Succession

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

A will can be drawn up in one of two forms: as a handwritten will or as a public will.

A handwritten will can only be drawn up by persons who are 16 years of age or more, and must be handwritten from start to finish and also be signed. If the will has been typed with a typewriter or a computer, if the signature is missing or if it has been dictated (e.g. onto tape), the will is invalid and, as a result, only the legal heirs are able to inherit from the estate if no other valid will giving an alternative appointment of an heir exists. For reasons of proof, it is also very important that the testator sign with his or her full name (i.e. first name and last name) so that there can be no confusion as to who has drawn up the will. Finally, it is strongly recommended to include the time and place in the will to show when and where this official written record was produced. This is important because an earlier will can be revoked — in whole or in part — by a new one. If the date is missing from one or possibly even both of the wills, it is often impossible to tell which one is more recent and to be regarded as valid.

Married couples and registered partners are also permitted to draw up a joint handwritten will. In this case, the handwritten will that has been produced by one or both of the spouses or partners must be signed by both of them together.

If you want to avoid the risk of making mistakes when drafting your will, you should draw up a public will (also called a 'notarial will'). This involves verbally relaying your last will and testament to a notary who then records it in writing or drafting it yourself and handing it over to the notary in writing.

In order for a contract of inheritance to be concluded, both parties must appear before a notary at the same time.

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

To counter the risk of a handwritten will being hidden away or getting lost or forgotten about after a person's death, it is often advisable (but not compulsory) to lodge the will with the local court (*Amtsgericht*) – or in Baden-Württemberg with the notary's office (*Notariat*) up to the end of 2017 – so that it can be kept in safe custody. A notarial will is always kept in safe custody. The same applies to a contract of inheritance, unless the contracting parties specifically state that it is not to be placed in official custody; in the latter case, the document is deposited with the notary instead. Wills and inheritance contracts that are kept in safe custody are opened upon the death of the person who made the dispositions *mortis causa* contained therein (to whom the law refers as the 'testator').

Since 1 January 2012, documents kept in safe custody have been registered electronically in the Central Register of Wills at the Bundesnotarkammer [Federal Chamber of Notaries]. Only the details required to locate the disposition *mortis causa* in the event of death are recorded (safe custody identification details). The content of the disposition *mortis causa* is not recorded in the Central Register of Wills. In the case of dispositions *mortis causa* that were drawn up prior to this date and placed in safe custody, the relevant details of the registry offices have been transferred to the register.

As the registry authority, the Federal Chamber of Notaries is notified of all domestic deaths and, for the purpose of opening any dispositions *mortis causa* held in safe custody, informs the depository of the death and informs the competent probate court (*Nachlassgericht*) of whether and which dispositions are registered and where these are held in safe custody.

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

The next of kin can be disinherited by means of a will. However, a situation in which the surviving spouse, children and children's children or parents were to receive no inheritance at all, even though they would have been the legal heirs if the testamentary disposition had not actually existed in the first place, has always been regarded as unjust. Due to their officially recognised and legally established acceptance of mutual responsibility, the same applies to surviving registered same-sex partners. For this reason, the law grants this narrowly defined group of people something called a 'compulsory portion'. The beneficiaries of a compulsory portion are entitled to claim a monetary payment from the heirs that is equal to half the value of the legal portion.

Example: The testator is survived by her husband (with whom she lived under the property regime of community of accrued gains) [whereby each spouse retains ownership of his or her own property but the increase in the combined net worth of the spouses during the marriage is distributed equally] and a daughter. In her will, the testator named her husband as the sole heir. The estate is worth EUR 100 000. The fraction for determining the daughter's compulsory portion is ¼ (whereas her legal portion is ½; the same as that of the husband who lived with the testator under the property regime of community of accrued gains). To calculate the sum of money to which she is entitled, the compulsory portion fraction must be multiplied by the value of the estate at the time of inheritance. This means that the daughter can claim a compulsory portion amounting to EUR 25 000 (¼ × EUR 100 000) from the husband.

Testators are not able to obstruct a claim to this compulsory portion by including beneficiaries of a compulsory portion in their wills but only allocating them less than half of their legal portion. In such cases, the beneficiary of the compulsory portion is entitled to a supplementary amount to bring their compulsory portion up to half the legal portion (compulsory portion adjustment claim).

