# Succession

Romania

*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?

Joint wills and agreements as to succession are prohibited by Romanian law.

Ordinary wills may be either holographic or authentic.

**A holographic will** is written, dated and signed by the testator and, before execution, it is presented to a civil law notary in order to be duly stamped and validated.

An authentic will is executed by a civil law notary or another person vested with public authority. The testator dictates it to the notary, who will write it down and read it out, specifying the formalities. If the will has been already drafted by the testator, it is read out by the notary, and the testator declares that it represents his last will. The will is signed by the testator, while the authentication certificate is signed by the notary. During the authentication, the testator may be accompanied by one or two witnesses.

**Privileged wills** made in special situations by certain serving officers, in the presence of two witnesses, have the evidentiary effect of an authentic instrument.

In the case of amounts of money to be bequeathed to specialised institutions, the specific formal requirements laid down in the special acts governing their organisation must be met.

The will **contains** provisions concerning the designation of the (in)direct legatee, partition, disinheritance, appointment of executors of the will, responsibilities, revocation of legacies, etc.

The provisions regarding the transfer of the estate/assets of the deceased are called legacies. **Legacies** fall into the following categories: universal legacies or legacies under a universal/particular title. **A universal legacy** confers rights to the entire inheritance, **while a legacy under a universal title confers rights** to a fraction of the inheritance.

See Article 1034 et seq. of the Civil Code.

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

The notary authenticating the will must register it in **The National Notarial Register for the evidence of liberalities (*Registrul național notarial de evidență a liberalităților RNNEL*)**, where donations are also registered.

See Article 1046 of the Civil Code, Article 164 of Act No 36/1995 on public notaries and notary activities, republished.

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

The reserved portion of the succession is the part of the inheritance to which forced heirs (surviving spouse, descendants, and privileged ascendants – parents of the deceased) are entitled, even against the wishes of the deceased. The reserved portion for each forced heir is half of the share which would have been due to them as an heir at law, in the absence of any liberalities or disinheritance in the will.

See Article 1086 et seq. of the Civil Code.

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

The inheritance goes to the heirs at law, namely the surviving spouse and relatives of the deceased, in the following order:

descendants – first order of heirs

ascendants and privileged collateral relatives – second order of heirs

ordinary ascendants – third order of heirs

ordinary collateral relatives – fourth order of heirs

Descendants and ascendants are entitled to the inheritance regardless of their degree of relationship to the deceased, while collateral relatives are entitled thereto up to the fourth degree.

Only descendants of the children of the deceased and descendants of the siblings of the deceased may take part in the inheritance by right of representation. In the case of representation, the inheritance is distributed according to parental line. If a line has more than one branch, subdivision takes place within the line, equally dividing the due portion of the inheritance.

**The surviving spouse** participates in the succession together with any of the orders of heirs at law according to the following proportion:

1/4 of the estate, if the remainder passes to the descendants

1/3 of the estate, if the remainder passes to the privileged ascendants and privileged collateral relatives

1/2 of the estate, if the remainder passes either to the privileged ascendants, or the privileged collateral relatives

3/4 of the estate, if the remainder passes either to the ordinary ascendants, or to the ordinary collaterals.

The surviving spouse may be entitled to the right to reside in the marital home and may also inherit the household furniture and common household appliances.

**Descendants**, the children of the deceased and their direct descendants, exclude any heirs in the other categories and are entitled to the inheritance in the order of the proximity of the degree of relationship. If the surviving spouse stands to inherit, descendants collectively receive ¾ of the inheritance.

**The privileged ascendants** are the father and the mother of the deceased, with the inheritance due to them to be divided equally.

**The privileged collateral relatives** are the siblings of the deceased and their descendants, up to the fourth degree.

If the surviving spouse participates in the inheritance together with both privileged ascendants and privileged collateral relatives, the portion due to the second order of heirs is 2/3; the portion due to the second order of heirs is 1/2 if there are privileged ascendants or privileged collateral relatives, but not both.

The inheritance due to the privileged ascendants and privileged collateral relatives is divided between them depending on the number of privileged ascendants. If there is a single parent, he/she will collect 1/4, while the privileged collateral relatives will be entitled to 3/4. If there are two parents, they will jointly collect 1/2, while the privileged collateral relatives will be entitled to the remaining 1/2.

The inheritance of the privileged collateral relatives is divided equally between them or, if they take part in the inheritance by right of representation, between parental lines. In the case of different collateral relationships, the inheritance is divided equally between the maternal and paternal line, and the previous rules apply. Collateral relatives who are related to the deceased on both lines receive cumulated portions.
Where there are no heirs, **the inheritance is deemed vacant**, and is collected by the municipality, town or city where the estate is located at the time of opening of the succession.
See Articles 970 to 983, Articles 1135 to 1140 of the Civil Code.

