

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?

Dispositions of property upon death can be drawn up in two forms: (i) a will; (ii) a contract.

(i) Will

A will is a personal deed that cannot be drawn up by a representative.

Joint wills, i.e. wills made by two or more persons in the same document, either for the benefit of a third person or for their mutual benefit, are not allowed.

A will is a declaration of intent by one person alone that does not need to be addressed to or brought to the notice of a given person. It is freely revocable and assets are only transferred to heirs or legatees after the death of the testator.

Standard and special types of will exist.

Standard types of will are: public wills and closed wills.

A public will is drawn up by a notary in his or her register.

A closed will is drawn up and signed by the testator or by another person at the testator's request, but must be approved by a notary. It may be kept by the testator or by a third person or may be filed with the notary. A person in possession of a closed will must present it within three days of the date he or she becomes aware of the testator's death, failing which they will be liable for any loss or damage caused, and if they are a successor they may lose the capacity to inherit due to disqualification by conduct.

The law provides for the following types of special will: military wills, wills made on a ship, wills made on an aircraft, wills made in the event of a disaster. A will may only be made in one of these special forms on the occurrence of certain exceptional circumstances provided for by law. Such wills are void two months after the cause that prevented the testator from making a will in the usual forms ceases.

Portuguese legislation also provides for a special form of will made by a Portuguese national abroad under foreign law. This takes effect in Portugal if it is made or approved formally.

(ii) Contract

The Portuguese legal system accepts succession by contract on an exceptional basis. This may occur through agreements as to succession or gifts in contemplation of marriage, which take effect upon the death of the donor. To be valid, both agreements as to succession and gifts upon death in contemplation of marriage must be set down in a marriage contract.

The rule, however, is that succession by contract is prohibited. Agreements as to succession are therefore prohibited in principle, failing which they will be invalid. Gifts in contemplation of death are also prohibited, but rather than being invalid they become testamentary dispositions by force of law and are freely revocable.

There are two types of agreement as to succession whose validity is admitted by law by way of exception: (a) appointment of an heir or legatee for the benefit of either spouse, by the other spouse or by a third person; (b) appointment of an heir or legatee for the benefit of third persons by either spouse. The distinction between heir and legatee is explained below in answer to the question "How and when does one become an heir or legatee?"

Valid agreements as to succession take effect only after the death of the testator. The agreement referred to in (a) above, however, cannot be revoked unilaterally after it has been accepted, and while the testator is alive he or she cannot prejudice the beneficiary by gratuitous dispositions. The agreement as to succession referred to in (b) above is freely revocable if the third person was not involved in the marriage contract as an accepting party.

In addition to these two types of agreement as to succession, the law also accepts the validity of gifts upon death in contemplation of marriage. These are given in contemplation of marriage to one of the spouses by the other or by a third person. A gift upon death in contemplation of marriage is subject to the scheme of agreements as to succession and must be set down in the marriage contract.

NB:

Portuguese law provides for two types of succession. One is voluntary succession – by will or contract – referred to in this answer. The other is legal succession – legitimate or compulsory – which will be mentioned in the answers to the questions 'Are there restrictions on the freedom to dispose of property upon death (e.g. reserved share)?' and 'In the absence of a disposition of property upon death, who inherits and how much?'

Voluntary succession is a result of an act of will on the part of the testator, as are wills and contracts.

Legal succession is accepted by law. It is known as compulsory succession when it is a direct result of the law and cannot be overridden by the wishes of the testator. It is known as legitimate succession when it results from the law but can be overridden by the wishes of the testator.

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

In principle, dispositions do not need to be registered.

There are exceptions, however, which are enshrined in various provisions. Dispositions of property upon death must be registered, for example, in the following cases: (i) preferential testamentary disposition given real effectiveness; (ii) establishment of a prerogative and its amendments; (iii) obligation to reduce gifts subject to collation; (iv) marriage contracts.

In the cases indicated in (i), (ii) and (iii) above, the record must be filed with the Conservatórias do Registo Predial [land registries] by the claimants or respondents in the legal relationship, persons who have an interest in the registration or persons who are required to promote the registration pursuant to the law (official registration promoted in some cases by the courts, the Public Prosecution Service or the registrar him or herself). The registration is drawn up by means of a property description, entry of the facts and respective comments and the noting of certain circumstances.

In the case indicated in (iv), the registration is drawn up in Conservatórias do Registo Civil [register offices] as an entry or record through a declaration by the parties. In this case, persons to whom the fact relates directly or whose consent is required to make it fully effective may also be party to the registration.