Example: In his will, the testator named his wife (with whom he lived under the property regime of community of accrued gains) and his daughter as heirs such that they stand to inherit ⅞ and ⅛ of his estate respectively. The estate is worth EUR 800 000. The fraction for determining the daughter's compulsory portion is ¼ (= EUR 200 000). Given that she has been included in the will and so already stands to inherit EUR 100 000 (⅛ of EUR 800 000), she is thus only entitled to a supplementary amount to cover the shortfall (EUR 100 000).

Compulsory portion claims must be asserted within three years of any beneficiaries of the compulsory portion becoming aware of the inheritance and of the disposition by which they are detrimentally affected, and certainly within no more than thirty years of the inheritance.

Heirs can ask for the compulsory portion claim to be deferred if immediate satisfaction of the claim would severely affect them in an unfair way. The example cited in the legislation is a scenario in which the family home would otherwise have to be sold. Nevertheless, there must still be due regard for the interests of the beneficiary or beneficiaries. Deferment means that the compulsory portion does not have to be paid immediately. It is up to the court to decide, on a case-by-case basis, by how long the compulsory portion may be deferred and whether security has to be pledged in respect of the compulsory portion claim.

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

If there is no will or contract of inheritance, the rules of legal succession apply.

Under German law of succession, only relatives are classed as heirs, i.e. people with the same parents, grandparents or great-grandparents as the testator, as well as people who share more remote common ancestors with the testator. According to this definition, relations by marriage are not considered to be related to the testator at all and so are excluded from legal succession, e.g. mother-in-law, son-in-law, stepfather, stepdaughter, aunt by marriage, uncle by marriage, etc.; this is because they do not share any common ancestors with the testator.
The family relationship can also result from adoption (as a child), as this process creates a fully-fledged family relationship in law between the child and the adopter as well as the latter's relatives, along with all the associated rights and obligations. Consequently, adopted children generally have the same rights as biological children (special conditions may apply if 'children' over the age of majority are adopted). Spouses are an exception to the principle of relative-only inheritance.
Although they are not usually related to one another and so do not share any common ancestors, they still have a right of their own to an inheritance from their spouse. If the spouses are divorced, there is no right to an inheritance. Under certain conditions, this also applies to spouses who are not yet divorced but live separately.
Under the law of succession, registered partners have the same inheritance rights as spouses. By contrast, there is no legal right to an inheritance for other forms of cohabitation.

The law of succession for relatives:

Not all relatives have equal inheritance rights. The law divides them up into heirs of various different degrees:
1st degree
Heirs of the 1st degree only include the descendants of the deceased, i.e. the children, grandchildren, great-grandchildren, etc.
Extra-marital children are the legal heirs of their mothers and fathers and of their respective relatives. An exception applies to cases of inheritance in which the testator died before 29 May 2009, if the extramarital child was born before 1 July 1949.
Provided that someone can be found who belongs to this group of very close relatives, all the relatives that are more distant receive nothing and have no share in the inheritance.
Example: The testator has one daughter and numerous nephews and nieces. The nephews and nieces inherit nothing.
The children's children (i.e. grandchildren, great-grandchildren, and so on) can usually only inherit something if their parents have already died or have themselves waived the inheritance.
Example: The deceased is survived by one daughter as well as three grandchildren by a son who has himself already passed away. The daughter receives half the inheritance while the grandchildren have to share the other half between them — that is, the half that would otherwise have gone to their father. This means that each grandchild receives of the inheritance.
2nd degree
Heirs of the 2nd degree are the parents of the deceased along with their children and children's children, i.e. the siblings, nephews and nieces of the testator. Once again, children of the parents of the testator only inherit if the parents of the testator are already deceased. They then inherit the portion due to their deceased father or deceased mother.
Relatives of the 2nd degree can only inherit if there are no relatives of the 1st degree.
Example: The testator is survived by a niece and a nephew. The sisters and parents of the testator have already passed away. The niece and the nephew thus each inherit one half of the estate.
3rd and subsequent degrees
The 3rd degree category encompasses the grandparents plus their children and children's children (aunt, uncle, cousin, etc.), while the 4th degree covers the great-grandparents plus their children and children's children, and so on. Legal succession is essentially based on the same rules as for the aforementioned degrees. However, as of the 4th degree, if the offspring of the grandparents have already passed away, it is no longer the descendants of those offspring that are next in line; rather, the persons who are the closest relatives now become the sole heirs (at this point there is a switch from the parentelic system of succession [which involves working down each line (parentela) descended from an ancestor until an heir is found] to the degree of relationship system [which involves identifying the closest relative based on degrees of kinship]).
The following always applies: only one relative of the previous degree needs to be alive in order for all the possible heirs of the subsequent degree to be excluded.