**5 What type of authority is competent:**

**5.1 in matters of succession?**

The competent bodies for non-contentious succession procedures are notaries, while courts of first instance ('judecătorie') are responsible for contentious succession proceedings.
The heir or any other interested person may apply directly to the court by submitting a notarised certificate concerning the verification of the succession registry.
See Article 103 et seq. of Act No 36/1995, Article 193 of the Code of Civil Procedure.

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

An heir expressly accepts the inheritance when they explicitly take on the title/capacity of heir. Such acceptance is tacit when it is done through an act or an action which can only be carried out by a person in their capacity as heir (Article 1108 of the Civil Code).
The declaration of waiver of succession is made before a notary or before a diplomatic mission or consular representation of Romania (Article 1120(2) of the Civil Code).
All notarial instruments referring to the acceptance or the waiver of succession are registered in the National Notarial Register for the evidence of successional options (*Registrul național notarial de evidență a opțiunilor succesorale RNNEOS*).

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

See 5.2.

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

See 5.2.
After the opening of a succession procedure, any liberalities infringing the succession reserve may be subject to clawback at the request of forced heirs, successors and unsecured creditors of forced heirs. In the case of multiple forced heirs, clawback is applicable only within the limit of the reserved portion due to the applicant and benefits only the latter. As a result of clawback, legacies may become ineffective and donations may be cancelled.
See Articles 1092 to 1097 of the Civil Code.

**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 notarial succession procedure** is opened on request. The request is registered in the notary's succession registry following registration in the succession registry of the chamber of notaries. The appointed notary verifies their territorial jurisdiction and orders the summoning of those entitled to the inheritance and, where there is a will, summons the legatee, executor of the will, legal representative of the legally incompetent heir, supervisory body (where applicable), public administration representative (in the event of a vacant succession). The notary determines the capacity of the heirs and legatees, the extent of their rights and the composition of the estate of the deceased person.
The number of heirs and the capacity of heir and/or title of legatee are determined on the basis of civil status certificates, by means of a will, and with the assistance of witnesses. Assets are proven through official documents/any other means of proof recognised by the law.
See Articles 103 to 120 of Act No 36/1995, republished.
The heir/other interested person may apply directly to the competent court by submitting a notarised certificate concerning the verification of the succession registry. Judicial partition may be carried out by agreement between the parties. In the absence of such agreement, the court will decide on the partition of the assets, the status of heir, the shares in the estate, receivables, debts and obligations. The court may give a ruling on any clawback of excessive liberalities and the restoration of donations. The division of assets is carried out in kind, lot by lot or by assigning individual assets to one of the heirs subject to payment of financial compensation to the remaining heirs. The court may order the selling of the property, with the consent of the parties or by an enforcement officer by public auction. The court will hand down a judgment and will decide on the division of the amounts deposited by one of the heirs for the others and those resulting from the sale.
See Article 110 of Act No 36/1995, Article 193(3) of the Code of Civil Procedure.
With the approval of all heirs, the notary may begin the **liquidation of the succession liabilities** i.e. collection of receivables, payment of debt and liabilities, sale of movable/immovable property, and execution of particular legacies.
In the mandatory preliminary phase, the notary will issue **a certificate of succession liquidation**, which sets out the estate (receivables and liabilities), the heirs, their respective shares, and their consent regarding the means of liquidation of the liabilities, the appointment of a liquidator and the deadline for completion.
The liquidator collects the receivables under the succession, pays the debts and sells the assets. The liquidator submits a report to the appointed notary, setting out the operations carried out for the collection of the receivables and the arrangements for settling the debts. After completion, the notary issues a **certificate of succession**, and the net product of the liquidation is marked in the estate.
See Articles 121 to 134 of Act No 36/1995, Article 1114 of the Civil Code.
The **partition of the estate** between heirs is carried out after the issuing of the certificate of succession following liquidation. The partition of the estate may be voluntary. Restoration of donations is the obligation of the surviving spouse and the descendants of the deceased who are entitled to the legal inheritance to restore any donated assets that were not exempt from such an obligation.

***Payment of liabilities. Exceptions to the statutory division of the liabilities of the inheritance***

The universal heirs and heirs under universal title must contribute to the payment of the debts and obligations of the estate in proportion to their respective share.
The personal creditors of the heirs and any interested person may request the partition of the inheritance and may exert their right to be present at the voluntary division or to intervene in the division. The creditors' requests are registered in The National Notarial Register for the Evidence of Creditors Natural Persons and the Evidence of Oppositions to the Fulfilment of Successional Partition (*RNNEC – Registrul național notarial de evidență a creditorilor persoanelor fizice și a opozițiilor la efectuarea partajului succesoral*).
The universal heir/the heir under a universal title who has paid a larger share of the common debt has a right of recourse against the others, but only for the part of the common debt corresponding to each of the heirs, even where they have been subrogated to the rights of the creditors.