NB:

The prerogative involves the right of the surviving widow or widower to maintenance by the funds left by the deceased.

Collation involves the return to the mass of the succession by descendants who hope to inherit of assets or valuables given by an ascendant relative.

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

Yes, under Portuguese legislation the reserved share is a restriction on the freedom to make dispositions of property upon death. The reserved share is the portion of assets the testator cannot dispose of because it is assigned by law to the forced heirs. This is compulsory succession, which is a form of legal succession that cannot be overridden by the wishes of the testator.

The forced heirs are the spouse, descendants and ascendants. The spouse and descendants form the first category of successors. In the absence of descendants, the spouse and ascendants are the successors.

The rules on the assets the testator may not dispose of (reserved share) are as follows:

the reserved share of the spouse and children is two thirds of the inheritance;

if the testator does not leave descendants or ascendants, the reserved share of the spouse is half the inheritance;

if the testator does not leave a spouse but leaves children, the reserved share is half the inheritance if there is only one child and two thirds of the inheritance if there are two or more children;

the reserved share of descendants in the second and following degrees is the share that would apply to their ascendant;

if there are no descendants, the reserved share of the spouse and ascendants is two thirds of the inheritance;

if there are no descendants or a surviving spouse, the reserved share of the parents is half the inheritance; if ascendants in the second and following degrees are designated as heirs, the reserved share of the latter is one third of the inheritance.

NB:

The spouse is not designated as an heir if at the time of the testator's death they are divorced or legally separated by a final judgment or a by a judgment which is to become final. When divorce or legal separation proceedings are pending at the time of the testator's death, the beneficiaries may continue such proceedings for the property consequences. In this case, if the divorce or separation is subsequently granted the spouse is not designated as a beneficiary.

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

If the deceased has not made a valid and effective disposition, in full or in part, of the property to be disposed of subsequent to their death, his or her forced heirs are designated as the successors. This is known as legitimate succession, which is a form of legal succession that can be overridden by the wishes of the testator.

The forced heirs are the spouse, relatives and the state, in the following order: a) spouse and descendants; b) spouse and relatives in the ascending line; c) siblings and their descendants; d) other collateral relatives up to and including the fourth degree; e) the state.

5 What type of authority is competent:

Competence in matters of succession depends on whether the succession is contested (acceptance under benefit of inventory) or not (acceptance pure and simple).

Notaries and the courts are competent in matters of contested succession. For cases provided for in Article 1083(1) of the Code of Civil Procedure (e.g. heirs whose whereabouts are unknown, heirs without legal capacity, inventory required by the Public Prosecution Service), the inventory must be carried out in the courts. In other cases, the persons concerned may choose to take the inventory to a notary's office (*Cartório Notarial*) or a court.

Notaries and registrars (*Conservatórias dos Registos*) are also competent in matters of uncontested succession. In this case, they are competent to empower heirs and carry out the respective division.

By authenticating a private document, lawyers and solicitors can divide uncontested estates but are not competent to empower heirs.

5.1 in matters of succession?

If the inheritance is contested, either the courts or notary's offices can conduct the inventory, in accordance with Article 1083 of the Code of Civil Procedure.

No probate proceedings are required in the event of acceptance of the inheritance pure and simple. In this case the heirs and legatees wind up and share out the inheritance by mutual agreement, with no obligation to open proceedings involving a notary or court.

When an estate is declared to be in abeyance to the state, the respective special procedure to wind up the succession for the benefit of the State is conducted in court (Articles 2152-2155 of the Civil Code).

If the inheritance is not contested, civil-law notaries, registry offices and land registries are competent, with no territorial jurisdiction. Interested parties may therefore carry out the acts in the institution of their choice, without territorial restrictions.

For uncontested inheritances, estates may be divided before any lawyer or solicitor in the country, provided that the persons concerned have been previously empowered (e.g. by a registrar or notary).

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

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

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

As regards the authority competent to receive a declaration of acceptance or waiver of succession, there are no substantial differences between a legacy and an inheritance, or between legal or voluntary succession. The answer to these three questions is therefore the same.

If the succession has been accepted under benefit of inventory, the declaration of acceptance is made in the probate proceedings. In this case, the court or the notary are the authorities competent to receive the declaration of acceptance.

Acceptance of succession under benefit of inventory is ensured by requesting the inventory or intervening in it.