Spouses and registered partners

Regardless of the respective matrimonial property regime that applied, the surviving spouse or registered partner are classed as legal heirs and are entitled to ¼ of the estate along with any descendants and to ½ of the estate along with any relatives of the 2nd degree (i.e. parents, siblings, nephews or nieces of the testator), as well as any grandparents.
If the spouses or registered partners lived under the 'property regime of community of accrued gains' (which is the default regime, unless the spouses agreed to a different property regime as part of a pre-nuptial or post-nuptial agreement), the aforementioned portion increases by ¼. The same applies to registered partners.
If there are no relatives of the 1st or 2nd degree and no grandparents either, the surviving spouse/registered partner receives the entire inheritance.
Example: The testator is survived by his wife (with whom he lived under the property regime of community of accrued gains) and by his parents. The wife receives ¾ (½ + ¼) and the parents — as heirs of the 2nd degree — each receive ⅛ of the estate. In addition, where the other heirs are relatives of the 2nd degree, as here, or grandparents, the wife is entitled to what is known in German as the '*Großer Voraus'*, which is a preferential right that in most cases covers all household effects and wedding presents (where the other heirs are relatives of the 1st degree, a surviving spouse inheriting as a legal heir is entitled to these effects only in so far as he or she needs them in order to run a proper household).

The State's legal right of inheritance:

If there is no spouse or registered partner and no relative of the testator can be identified, the State becomes the legal heir. Its liability is always limited to the size of the estate.
Further information, including on disposition *mortis causa*, the right to a compulsory portion and legal succession, can be found in the booklet *Erben und Vererben* [Inheriting and bequeathing] published by the Federal Ministry of Justice, which can be accessed online – exclusively in German – from https://www.bmj.de/SharedDocs/Publikationen/DE/Erben_Vererben.pdf;jsessionid=192CD76974962294D2DFB24EF4ACD77A.2_cid297?__blob=publicationFile&v=40

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5 What type of authority is competent:

5.1 in matters of succession?

In principle, it is the probate court of the local court at the testator's last usual place of residence in Germany that is competent to deal with matters of inheritance.

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

An inheritance is waived by submitting a declaration to the probate court; this declaration must be made in the presence of and recorded by the probate court or be submitted after certification by a notary (for further details, see below).

A declaration of acceptance does not have to be submitted in any particular form and there is no need for acknowledgement of receipt. Merely exceeding the deadline for the waiver is sufficient to constitute acceptance.

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

A legacy or bequest is accepted or waived by submitting a declaration to the person charged with the legacy/bequest. This can be the heir or a legatee, i.e. for a sub-legacy.

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

German law of succession makes no provision for declaring the acceptance or waiver of a compulsory portion.

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)

Opening of the will:

A disposition *mortis causa* submitted to the probate court or taken from safe custody is officially opened by the probate court following the death of the testator. The heirs will be officially notified of this.

Proceedings for the issue of a certificate of inheritance:

The certificate of inheritance is issued by the probate court and specifies who the heir is, the extent of his or her right of inheritance and, where applicable, may also stipulate subsequent succession or the execution of the will.

The probate court issues the inheritance certificate on request. The applicant must demonstrate that the details required by law are all accurate or provide a statutory declaration to show that there are no grounds to doubt the accuracy of the details. The applicant can make a statutory declaration by appearing before a notary or a court, unless the law of the federal state concerned stipulates that only notaries are competent to deal with this matter.

Issue of a European Certificate of Succession:

International Probate Administration Law [*Internationale Erbrechtsverfahrensgesetz, IntErbRVG*] sets out the procedures for the European Certificate of Succession. The European Certificate of Succession is a certificate of inheritance that is valid in almost all European Union countries (with the exception of Ireland and Denmark). It is also issued at the request of the probate court in the form of a notarised copy with a restricted validity period. The main aim of the certificate is to simplify the settlement of estates within the EU.

