

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

This matter is regulated in the Netherlands in Article 4:182 of the Civil Code (*Burgerlijk Wetboek*).

Article 182 of the Civil Code reads:

When a person dies, the heirs shall succeed *ipso jure* to that person's transferable rights, possessions and holdings. The first sentence shall not apply when the estate of the deceased is divided pursuant to Article 13. In that case, the spouse shall succeed *ipso jure* to the possessions and holdings of the deceased. They shall become *ipso jure* debtors of the deceased's debts that have not ceased to exist at the time of death. Where performance is divisible, each of them shall be responsible for a part, equal to their share in the inheritance, unless they are jointly and severally liable.

The principle of seisin applies in the Netherlands, by which the heirs take over *ipso jure* the position of the deceased. Ownership of the assets and debts of the succession is transferred under universal title to the heirs who have accepted the succession.

In the case of legal division of the estate (*wettelijke verdeling*) if the deceased dies intestate, the surviving spouse/registered partner takes over all assets and debts and the descendants receive only a claim. The descendants are not liable for the debts from the succession. Only the surviving spouse/registered partner is liable for the debts if the legal division of the estate is applied.

The principle of seisin entails that no proprietary rights in rem or property rights derive from the succession as such. The estate does not constitute a separate asset in the Netherlands. No restraint applies as regards disposal of the assets of the estate and the estate cannot be attached. Attachment of the goods from the estate among the heirs is possible.

**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?**

Since the estate itself is not a separate asset, recording in a register does not arise.

The Certificate of Succession or the European Certificate of Succession can be recorded in the land register, see Articles 27 and 27a of the Land Register Act (*Kadasterwet*). This enables the heirs to make it known that the owner has died and ownership has been transferred to them under universal title.

However, registration is not a constitutive requirement. Without registration, ownership is also transferred *ipso jure*. If the heirs then divide the assets from the estate, a delivery is required. This then constitutes a transfer under particular title. The division is regulated under Article 3:186 of the Civil Code.

Article 186 of the Civil Code reads:

For the transfer of the portion allocated to each of the joint owners, formal delivery shall be required in the same way as provided for the transfer.

The portion obtained by a joint owner shall be held under the same title as the joint owners held it together before the division.

For formal delivery of immovable property or limited rights on this property, Article 3:89 of the Civil Code provides for a notarial deed to be drawn up and recorded in the public registers.

Article 89 of the Civil Code reads:

The formal delivery required for transfer of immovable property shall take place by notarial deed, drawn up for this purpose between the parties, followed by its registration in the public registers intended for this purpose. Both the transferee and the transferor may have the deed registered.

The deed of formal delivery shall state the title of transfer precisely; ancillary conditions not concerning the transfer may be omitted from the deed.

If an authorised representative acts for one of the parties for drawing up the deed of formal delivery, the power of attorney shall be stated precisely in the deed.

The provisions of this Article shall apply *mutatis mutandis* to the formal delivery required for the transfer of other registered property.

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

Please see reply 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?**

No, no specific rules apply in the Civil Code or the Land Registry Act.

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