Another type of acceptance of succession is acceptance pure and simple, which occurs when the succession is accepted and divided without the need for probate proceedings.

The rules relating to acceptance of succession also apply to acceptance of a legacy. The difference between inheritance and legacy is set out in the answer to the following question.

If probate proceedings are opened the waiver must be effected or included in the file. In this case, the court or notary are the authorities competent to receive the declaration of waiver.

The waiver must take one of the following forms: public deed or private certified document if assets exist which the law requires to be disposed of in one of these forms; a private document in other cases.

An acceptance or waiver of an inheritance or legacy is a unilateral legal transaction that cannot be repudiated, i.e. both are done through a declaration by the successor that does not need to be addressed to or brought to the attention of a given person.

If the estate is in abeyance, interested parties or the Public Prosecution Service may ask the court to notify the heir to accept or waive the inheritance (Articles 1039-1041 of the Code of Civil Procedure). In this case the court receives the declaration of acceptance. The estate is deemed to be in abeyance during the period in which it has not yet been accepted nor declared as in abeyance to the state.

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 procedure depends on whether the succession is contested or not.

CONTESTED SUCCESSION

The purpose of probate proceedings for succession is: to share out the estate to draw its co-ownership to a close; to list the estate's assets if it is not necessary to share them out; to wind up the estate if necessary (Article 1082 of the Code of Civil Procedure).

When the inventory is brought before a court, it follows the form of judicial inventory provided for in Title XVI of Book V of the Code of Civil Procedure (Articles 1082-1129). The internal local jurisdiction of the national courts is determined in accordance with the connecting factors set out in Article 72A of the Code of Civil Procedure.

The main stages of the judicial inventory process are: (i) initial request (ii) opposition and verification of liabilities (iii) prior hearing of the interested parties (iv) identification and convening of interested parties (v) reduction of gifts or legacies that exceed the disposable portion (vi) statement on the division and judgment ratifying the division. The judgment may be followed by a cancellation or alteration of the division, an additional division or the allocation of a share to an overlooked heir.

When the inventory is brought before a notary's office, it follows the form of notarial inventory provided for in the Annex to Law No 117/2019 of 13 September 2019 referring to the necessary amendments to Title XVI of Book V of the Code of Civil Procedure.

In line with Articles 1-5 of the Annex to Law 117/2019: the Portuguese Notary Association publishes a list of notaries who can process inventories (www.notarios.pt); for notarial inventories, while it is the task of the notary to take the necessary action, the ratifying judgment is always issued by the court to which the case is referred for that purpose, without prejudice to any other issues the notary may refer to the judge for a ruling; it is the task of the court to rule on appeals brought during notarial inventory process; the parties are free to choose the notary's office where the inventory process takes place, provided there is a relevant link with the succession (e.g. the notary's office is situated in the municipality where the succession was opened or where the assets are located or where most of the interested parties live).

UNCONTESTED SUCCESSION

The interested party may settle matters before a notary or registrar. Via the single-window system of a registrar, they may deal with all succession-related issues, from authorisation to the final recording of assets resulting from the division.

Alternatively, once empowered as heirs in a notary's office or registry, interested parties may share out estate assets by means of a private document certified before a lawyer or solicitor.

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

Heirs inherit the estate of the deceased in total or in part, i.e. the assets they are to inherit are not predetermined.

Legatees on the other hand inherit particular assets or valuables.

In legal succession, eligibility arises out of the law. In voluntary succession, eligibility arises out of a declaration of intent by the testator. Successors may have the status of heirs or legatees in either legal or voluntary succession.

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

If the estate is accepted under benefit of inventory, only property listed in the inventory is liable for the deceased's debts and other succession charges, unless the creditors or legatees prove that other assets exist. If there is an inventory, the burden of proof that such other assets exist lies with the creditors or legatees.

In the event of acceptance pure and simple, liability for debts and other succession charges similarly does not exceed the value of the assets inherited, but in this case it is up to the heirs or legatees to prove that the estate does not include assets of sufficient value to pay the debts or satisfy the legacies. Here the burden of proof that such other assets do not exist lies with the heirs or legatees.

The estate is liable for the following charges: the testator's funeral and related expenses; charges for executorship and the administration and winding-up of the estate; payment of the deceased's debts; satisfaction of legacies.

Jointly inherited assets are collectively liable for meeting the above charges. When the estate has been divided, each heir is liable only for an amount *pro rata* to their share of the inheritance.