Distribution of the assets:

If there are multiple heirs for the estate, it becomes the joint property of the community of heirs. As a result, the coheirs are only permitted to dispose of individual items of the estate by acting jointly, e.g. for the purpose of selling the testator's car if it is no longer required. They must also manage the inheritance jointly. This often causes major difficulties, particularly if the heirs live far apart and cannot come to an agreement. This 'forced community' is usually very inconvenient and, in principle, each heir can ask for the community to be dissolved by requesting the partitioning of the estate. The most important exception in this regard is when the testator has stipulated in his or her will that the estate is not to be divided up for a set period of time, e.g. so that a family business can continue operating.

If the testator has appointed an executor, he or she is then responsible for partitioning the estate. Otherwise, partitioning the estate is the responsibility of the heirs. For this purpose, they are allowed to seek assistance from a notary. If the heirs fail to reach an agreement despite having appointed a notary to act as an intermediary, the only remaining option is to take legal action.

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

For details of legal succession, please see above.

If the deceased has left a will, this takes priority over the rules of legal succession. Consequently, only those persons named in the will inherit from the estate if the testator gave instructions about the entire estate in his or her will. For details of who is entitled to a compulsory portion, please see above.

On the death of the testator, the inheritance legally passes to the heir or heirs (principle of automatic acquisition of the inheritance). However, heirs are entitled to waive their inheritance (see below).

The testator may also leave a legacy or bequest in his or her will, e.g. by allocating individual items or specific sums of money to particular people. In such cases, the recipients of the legacy/bequest ('legatees') are not classed as heirs but have a claim against the defendant(s) for whatever it is that has been specifically left for them in the will.

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

Waiver of the inheritance:

The heirs are not liable for the liabilities of the estate if they waive their inheritance by the stipulated deadline. As a general principle, the respective heir must waive his or her inheritance within six weeks of having been notified of the opening of the inheritance and the basis for his or her status as an heir, which involves making an official declaration to the probate court. This can either be done in the presence of and recorded by the probate court or be submitted after certification by a notary. In the case of the latter, it is sufficient to submit a letter, although the signature of the heir must be certified as true by the notary. The act of either waiving or accepting the inheritance is usually binding.

Liability if the inheritance is accepted:

If the heirs accept their inheritance, they essentially 'step into the shoes' of the testator from a legal perspective. This means that they also inherit the person's debts and, in principle, must also use their own assets to cover them.

However, the heirs are able to limit their liability for the inherited debts to what is known as the 'legal estate' ('*Erbmasse*'). This means that any creditors to whom the deceased was indebted can recover their losses from the legal estate but the heirs' own assets remain protected from third parties.

The heirs can obtain this limitation of liability in one of two ways: they can either submit an application to the probate court to request administration of the estate on behalf of the creditors or they can request estate insolvency proceedings by submitting an application to the local court that is competent to act as an insolvency court. If the estate is not even sufficient to cover the costs of administration of the estate on behalf of the creditors or to cover the costs of estate insolvency proceedings, the heirs can still obtain a limitation of liability. If claims are asserted by a creditor, the heirs can plead insufficient assets in the estate. The heirs can then refuse to settle the liabilities of the estate in so far as the size of the estate is insufficient to cover them.

However, the heirs are required to hand over what there is of the estate to the creditors. If the heirs simply wish to avoid being confronted with debts they were not anticipating, all they need to do is initiate a public notice procedure ('*Aufgebotsverfahren*'), whereby the heirs can submit an application to the probate court requiring all the creditors of the testator to notify the court — by a set deadline — of the outstanding debt owed to them by the testator. If a creditor fails to file his or her claims on time, he or she must be satisfied with whatever is left of the inheritance at the end. The public notice procedure may

also clarify the situation for the heirs by revealing whether there are grounds to put the estate into official administration by applying for administration of the estate or insolvency of the estate.

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

According to the principle of automatic acquisition (see point 7), the heir of the owner of a piece of land acquires ownership of that land the second the testator dies. This will result in the land register becoming incorrect, as the testator will still be listed as the owner. It is necessary to submit an application for the rectification of the land register along with evidence to show that it is incorrect so that the heir of a property owner can also be formally entered in the land register as the owner. In order to apply for a rectification of the land register following the death of the registered owner, the applicant must thus submit **proof of their status as an heir** to the land registry office.

In the strictly formalised land register process, this proof can only be provided by submitting a **certificate of inheritance or European Certificate of Succession** in which the applicant is identified as the heir.

If succession is based on a disposition *mortis causa* set out in a **public document** (a notarial will or contract of inheritance), it is sufficient to present the land registry office (*Grundbuchamt*) with the disposition and the official record of its opening. No certificate of inheritance or European Certificate of Succession is then required.

