositions in the Register of Wills of Austrian Lawyers (*Testamentsregister der österreichischen Rechtsanwälte*). During probate proceedings, the court commissioner must search the Austrian Central Register of Wills and the Register of Wills of Austrian Lawyers and document the result of their search (Section 145a of the Non-contentious Proceedings Act (*Außerstreitgesetz* – AußStrG)).

3 Are there restrictions on the freedom to dispose of property upon death (e.g. reserved share)?

The reserved share (which restricts the degree of testamentary freedom) amounts to half the intestate share in the estate of the deceased. The deceased's issue and surviving spouse or registered partner are entitled to a reserved share. If a person entitled to the reserved share never had a close family relationship with the deceased or such a relationship has not existed for a long period of time (about 20 years), the reserved share may be reduced.
The reserved share is the share in the value of the assets of the deceased that is to be distributed to the persons entitled to the reserved share. The reserved share must be paid in cash. However, it may also be covered by a gift on the death of the deceased (Section 780 ABGB) or a lifetime gift (Section 781 ABGB).
The right to a reserved share must be asserted in court within 3 years of discovery of the claim and at the latest within 30 years (Section 1487 ABGB). The period of limitation begins with the discovery of the facts which determine the existence of the claim, but no sooner than 1 year after the death of the deceased (Sections 765 and 1487a ABGB).
The reserved share may be waived while the testator is still living. This waiver must take the form of a notarial deed or an official court record (Section 551 ABGB).

4 In the absence of a disposition of property upon death, who inherits and how much?

If the deceased is not survived by a spouse, a registered partner, or any children, then the parents of the deceased and their issue (i.e. the siblings of the deceased) inherit (Sections 735 and 736 ABGB).
If the deceased is not survived by a spouse or a registered partner but is survived by children, then the children inherit equal shares (Section 732 ABGB).
If the deceased is survived by a spouse or a registered partner but no children, then the surviving spouse or registered partner becomes the sole heir.
If the deceased is survived by a spouse or a registered partner and children, then the spouse or registered partner inherits one third of the estate plus a preference legacy granted by law (that entitles them to the household items). Two thirds of the estate are divided equally among the children of the deceased (Section 744 ABGB).
The non-registered partner (cohabiting partner) inherits if there are no other statutory heirs. Otherwise, they inherit only if there is a testamentary disposition to that effect. However, the surviving cohabiting partner is protected by the Tenancy Act (*Mietrechtsgesetz*) and the Apartment Co-ownership Act (*Wohnungseigentumsgesetz*). If the deceased and their cohabiting partner jointly owned an apartment (cooperative apartment ownership), the deceased's share goes to the surviving partner. In addition, the cohabiting partner has a preference legacy granted by law and therefore the right, limited to 1 year, to

continue to live in the shared home and to use the joint household items, in so far as they are necessary in order to continue living in accordance with the previous living conditions.

5 What type of authority is competent:

5.1 in matters of succession?

The district court (*Bezirksgericht*); the court commissioner (notary) as an organ of the court.

The authority with jurisdiction in the subject matter and geographical area is the district court where the deceased's last place of legal residence was located (last abode, usual place of residence) (Section 105 of the Court Jurisdiction Act (*Jurisdiktionsnorm* – JN) in conjunction with Sections 65 and 66 JN). For the purposes of carrying out the process, the district court relies on the services of a notary acting in the capacity of a court commissioner (Section 1 of the Court Commissioner Act (*Gerichtskommissärsgesetz* – GKG)).

5.2 to receive a declaration of waiver or acceptance of the succession?

The district court; the court commissioner (notary) as an organ of the court.

5.3 to receive a declaration of waiver or acceptance of the legacy?

The district court; the court commissioner (notary) as an organ of the court.

5.4 to receive a declaration of waiver and acceptance of a reserved share?

The district court; the court commissioner (notary) as an organ of the court.

6 Short description of the procedure to settle a succession under national law, including the winding-up of the estate and sharing out of the assets (this includes information whether the succession procedure is initiated by a court or other competent authority on its own motion)

The inheritance process (or 'probate proceedings' (*Verlassenschaftsverfahren*)) is initiated by the district court once the accrual of inheritance has been officially announced. The competent district court is that of the district where the deceased had their last abode or usual place of residence. The proceedings are handled by a notary in their capacity as a court commissioner, and end with a court order.

Probate proceedings must be initiated by the court's own motion as soon as the court becomes aware of a death (Section 143(1) AußStrG)).