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

The following answer shows separately the documents and information required to register immovable property, the fees payable and how the application for registration can be submitted (in person, by post or online).

Documents and information required

Applications for registration of immovable property must identify the applicant, facts and properties concerned and the list of supporting documents.

Only facts set out in documents that legally substantiate them may be registered.

Documents in a foreign language may only be accepted when translated in accordance with the law, except when they are drafted in English, French or Spanish and the competent official has a command of the language concerned.

When the viability of an application for registration has to be assessed on the basis of foreign law, the interested party must prove the respective content by means of any appropriate document.

If an application for registration concerns a building which is not described, an additional declaration must be attached indicating the name, status and address of the owners immediately prior to the transferor and the previous property register article, unless the applicant states in the declaration why this is not known.

If the registration concerns a share in an undescribed joint property, the name, status and address of all *co-owners* must also be declared.

Fees payable

The fee must be paid on submission of the application or must be sent with it. The fee corresponds to the likely total amount payable. If this is not paid when the application for registration is submitted the application may be immediately rejected.

When the fee has not been paid and the application has not been rejected, the registration service notifies the interested party of the time-limit for paying the amount unpaid if registration is not to be rejected.

The same procedure is followed when the amount initially paid is insufficient and is not completed.

Application for registration in person, by post or online

Applications for registration of immovable property may be submitted in person, by post or online.

Applications for registration in person and by post must be in writing, in accordance with the forms approved by a decision of the governing body of the *Instituto dos Registos e do Notariado, I.P.* (Institute of Records and Notaries). Documents substantiating the fact to be registered and the above-mentioned additional declarations, if any, must accompany the forms.

The forms referred to in the preceding paragraph do not have to be used for applications for registration in writing by public authorities involved as claimants or respondents in acts by the courts, the Public Prosecution Service, insolvency administrators or enforcement agents, whether submitted in person or by post.

Applications made by the courts, the Public Prosecution Service, enforcement agents or bailiffs who carry out measures particular to enforcement agents and court administrators should preferably be sent electronically, accompanied by the documents required for registration and the amounts payable.

Applications to register property can be done online at <http://www.predialonline.mj.pt>. The only procedures that cannot be registered online are procedures justifying, rectifying or challenging decisions taken by a registrar.

A digital certificate is required to apply for property registration deeds online. Nationals bearing a Portuguese identity card who have activated their digital certificate, lawyers, notaries and solicitors already have these certificates.

Managers and directors of commercial companies or civil law companies having a commercial form may certify that electronic documents they have submitted conform to the original paper documents when they submit applications for registration online in which the respective companies are interested parties.

NB:

Only persons and/or entities the law deems to be legitimate may submit applications to register immovable assets. These persons or entities are identified above in the answer to the question 'Should the disposition be registered and if yes, how?' in the section indicating the records to be submitted to the Land Registry.

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?

The appointment of an administrator is mandatory if probate proceedings are sought. In this case it is mandatory to appoint the head of household responsible for administering the succession. The person applying for probate specifies who is required under the law to perform the duties of head of household. This is done on the form used for applying for probate.

While an estate is in abeyance there may not be anyone who is legally entitled to administer it. In this case any heir may take action to administer the succession even before it is accepted or waived. If there is a risk of loss or deterioration of the assets in the estate in abeyance, the courts appoint a curator. This is done at the request of the Public Prosecution Service or of any interested party. The definition of an estate in abeyance has already been given in the answer to the question 'What type of authority is competent: (...) to receive a declaration of waiver or acceptance?'

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

Head of household

The head of household is responsible in principle for administering the estate until it is wound up and shared out.

Under the law, the duty of head of household is delegated in the following order:

- a) to the surviving spouse, not legally separated in person or property, if he or she is an heir or has a marital portion of the couple's assets;
- b) to the executor, unless stated otherwise by the testator;
- c) to relatives who are heirs at law;
- d) to the testamentary legatees.

If the whole estate is shared out to legatees, the most favoured legatee will act as head of household, replacing the heirs; other things being equal, the oldest will be preferred.

There are specific cases in which the administration of part or all of the assets in the estate may be entrusted to the executor or the trustee, as will be explained below.

Executor

In the event of succession by will the testator may appoint one or more persons who are required to ensure that the will is carried out or to execute it fully or in part. This is known as executorship. The person appointed is the executor.

