Succession

Romania

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

Joint will and an agreement as to succession are prohibited by Romanian law.

A will may be of the following types: authentic will and holographic will.

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

An authentic will is executed by a civil law notary or by another person vested with public authority. The testator dictates it to the civil law notary, who will write it down and read it out to them, mentioning these formalities. In the event that the will has been already drafted by the testator, it is read out by the civil law notary, and after reading, the testator declares that it represents his last will. The will is signed by the testator, while the conclusion of authentication is signed by the civil law notary. During the authentication, the testator may be assisted by one or two witnesses. **Privileged wills** made in special situations by certain serving officers, assisted by two witnesses, have the evidentiary effect of the authentic instrument.

In case of amounts of money to be bequeathed to specialised institutions, the specific formal conditions established by the relevant special acts 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** are universal or under universal/particular title. **The universal legacy** confers rights to the whole inheritance, while **legacy under a universal title** confers rights to a fraction thereof.

See Article 1034 and subsequent articles 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 naţional notarial de evidenţă a liberalităţilor RNNEL), where donations are also registered .

See Article 1046 of the Civil Code, Article 162 of Act No 36/1995 on public notaries and notary activities, as 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 – parent of the deceased) are entitled, even against the wish of the deceased. The reserved portion for each forced heir shall be half of the share which would have been due to them as a legal heir, in the absence of any liberalities or disinheritance in the will.

See Article 1086 and subsequent articles of the Civil Code.

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

The inheritance passes to the legal heirs, 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 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 legal heirs 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 is 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 other type of heirs 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 3/4 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, they will collect 1/4, while privileged collateral relatives are entitled to 3/4. If there are two parents, they will jointly collect 1/2, while the privileged collateral relatives are entitled to the remaining 1/2.

The inheritance of the privileged collateral relatives is equally divided 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 shall be divided equally between the maternal and paternal line, with the application of the previous rules. Collateral relatives who are related to the deceased on both lines shall receive cumulated portions.

Where there are no heirs, **the inheritance is vacant**, and shall be collected by the municipality, town or city where the estate is located at the moment of distribution.

See Articles 970–983, Articles 1135–1140 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 civil law notaries, while courts of first instance (“Judecătorie”) are responsible for carrying out contentious succession procedures.

The heir or any other interested person may directly refer the case to the court after submitting a notarised certificate on the verification of the succession registry.

See Article 101 and subsequent articles 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?

See point (b)

An heir expressly accepts the inheritance when they explicitly take on the title/capacity of heir. This acceptance is tacit when it is done through a deed/action which can only be carried out in the capacity of heir (Article 1108 of the Civil Code).

The declaration of waiver of succession is made before a civil law notary, or before a diplomatic mission or consular representation of Romania (Article 1120 (2) of the Civil Code).

All notarial instrument referring to the acceptance or the waiver of succession are registered in the National Notarial Register for the evidence of successional options (Registrul naţional notarial de evidenţă a opţiunilor succesorale RNNEOS).

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

See point (b)

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

See point (b)

After the opening of a succession procedure, the liberalities infringing the succession reserve are subject to reduction at the request of forced heirs, successors and unsecured creditors of the forced heirs. In the case of multiple forced heirs, the reduction is applicable only within the limit of the reserved portion due to the applicant, and it favours only the latter. The reduction will result in the ineffectiveness of the legacies or in the annulment of donations.

See Articles 1092–1097 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 succession registry of the notary, following the registration in the succession registry in the chamber of civil law notaries. The commissioned 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 incapable heir, supervisory body, public administration representative (in the event of a vacant succession). The notary establishes the capacity of the heirs and legatees, the extent of their rights and the composition of the estate of the deceased person.

The number and capacity of heir and/or title of legatee is established by means of civil status acts, by will and with the assistance of witnesses. Assets are proven through official documents/any other means of proof recognised by the law.

See Articles 101–118 of Act No 36/1995, republished.

The heir/other interested person may directly commission the competent court after submitting a notarised certificate on the verification of the succession registry. Judicial division may be carried out by agreement between the parties, or, if this is not the case, the court must establish the assets, the status of heir, share of estate, receivables, debts and obligations. The court may give a ruling concerning the restriction of excessive liberalities and the report of donations. The division of assets is carried out in kind, by means of forming lots or by conferring an asset to one of the heirs under the condition of payment of the due amounts to the rest of the heirs. The court may order the selling of the property, with the consent of the parties or by an enforcement officer through a public auction. The court decides in a ruling, and the amounts deposited by one of the heirs for the others and those resulting from the sales are divided by the court.

See Article 108 of Act No 36/1995, Article 193(3) of the Code of Civil Procedure.

