Adapting rights in rem

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1 Which are the rights in rem that could arise from a succession under the law of this Member State?

Aside from the right of ownership, or from a share in the right of ownership, the following rights in rem may be acquired by succession:

1. Right of usufruct
2. Right of use
3. Right of residence
4. Right of superficies
5. Right of servitude

Romanian law does not allow legal heirs to choose in the context of a legal succession between a share in the estate to which they would be entitled and the right of usufruct over the estate. Bearing in mind that the rights of usufruct, use and residence benefiting a physical person are at most life-long, and are extinguished on the death of the entitled person, they cannot be acquired by legal inheritance, but on the basis of a *mortis causa* provision. With regard to both the exercise of these rights and other rights in rem, the author may impose certain limits.

Also, where the deceased person was the holder of a guarantee in rem (mortgage on movable or immovable property, pledge, etc.), this right will be transmitted by succession, with the guaranteed claim.

A special situation arises where the surviving spouse does not hold a right in rem to use a dwelling. After the opening of the succession, such a person benefits from a legal right of residence in the dwelling in which he or she lived with the person now deceased, if the dwelling in question is part of the succession assets, although it is possible that the other successors will request, under certain circumstances, that the right of residence be restricted or that there be a change of residence. The right of residence acquired in such conditions may not be used for pecuniary gain by the surviving spouse, since he/she does not have the right, for example, to rent out the dwelling. The right of residence is extinguished by sharing, but no earlier than one year after the date of the opening of the inheritance. This right ceases, even before the end of the one-year period, in the event of the remarriage of the surviving spouse.

2 Are these rights in rem recorded in a register of rights in immovable or movable property and, if so, is such recording compulsory? In which register(s) are they recorded and what are the registration requirements and procedure?

In general, successoral transmission shall take full effect from the date of opening of the inheritance, through the death of the rightholder alone, and does not need to be entered in a register.

In accordance with the Civil Code, publication shall be in the land registry (*cartea funciară*), the Electronic Archive for Security Interests in Movable Property (*Arhiva Electronică de Garanții Reale Mobiliare*), the register of companies and other forms of publication provided for by law. At present, entry in a register does not generally create a right, but rather ensures the publication and enforceability of the registered rights.

Entry in the land register of rights in rem to immovable property does create a right, but only upon completion of the cadastral work concerned at each administrative-territorial unit and the opening, on request or *ex officio*, of land records for the respective immovable properties. Nevertheless, even in such a case, rights in rem will be acquired without entry in the land register when they derive from an inheritance, in accordance with the Civil Code. However, entry in the land register will be necessary before the successor has the right of disposal *inter vivos* in respect of: sale, donation, mortgage, etc.

Rights in rem will be entered in other registers (for example, entry in the Electronic Archive for Security Interests in Movable Property, as a result of the transmission of a secured claim through succession) for the purpose of publication, if the transmitted right had also been registered.

Entry in registers is carried out on the basis of the document establishing the status of heir (certificate of inheritance, judicial decision), and, where applicable, the rights and assets that comprise the estate are also entered.

3 Which effects are linked to the registration of the rights in rem?

Entry in registers shall be for the purpose of publication and with a view to ensuring enforceability vis-a-vis third parties. With regard to the effect of entering in the land register rights in rem over immovable property acquired by succession, see the answer above.

4 Are there specific rules and procedures in place for the adaptation of a right in rem to which a person is entitled under the law applicable to the successions in case the law of the Member State in which the right is invoked does not know such right in rem?

In accordance with the provisions of Law No 206/2016, applications for the adaptation of rights in rem pursuant to Article 31 of the same Regulation are a matter for the courts (*tribunali*).

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