Trustee

Replacement of the trustee, or trusteeship, is a disposition by means of which the testator entrusts the designated heir with the task of preserving the inheritance so that it reverts to the benefit of another on his or her death. The heir given this duty is called the trustee. The beneficiary of the replacement is known as the trustee heir. The trustee benefits from and administers the assets under trusteeship.

9.3 What powers does an administrator have?

Powers of head of household

The head of household administers the assets of the deceased and, if the latter was married under community of property, the common assets of the couple. The head of household may ask heirs or a third person to hand over assets he or she is to administer which they have in their possession. He or she may bring actions for possession against heirs or against a third person and may recover the estate's receivables when delay would jeopardise their recovery or when payment is made spontaneously.

The head of household must sell the fruits or other perishables and may use the proceeds to meet funeral and related expenses and administration fees.

The head of household may also sell non-perishable fruits to the extent necessary to meet funeral and related expenses and administration fees.

Outside the cases referred to above, the rights relating to the succession may only be exercised jointly by all heirs or against all heirs.

Powers of the executor

If an executor has been appointed in testamentary succession, he or she holds the powers granted by the testator.

If the testator does not specify the powers of the executor, the latter is responsible for the following: dealing with the funeral and related arrangements and paying the respective expenses; monitoring the performance of dispositions upon death and maintaining their validity before the courts, where necessary; performing the duties of head of household.

The testator may entrust the executor with satisfying the estate's legacies and other liabilities when he or she is head of household and a mandatory inventory is not needed. For this purpose the executor may be authorised by the testator to sell any estate assets (whether movable or immovable) or those designated in the will.

Powers of the trustee

The trustee not only administers but also receives the benefits of the assets under trusteeship. The provisions relating to the enjoyment of such assets in so far as they are not incompatible with the trusteeship are applicable. The trustee requires court authorisation to dispose of or encumber assets under trusteeship.

Heirs and curator for an estate in abeyance

While an estate is in abeyance it constitutes a fund with legal personality. The estate may therefore initiate proceedings and proceedings may be initiated against it. If there is no one to administer the estate in this case, one of the solutions set out below may be adopted.

Before accepting or waiving the succession, any heir may take urgent administrative measures while the estate is in abeyance. If an objection is raised when there are several heirs, the will of the majority prevails.

A curator for the estate in abeyance may also be appointed by the courts. The curator is responsible for applying for the necessary interlocutory proceedings and for bringing actions that cannot be delayed without putting the interests of the succession at risk. He or she is also responsible for representing the estate in all actions brought against it. The curator requires judicial authorisation to dispose of or encumber fixed assets, precious objects, valuables, commercial establishments and any other assets the disposal or encumbrance of which is not an administrative act. Judicial authorisation will only be granted when the act is justified to avoid deterioration or loss of the assets, to pay the estate's debts and to meet the cost of necessary or useful improvements, or if another urgent need arises.

When the estate is no longer in abeyance because it has been accepted but remains undivided, the law allows any heir to apply for judicial recognition of their status as an heir and the restoration of all or part of the estate's assets against whoever possesses them as an heir or by another entitlement, or without entitlement. This is known as a petition for possession. This action can be taken by a single heir unaccompanied by the others, but does not infringe the right of the head of household to call for the assets he or she is to administer to be handed over, as referred to above.

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?

Documents confirming the status of heirs or legatees

Judgments;

Notarial deeds;

Simplified procedures for confirming the status of heirs issued by a registry office.

The above attest to the status of heirs and/or legatees who survive the deceased.

Judgments, notarial deeds and simplified procedures for empowering heirs are authentic instruments with full evidentiary value.

The empowering of heirs or legatees is recorded at the registry office by means of an endorsement on the deceased's death certificate.

Documents confirming the division

In contested succession:

A judgment given by the competent court that ratifies the division of the estate in probate proceedings. The judgment determines how the shares are satisfied (e.g. the assets to be inherited by each heir or legatee). This is an authentic instrument with full evidentiary value.

In voluntary succession:

A private certified document drawn up before a lawyer or solicitor, which establishes how the shares are satisfied. This is not an authentic instrument but a private certified document which in this case has evidentiary value equivalent to full evidentiary value.

A document covering the division in simplified succession proceedings before the registrar. This is an authentic instrument with full evidentiary value.

A notarial deed of division drawn up by the notary. This is an authentic instrument with full evidentiary value.

Any of the above documents which confirm the division may form the basis for registering the estate's assets for the benefit of the heir or legatee, irrespective of whether they have full evidentiary value.

Final note

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