The court commissioner identifies the heirs as part of the judicial probate proceedings (Section 797 ABGB).

The court commissioner (Section 1(2), subparagraph 2(b), and Section 2(2) GKG) draws up an inventory of the estate in the following circumstances: if a declaration of conditional acceptance of the inheritance has been submitted (which limits the liability of an heir to the value of the assets they will receive from the estate); if the persons who may be entitled to a reserved share are minors or may require a legal representative on other grounds; if authorisation has been granted for the inheritance to be segregated from the assets of the heir; if inheritance by a subsequent heir has to be taken into account or if a private testamentary trust has been established; if there is a possibility of the inheritance going to the State for lack of an heir; or if this is requested by any authorised person or by the trustee of the estate (Section 165 AußStrG).

7 How and when does one become an heir or legatee?

No-one is allowed to take possession of the inheritance on their own authority. Rather, it must be officially handed over so that it is legally possessed by the heir, a process known as the devolution of property (*Einantwortung*) by order of the probate court (*Abhandlungsgericht*) (Section 797 ABGB and Section 177 AußStrG). Property can only be devolved once a declaration of acceptance of the inheritance has been submitted by the persons concerned as evidence of their right to inherit, and once the judicial probate proceedings are complete. Even in the case of real estate, ownership is transferred at the time of devolution, i.e. independently of entry of the new owner in the land registry. However, if the heirs fail to submit an application for entry in the land registry within a reasonable amount of time, the court commissioner is required to submit the application instead.

8 Are the heirs liable for the deceased's debts and, if yes, under which conditions?

The heirs are liable for the deceased's debts from their total assets. However, if an inventory has been drawn up, they are only liable up to the value of the estate.

9 What are the documents and/or information usually required for the purposes of registration of immovable property?

The document showing legal title of acquisition must be presented to the land registry court (*Grundbuchsgericht*). Heirs are required to present the devolution order and legatees must present an official confirmation. In addition, it may be necessary to present a tax clearance certificate and, depending on the law of the province concerned, a special permit issued under the legislation governing real estate transactions as well as – where applicable – proof of the transferee's citizenship.

9.1 Is the appointment of an administrator mandatory or mandatory upon request? If it is mandatory or mandatory upon request, what are the steps to be taken?

It is not mandatory to appoint an administrator.

9.2 Who is entitled to execute the disposition upon death of the deceased and/or to administrate the estate?

An heir who is sufficiently able to prove their right to inherit on acceptance of the inheritance is entitled to use and administer the inherited assets and to represent the inheritance, unless otherwise stipulated by the probate court (*Verlassenschaftsgericht*); where this applies to more than one party, all parties exercise this right jointly, unless they agree otherwise (Section 810(1) ABGB).

9.3 What powers does an administrator have?

The executor only plays a secondary role during Austrian probate proceedings. This is because the probate proceedings are handled by the court and it is the court commissioner, as an organ of the court, who ensures that the wishes of the deceased are implemented. According to Section 816 ABGB, the deceased can use a testamentary disposition to designate someone with responsibility for carrying out their final wishes. The scope of this person's duties is defined by the testamentary disposition and may range from monitoring whether the heir/legatee fulfils certain conditions or distributes the estate correctly through to the administration of the estate.

If oral proceedings are arranged as part of the process of summoning the creditors of the estate (Sections 813 to 815 ABGB), the court commissioner is required to announce the date of these proceedings and also to summon the executor (Section 174 AußStrG).

10 Which documents are typically issued under national law in the course of or at the end of succession proceedings proving the status and rights of the beneficiaries? Do they have specific evidentiary effects?

On request, the court commissioner must issue an official confirmation to the beneficiaries as proof of their power of representation (Section 172 AußStrG) (see point 9.2 above).

Once the heirs and their shares have been definitively determined and evidence has been provided to show that the other requirements have been met, the court must devolve the inheritance to the heirs (Section 177 AußStrG: devolution order). An official copy of the devolution order bearing a certificate of indefeasibility is sufficient to unblock funds held at credit institutions (Section 179 AußStrG).

The European Certificate of Succession provided for in Articles 62 et seq. of the European Succession Regulation (Regulation (EU) No 650/2012) is issued by the court commissioner. If the applicant does not agree with this Certificate of Succession, the court must examine it. The Certificate issued by the court commissioner ceases to be valid and is replaced by the Certificate issued by the court.

This web page is part of Your Europe.
We welcome your feedback on the usefulness of the provided information.



Last update: 16/12/2022

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.