If a piece of land is the subject of a **legacy or bequest**, there is no automatic acquisition of ownership under German inheritance law. However, the legatee may request the heir to transfer ownership to him or her. A notarial deed must be presented for the acquisition of ownership, which deed must show the transfer of ownership of the land in question from the heir to the legatee. If foreign inheritance law applies, for example because the testator had his or her last usual place of residence abroad and did not make a choice of applicable law, the presentation of a certificate of inheritance or a European Certificate of Succession may exceptionally suffice even if the allocation was only made by way of a legacy or bequest. Other documents may also be required depending on the nature of the case concerned. For instance, in order for a trading company to be registered as the heir, proof of power of representation must be provided (e.g. official excerpt from the commercial register).

8.1 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?

Under German law of succession, the administration of the estate on behalf of creditors can be used to prevent debts being enforced against the heirs' own assets. The probate court may only order that the estate be placed into administration at the request of an authorised person (heir, executor, creditor of the estate, purchaser of the total inheritance or subsequent heir).

The administrator is an officially appointed body. Although responsible for administering the total assets of somebody else, it still has the status of a party in its own right in the event of a legal dispute. It carries out its official duties in a private capacity when administering the other person's assets with a view to satisfying the interests of all the parties involved (heirs and creditors). The estate administration process that the administrator is entitled — and indeed — required to perform is not merely aimed at maintaining and increasing the estate, but primarily at satisfying the creditors of the estate. The main duty of the administrator is to ensure that the liabilities of the estate are cleared.

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

Aside from the actual heirs, the (insolvency) administrator (see above) and the executor (see below), relevant powers can also be granted to a curator of the estate.

The probate court officially orders curatorship of the estate if there is a current need for this when the identity of the responsible heir is uncertain or if it is not known whether he or she has accepted the inheritance. Curatorship of the estate is aimed at safeguarding and maintaining the estate in the interests of unknown heirs.

The probate court sets the curator's scope of responsibilities in accordance with what is required in each individual case. This scope may be quite broad or may simply focus on the administration of individual items of the estate. The curator of the estate is usually given responsibility for identifying the unknown heirs and for safeguarding and maintaining the estate.

In principle, the curatorship of an estate does not aim to satisfy creditors of the estate because it is primarily instigated to protect the heirs. By way of an exception, the duties of the curator may also include using the resources of the estate to settle liabilities of the estate if this is necessary for its proper administration and maintenance or for the purpose of averting loss or damage, particularly any costs that could be incurred as a result of unnecessary legal disputes.

8.3 What powers does an administrator have?

A testator is permitted to designate the person or persons who will act as executor(s) in his or her disposition *mortis causa*. He or she can also authorise a third party, the executor or the probate court to designate the person or persons who will act as executor(s). The obligations of the executor commence as soon as the designated person accepts their appointment to this role.

Under the law, it is the duty of the executor to execute the testamentary dispositions of the testator. If there is more than one heir, the executor is responsible for partitioning the estate between them.

The executor is required to administer the estate. In particular, he or she is entitled to take possession of the estate and dispose of the items of the estate. In this case, the heirs have no power of disposition over any item of the estate that is subject to administration by the executor. The executor is also entitled to take on liabilities in the name of the estate provided that this is necessary for its proper administration. He or she is only entitled to dispose of items free of charge if there is a moral obligation to do so or out of respect for common decency.

However, the testator is able to restrict the powers of the executor as he or she sees fit compared to what has been laid down by the legal provisions. He or she also has the authority to define the period for executing the will. He or she might, for example, merely go so far as to allow the executor to handle the estate and partition it in the short term. On the other hand, he or she might equally decide to provide instructions in his or her will or contract of inheritance to make the estate subject to long-term execution. In principle, long-term execution can be mandated for a maximum of 30 years, starting from the actual date of inheritance. Nevertheless, the testator can provide instructions for the administration to continue until the death of the heir or the executor, or until the occurrence of a specified event affecting one or other of them. In such cases, the execution of the will can actually take longer than 30 years.

9 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?

A certificate of inheritance or a European Certificate of Succession is generally required to prove that the heir holds a right of inheritance, e.g. if an heir wishes to have a piece of land or an account held in the name of the testator transferred to his or her own name. If a public will exists (see above), it may not be necessary to present a certificate of inheritance or European Certificate of Succession in such cases.

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