***Partition of ascendants' assets***

Ascendants may divide their assets between descendants by means of donation or a will. If not all assets of the inheritance have been included, the assets not included are divided in accordance with the law.
See Articles 669 to 686, Articles 1143 to 1163 of the Civil Code.

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

A person may inherit if they exist at the time the succession is open and/or have the capacity to receive liberalities, are entitled to the succession, have not been disqualified by conduct, and have not been disinherited.
The person called to receive an inheritance may accept or waive the inheritance. A legatee who is an heir by operation of law may exercise either one of these capacities. If, despite the reserve not having been infringed, the will shows that the deceased intended to reduce the share due to the legal heir, the latter may only act as a legatee.
See Articles 957 to 963, 987, 989, 993, 1074 to 1076, 1100 and 1102 of the Civil Code.

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

Yes, see point 6.

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

The request for registration in the land register must be accompanied by the original document or a notarised copy thereof and, in the case of a court judgment, an authenticated copy with the remark 'final'. The land registrar registers the property if the document meets several formal requirements: identification of the party and of the real estate; the existence of a notarised translation (in the case of an authentic notarial instrument, it must be issued by a Romanian notary); the existence of excerpts from the land register; payment of the fee, etc. The first registration of the real estate in the integrated information system of cadastre and land registry can be also be based on the certificate of succession and the cadastral documentation.

**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?**

**Voluntary appointment**

The testator may appoint one or more persons, conferring them powers to execute the will. The executor of the will manages the estate for up to two years after the opening of the succession. This period may be extended by a court decision.

**Mandatory appointment**

*If the debtor has died prior to the appointment of an enforcement officer*, enforcement cannot be launched. If the debtor has died after enforcement has been launched, the proceedings may not continue until the inheritance has been accepted or a curator of the succession/special succession curator has been appointed. If the creditor or the enforcement officer becomes aware that the debtor has died, they must ask the chamber of the civil notaries in the jurisdiction where the deceased was last domiciled to enter a note in the special register concerning the enforcement proceedings and issue a certificate. The certificate must state whether the inheritance has been settled and, if so, list the heirs and indicate whether a curator was appointed pending the acceptance of the inheritance.
*If there is a risk that the assets may be sold, lost, replaced or destroyed*, the notary will place them under seal or hand them over to a custodian.
*Until the inheritance has been accepted or where the heir is unknown*, the notary may appoint a special succession curator *in order to protect the rights of the potential heir*.
See Article 686 of the Code of Civil Procedure, Article 1117(3), Article 1136, Articles 1077 to 1085 of the Civil Code.

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

The executor of the will, the liquidator, an heir by operation of law/heir entitled under a will, appointed custodian/curator (See point 9.1).
The liquidator, who carries out their responsibilities under the supervision of the notary, may be appointed by the deceased, the heirs or the court.
See Article 124 of Act No 36/1995, Article 1117(3), Article 1136 of the Civil Code.

**9.3 What powers does an administrator have?**

See point 9.1.
The executor of the will affixes the seals, draws up the inventory, requests that the court approve the sale of the assets, pays the debts under the inheritance and collects the receivables.
See Articles 1077 to 1085 of the Civil Code, Articles 103 to 134 of Act No 36/1995.

**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?**

The notary draws up reasoned **conclusions** and, following the settlement of the succession, issues a final certificate based on which the certificate of succession/the legatee certificate is issued.
The **certificate of succession** includes the arrangements for determining the extent of the rights and serves as a proof of the status of heir and of the property rights. The notary may issue a **certificate of the status of heir**, which states the number of theirs, their status and the extent of their rights, but not the estate. Where there are no heirs, the inheritance is considered vacant, and a **certificate of succession vacancy is issued**.
The notary may resume the procedure in order to issue the final notarial certificate with the omitted assets, and will issue an **addendum to the certificate of succession.**
A person who believes they have suffered damages may apply to the court to annul the certificate and determine their rights. **In the event of an annulment, the notary will issue a new certificate of succession based on the final court decision**. The interested parties may also have an authentic instrument drafted by a public notary certifying the amicable settlement of the dispute. In this case, a new certificate of succession will be issued. Pending the amicable settlement of the dispute by means of a notarial act, or pending the annulment of the certificate of succession by the court, the new certificate will serve as proof of the status of heir by operation of law or heir entitled under a will, and of the property rights of the heirs accepting assets listed in the estate in proportion to their respective share.
A universal heir/heir under a universal title may, at any time, seek recognition of that status against any person unduly possessing assets from the estate by launching **proceedings claiming the rights of an heir**.
In contentious succession proceedings, the courts hand down rulings, decisions and judgments. The partition decision has a constitutive effect and is enforceable after it becomes final.
See Articles 1130 to 1134, Articles 1635 to 1639 of the Civil Code, Articles 113 to 120 et seq. of Act No 36/1995.