The notary can proceed with the **liquidation of the succession liabilities** with the approval of all heirs, as well as with the collection of receivables; payment of debt and liabilities; selling of movable property (i); execution of particular legacies.

In the mandatory preliminary phase, the notary will issue a **certificate of succession liquidation**, which lists the estate (receivables and liabilities), heirs and their respective shares, as well as the consent of the heirs regarding the means of liquidation of the liabilities, appointment of a liquidator and deadline for completion.

The liquidator collects the receivables of the succession, pays the debts and sells the assets. The liquidator presents a report to the appointed notary, listing the operations carried out in order for the collection of the receivables and the method for settling the debts. After completion, the notary issues an **heir certificate**, and the net product of the liquidation shall be marked in the estate.

See Articles 119–132 of Act No 36/1995, Article 1114 of the Civil Code.

The division of the estate between heirs is carried out after issuing the heir certificate following liquidation. The division of the estate may be voluntary. The report of donations is the obligation of the surviving spouse and the descendants of the deceased who are entitled to the legal inheritance to bring back to the inheritance the assets donated without being exempt from reporting.

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 division of the inheritance, or exert the 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 naţional notarial de evidenţă a creditorilor persoanelor fizice şi a opoziţiilor la efectuarea partajului succesoral).

The universal heir/heir under universal title who overpaid a 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 if it had been subrogated in the rights of the creditors.

Division of ascendants' assets

Ascendants may divide their assets between descendants by means of donation or will. In the event that not all assets of the inheritance have been included, the assets not included shall be divided according to the law.

See Articles 669–686, 1143–1163 of the Civil Code.

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

A person may inherit if they *exist* at the moment of opening the succession procedure and/or have the capacity to receive liberalities; are entitled to a succession; are not unworthy; are not disinherited.

The person called to receive an inheritance may accept/waive the inheritance. The legatee who is the legal heir may exercise either one of these capacities. In the event that, despite the reserve not having been infringed, the will shows that the deceased wanted to reduce the share due to the legal heir, the latter may only act as a legatee.

See Articles 957–963, 987, 989, 993, 1074–1076, 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 is accompanied by the original document/notarised copy thereof, and in the case of a court decision, an authenticated copy, with the remark “final”. The registration is completed by a proof of registration issued by the land registrar if the document fulfils 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 done also based on the heir certificate 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 procedure. This period may be extended by a court decision.

Mandatory appointment

If the debtor dies prior to commissioning the enforcement officer, the compulsory execution cannot be launched, and if they die after launching it, it cannot be continued until the inheritance has been accepted or a curator of the succession/special succession curator is appointed. If the creditor or the enforcement officer become aware that the debtor is deceased, the former is obliged to request that the competent chamber of the civil notaries for the last domicile of the deceased register it in the special register for opening the compulsory execution and issue a certificate. This certificate should mention whether the inheritance was settled, and if so, it should list the heirs and also mention whether a curator was appointed until the acceptance of the inheritance.

If there is a risk of selling, losing, replacing/destroying of the assets, the notary puts the assets under seal or hands them over to a custodian.

Until the inheritance has been accepted or if 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), 1136, Articles 1077–1085 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, liquidator, a legal heir/heir entitled under a will, appointed custodian/curator (See point a).

The liquidator, who carries out their responsibilities under the supervision of the notary, may be appointed by the deceased, the heirs or by the court.

See Article 124 of Act No 36/1995, Article 1117 (3), 1136 of the Civil Code.

9.3 What powers does an administrator have?

See point a).

The executor of the will puts the seals, makes the inventory, requests that the court approve the selling of the assets, pays the debts of the inheritance, and collects the receivables of the inheritance.

See Articles 1077–1085 of the Civil Code, Articles 101–132 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 motivated **conclusions**, and following the settlement of the succession, issues the final conclusion based on which the heir/legatee certificate is issued.

The heir certificate includes the mode of establishing the extent of rights and serves as a proof of the capacity of heir and of the property right. The notary may issue a **certificate of the status of heir**, which states the number, capacity and extent of 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 complete the notarial conclusion with the omitted assets, and will issue an **addendum to the heir certificate**.

Those who consider they have suffered damages may file a request to the court for the annulment of the certificate and the establishment of their rights. **In the event of an annulment, the notary will issue a new heir certificate based on the final court decision.**

By the petition for succession, the universal heir/heir under universal title may obtain at any time the acknowledgement of such capacity against the person possessing assets from the estate *without* any property rights.

During a contentious succession procedure, the courts issue conclusions and court decisions. The decision of division has a constitutive effect and has an enforceable character after it becomes final.

See Articles 1130–1134, 1635–1639 of the Civil Code, Articles 111–118 and subsequent articles of Act No 36/1995.

Last update: 10/06/2015